

11 June 2021

Arena Point
Merrion Way
Leeds
LS2 8PA

REF: SHA/24560

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

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1 Outcome

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

A copy of this decision is being sent to:

Sanjivani Ltd t/a Tower Bridge Wellness Pharmacy
PCSE on behalf of NHS England
Lloyds Pharmacy
Day Lewis PLC
Boots UK

Advise / Resolve / Learn

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1 The Application

By application dated 5 August 2020, Sanjivani Ltd t/a Tower Bridge 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 In response to why this application should not be refused pursuant to Regulation 31, the Applicant stated:
 - 1.1.1 There are no other pharmacies or dispensing doctors adjacent to or in close proximity to the location in this application.
- 1.2 The Applicant included the following comments in a covering letter to the application:
 - 1.2.1 The Applicant would like to make an urgent appeal to fast tract [sic] and approve their application for inclusion into the Pharmaceutical List and grant [them] an NHS Licence.
 - 1.2.2 Background:
 - 1.2.3 The Applicant have been trading now for nearly two years and the demand for NHS services grows daily from ever expanding local residents, offices and tourists alike. But lately during this Corona virus epidemic [they] have seen Pharmacies all over and Southwark area over stretched, staff sickness on the increase, NHS requesting retired NHS medical professionals to return to work, almost 6000 pharmacy staff asked to re-register to help with COVID- 19.
 - 1.2.4 The Riverside Ward of SE1 2NJ area has significantly grown in both locals, offices, and tourists (before this Virus epidemic).
 - 1.2.5 As a private independent pharmacy the Applicant have been frequently approached by Local surgeries if they can dispense prescriptions and deliver ([they] are in a position to deliver - where many near to [them] are not), many locals who are sick need their medication and a 10-15 minute walk can be too much. It makes the Applicant very sad to refuse NHS prescriptions when [they] have the stock like Ventolin, Clenil 100, paracetamol etc when many pharmacies have run out. The Applicant are fully set up to play [their] part in anyway [they] can to eradicate this disease.
 - 1.2.6 The Applicant had one patient who was critical with cancer, could not get her medicines from anywhere and [they] sourced it for her - be it a private prescription. This is one of many examples of how the Applicant have helped [their] community - you only have to look at [their] 80+ five star google reviews not matched by any pharmacy [they] know of in Southwark district - please have a look at these reviews.

- 1.2.7 The Applicant had plenty of supply of masks and sanitisers as well as other essential items like antibacterial wipes, that [they] worked hard and sourced from India whilst no pharmacy near [them] had any stock.
- 1.2.8 The Applicant was extremely sad that [they] were not in a position to help the NHS at this critical they needed all the help they can get [sic]. The Applicant feel the out dated regulations do not apply in the situation [they] are in. It still is not too late to help out if NHS Resolutions Team can act fast. To prove the Applicant's sincerity and genuineness [they] would be most happy for a site and area visit by appointment.
- 1.2.9 Furthermore the Applicant are providing established services that GP Surgeries have stopped like Ear Microsuction, Full Sexual Health Screening, Travel Vaccinations, Cardiovascular and Diabetes risk assessment and lifestyle medicine which the NHS really wants pharmacies to get involved and not commissioned yet.
- 1.2.10 The Applicant also offer full blood testing services with phlebotomy onsite too.
- 1.2.11 The Applicant's state of the art consulting room can be adapted to have a separate entrance and [they] are in a position to provide COVID 19 onsite testing facility if needed – [they] do not think any other pharmacies are offering [sic].
- 1.2.12 The Applicant's vast service can easily be commissioned by the NHS.
- 1.2.13 The Applicant asks to please reconsider [their] proposal and make a responsible decision that can save lives and let [them] help in this hour of need.
- 1.2.14 The Applicant's aim is not to compete with the likes of Boots but rather work with other pharmacies and share [their] expertise with them.
- 1.2.15 The Applicant has written to the Health Secretary Mr Matt Hancock MP, Neil Coyle MP for Southwark and the Dr Leidon Shapo Head for Health & Social Care Southwark Council regarding this matter.
- 1.2.16 The Applicant thinks it would be criminal and injustice if [they] are not allowed to help and many sick people denied easy access in [their] locality - please also look at the map enclosed.
- 1.2.17 Also the Applicant pledge to open over Easter and Christmas Day (plus bank holidays) if the need arises.

1.3 The Applicant proposed the following opening hours:

1.3.1 Proposed core opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
9.00am – 6.00pm	10.00am – 5.00pm	Closed	52				

1.3.2 Total proposed opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total

8.30am – 6.30pm	10.00am – 5.00pm	11.00am – 3.00pm	61				
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1.4 The Applicant has applied to provide the following services:

1.4.1 Essential services

Service	Accredited to provide (Y/N/NA)	Premises accredited (Y/N/NA)	Consultation area (Y/N/NA)
NEW MEDICINES SERVICE	N	N	Y
SEASONAL INFLUENZA SERVICE	N	N	Y
NHS URGENT MEDICINE SUPPLY	N	N	Y
MINOR AILEMENT SCHEME	N	N	Y
STOP SMOKING SERVICE	N	N	Y
SEXUAL HEALTH L 1&2 (plus full sexual health screening)	N	N	Y
ORAL HORMONE CONTRACEPTION	N	N	Y
NHS HEALTH CHECKS	N	N	Y
Outside scope of NHS currently (easily for NHS to commission - ear micro-suction, full blood testing service, travel vaccination, full sexual health screening, Covid 19 screening (PCR + ANTIBODY). PLUS TREATMENT via PGD.	N	N	Y
Onsite private remote GP - Medicspot for acute consolation	N	N	Y

1.5 In the documents received by NHS Resolution from NHS England in relation to this matter, a further document was included that appeared after the application. No reference is made to this document in the application and it appears it is a draft document for application to be included in the pharmaceutical list in early 2018. NHS Resolution has not extracted the contents of this document here but notes that NHS England, in its decision report, extracted below, contains the wording in this document.

2 **The Decision**

NHS England considered and decided to refuse the application. The decision letter dated 5 March 2021 states:

2.1 NHS England has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning.

2.2 Report

- 2.3 The PSRC have determined that there is enough information within the papers to decide the application without an oral hearing.
- 2.4 The current PNA is the one that was published by the HWBB in April 2018. There is a Supplementary statement issued in September 2020.
- 2.5 NHS England is only able to review the application in respect to services which are commissioned by NHS England.
- 2.6 The Applicant is offering to provide 52 core hours and a total of 61 hours. If the application is approved NHS England would accept these hours and issue a direction for the additional core hours.
- 2.7 It is noted that the Applicant made a previous similar application that was refused.
- 2.8 Distances
- 2.9 The distance between the proposed site and Boots at Hayes Galleria via google maps is 8 minutes (650 m) and driving time is 5 minutes (1.3 km). The Applicant has stated that the driving distance is longer due to one-way streets at 3.6km and takes 16 minutes. There are buses that cover most of this distance, but some walking at either end is required. The buses run approx. every 8 minutes and would halve the walking distance.
- 2.10 The Applicant has stated the distance between the proposed site and the next nearest pharmacy (Amadi Chemist) is a 11 minute walk and approx. 900 m, google maps measures this as a 11 minutes walk and is 900m, driving is 1.3km taking 5 minutes. There are buses that cover most of this distance, but some walking at either end is required. The buses run approx. every 8 minutes and would at least halve the walking distance.
- 2.11 Regulation 31
- 2.12 There are no pharmacies in the immediate vicinity of this application so regulation 31 is not engaged.
- 2.13 Regulation 32
- 2.14 There are currently no LPS designations in this area therefore regulation 32 is not engaged.
- 2.15 General Comments
- 2.16 The pharmacy is offering to provide a number of unforeseen benefits as follows:
- 2.17 Applicant Details
- 2.18 The Applicant have been trading now for nearly two years and the demand for NHS services grows daily from ever expanding local residents, offices and tourists alike. But lately during this Corona virus epidemic [they] have seen Pharmacies all over and Southwark area over stretched, staff sickness on the increase, NHS requesting retired NHS medical professionals to return to work, almost 6000 pharmacy staff asked to re-register to help with COVID- 19.
- 2.19 The Riverside Ward of SE1 2NJ area has significantly grown in both locals, offices and tourists (before this Virus epidemic).
- 2.20 The Applicant act as a private independent pharmacy have been frequently approached by Local surgeries if [they] can dispense prescriptions and deliver (the

Applicant are in a position to deliver - where many near to [them] are not), many locals who are sick need their medication and a 10-15 minute walk can be too much. It makes [the Applicant] very sad to refuse NHS prescriptions when [they] have the stock like Ventolin, Clenil 100, paracetamol etc when many pharmacies have run out. The Applicant are fully set up to play [their] part in anyway [they] can to eradicate this disease.

- 2.21 The Applicant had one patient who was critical with cancer, could not get her medicines from anywhere and [they] sourced it for her - be it a private prescription. This is one of many examples of how [the Applicant] have helped [their] community - you only have to look at our 80+ five star google reviews not matched by any pharmacy I know off in Southwark district - please have a look at these reviews.
- 2.22 The Applicant had plenty of supply of masks and sanitisers as well as other essential items like antibacterial wipes, that [they] worked hard and sourced from India whilst no pharmacy near [them] had any stock.
- 2.23 The Applicant was extremely sad that [they] were not in a position to help the NHS at this critical they needed all the help they can get [sic]. I feel the outdated regulations do not apply in the situation we are in. It still is not too late to help out if NHS Resolutions Team can act fast. To prove [their] sincerity and genuineness [they] would be most happy for a site and area visit by appointment.
- 2.24 Furthermore, the Applicant are providing established services that GP Surgeries have stopped like Ear Microsuction, Full Sexual Health Screening, Travel Vaccinations, Cardiovascular and Diabetes risk assessment and lifestyle medicine which the NHS really wants pharmacies to get involved and not commissioned yet.
- 2.25 The Applicant also offer full blood testing services with phlebotomy onsite too.
- 2.26 The Applicant's state-of-the-art consulting room can be adapted to have a separate entrance and [they] are in a position to provide COVID 19 onsite testing facility if needed – the Applicant does not think any other pharmacies are offering [sic]. Our vast service can easily be commissioned by the NHS.
- 2.27 The Applicant asks to please reconsider [their] proposal and make a responsible decision that can save lives and let us help in this hour of need.
- 2.28 The Applicant's aim is not to compete with the likes of Boots but rather work with other pharmacies and share [their] expertise with them. [The Applicant] has written to the Health Secretary Mr Matt Hancock MP, Neil Coyle MP for Southwark and the Dr Leidon Shapo Head for Health & Social Care Southwark Council regarding this matter.
- 2.29 The Applicant thinks it would be criminal and injustice if [they] were not allowed to help and many sick people denied easy access in [their] locality - please also look at the map enclosed.
- 2.30 Also the Applicant pledges to open over Easter and Christmas Day (plus bank holidays) if the need arises.
- 2.31 Background
- 2.32 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. The improvements or better access that would be secured were not included in the relevant Pharmaceutical Needs Assessment although there is some reference within the Pharmaceutical Needs Assessment to a need for more extensive opening hours in some localities. 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 we will deal with each of those in turn:-

- 2.33 Choice
- 2.34 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 Pharmaceutical Needs Assessment. It is therefore clear that the choice has reduced since the 2015 PNA was commissioned. In contrast, the population currently listed in the Office for National Statistics given above 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. As at 2011 (2011 census data) there were 14,390 usual residents in Riverside Ward. The nearest pharmacies are Boots the Chemist at the Hay's Galleria retail development to the west which is eight 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.
- 2.35 The next closest pharmacy is Amadi's Chemist at 107 Abbey Street, North Southwark SE1 3NP. This is an 11-minute walk and the distance of 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. *(do you have any information on what these crossings are like? Busy? Isolated?)* Again because of the restrictive road system the distance to this pharmacy is 1.3km if driving. The third closest but second pharmacy within the ward is to the southeast of the ward, 1.1km walking distance which involves crossing Tooley Street and it is 1.2km by car.
- 2.36 For those attempting to drive to the nearest pharmacies there is no parking at a number of them in particular Boots at Hay's Galleria. There is a limited amount of on street parking at Amadi's Chemist *(is this correct? How much parking? Have you any photos?)* There is parking at Hobbs Pharmacy which is co-located with Bermondsey Health Spa Health Centre but this is extremely limited as it serves the Health Centre as well *(is this correct?)* which has a list size of 10,850 patients. *How many spaces are available? .*
- 2.37 Public transport; because of the riverside location of the proposed pharmacy and nearest pharmacies there is not a direct public transport route to the nearest pharmacies and there is cost involved in this option.
- 2.38 In short the Shad Thames area has no current pharmacy service and a lack of choice in provision.
- 2.39 In the wider area accessibility to the local GP surgeries is limited because of restricted hours of opening of local pharmacies that are not aligned with the extended hours of surgeries.

