

22 August 2025

**REF: SHA/ 26613**

**APPEAL AGAINST SOUTH EAST LONDON ICB  
DECISION TO REFUSE AN APPLICATION BY 3CEES  
LIMITED FOR INCLUSION IN THE PHARMACEUTICAL  
LIST AT 20-22 DARTMOUTH ROAD, FOREST HILL,  
LONDON, SE23 3DH WITH REGARD TO CURRENT  
NEED UNDER REGULATION 13**

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**1 Outcome**

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

A copy of this decision is being sent to:  
Samuel Ross Solicitors on behalf of 3CEES Limited  
PCSE on behalf of South East London ICB  
Medicos Pharmacy  
Community Pharmacy South East London  
Perfucare Pharmacy Ltd  
Pharmacy Sales & Consultancy on behalf of Dalapa Limited t/a Crofton Park Pharmacy  
Boots UK Ltd

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**1 The Application**

By application dated 15 August 2024, 3CEES Limited ("the Applicant") applied to South East London ICB ("the Commissioner") for inclusion in the pharmaceutical list at 20-22 Dartmouth Road, Forest Hill, London, Greater London, SE23 3DH with regard to Current Need under Regulation 13. In support of the application it was stated:

In response to "In my view this application should not be refused pursuant to Regulation 31 for the following reasons" the Applicant stated left this box blank.

Information in support of the application

In making this application I/we am/are seeking to meet the current need identified on page PNA (Published March 2023) [sic].

- 1.1 "Page, 56 - average number of pharmacies per 100,000 population
- 1.2 Page 59 - location of pharmacies
- 1.3 Page 80 - Pharmacy users views of the HWB's pharmaceutical needs assessment".

Please insert the identified current need you are offering to meet here.

- 1.4 "As per the Lewisham Pharmaceutical Needs Assessment (PNA) 2022, published in 2023, Lewisham had 17.30 community pharmacies per 100,000 population. In comparison, the London and England averages were 20.69 and 20.51 per 100,000 population, respectively. However, recent closures of Lloyds and Boots pharmacies have reduced the total number of pharmacies in the borough from 52 to 48.
- 1.5 The reduction in the borough's pharmacy count has affected the validity of the statement in the Lewisham PNA that "100% of Lewisham residents can access their nearest pharmacy in Lewisham or surrounding areas within 16 minutes by walking." Specifically, a portion of Forest Hill now exceeds the 16-minute walking distance to a local pharmacy. 3CEES aims to address this gap by entering the market and enhancing access to general pharmacy services in that area.
- 1.6 Despite Lewisham's younger age structure, stroke admissions and other cardiovascular disease have risen significantly and exceed the national average.
- 1.7 Enhancing pharmacy access will facilitate preventive services, including 'hypertension case finding' and community atrial fibrillation screening by 3CEES pharmacy, ultimately benefiting the local residents' health and well-being.

- 1.8 This application is motivated by a strong commitment