	New Mill Street Surgery	St Katherine's Dock Practice	Bermondsey Spa Medical Centre	Bermondsey and Lansdowne Medical Mission	Artesian Health Centre
Mon	09:00 to 20:00	07:30 to 18:00	07:00 to 18:00	08:00 to 18:30	08:45 to 18:30
Tues	09:00 to 20:00	07:30 to 18:00	09:30 to 19:30	08:00 to 18:30	08:45 to 20:00
Weds	09:00 to 18:30	07:30 to 18:00	07:00 to 18:00	08:00 to 18:30	08:45 to 20:00
Thurs	09:30 to 18:30	07:30 to 18:00	09:30 to 18:00	08:00 to 18:30	08:45 to 20:30

Fri	08:00 to 18:30	07:30 to 18:00	09:30 to 18:00	08:00 to 18:30	08:45 to 18:30
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- 2.40 Boots at Hays closes at 19h00, Amadi at 18h30 and Hobbs at 18h30, so there is no cover for late night surgeries. There are also limited opening hours on Saturday and Sunday, thus reducing choice and accessibility at those times.
- 2.41 Protected Characteristics
- 2.42 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. Dealing with people who share a protected characteristic having access to services, the 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. These statistics are often linked to a high level of people who live with long term sickness or disability and therefore would share that protected characteristic. 17% of households have one person in the household with a long-term health problem or disability. 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. 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. The focus of the applicant's pharmacy will be healthy living and will prioritise personalised medicine. A modern consulting 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 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, Bio-impedance (*what do you mean by this?*) and blood markers. *What are your qualifications to offer these additional services?* 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. Stress management (*how would this work? what would you be offering?*). For these services there would be a shared patient medication record to track progress and diarised follow-ups would be offered. There would also be a travel clinic – this would be a private service..
- 2.43 Innovation
- 2.44 The pharmacy's wellness and personalised medicine approach is novel where it overlaps with NHS Services (*can you clarify how it goes beyond a healthy living pharmacy?*) Granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant Pharmaceutical Needs Assessment was published..
- 2.45 Significant detriment Pursuant to Regulation 18.2(a)(i):-

- 2.46 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.
- 2.47 Pursuant to Regulation 18.2(a)(ii):- 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.
- 2.48 Boots Comments
- 2.49 Whilst [Boots] accept that the application is based on benefits not foreseen when drafting the PNA, it unclear from the information provided what elements of this application were 'unforeseen' during the preparation of the PNA.
- 2.50 The PNA produced by Southwark Health and Wellbeing board, clearly states in its executive summary:
- 2.50.1 Conclusions
- 2.50.2 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).
- 2.50.3 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.
- 2.51 [Boots] believe that there are 17 pharmacies within 1 mile of the proposed offering patients' choice and access to extended hours.
- 2.52 The Applicant has not identified any specific patient groups that may wish to access a pharmacy at the proposed location that currently have expressed difficulty in accessing services in the area. The nearest pharmacy to the Applicant's admission is 650 metres away. We do not believe that this to be a significant distance and there are no gaps or suggestions that this is the case in the current PNA. We are not aware of any complaints made to NHS England with regards to access and the suggestion that there has been a reduction of one pharmacy in the Riverside Ward between the 2015 and 2018 PNA has not been highlighted. The closure of a pharmacy is likely to have been discussed as part of the drafting of the PNA and just because it has not been stated, does not mean it hasn't been considered. [Boots] believe that patients have access to providers and choice in the area and do not believe that the Applicant is offering to secure any innovation.
- 2.53 For these reasons [Boots] respectfully urge NHS England to refuse this application.
- 2.54 Day Lewis Comments
- 2.55 The Applicant made an essentially identical application at this location in March 2018. That application was refused by NHS England and this decision was upheld by NHS Resolution following an appeal by the Applicant.
- 2.56 No evidence has been provided by the Applicant in respect of what has changed since the previous refusal. There is no reason, therefore, for NHS England to make a different decision this time.

- 2.57 The Applicant's main argument for a new pharmacy to be provided at the proposed location is that there is one fewer pharmacy within the Riverside Ward listed in the draft 2018 Southwark PNA compared to the 2015 PNA.
- 2.58 The Applicant has failed to provide any information in respect of where the 'closed' pharmacy was located or, more importantly, any evidence that such closure has led to a shortfall in the provision of pharmaceutical services.
- 2.59 Reduction of choice, if in fact there has been any, is not evidence that the existing pharmaceutical services provision does not meet the needs of the relevant population.
- 2.60 The Applicant claims that existing pharmacies are difficult to access from the proposed location yet fails to point out that the resident population in the immediate area of the proposed location is both relatively small and typically highly affluent.
- 2.61 Most people visiting the proposed location do not live locally and have therefore travelled from further afield where, no doubt, they will have access to a large number of existing pharmacies. Alternatively, those who do live locally will travel further afield to work and to shop where they can easily access a pharmacy.
- 2.62 Reference to journeys by car is largely meaningless. Central London is not an area where most people travel by car. In fact, the local population tends to be highly mobile and accustomed to walking around the area or making use of public transport. Notably the applicant has failed to provide any evidence that people within the proposed area are not easily able to access existing pharmacies using public transport - it simply states that access by public transport is difficult without substantiating this claim. The journey to the 'nearest pharmacy' by public transport is irrelevant if local residents do have easy access to *other* pharmacies by public transport. It is clear, in this case, that they do.
- 2.63 Reference to areas of Southwark which are more deprived are irrelevant without highlighting where those areas are and demonstrating that the proposed location will be more accessible to these people. In reality, the proposed location is not in any way deprived. Data from the 2011 census is of very little relevance, not least because the proposed location is within an area where there has been substantial redevelopment including the building of highly expensive apartments.
- 2.64 Whilst the Applicant's claims in respect of the services it proposes to provide may be laudable, they are simply aspirational in the absence of any framework for commissioning the services. Furthermore, the Applicant has not provided any evidence that there is demand for the services it proposes.
- 2.65 Bizarrely, the supporting information includes a number of questions that appear to have been raised by somebody who has reviewed the document, yet the applicant has failed to address any of these questions!
- 2.66 In conclusion, this application falls a long way short of providing any evidence that might lead NHS England to conclude that granting it would secure improvements or better access to the provision of pharmaceutical services in the area. For that reason, the application should be refused.
- 2.67 Lloyds Pharmacy Comments
- 2.68 NHS England will be aware that a similar application for inclusion in the pharmaceutical list offering to provide unforeseen benefits was refused on the 1st October 2018 and whose decision was upheld by Primary Care Appeals Ref SHA/20013 on the 31st January 2019.

- 2.69 It has already been established a pharmacy at this location will not confer significant benefits to the population therefore [Lloyds Pharmacy] submit the application be refused.
- 2.70 LSL LPC Comments
- 2.71 Firstly, apologies for the delayed response; this is as a result of the unprecedented demand on the LPC as a result of COVID, flu and winter pressures. As far as the LPC is concerned, this application was rejected by NHS England London Region and there is no significant change in the application and therefore our response is the same as the last time:
- 2.72 2(a)(i) & (iii)
- 2.73 As pointed out in the LPC's earlier response there 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.
- 2.74 2(b)(i) & (ii)
- 2.75 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.* [Emphasis added by LPC].
- 2.76 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 assessing 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.
- 2.77 2(b)(iii)
- 2.78 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 an 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 credible 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.

- 2.79 2(c)(d)(e) & (f)
- 2.80 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. 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. 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.
- 2.81 Comments from previous application.
- 2.82 Re: Application offering unforeseen benefits at 43 Shad Thames, SE1 2NJ by Sanjivani Limited
- 2.83 Overall comment:
- 2.84 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.
- 2.85 Pharmaceutical services to be provided at the proposed premises:
- 2.86 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.
- 2.87 Information in support of the application:
- 2.88 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.
- 2.89 Choice:
- 2.90 Nearest Pharmacies around SE1 2NJ area – information using Google Maps:

Pharmacy/Post Code	Time taken by care and road distance	Time taken walking and	Time taken by bicycle and distance	Other comments
Boots Pharmacy SE1 2HD	9mins 1.1 miles	8mins 0.4mile	5mins 0.5mile	Taking in to consideration current road

				works in the area
Amadi Pharmacy SE1 3NP	5mins 0.7mile	11mins 0.7mile	4min 0.6mile	Taking into consideration current road works in the area
Hobbs Pharmacy SE16 4BL	5mins 0.7mile	14mins 0.7mile	5min 0.7mile	Taking into consideration current road works in the area
Harfleur Pharmacy SE1 4TW	5mins 0.6mile	15min 0.8mile	5min 0.7mile	Taking into consideration current road works in the area
Jamaica Road Pharmacy SE16 4RT	8min 1.3mile	18min 0.9mile	6min 1.1mile	Taking into consideration current road works in the area
City Pharmacy SE1 1LZ	11min 1.3mile	15min 0.7mile	8min 0.8mile	Taking into consideration current road works in the area
Boots Pharmacy EC4R 9AA	17 min 1.8mile	19min 0.9mile	11min 1.2mile	Taking into consideration current road works in the area
Superdrug Pharmacy EC3M 1BU	18min 1.9mile	19min 0.9mile	11min 1.1mile	Taking into consideration current road works in the area

- 2.91 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. 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.
- 2.92 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.
- 2.93 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.
- 2.94 Protected characteristics:

- 2.95 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 NHS England 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.
- 2.96 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.
- 2.97 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.
- 2.98 Southwark PNA 2018: Which has now been published
- 2.99 Page 11 and page 79 states:
- 2.100 *'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).'*
- 2.101 *'Consider commissioning a number of pharmacies to open on Sundays or work extra hours if deemed necessary.'*
- 2.102 Page 17 states:
- 2.103 PNA Conclusions
- 2.104 *'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.'*
- 2.105 *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).'*
- 2.106 ***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.***
- 2.107 *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.'*
- 2.108 Page 57

- 2.109 *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.***
- 2.110 In conclusion, the LPC considers the application should be refused for the reasons stated.
- 2.111 City & Hackney LPC
- 2.112 Wished to be kept informed of the application progress.
- 2.113 **Applicant's Response**
- 2.114 Firstly, the Applicant must say that [they] are disappointed to see the objection letters from Boots, Lloyds and Day Lewis pharmacy groups. It is interesting to note that none of the smaller or independently established pharmacies within the area have objected to the application, and instead it is the corporate group pharmacies that have objected as if to create barriers to entry for new entrants, when it would be beneficial for the community especially in light of Covid-19 to provide customers with greater choice and accessibility.
- 2.115 The Applicant's response below comprises a summary of the Unforeseen Benefits that our pharmacy could provide, and is already providing, to the community if our application for inclusion on the NHS Pharmaceutical List is accepted. The Applicant has also responded to points raised by each of the opponents further below.
- 2.116 Unforeseen benefits and Covid-19
- 2.117 The Applicant acknowledges that [they] have previously made an application in March 2018, citing Unforeseen Benefits, and [they] have now made another application on the same grounds.
- 2.118 However, it is clear in relation to the new application that, because of Covid-19, the Unforeseen Benefits via the Wellness Pharmacy to the local community have vastly increased. We have been inundated with customer enquiries requesting whether we can register our pharmacy with the NHS.
- 2.119 The Applicant has not made reference to the Southwark Health and Wellbeing Board's Pharmaceutical Needs Assessment ("**PNA**") in [their] response given that it was last published in 2015, and the 2018 draft PNA is now very likely out of date as it could not have taken Covid-19 into account.
- 2.120 It became apparent to the Applicant from the end of March 2020, during the initial government lockdown, that demands for the Wellness Pharmacy to offer NHS services exceeded [their] expectations, as [they] had a surplus stock of medicines whilst operators such as Boots were not able to facilitate nearby locals.
- 2.121 The Wellness Pharmacy has also received increased demand from outside the local area, for example from surgeries as far as Brighton asking if [they] are a part of the EPS in order to provide [them] with prescription data.
- 2.122 Covid-19 and the lockdown conditions have been a primary reason for the application in 2020, and the Applicant has listed examples of the Unforeseen Benefits that [they] would provide as follows:

Covid-19 related issues or restriction	Unforeseen Benefit
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<p>Decreased availability and access to GP surgeries creates a wider healthcare service gap that can be covered by pharmacies such as the Wellness Pharmacy.</p>	<p style="text-align: center;">Service-led</p> <p>The Wellness Pharmacy provides advice on immunology and also assists patients requiring blood tests</p>
	<p>The process for phlebotomy bookings is longwinded as it involves bookings at hospitals, and the booking process now takes even longer owing to Covid-19 related delays.</p> <p>The Wellness Pharmacy has the facilities to help patients have their blood drawn, centrifuged and frozen ready for shipping. The NHS will be aware of how our blood services for example helps in therapeutic drug monitoring. The Applicant have helped many patients this way e.g. on Lithium Medications, Tamoxifen, Warfarin, Diabetic control and much more. The Applicant does not believe my corporate opponents offer such service.</p> <p>The services provided by the Wellness Pharmacy are increasingly beneficial and can be considered as Unforeseen Benefits in an environment where healthcare services have been overrun by demand and struggled with supply.</p> <p>Users of our services (blood testing, ear microsuction, functional medicine, specialty health checks, and much more) would find it much more convenient to have their prescription dispensed at the same time.</p>
<p>Personalised, service-led advice complementary to NHS</p>	<p>Assisting the NHS</p>
	<p>The Applicant offer many services which may not be NHS commissioned, but are extremely important and needed, and local GP services are not offering them. Some of these services include ear microsuction, sexual health screening, Covid-19 testing both PCR and antibody, blood testing, by providing these services we are helping the NHS indirectly, as this minimises hospital visits thus "Protecting the NHS".</p>
	<p>In addition to providing blood tests and immunology advice, the Wellness Pharmacy provides travel health advice and travel vaccinations</p>
	<p>By providing customers with a high-quality healthcare resource like the Wellness Pharmacy, we are taking steps in whatever capacity we can to reduce the burden on the NHS.</p>
	<p>The Wellness Pharmacy also features a consultation room which is designed in compliance with Covid-19 protective measures, and we are designing a second consultation room on the same basis. It is very unlikely that our competitors have the space to safely</p>

	provide consultation at the same level as our pharmacy.
	The NHS has written about 'personalised medicine' (https:// www.england.nhs.uk/wp-content/uploads/2016/09/improving-outcomes-personalised-medicine.pdf) in the context of understanding the role of our DNA, but I believe it is worth mentioning the following excerpts from the NHS publication on the subject which aligns with the mission of Wellness Pharmacy: - "Personalised medicine: Personalised medicine: a move away from a 'one size fits all' approach to the treatment and care of patients with a particular condition, to one which uses new approaches to better manage patients' health and target therapies to achieve the best outcomes in the management of a patient's disease or predisposition to disease." (page 6, "Improving Outcomes through Personalised Medicine")
	"Personalised medicine will help to maximise the value we can secure from the £15billion that the NHS currently spends on drugs each year. It will create the opportunity to find new purposes for, and better use of, existing medicines including generics and biosimilars. It will also help us to use other non- pharmacological treatments, and even, in some patients, simple dietary or lifestyle interventions. (page 8, "Improving Outcomes through Personalised Medicine")
	The time for 'one-sized fits all' pharmacies like Boots and Lloyds is ending, as evidenced through their increasing store closures.
Lockdown restrictions have introduced maximum occupancy requirements and increased waiting times.	Choice and accessibility As a result of maximum occupancy restrictions, a lesser number of locals are able to be serviced by existing NHS pharmacies as needed. The Wellness Pharmacy complies with the same protocols, and it is an Unforeseen Benefit that the customers have an additional pharmacy option to procure medicine in a safe environment.
Transportation related restrictions and reduced travel	Public transport is not as widely used as a result of Covid-19. There are less people who use the London Underground or London Buses and a greater portion of the local population would now prefer to walk to their destination as opposed to using public travel. The ability to provide an additional NHS pharmacy which is walking distance for locals is an Unforeseen Benefit.
Patients / households with Covid-19 symptoms are required to self- isolate	Delivery services The government guidelines require individuals and households who suffer from Covid-19 symptoms to self- isolate
	Therefore, those in need of medicine are then restricted from travelling to local pharmacies as there is a risk of not being able to do so safely

	and without increasing the risk of infection to others.
	The Wellness Pharmacy is well-equipped to assist with this issue, as it provides a delivery and postal service, which is a service that many of its competitors in the area (e.g. the local Boots and Lloyds) do not provide.
	The Wellness Pharmacy is able to deliver locally within a 2- mile radius and we can also dispatch medicine by post all over England.
	To provide an example, we had one patient who tested positive for the Epstein Barr Virus, which we tested for. The patient became very ill, but the Wellness Pharmacy was able to deliver the required medicines as well as meal replacements as the patient could not swallow.
	It is also worth highlighting that the Wellness Pharmacy is also very well located and provides easy access from Tower Bridge to customers from St Katherine's Docks, an area lacking in pharmacies. An NHS contract would therefore benefit not just to riverside residents but the customers who travel into the area for work, as well as those living and working across the river near St Katherine's Docks.

- 2.123 In recent times, the latest reports indicate more than 21,000 daily positive cases for Covid-19 (although the infection rate could be as high as 90,000 - <https://www.independent.co.uk/news/uk/politics/coronavirus-cases-england-patrick-vallance-boris-johnson-press-conference-b1227538.html>). With local lockdowns imminent, London categorised as 'Tier 2', the fast approaching winter coupled with the potential of a flu epidemic, our healthcare system will continue to be stretched to its limit.
- 2.124 Therefore, an additional NHS pharmacy should be welcomed instead of being opposed, for its ability to assist with patient care.
- 2.125 It was only 6 – 7 months ago when the NHS called upon retired doctors, and the GPhC called upon pharmacists to come back to work in order to fulfil the dire demand for healthcare services. There is also the unavoidable risk of pharmacists, doctors and nurses becoming sick from increased exposure. With such scenarios in the pipeline, can we really risk a reduction in NHS services? It is therefore very reasonable and necessary to conclude that the Applicant's community needs an additional NHS commissioned pharmacy.
- 2.126 Covid-19 has also led to an increasing sentiment of camaraderie and unity displayed among businesses and individuals in every sector, where instead of cutting down competition, businesses are willing to provide support to each other.
- 2.127 The Applicant would have therefore expected greater understanding from my professional colleagues at Boots, Day-Lewis and Lloyds Pharmacy of the Unforeseen Benefits that the Wellness Pharmacy provides to the community, especially in times like these.
- 2.128 It is the view of the Applicant that it is gravely unjustified for corporates like Boots and Lloyds to have a right to object or use any influence they have to affect the success of [their] application especially when the primary motivations for these companies is profit

as opposed to patient care. This is evident as Lloyds has been closing its stores for quite some time, and Boots has also closed so many stores during the epidemic (<https://www.bbc.com/news/health-55811124>).

- 2.129 The Wellness Pharmacy is fighting to protect the health and wellbeing of [its] patients, instead of making corporate decisions based on the bottom-line which result in less accessibility and availability of health services to customers. It is very regretful for us to see customers coming to the Wellness Pharmacy for their prescriptions during the lockdown, and for us not to be able to dispense despite having stock whilst competitors like Boots were out of stock. On many occasions, customers were willing to pay private prescription prices for medicine, but as the NHS scripts belonged to the NHS, the Applicant were not able to dispense medicine to them. Ultimately it was the patients and children that suffered as a result of the pharmacy not being commissioned by the NHS.
- 2.130 It is worth noting that the primary reason for the corporate oppositions is that the Wellness Pharmacy has made the same type of application as in 2018 (i.e. on grounds of Unforeseen Benefits), and none of the opponents have acknowledged the impact of Covid-19 nor provided any comments on whether they believe that the Wellness Pharmacy does not provide Unforeseen Benefits in light of Covid-19.
- 2.131 As a Covid-19 survivor and having a huge passion for immunology, the Wellness Pharmacy keeps excellent patient information and provides education on how to survive coronavirus for our patients. Helping prevent, or enhancing the immune system is our contribution towards “protecting the NHS”.
- 2.132 Case study
- 2.133 In October, [its] pharmacy had a patient who suffers from Parkinson’s Disease and was prescribed new medicine. The patient needed to have his/her Sodium levels checked regularly to tailor the dosage of the medicine.
- 2.134 Hyponatraemia occurs when sodium levels in the blood are too low. Symptoms include lethargy, confusion, fatigue, muscle weakness, restlessness, and seizures. It can result from underlying conditions such as kidney failure or taking certain medications. Low sodium levels in Parkinson’s Disease are therefore very detrimental.
- 2.135 This patient who already has gait and wobbling, had to trek to Boots to get their medication, despite the fact that the Wellness Pharmacy had already carried out the blood test, and collaborated with the patient’s GP to personalise the prescription.
- 2.136 [The Applicant] trust the above helps support [their] assertion that the personalised services [they] offer alongside [their] reputation and the relationships [they] have cultivated with [their] customers and healthcare advisers is an **Unforeseen Benefit** meriting [their] inclusion in the NHS Pharmaceutical List.
- 2.137 Response to Lloyds Pharmacy
- 2.138 Lloyds Pharmacy sent an opposition letter on 28 September 2020.
- 2.139 **Lloyds comments:** “It has already been established a pharmacy at this location will not confer significant benefits to the population therefore, I submit the application be refused.”
- 2.140 The Applicant’s Response to Lloyds:
- 2.141 Reference is made to the application in 2018. Naturally the Applicant applied for an NHS contract upon starting [their] pharmacy. The Applicant has re-applied because of the huge demand and the clear need from patients and peers of the Wellness

Pharmacy. It should also be noted that the application was made in 2018, however we are now in 2020, and the need for healthcare is much more dire given the impact of Covid-19.

- 2.142 Accessibility, availability, and service levels are important.
- 2.143 The nearest Lloyds branch is in either Borough or Bermondsey and it is not practical for Riverside residents or those who work there to get their medications. The Applicant refers NHS England to the map in Appendix A which shows the distance between the pharmacies more clearly. As you can see there is no cluster of pharmacies near the Wellness Pharmacy.
- 2.144 Lloyds Pharmacy has closed 182 branches, and many branches have moved into hospitals. The Applicant therefore cannot see the benefit to either Lloyds or the local community of blocking an independent provider from providing greater stability to the local community by applying for NHS services.
- 2.145 Customer Service:
- 2.146 As mentioned, service levels are important. Below is an excerpt of the most recent Google Reviews of Lloyds Pharmacy at 18 Harper Road.
- 2.147 In comparison, the Wellness Pharmacy prides itself on providing a personalised service to each customer and much greater care is taken to comply with Covid-19 safety measures.
- 2.148 Distance to Lloyds:
- 2.149 The distance from the riverside to the nearest Lloyds pharmacy is 1.3 miles or a 27-minute walk. Patients of the Wellness Pharmacy are therefore very unlikely to use Lloyds pharmacy as an alternative.
- 2.150 Response to Boots pharmacy
- 2.151 Boots sent an opposition letter on 9 October 2020.
- 2.152 **Boots Comments:** *“The Applicant has not identified any specific patient groups that may wish to access a pharmacy at the proposed location that currently have expressed difficulty in accessing services in the area. The nearest pharmacy to the applicant’s admission is 650 metres away We do not believe that this to be a significant distance and there are no gaps or suggestions that this is the case in the current PNA”.*
- 2.153 *“We believe that patients have access to providers and choice in the area and do not believe that the Applicant is offering to secure any innovation”.*
- 2.154 The Applicant’s response to Boots:
- 2.155 Boots refers to the “current PNA” which was published in 2015. The new draft PNA from 2018 is likely delayed due to Covid-19, and therefore reliance on previously published or draft PNAs to oppose the Applicant’s application should not be accepted especially given the ‘current PNA’ does not take into account the global pandemic.
- 2.156 Cluster group
- 2.157 Pharmacies are in clusters in many parts of the Southwark area, but none in the riverside area especially near Mill St Surgery and St Katherines Dock surgery. The Applicant sees many patients from much further afield as mentioned. The Applicant serves not just the locals, but many office workers who want to use the pharmacy as we offer excellent variety of services which Boots lack.

- 2.158 Boots mention specific patient groups and the Applicant refers NHS England to the above case study regarding the Parkinson's patient.
- 2.159 The Wellness Pharmacy provides an accessible alternative to vulnerable, elderly and high-risk patients who are either not receiving adequate services from existing providers or cannot access existing providers the same way as the Wellness Pharmacy.
- 2.160 Innovative Services:
- 2.161 Boots has commented that it does "*not believe that the Applicant is offering to secure any innovation*". The Applicant provides many innovative products and services, please see below for a short list:
- 2.161.1 Sexual Health Screening
- 2.161.2 Blood Tests & Phlebotomy
- 2.161.3 Covid-19 Testing
- 2.162 The Wellness Pharmacy is dedicated to providing a holistic lifestyle-focused service, which correlates very well with the NHS' own objectives of providing personalised care.
- 2.163 The Wellness Pharmacy provides hundreds of different types of blood tests and has the facilities to provide Covid-19 testing, ear-micro-suction, flu testing among others. The Wellness Pharmacy also carries out diabetes testing – HBA1C, hCRP (marker for inflammation), a cholesterol panel, bio-impedance available onsite with results in 5 mins backed by sound nutritional advice etc.
- 2.164 The Applicant's pharmacy has also received business because of the offices in the area – the Applicant now provide flu services to many offices, and the specialty Wellness Heath Screening for their employees as well as Covid antibody tests using Abbots Methodology.
- 2.165 The key purpose of mentioning the range of innovative services the Applicant provides, is to defend comments made by Boots and to explain how the Applicant's services are popular among customers which is how the Applicant have survived for so long as a private pharmacy, and it is a result of this that the Applicant's customers have continuously emphasised that they would like to get their prescriptions at the same time, which would only be possible if the Applicant were awarded an NHS contract.
- 2.166 Therefore, The Applicant does not see how more innovative [they] can be. The Applicant sees no innovation being shown by these multiples.
- 2.167 Although the Applicant's innovative services are not NHS commissioned services, the services [they] provide are not offered by doctors anymore which is why [they] have chosen to offer them. It is also possible that the push by the NHS towards personalised medicine may result in the Applicant's services becoming NHS commissioned in the future. Even if such an outcome does not happen, it is still evident that the Applicant's innovative and personalised services attract customers who also want their prescriptions to be dispensed at the same time, and it is a burden for them to have to travel far (bearing in mind that distance is relative for customers who are unwell) to other pharmacies for their prescriptions even though they choose the Applicant.
- 2.168 Distance to nearby pharmacies:
- 2.169 Boots have claimed that the nearest pharmacy to the Wellness Pharmacy is 650 metres away. The Applicant respectfully disagrees with this assertion, since the distance to the nearest pharmacies from the Wellness Pharmacy are as follows:

- 2.169.1 To Boots (Hay's Galleria) – 0.5 miles (804m)
- 2.169.2 To Boots (London Bridge): 0.6 miles – 0.7 miles (965m to 1,126m) (Non NHS I believe)
- 2.169.3 To Amadi Chemist – Alphega Pharmacy: 0.6 miles (965m)
- 2.169.4 To Jamaica Road Pharmacy: 0.9 miles (1,448m)
- 2.170 The Applicant refer NHS England to the map on Appendix A as confirmation that there is no cluster of pharmacies near the Wellness Pharmacy. From a customer / patient perspective, when you live at the end of Shad Thames or St Katherines Dock, or Mill Street, east of the Wellness Pharmacy, the distance to the nearest NHS pharmacy becomes greater than one mile.
- 2.171 High risk patients, for example with Parkinson's example above, or those with flu like symptoms, even if healthy, would struggle to walk or travel the necessary distance.
- 2.172 Whilst the Applicant's opponents and the Applicant can argue about the distance between the various pharmacies, when patients are ill 0.5 – 0.6 miles is too great a distance to walk or travel to find an NHS pharmacy. Patients are ultimately worse-off as a result, and this highlights the Unforeseen Benefit to the community of granting an NHS contract to the Wellness Pharmacy.
- 2.173 The Applicant does not believe that the corporate pharmacy groups who have opposed my application offer the kind of treatment or service as the Wellness Pharmacy, not to mention a delivery service.
- 2.174 Customer Service:
- 2.175 The customer service offered by Boots is very poor and this can be verified by their Google reviews. The Applicant offer a much more personal service which is very apparent from [their] Google reviews.
- 2.176 *Google Review:* 'Unless desperate, go somewhere else, the pharmacist promised my mum of her much- needed medicine the next day, when she returns [sic] the pharmacist suggested she never made the promise'.
- 2.177 This review is one of many.
- 2.178 Response to Day Lewis
- 2.179 Day Lewis pharmacy sent their opposition letter on 5 October 2020.
- 2.180 **Day Lewis Comments:** *"This applicant made an essentially identical application at this location in March 2018."*
- 2.181 *"The Applicant has failed to provide any information in respect of where the 'closed' pharmacy was located or, more importantly, any evidence that such closure has led to a shortfall in the provision of pharmaceutical services."*
- 2.182 *"Most people visiting the proposed location do not live locally and have therefore travelled from further afield where, no doubt, they will have access to a large number of existing pharmacies."*
- 2.183 *"Furthermore, the Applicant has not provided any evidence that there is demand for the services it proposes."*
- 2.184 Previous Application:

- 2.185 Day Lewis made reference to the Applicant's application for Unforeseen Benefits being made in March 2018 as a basis for their opposition. However, Day Lewis have not acknowledged that the type of Unforeseen Benefits have dramatically given the impact of Covid-19.
- 2.186 Day Lewis is not aware of the personalised service provided by the Wellness Pharmacy and the Applicant refers them to page 1 – 2 of this letter where the Unforeseen Benefits as a result of our services are outlined clearly.
- 2.187 Demand & Services:
- 2.188 Day Lewis commented on how the Applicant made no mention of the location of the 'closed' pharmacy, and the impact this may have had on the provision of pharmaceutical services.
- 2.189 The pharmacy that was closed was in Dock head. It goes without saying that the closure of an NHS pharmacy has an impact on the availability of NHS services in the area. In addition to this, many of the services offered by the Wellness Pharmacy (e.g. delivery services) are not available by other providers, and there is a greater demand for delivery services given the impact that Covid-19 has had on the ability of customers and patients to travel far.
- 2.190 Unsubstantiated Claims:
- 2.191 Reading the comments from Day Lewis, the Applicant cannot see how their comments are backed with facts.
- 2.191.1 The statement about "*most people visiting the proposed location do not live locally*"- Day Lewis has not provided any demographics / statistics of the area so it is not clear how they have come to this conclusion.
- 2.191.2 Day Lewis claims there is no evidence for a demand of services it proposes. The Applicant have enclosed testimonials from September 2020 alone as evidence of the demand. They also do not have access to the Applicant's diary, and how they can come to this conclusion seems very strange. The Applicant have been established for over 2 years and the need for [their] services have been growing [sic].
- 2.192 Distance:
- 2.193 The nearest Day Lewis is in Whitechapel (a 26 minute walk) so it is not clear what purpose their opposition services.
- 2.194 The map in Appendix A shows the how the Wellness Pharmacy is located in the centre of an area with no pharmacies being located immediately nearby.
- 2.195 The Applicant's customers
- 2.196 The Applicant feel that it is very important for the NHS to see that [they] are a customer-focused and service led pharmacy above all else.
- 2.197 The Applicant's drivers to seek an NHS contract have been [their] customers who greatly value the way [they] provide [their] services, which is distinct from any of [their] competitors. The culture of the Applicant's pharmacy and the similarity between [their] approach and the NHS' long-term goals is an Unforeseen Benefit.
- 2.198 The Applicant refers NHS England to Appendix B for a list of testimonials highlighting our services during the Covid-era. (The Applicant have over 100 five star reviews based purely on [their] service).

- 2.199 The Applicant would also like to highlight the 1-star review received from a customer who's only complaint was that we are not an NHS pharmacy.
- 2.200 Response to NHS resolution team
- 2.201 The purpose of the Applicant's responses above is not to patronise [their] professional colleagues, but **[they] do need to defend [themselves] when it appears that the only interest in opposing [their] application is from large pharmacy corporate groups.**
- 2.202 The Applicant genuinely intend to work with all [their] local pharmacies and pharmacists, signposting each specialty and work as a team to fight the horrible invisible force that is Covid-19. As a Covid-19 survivor, the Applicant personally appreciate[s] the importance of having accessible healthcare and basic medicines and well-led, sound advice.
- 2.203 The Wellness Pharmacy has been established for over 2 years and has made tremendous progress on [its] vision to be a pharmacy of the future. The Applicant offer a whole range of services that GP surgeries no longer offer. The Applicant offer a much-needed delivery service that competitors such as Boots does not provide. The Applicant's unique services mean patients also want to get their prescription from them.
- 2.204 The opposition has based their arguments on similar grounds which are distance, demand, and services, however the Applicant has disproved their arguments and trusts it is clear that their oppositions are unjustified.
- 2.205 Since the Applicant's first application in 2018, vast amounts of people want prescriptions from [them], including those who do not live in the Southwark area. People want a friendly service where they want to see a professional, they can develop a relationship with, like their GP. The Applicant have strived to offer that personalised service which is so extremely rare in corporate pharmacy stores. Our willingness to help the NHS combat Covid-19 and the variety of our personalised services should be considered a sufficient Unforeseen Benefit to grant this application.
- 2.206 The Applicant's Proposal
- 2.207 The Applicant urges the NHS to grant [them] the NHS contract on the basis that [they] meet and satisfy the criteria set for a pharmacy applying under Unforeseen Benefits.
- 2.208 The impact of Covid-19 has additionally created a greater need in the area as the Applicant has explained.
- 2.209 Progressing to the appeals stage will delay matters and be a waste of time, as the corporate opposition will continue to strive to squash any potential for a new NHS contract even though the Wellness Pharmacy poses little threat to their businesses and will establish greater stability in our local community.
- 2.210 Alternatively, the Applicant suggests we move straight towards an oral hearing and propose this take place at the Wellness Pharmacy where the Applicant will be happy to demonstrate how the pharmacy complies with all necessary Covid-19 safety measures. It would be an injustice if a proper oral hearing were not held, and if a decision were made solely based on the representations of the corporate opponents.
- 2.211 This application was made primarily due to the high demand for NHS services and what we offered during the Covid-19 lockdown in March 2020, and the Unforeseen Benefits are evident.
- 2.212 As mentioned above, the Applicant have enclosed some recent testimonials from the month of September 2020. The Applicant ask NHS England to review them carefully,

as many show their disappointment with existing operators, which is evidence that patients are not really spoiled for choice. They would go elsewhere if they could.

2.213 If after the oral hearing the NHS Resolution deems it not necessary to grant the Applicant an NHS contract, [they] will end [their] journey to pursue the NHS contract and continue growing [their] private healthcare business.

2.214 All the Applicant asks is to give [them] a chance to show you what difference [they] can make.

2.215 **NHS England Comments**

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

2.217 **Choice**

2.218 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).

2.219 It is the opinion of the NHS England officer that there is 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 in this ward relocated their premises as the GP practice in the area relocated.

2.220 Patients in this area are unlikely to drive and would probably either walk or take public transport. There are options for pharmacies under 15 minutes walk from this site. Due to the nature of this site and the natural barrier of the Thames, pharmacies that are used are mainly on the South of the Thames side.

2.221 The Applicant has made comments regarding services due to the current pandemic situation. This is an issue at this current time and will be finite, it does not mean that there is additional need for services in this or any other area in London. The Secretary of state powers that have been evoked can deal with any changes in hours or locations due to the current situation. Pharmacies also have business continuity plans in place to deal with any other issues. Any application still has to be considered using the regulations and the PNA.

2.222 **Protected Characteristics**

2.223 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. This information relates to the whole borough and not specifically to the ward that the proposed pharmacy is situated. It is the opinion of the NHS England Officer 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.

2.224 *The PNA states*

2.225 *"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."

- 2.226 *"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."*
- 2.227 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.
- 2.228 **Innovation**
- 2.229 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.
- 2.230 **18. (1)(a)**
- 2.231 *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;*
- 2.232 The PSRC have determined that Regulation 18(1)(a) was satisfied in that NHSCB 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.
- 2.233 **18. (1)(b)—**
- 2.234 *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).*
- 2.235 The relevant PNA for this Application is the PNA published by Southwark HWBB on 26 March 2018. This is the latest published PNA.
- 2.236 The PSRC have noted that 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. NHS England bears in mind that, under regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable (after identifying changes that have occurred that are relevant to the granting of applications) unless to do so appears to be a disproportionate response to

those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a Supplementary Statement under regulation 6(3). Such a statement then forms part of the PNA. It is noted that the PNA was dated 26 March 2018 and that there had been supplementary statements issued, the latest of which was in September 2020. This latest statement pulled together all the changes that have occurred since the PNA was published.

- 2.237 The Applicant seeks to provide unforeseen benefits to the patients of Riverside Ward in Southwark. There is no specific reference in the PNA to this ward. 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.
- 2.238 Therefore, the application would need to be assessed in accordance with the regulations under 18(2)
- 2.239 (2) Those matters are—
- 2.240 (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,
- 2.241 There are 29 pharmacies within 2km, (20 of which are located to the South of the River Thames) of the application site, as the crow flies as per NHS Choices website. Distances by foot, car and public transport to the nearest pharmacies have been detailed above. This gives information for local patient access to the nearest pharmacies.
- 2.242 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 Riverside 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.”
- 2.243 Therefore, the granting of this application may result in the over provision of essential services in the area. However, if the application were to be granted and the pharmacy open, the ability to plan for the provision of services would not be affected in a significant way.
- 2.244 **The PSRC have determined that it was not satisfied that significant detriment to the proper planning in respect of pharmaceutical services in its area would result from a grant of the application.**
- 2.245 (ii) the arrangements it has in place for the provision of pharmaceutical services in its area;
- 2.246 The conclusions above relating to 18(2)(a)(i) applied equally to Regulation 18(2)(a)(ii).
- 2.247 **The PSRC have determined that it was not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application. In the absence of any significant detriment as described in Regulation 18(2)(a), NHS England was not obliged to refuse the application and went on to consider Regulation 18(2)(b).**

- 2.248 (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—
- 2.249 (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)),
- 2.250 **Choice**
- 2.251 **Applicant**
- 2.252 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.”
- 2.253 The Applicant states the nearest pharmacies are as follows:
- 2.254 Boots the Chemist at the Hay's Galleria retail development to the west which is eight 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.
- 2.255 The next closest pharmacy is Amadi's Chemist at 107 Abbey Street, North Southwark SE1 3NP. This is a 11 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.
- 2.256 The third closest but second pharmacy within the ward is to the southeast of the ward, 1.1km walking distance which involves crossing Tooley Street and it is 1.2km by car.
- 2.257 For those attempting to drive to the nearest pharmacies there is no parking at a number of them in particular Boots at Hay's Galleria. There is a limited amount of on street parking at Amadi's Chemist. There is parking at Hobbs Pharmacy which is co-located with Bermondsey Health Spa Health Centre but this is extremely limited as it serves the Health Centre as well which has a list size of 10,850 patients.
- 2.258 Public transport; because of the riverside location of the proposed pharmacy and nearest pharmacies there is not a direct public transport route to the nearest pharmacies and there is cost involved in this option.
- 2.259 In short, the Shad Thames area has no current pharmacy service and a lack of choice in provision.
- 2.260 In the wider area accessibility to the local GP surgeries is limited because of restricted hours of opening of local pharmacies that are not aligned with the extended hours of surgeries.
- 2.261 The full details of the applicant's comments are detailed above in pages 4-10 & 14 to 23.
- 2.262 **NHS England Comments**

- 2.263 Much of the predicted population growth that the Applicant has alluded to will take place in areas in and around the Riverside Ward rather than within it.
- 2.264 The LPC have commented 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. They also go on to note 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 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.*
- 2.265 It is a reasonable conclusion that the majority of patients/residents/commuters/visitors within Central London will likely travel by foot or by public transport.
- 2.266 The two nearest pharmacies to this site were between 8 minutes and 11 minutes walk away. This would not be considered unreasonable. There are also buses that cover part of these distances making any walk much shorter.
- 2.267 NHS England considers that these pharmacies can be reasonably accessed by foot.
- 2.268 Whilst the Applicant has given information regarding driving distances, in this part of Central London, it is unlikely that patients would drive. But for those that wished to drive, there was a relatively short drive and some existing parking facilities. Therefore, NHS England is of the opinion that access is reasonable.
- 2.269 There are buses that run between the proposed site and the two nearest pharmacies, whilst these are not door to door, there is some walking at either end of a journey, this would reduce any journey by foot. Buses run approx. every 10 minutes.
- 2.270 Therefore, NHS England is of the opinion that access is reasonable.
- 2.271 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). This pharmacy relocated their premises as the GP practice in the area relocated. 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).
- 2.272 It is the opinion of the NHS England there is a 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.
- 2.273 **The PSRC have determined that NHS England is satisfied that residents of this part of Southwark have a reasonable choice of pharmacies.**
- 2.274 (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)),
- 2.275 **Applicant**
- 2.276 The Applicant has stated the following for patients with protected characteristics "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.

- 2.277 Dealing with people who share a protected characteristic having access to services, the 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. These statistics are often linked to a high level of people who live with long term sickness or disability and therefore would share that protected characteristic. 17% of households have one person in the household with a long-term health problem or disability. 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. 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. The focus of the applicant's pharmacy will be healthy living and will prioritise personalised medicine. A modern consulting 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 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, Bio-impedance and blood markers. 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. Stress management. For these services there would be a shared patient medication record to track progress and diarised follow-ups would be offered. There would also be a travel clinic – this would be a private service.
- 2.278 The full details of the Applicant's comments are detailed above in pages 4-10 & 14 to 23.
- 2.279 **NHS England Comments**
- 2.280 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 Officer 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.
- 2.281 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.*
- 2.282 *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.”

- 2.283 The application is for the ward of Riverside, which does not have the largest growth areas in Southwark. The HWBB have issued a supplementary statement in September 2020. This highlighted where there have been changes to pharmacy services since the publication of the PNA. Neither the PNA nor the Supplementary statement highlight that there have been any issues for patients with protected characteristics that have found any difficulties in accessing services.
- 2.284 Within the information provided 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.
- 2.285 **Therefore, the PSRC have determined that NHS England is 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.**
- 2.286 (iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the NHSCB's duties under section 13K of the 2006 Act(a) (duty to promote innovation)), granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;
- 2.287 **Applicant**
- 2.288 The pharmacy's wellness and personalised medicine approach is novel where it overlaps with NHS Services. Granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant Pharmaceutical Needs Assessment was published.
- 2.289 The full details of the Applicant's comments are detailed above in pages 4-10 & 14 to 23.
- 2.290 **NHS England Comments**
- 2.291 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.
- 2.292 **The PSRC have determined that NHS England is not satisfied that there are innovative approaches with regard to pharmaceutical services within this application.**
- 2.293 Regulation 19 – Deferral
- 2.294 **n/a as not deferred**
- 2.295 **Decision**
- 2.296 The PSRC have determined that there is enough information within the papers to decide the application without an oral hearing. There are no pharmacies within the immediate vicinity of the application, so Regulation 31 is not engaged. With regard to

18(1)(a) NHS England is satisfied that they were required to determine the application. With regard to 18(1)(b) NHS England is satisfied that the application would need to be assessed in accordance with the regulations under 18(2). With regard to 18(2)(a)(i) & (ii) In the absence of any significant detriment as described in Regulation 18(2)(a), NHS England was not obliged to refuse the application and went on to consider Regulation 18(2)(b).

- 2.297 With regard to 18(2)(b)(i) NHS England is satisfied that residents of this part of Southwark have a reasonable choice of pharmacies. With regard to 18(2)(b)(ii) that NHS England is 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.
- 2.298 With regard to 18(2)(b)(iii) NHS England is not satisfied that there are innovative approaches with regard to pharmaceutical services within this application.
- 2.299 The 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 have determined to refuse the application

3 The Appeal

In a letter dated 27 March 2021 addressed to NHS Resolution, the Applicant appealed against NHS England's decision. The grounds of appeal are:

- 3.1 The Applicant writes further to the NHS letter dated 5 March 2021 and this letter is the appeal of Tower Bridge Wellness Pharmacy (the Pharmacy).
- 3.2 The Applicant is very disappointed to learn of NHS England's decision not to accept the Pharmacy's application for inclusion in the Pharmaceutical List. The NHS states that there is enough information within the papers to decide without an oral hearing, which just indicates that the NHS allows corporate multiples to be the gatekeepers of to the NHS Contract. This can be evidenced by the fact that opposition to our application has come primarily from corporate multiples, whereas not one of the long list of independent pharmacies that received notice raised an opposition. At a time when businesses in other industries are helping each other, it is disheartening to see how corporate greed continues to uphold the barriers to entry.
- 3.3 Distances
- 3.4 It would be unfair for the NHS's determination in relation to Regulation 18 to be based solely on the word of corporate pharmacies regarding the distances to other pharmacies. These are neither consistent with the Applicant's own calculation of the distances or those that can be found on Google Maps.
- 3.5 There is clearly no consensus regarding the distance between our Pharmacy and other pharmacies and therefore the Applicant invites the Appeals Team to have an oral hearing at the Pharmacy's premises and see the distances and our innovative services first-hand.
- 3.6 This is the only way to ensure the matter is concluded objectively and without corporate interference. The Applicant were not given the opportunity of an oral hearing when [they] applied in 2018 and ask that on this occasion the NHS allow an oral hearing as otherwise what the Applicant says will be discarded in favour of what is said by corporate multiples and the LPC. A site visit is needed so that we can give you a tour of the area that our Pharmacy serves.
- 3.7 This dispute needs a fair hearing by an impartial body. The Applicant have also implemented the appropriate safeguards in relation to Covid-19 and can assure safety.

- 3.8 Response to corporate multiples and LPC
- 3.9 The Applicant have expressed disappointment with the prejudicial approach taken by the corporate multiples. Their interests clearly lie in keeping all barriers to entry erected.
- 3.10 The LPC's response should not be considered because (1) it did not respond timely in the first instance, and (2) its response is copied verbatim from the LPC's response in relation to the Applicant's 2018 application.
- 3.11 This is clear evidence that the LPC has not even read our application. Not only has the LPC ignored the application, but Appendix B shows an extract from the LPC's response in 2018 to confirm that they recycled their own response.
- 3.12 The LPC's actions are misleading because it states a site visit was undertaken for this application when it was not. The opposition is surely acting in concert to bully the Applicant's Pharmacy into withdrawing from our noble pursuit of an NHS Contract.
- 3.13 NHS's decision
- 3.14 Among other factors in Regulation 18, the NHS' decision must take into account the desirability of (1) there being a reasonable choice of pharmacies, (2) people who share a protected characteristic having access to services, and (3) there being innovative approaches taken with regard to service delivery.
- 3.15 Reasonable choice
- 3.16 The Riverside Ward has had a reduction of a pharmacy in recent years and the Applicant's Pharmacy would therefore provide further choice.
- 3.17 The Applicant's Pharmacy is proposing a phased increase to [their] opening hours with an aim to be operating at 8am – 8pm Monday to Saturday, and 11 – 5pm on Sunday.
- 3.18 In making a determination in accordance with Regulation 18 (2) (b) (i), the NHS must also have regard to its duties under section 13I of the National Health Service Act 2006 (NHSA 2006) which requires the NHS to act with a view that patients can make choices with respect to health services provided to them.
- 3.19 The Applicant's Pharmacy's patients receive a number of health services from [them] but yet they do not have the choice to come to the pharmacy with their prescriptions and allow the Applicant to provide a more well-rounded health service.
- 3.20 Protected characteristics
- 3.21 Southwark has one of the fastest growing populations in South East London. The Applicant's area's population is projected to grow by almost 20% by 2030; equating to an extra 60,000 residents.
- 3.22 Around 35 - 36% of the borough's population is in the BAME demographic, and given this demographic has a higher proclivity towards diabetes and high blood pressure among other things, it further necessitates adding more NHS commissioned pharmacies to the area to tackle the growing need for healthcare.
- 3.23 Pharmacies like the Applicant's provide additional services, which although not NHS commissioned, deliver healthcare services to BAME patients who might regularly struggle with booking urgent health checks or blood-tests through their GPs.
- 3.24 The NHS must have regard to section 13G of the NHSA 2006 when considering protected characteristics which is a duty to reducing inequalities. It is an inequality that BAME patients are at higher risk of certain diseases such as diabetes, and the

Applicant's Pharmacy is well equipped to detect such matters and treat it through the advice of [their] staff which includes dieticians. Having in mind that the NHS has a duty to reduce inequalities, the Applicant's Pharmacy should be supported in its efforts to provide services people with protected characteristics.

- 3.25 Innovative approach to services, improvements and better access
- 3.26 The Applicant refers the Committee to the previous submissions which set out numerous testimonials providing feedback on the Applicant's services.
- 3.27 The Applicant provide many innovative products and services, please see below for a short list:
 - 3.27.1 Sexual Health Screening
 - 3.27.2 Blood Tests & Phlebotomy services
 - 3.27.3 Covid-19 Testing (PCR, Anti-body, antigen, nucleic acid amplification technology)
- 3.28 The Wellness Pharmacy is dedicated to providing a holistic lifestyle-focused service, which correlates very well with the NHS' own objectives of providing personalised care.
- 3.29 Although many of the Applicant's services are not directly commissioned by the NHS, indirectly [they] provide innovative services which helps with medicine management through the Applicant's vast diagnostic (blood testing, DNA, etc) coupled with sound lifestyle advice to make positive outcomes. For example, the NHS has recognised the importance of individuals genome for drug metabolism and we have been offering this service since the Applicant opened 3 years ago.
- 3.30 The Wellness Pharmacy provides hundreds of different types of blood tests, and has the facilities to provide Covid-19 testing, ear micro-suction, flu testing among others. Ear micro-suction has very long waiting times for appointments with GPs, and many GP surgeries generally no longer offer the services the Pharmacy provides. Therefore, a grant of an NHS contract would complement the services we provide very well.
- 3.31 The Wellness Pharmacy also carries out diabetes testing – HbA1C, hCRP (marker for inflammation), a cholesterol panel, clinical nutrition and much more.
- 3.32 The Applicant has attached a patient follow up letter (Appendix A) sent by the Pharmacy to a patient on the way to being diagnosed with diabetes, to exemplify the high standards at which the Pharmacy provides its service.
- 3.33 To provide context, a patient visited the Pharmacy recently to be tested for diabetes. The Pharmacy has the facilities available to test him and it was noted that the patient's diabetic markers were very high and we referred the patient to the GP.
- 3.34 If we had an NHS Contract, we would have managed the patient's medicine, monitored therapeutic outcomes, liaised with his GP. This is just one recent example of many. The patient was pleased with the treatment from the Pharmacy, the GP referral and the diet plan we provided him. It is disappointing however that patients like these with whom the Pharmacy builds a great rapport are unable to benefit further given our lack of an NHS contract.
- 3.35 The Applicant has also attached Appendix C which is an example of a patient's routine request for a blood draw. Phlebotomy is one of our services that patients really value since it is extremely difficult for patients to have their blood drawn or otherwise time consuming if done through the GP.
- 3.36 Appendix D is an example report in relation to a patient who was having issues with sleep and chronic fatigue that the Pharmacy recently treated. We decided to look at the patient's salivary cortisol and DHEA profile. Without the Pharmacy's intervention the

patient could go on to develop high blood pressure, cardiovascular risk, chronic fatigue syndrome and much more. Since the tests, the Applicant have helped the patient take appropriate measures to treat himself. This is a prime example of innovation and how the Pharmacy saves the NHS time and resources by mitigating hospital admissions.

- 3.37 The Pharmacy should be positively recognised for the holistic healthcare service it provides which helps reduce the burden on other NHS resources, and we implore the NHS to have regard to our services as innovative.
- 3.38 The Pharmacy provides services that other pharmacies do not provide, and this displays how well The Wellness Pharmacy already integrates into the healthcare ecosystem. With an NHS Contract, the Pharmacy will be able to dispense directly to patients who already receive important elements of healthcare service.
- 3.39 In the NHS's Long Term Plan published in January 2019, for community pharmacies, the plan states, among other things, that:
 - 3.39.1 NHS England will work with Government to make greater use of community pharmacists' skills and opportunities to engage patients; and
 - 3.39.2 NHS England will work with community pharmacists and others to provide opportunities for the public to check their health, through tests for high blood pressure and other high-risk conditions.
- 3.40 Our Pharmacy already provides various tests as mentioned in our earlier submissions and engages well with its patients. It would be very contradictory for the NHS to make decisions which are inconsistent with the goals published in the Long Term Plan.
- 3.41 The Applicant believe the Pharmacy is a prime example of the pharmacy of the future – clinical and service based – which is exactly what the government promotes. We cannot understand how opposition from a few corporations can have so much weight on the NHS' decision and hope the NHS Appeals team can come to a decision on our matter with regard to the unforeseen benefits the Pharmacy provides instead of being steered by the opposition.
- 3.42 The NHS should also note the Pharmacy's continued efforts to contribute towards the health and wellbeing of its locality. The Pharmacy carries out Covid-19 testing and is the only pharmacy in Southwark that is named as a Government approved Covid-19 testing center. The Pharmacy is expecting to receive UKAS accreditation to further evidence this. The Applicant urges the NHS to allow the Wellness Pharmacy the opportunity to make further representations on why its application should be accepted at an oral hearing or proceed to grant us a license.
- 3.43 Further, the Pharmacy is fully committed to increasing its hours. The Pharmacy proposes a phased and gradual increase to its opening hours to 8am – 8pm. Naturally the Pharmacy will need to recruit additional staff to cover increased hours and the pharmacy can furnish a business plan to show how the income from an NHS contract would help sustain the additional expenditure in the pharmacy.
- 3.44 Final plea to NHS Primary Care Appeals
- 3.45 The Applicant urges the NHS Appeals team to consider the information provided, and having regard to the duties referred to in NHA 2006 when making determinations under Regulation 18 of the NHS Regulations 2013, grant the Applicant's request for an oral hearing during which we are confident the Applicant can further explain how [they] meet the NHS's criteria to receive an NHS Contract.
- 3.46 The Applicant implores the NHS not to make the same decision a second time based on the anticompetitive bullying tactics of big corporate pharmacies and dishonest representations given by the LPC. This would not be just.

- 3.47 The Applicant's Pharmacy has stepped up in the name of the NHS and healthcare in general and provided a well-rounded service both before and during the Covid-19 pandemic and the Applicant hope the NHS can recognise this and grant [them] an oral hearing or the NHS Contract.
- 3.48 The Applicant hope this oral hearing can take place at the Pharmacy's premises so that the NHS can make an objective decision on the matters at hand.

4 Summary of Representations

4.1 BOOTS UK LTD

- 4.1.1 Boots UK Ltd note that the Applicant has applied previously for a pharmacy at the same location, under the same Regulation, offering to secure an unforeseen benefit. This application was refused in 2018 and subsequently appealed SHA/ 20013, where it was also refused, and the application closed.
- 4.1.2 Boots UK Ltd fail to see what has changed in the local area since the initial application and why it should now be approved. The Applicant seems to make several references to "corporate pharmacies" and believes that without an oral hearing and a site visit, a fair decision cannot be reached. NHS Resolution, via this appeals procedure, should decide whether such a hearing is deemed necessary. Boots UK Ltd know that many appeals can be determined on the evidence that is presented by the interested parties.
- 4.1.3 The comment with regard to the opposition acting to bully the pharmacy into withdrawing their application is extremely unjust. In addition, the LPC, as you will be aware, is there to support ALL contractors and to work alongside them enabling all parties to get the right outcome.
- 4.1.4 The Applicant fails to mention that out of the 17 pharmacies within a mile of the proposed location, there is a diverse mix of providers, including many independent pharmacies, all offering a range of services and opening hours. Boots UK Ltd are unable to see how such a range of providers in the area fails to offer patients a **choice** as to which pharmacy they access for service and advice.
- 4.1.5 It is stated by the Applicant that there has been a reduction in the number of pharmacies in recent years within the Riverside Ward. Boots UK Ltd would have expected the Pharmaceutical Needs Assessment (PNA) by means of a supplementary statement to have been published to reflect any gaps, if of course closures have created any. Boots UK Ltd are not aware of any such publications and therefore conclude that there have been no such gaps in provision.
- 4.1.6 There is no evidence to suggest that the existing pharmacies do not satisfactorily provide services to patients with protected characteristics, including the BAME demographic as singled out by the Applicant. Boots UK Ltd are unsure why the Applicant believes that this particular patient group may regularly struggle to book services through their GP, but Boots UK Ltd understand that pharmacies in the area are able to support all patients, including BAME patients.
- 4.1.7 The services being proposed by the Applicant are not innovative by means of approach or delivery. As stated, many services offered at the location are not commissioned by the NHS and can therefore be withdrawn at any time.
- 4.1.8 Boots UK Ltd ask therefore that NHSR refuse this appeal on the basis that the Applicant has failed to meet the criteria of Regulation 18.

- 4.1.9 The Applicant has 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.
- 4.1.10 The Applicant has not provided significant evidence that those patients with protected characteristics are currently having difficulty accessing pharmacy services.
- 4.1.11 The Applicant has not provided any innovation as part of their application.

4.2 NHS ENGLAND

- 4.2.1 NHS Resolution already has a copy of the decision report which details the decision already made by NHS England. This response is in addition to those comments already made.
- 4.2.2 NHS England would like to emphasise that each application is dealt with on its own merits and is determined against the criteria set out in the regulations. Whilst pharmacies are notified and have the right to make comments on an application, this is only part of the process. NHS England will review all of the information provided before determining an application and where appropriate seek to confirm information from other sources.
- 4.2.3 In terms of distances, whilst we may use google maps, we are aware of this area and if there are alternative routes that google maps does not show we will take this into account when assessing distances.
- 4.2.4 **Regulation 31**
- 4.2.5 As indicated in NHS England's decision report there are no pharmacies in the immediate vicinity of this application so Regulation 31 is not engaged.
- 4.2.6 As detailed in the decision report the PNA that was used for this application is the Southwark PNA 2018-21 and the supplementary statement 3 issued in September 2020.
- 4.2.7 **Regulation 18 2 (a)(i) & (ii)**
- 4.2.8 There are 29 pharmacies within 2Kms of this site, 20 of which are South of the River Thames.
- 4.2.9 The 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."*
- 4.2.10 Whilst NHS England believes the granting of this application may result in the over provision of essential services in the area, the ability to plan for the provision of services would not be affected in a significant way.
- 4.2.11 **Regulation 18 2 (b) (i)**
- 4.2.12 The Applicant has noted that there has been a reduction in services in the Riverside Ward in recent years. The Southwark PNA has not referred to services by ward, but it is noted that there was a pharmacy that has moved

from Riverside Ward to South Bermondsey Ward, some time ago. This was reviewed within the 2018 PNA and the HWBB did not identify this as an area of concern as they have not designated any needs or improvements needed within the whole of the borough. There are 29 pharmacies within 2kms of this site, 20 of which are South of the River Thames. Whilst this is a measurement via NHS choices as the crow flies, distances by foot, car and public transport were considered for those pharmacies that are closest to the proposed location. The two nearest pharmacies were between 8 and 11 minutes' walk away, this would not be considered unreasonable. There are also other pharmacies of which there are many may be slightly further away but did offer additional choice for patients.

4.2.13 Regulation 18 2 (b) (ii)

4.2.14 This part of the Regulations refers to patients with protected characteristics and their ability to access pharmaceutical services.

4.2.15 The Applicant has highlighted services that it believes these patients should receive, the Applicant has not provided any evidence regarding patients that cannot access services. Furthermore, these are not listed as pharmaceutical services as per the Regulations.

4.2.16 It is also further noted that neither the PNA nor the Supplementary Statement issued in 2020 have highlighted any issues of patients with protected characteristics having difficulty accessing services.

4.2.17 Regulation 18 2 (b) (iii)

4.2.18 The Applicant has listed a number of services that they wish to provide, however, none of these are currently commissioned services by NHS England or any other local commissioning body. Neither are any of these services pharmaceutical services as defined in the Regulations. When assessing an application, we have to look at services that are or could be commissioned rather than a list of "private services". Not every patient would be in a position to pay for private services.

4.2.19 Given the above NHS England is 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.

4.2.20 NHS England have determined that the Applicant has not fulfilled the criteria as required in Regulation 18(1) & 18 (2) and have refused the application.

4.3 LLOYDS PHARMACY

4.3.1 Primary Care Appeals will be aware that a similar application for inclusion in the pharmaceutical list offering to provide unforeseen benefits was refused by NHS England on the 1st October 2018 and whose decision was upheld by Primary Care Appeals Ref SHA/20013 on the 31st January 2019.

4.3.2 It has already been established a pharmacy at this location will not confer significant benefits to the population therefore Lloyds Pharmacy submit the application be refused.

5 Observations

5.1 THE APPLICANT

- 5.1.1 The Applicant writes further to the NHS letter dated 17 May 2021 and sets out their final observations before the Pharmacy Appeals Committee can consider the appeal and grant an oral hearing for Tower Bridge Wellness Pharmacy (the Pharmacy).
- 5.1.2 Each opponent has commented that the Applicant's appeal should be refused because the application from 3 years ago was also refused, but the Applicant asks the NHS Resolution Team to respectfully take into account the new environment we live in where access to healthcare is more important than ever.
- 5.1.3 The opponents also refuse to acknowledge the unforeseen benefits the Applicant currently provide and could further provide if [they] could combine NHS commissioned services with the various services that [they] have already detailed in previous correspondence. In a post-Covid world, patients would prefer to visit a single pharmacy or health centre for their medicinal or other routine health needs such as the Applicant's Pharmacy which provides a high quality and holistic service and the Applicant must emphasise again that a fair and independent oral hearing at [their] Pharmacy's premises would allow [them] to provide all evidence requested and / or to respond to any queries in relation to the unforeseen benefit that [they] provide.
- 5.1.4 The opponents continue to disagree on pharmacy availability, concentration and distances and it seems that each party is mapping the area differently. Whilst we live in the age of technology, it is one thing to use Google Maps to determine distances and another thing entirely to physically see and walk those distances and understand that a mapping software cannot account for all of the elderly patients in the area who would benefit from a pharmacy like the Applicant's being commissioned by the NHS. It would therefore be reasonable and prudent to carry out a site visit of the Pharmacy which would allow the vast distances between the pharmacies that the Applicant have been referring to finally being understood from the perspective of the patient.
- 5.1.5 In each round of correspondence, the Applicant have been asked to provide evidence or information which [they] have done and yet the opponent's responses fail to acknowledge the contents of [their] application and the supporting documents and the various statistics and examples [they] have provided in support of [the Applicant's] application. It feels discriminatory that corporate multiples can take over the NHS application and appeals process in this way and the Applicant believe that the only way to objectively and fairly determine the Pharmacy's application in a manner which guarantees that all evidence and supporting information is actually heard instead of ignored is through an oral hearing.
- 5.1.6 The Applicant hope this oral hearing can take place at the Pharmacy's premises so that the NHS can make an objective decision on the matters at hand with specific assessment of the Pharmacy's locality in real time.

6 Consideration

- 6.1 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.
- 6.2 It also had before it the responses to NHS Resolution's own statutory consultations.
- 6.3 The Committee noted the arguments and reasons put forward by the Applicant as to why an Oral Hearing and site visit was necessary and/or reasonable. One of the reasons indicated by the Applicant is that the distance between the Applicant's premises and the nearest NHS pharmacy is disputed. For the reasons given in this

determination under its consideration of Regulation 18(2)(b)(i), the Committee determined that even if there were any dispute over distance, it is not so significant as to require a site visit or oral hearing. The Applicant also argues that an oral hearing is needed as otherwise *“what the Applicant says will be discarded in favour of what is said by corporate multiples and the LPC”* and that an Oral Hearing would guarantee that *“all evidence and supporting information is actually heard instead of ignored”*. In reaching its decision on this appeal, the Committee had considered all the information provided to it in respect of the appeal which included all information provided by the Applicant, NHS England and other parties. For these reasons, the Committee considered it was not necessary to hold an Oral Hearing.

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

Regulation 31

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

(b) 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 Committee noted the Applicant’s application stated: *“...there are no other pharmacies or dispensing doctors adjacent to or in close proximity to the location 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

- 6.7 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)."*
- 6.8 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.
- 6.9 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.
- 6.10 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).
- 6.11 The Committee considered the Pharmaceutical Needs Assessment ("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 2018-2021 and that a supplementary statement had been issued on 1 September 2020.
- 6.12 The Committee noted in the Executive Summary, the PNA states:
- 6.12.1 *"The projected population growth will create additional demand for pharmaceutical services across Southwark's pharmacy network, particularly among older people. New housing developments will also alter the way in which our population use services and the demands placed on community pharmacy."*
 - 6.12.2 *"Given the diversity of the Southwark population, it is crucial that pharmacies across the borough are able to deliver services that are accessible and inclusive of their local communities. In doing so, pharmacies can contribute and support work to reduce health inequalities that exist in Southwark."*

- 6.13 Further, under the heading, “Overview of Pharmaceutical Services” and under the subheading, “Current service level”, the PNA states:
- 6.13.1 *“Southwark has 62 community pharmacies, the same number of pharmacies as 2013. There are no local pharmaceutical services contractors, dispensing appliance contractors, dispensing doctors, mail order or internet based pharmacies. Fifty-nine pharmacies (95%) have the standard 40 hours contract and out of these 28 are open longer than the 40 core contract hours. The majority of community pharmacies (86%) are open on a Saturday for at least part of the day and 11 pharmacies are open on a Sunday for at least part of the day.”*
- 6.14 The Committee noted the PNA also states:
- 6.14.1 *“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.”*
- 6.14.2 *“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.”*
- 6.15 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of the Riverside Ward of Southwark. The Committee noted that the specific improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant pharmaceutical needs assessment or the subsequent supplementary statement dated 1 September 2020 in accordance with paragraph 4 of Schedule 1.
- 6.16 In order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out in Regulation 18(2). The Committee's consideration of the issues is set out below.

Regulation 18(2)(a)(i)

- 6.17 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”*
- 6.18 The Committee noted NHS England's comment that the granting of this application may result in the over provision of essential services in the area. The Committee noted NHS England's further comment that if the application were to be granted and the pharmacy open, the ability to plan for the provision of services would not be affected in a significant way.
- 6.19 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.

6.20 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)

6.21 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"

6.22 The Committee considered that its conclusions at paragraph 6.18 above, applied equally to Regulation 18(2)(a)(ii).

6.23 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.

6.24 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)

6.25 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)

6.26 The Committee noted that the Applicant's proposed site is a city location in central London where the population density is likely to be high. An indication that this is indeed the case was provided by the Applicant's reference to the 2011 census data showing "there were 14,390 usual residents in Riverside Ward." This has not been disputed by any other parties. Furthermore, the 2018-2021 PNA states in the Executive Summary

that: *“Southwark is a densely populated and diverse inner London borough situated on the south bank of the River Thames, with Lambeth to the west and Lewisham to the east. Home to some 310,000 people, Southwark is a patchwork of communities.”*

- 6.27 The Committee noted NHS England’s comment that *“there are 29 pharmacies within 2km, (20 of which are located to the South of the River Thames) of the application site, as the crow flies as per NHS Choices website.”* The Committee noted that as per the NHS Choices website, the closest pharmacy is Boots Pharmacy located near the Hayes Galleria retail development which is a 0.4 miles walk away (8 minutes), 1.1 miles by car (9 minutes) and 0.5 miles by bicycle (5 minutes). The Amadi Pharmacy is located a 0.7 mile walk away (11 minutes), 0.7 miles by car (5 minutes) and 0.6 miles by bicycle (4 minutes). Hobbs Pharmacy is also located 0.7 miles from the proposed site by foot (14 minutes), car (5 minutes) and bicycle (5 minutes).
- 6.28 The Committee noted the Applicant’s comments regarding how *“a mapping software cannot account for all of the elderly patients in the area who would benefit from a pharmacy like [the proposed site]”*. Further, the Committee noted the Applicant’s statement that, *“There is clearly no consensus regarding the distance between the Applicant’s Pharmacy and other pharmacies and therefore the Applicant invite the Appeals Team to have an oral hearing at the Pharmacy’s premises and see the distances and the Applicant’s innovative services first-hand.”* The Committee noted that in the document that appeared to be appended to the Applicant’s application, the distance to the nearest NHS pharmacy (Boots) was indicated to be 650m from the Applicant’s premises. In the previous appeal (SHA/20013) the Applicant in its original application and in its appeal had stated this distance. The Committee noted that the location of the premises of the Applicant and Boots remained unchanged since that previous appeal. The Committee noted that the Applicant, in its observations to NHS England on the current application, indicated that the distance to Boots was 804m but no information had been provided on why this was different from the original distance provided by the Applicant both in its original application in this matter and from the distance referred to in the previous SHA/20013 appeal.
- 6.29 The Committee therefore went on to consider the access to a choice of pharmacy within the Riverside Ward of Southwark by foot.
- 6.30 The Committee acknowledged comments from parties that access to the pharmacy sites in close proximity to the proposed pharmacy do not present any significant barriers to current residents, and there is no evidence to suggest they are not accessible. The Committee noted Boots comments that despite the reduction of one pharmacy in the Riverside Ward between the 2015 and 2018 PNA, no complaints have been made with regard to access. The Committee noted that no evidence had been provided by the Applicant to suggest that patients were currently struggling to access existing pharmacy provision within the Riverside Ward. Further the Committee noted NHS England’s comment which further supports that there is no present issue with accessing pharmaceutical services, *“the Applicant has not provided any evidence regarding patients that cannot access services.”* Lloyds’ representations further this and state that the situation has remained unchanged since the decision was made by Primary Care Appeals in 2019 where the application was made for the same proposed premises and was refused. The Applicant has not provided information that would contradict the observation that patients wishing to access the proposed pharmaceutical services are currently experiencing difficulties.
- 6.31 The Committee noted the Applicant’s comments that the nearest pharmacies to the proposed site at 43 Shad Thames, *“are Boots the Chemist at the Hay’s Galleria retail development to the west which is eight minutes’ walk away (650 metres via the embankment). [...] The next closest pharmacy is Amadi’s Chemist at 107 Abbey Street, North Southwark SE1 3NP. This is an 11 minute walk and the distance of 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. [...] The third closest but second pharmacy within the ward is to the South East of the ward, 1.1km walking*

distance which involves crossing Tooley Street and it is 1.2km by car.” As indicated above, the Committee noted that the Applicant had offered an alternative distance of 804m to Boots but had not provided any information as to why this was different from the original or previous distance that it had put forward. The Committee noted that NHS England stated that *“the two nearest pharmacies were between 8 and 11 minutes’ walk away.”* The Committee noted that in the previous appeal (SHA/20013) the Committee had noted that the Applicant had indicated that walking time to Boots was 8 to 15 minutes’ walk and to Amadi’s chemist was 15 minutes. In the present appeal, the Applicant had indicated that Amadi’s chemist was 11 minutes’ walk away, Regardless of the varying opinions on distances or walking times, the Committee did not regard the distance or walking time (whichever is accepted as the most accurate) to the nearest existing pharmacies as excessive.

- 6.32 With regard to the potential barriers to access, the Applicant referred to crossing busy Tooley Street and a railway line however the Applicant does not mention how this provides a barrier to access. Whilst the Committee recognised that access in and around the area close to the proposed premises may be limited for those with limited mobility, no evidence had been provided by the Applicant to demonstrate how patients are struggling to access pharmaceutical services. The Committee concluded that persons in the Riverside Ward can reasonably access nearest existing pharmacies on foot.
- 6.33 The Committee then considered access to pharmaceutical provision by car. The Committee noted the Applicant’s comments that to the Boots Chemist at the Hay’s Galleria retail development, *“the quickest route by car is 3.6km and takes 16 minutes.”* This is *“due to one-way streets and pedestrian walkways.”* The Applicant goes on to state that, Amadi’s Chemist, *“because of the restrictive road system the distance to this pharmacy is 1.3km if driving.”* The Applicant then goes on to state that *“The third closest but second pharmacy within the ward is to the southeast of the ward [...] is 1.2km by car.”* Whilst the Committee noted that the distance when travelling by car could be viewed as inconvenient, no evidence had been provided as to how the distance when travelling by car are prohibiting patients from accessing pharmacies in the area.
- 6.34 The Committee noted that the Applicant states that there is limited parking at the nearest pharmacies to the proposed site *“in particular Boots at Hay’s Galleria”*. The Applicant goes on to state *“There is a limited amount of on street parking at Amadi’s Chemist [and] there is parking at Hobbs Pharmacy which is co-located with Bermondsey Health Spa Health Centre but this is extremely limited as it serves the Health Centre as well”*. The Committee noted that despite the Applicant suggesting that patients struggle to access pharmaceutical services by car due to the limited parking available at existing pharmacies, the Committee was mindful that car parking can often be challenging in many locations, particularly in central London. The Applicant’s information has not shown that for people with access to their own vehicle, parking is not available at some point at the locations referred to. Furthermore the Applicant has not provided evidence to suggest that those with access to a car are currently struggling to access pharmacies due to parking restrictions. The Committee had no information to show the level 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. The Committee considered it a reasonable conclusion that many patients/residents/commuters/visitors within Central London will likely travel by foot or by public transport. However, for those with access to their own vehicle, the distances involved in accessing the existing pharmaceutical services are not excessive. The Committee was of the view that the nearest existing pharmacies are accessible by car.
- 6.35 Having had regard to patients accessing pharmacies by foot and by car, the Committee considered if there was reasonable access to pharmaceutical services by public transport. The Committee noted the Applicant’s statement that *“because of the riverside location of the proposed pharmacy and nearest pharmacies there is not a direct public transport route to the nearest pharmacies and there is cost involved in this*

option.” The Committee noted NHS England’s comment that a bus service runs approximately every 8 minutes which halves the walking distance between the proposed site and Boots at Hayes Galleria. The Committee noted that no information had been provided by the Applicant to show that patients had difficulty accessing pharmaceutical services in the area by public transport and this was not disputed by any other party. The Committee noted the Applicant’s comment that there is a cost involved in the use of public transport to access pharmaceutical services, however there is no information to indicate what these charges are or that they would inhibit patients from accessing pharmaceutical services by public transport. The Committee noted that although the distance between the proposed site and the nearest Boots or Hobbs Pharmacy may not be accessible by a “*direct public transport route,*” the regular bus services provide patients with the option of travelling by public transport to a choice of pharmaceutical services and therefore the Committee considered that pharmaceutical services were accessible by public transport.

- 6.36 The Committee noted that the Applicant had indicated that granting this application would provide further choice. It was undeniable that enabling a new pharmacy to open anywhere would provide further choice of pharmacies. The Committee noted, however, that the test in Regulation 18(2)(b)(i) does not require a decision-maker to ensure there is further choice. Instead the statutory provision talks of having regard to the desirability of there being reasonable choice in obtaining pharmaceutical services. The Committee considered that if there was already reasonable choice, there was nothing in Regulation 18(2)(b)(i) that requires the decision-maker to extend that choice further.
- 6.37 The Committee also noted that the Applicant had stated that not granting the application would mean that patients do not have the choice to come to the pharmacy to dispense their NHS prescriptions. The Committee noted that the reference to choice in Regulation 18(2)(b)(i) did not extend to requiring the decision-maker to enable a person to be able to have an NHS prescription dispensed at any premises located anywhere regardless of whether that pharmacy premises was included on the pharmaceutical list or not.
- 6.38 For the reasons given above, the Committee was not satisfied that, having regard to there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits by way of physical access on persons.
- 6.39 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 NHS Act 2006 as referred to by the Applicant and 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. The Applicant states that around 35 – 36% of the borough of Southwark is in the BAME demographic. The Applicant states that given that people within the BAME demographic have a higher risk of developing diabetes and high blood pressure among other health issues, “*it further necessitates adding more NHS commissioned pharmacies to the area to tackle the growing need for healthcare.*” The Applicant states that the proposed pharmacy will deliver services to patients of BAME backgrounds who may struggle to book health checks or blood tests through their GPs. However, the Committee noted that the Applicant has not provided any information to demonstrate how these patients are having difficulties in accessing current pharmaceutical or medical services. The Committee noted NHS England’s comment that the Riverside Ward does not have the largest growth areas in Southwark. Further, the HWB have issued a supplementary statement to the PNA in September 2020 which highlights where there have been changes to pharmacy services since the publication of the PNA. Neither the PNA nor the supplementary statement highlight that there have been any issues for patients with protected characteristics that have found any difficulties in accessing services. The Committee also noted NHS England’s statement that there is a network of 62

pharmacies within the borough which NHS England regarded as being adequate provision of choice for those with specific health needs.

- 6.40 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.
- 6.41 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.
- 6.42 The Applicant proposes to provide:
- 6.42.1 Sexual Health Screening
 - 6.42.2 Blood Tests & Phlebotomy services
 - 6.42.3 Covid-19 Testing (PCR, Anti-body, antigen, nucleic acid amplification technology)
- 6.43 Further, the Applicant goes on to describe other examples of innovative services they intend to provide, services which help with medicine management such as blood testing, DNA, Covid-19 testing, ear micro-suction, flu testing. The Applicant also goes on to state that they are able to carry out diabetes testing – HbA1C, hCRP (marker for inflammation), cholesterol panel, clinical nutrition and much more. The Applicant states that the services being offered at The Wellness Pharmacy would negate the need for patients to wait for GP appointments for blood tests or diagnostic screening. The Applicant gives an example of testing a patient for diabetes who then went on to be referred to the GP for treatment. The Applicant states that the holistic healthcare service it provides will help to reduce the burden on other NHS resources. Furthermore, the Applicant states that the proposed pharmacy carries out Covid-19 testing and is the only pharmacy in Southwark that is named as a Government approved Covid-19 testing centre. The Pharmacy is expecting to receive UKAS accreditation to further evidence this.
- 6.44 The Committee noted that Boots UK Ltd and NHS England's representations state that the additional services listed by the Applicant such as phlebotomy services are not currently commissioned by NHS England or any other local commissioning body. The proposed services are not pharmaceutical services as defined in the Regulations and therefore for the purposes of Regulation 18(2). The Committee noted that diagnostic blood tests and other additional services would be useful to offer in a pharmacy setting however due to the fact that the Applicant's pharmacy is currently operating as a successful private pharmacy, there is nothing stopping them continuing these services as the services they are offering are not NHS commissioned. Further, the Committee considered the additional services proposed by the Applicant and determined that the holistic healthcare service being offered by the Applicant cannot be defined as innovative.
- 6.45 Furthermore, the Committee noted that the inclusion of Covid-19 testing facilities should not be cited as an unforeseen benefit. The current pressures that the health services are facing will not remain as they are in the medium term i.e. the pandemic is transient. The Committee noted the Applicant's comment that demand for the Wellness Pharmacy to offer NHS services exceeded their expectations since March 2020, however given the situation at the time with regard to the Covid-19 pandemic and the fact that patients were being asked to order extra medications as a result, the Committee was of the view that the demand for prescriptions and pharmaceutical

services at the application site for 2020 was unusual in this respect and is not a true reflection of dispensing demands.

- 6.46 Having regard to the services listed by the Applicant above, 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

- 6.47 The Committee noted the reference to multiple online reviews and letters of support provided by members of the public in the Applicant's representations to NHS England. The letters of support back the Applicant in its endeavour to become an NHS Pharmacy as it will be convenient to local residents to be able to pick up NHS prescriptions whilst visiting the pharmacy. The Committee noted that the reviews mention the nearest other pharmacies are quite some distance away from the proposed site which is "not ideal if one is not feeling well". While the Committee notes the number of positive reviews of Sanjivani t/a Tower Bridge Wellness Pharmacy and its commendable provision of non-NHS commissioned pharmacy services, the Committee notes that there is no evidence as to how the reviews or customer questionnaires were obtained. In the absence of any further information with regard to the comments on the provision of services at other surrounding pharmacies provided in the reviews, including that any complaints had been made to NHS England directly, the Committee placed limited weight on them. Further, the refusal of the application would not mean that the successful and popular services provided by the Applicant could not still be carried out without being commissioned by the NHS. The Committee was mindful that a new pharmacy will always be a popular proposition in any area, and the Committee noted that many of the persons supporting the application for example in terms of the convenient distance to the Applicant's pharmacy, there is no specific evidence that the proposed pharmacy would fill a gap in provision in the Southwark area.
- 6.48 The Committee noted the Applicant's comment that 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 not coping, or will be unable to cope, with increased demand for services.
- 6.49 The Committee noted NHS England's comment that the Riverside Ward where the application site is, does not have the largest growth areas in Southwark. Further, the HWB have issued a supplementary statement to the PNA in September 2020 which highlights where there have been changes to pharmacy services since the publication of the PNA. Neither the PNA nor the supplementary statement highlight that there have been any issues for patients with protected characteristics that have found any difficulties in accessing services.
- 6.50 On the application form, the Applicant's proposed core opening hours are:
- 6.50.1 Monday to Friday 09:00 to 18:00
 - 6.50.2 Saturday 10:00 to 17:00
 - 6.50.3 Sunday closed
- 6.51 The Applicant's total proposed opening hours are:
- 6.51.1 Monday to Friday 08:30 to 18:30
 - 6.51.2 Saturday 10:00 to 17:00
 - 6.51.3 Sunday 11:00 to 15:00

- 6.52 The Committee noted that on the appeal letter addressed to NHS Resolution dated 31 March 2021, the Applicant states “*Our Pharmacy is proposing a phased increase to our opening hours with an aim to be operating at 8am – 8pm Monday to Saturday, and 11 – 5pm on Sunday.*” The Committee could place little or no weight on the information given in the appeal letter regarding the proposed extended opening hours as it was not included in the original application form and the Committee could not be satisfied that the Applicant would open for the hours stated on the appeal letter. Further, the Committee noted that the evening and weekend hours proposed by the Applicant on the application form are *supplementary* hours which the Applicant could change with 3 months’ notice to NHS England.
- 6.53 The Committee noted the Applicant states that in the wider area, accessibility to the local GP surgeries is limited because of restricted hours of opening of local pharmacies that are not aligned with the extended hours of surgeries however the Applicant has made no comparison between their proposed opening hours being in line with those of local GP surgeries. 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.
- 6.54 Furthermore, 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 NHS England’s comments that if additional opening hours are identified as a need or a gap and requested by NHS England 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.
- 6.55 The Committee was of the view that there was no information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.
- 6.56 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

- 6.57 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).
- 6.58 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 6.59 The Committee had regard to Regulation 18(2)(g) and found that there was nothing to show that it applies in this instance.
- 6.60 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 6.61 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.
- 6.62 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.62.1 confirm NHS England’s decision;

- 6.62.2 quash NHS England's decision and redetermine the application;
- 6.62.3 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.
- 6.63 The Committee having reached the same decision but for different reasons, determined that the decision of NHS England must be quashed.
- 6.64 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to NHS England) or whether it was preferable for the Committee to redetermine the application.
- 6.65 The Committee noted that representations on Regulation 18 had been sought from parties by NHS England and representations had already been made by parties to NHS England in response. These had been circulated and seen by all parties 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.
- 6.66 The Committee concluded that a further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

7 DECISION

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

**Case Manager
Primary Care Appeals**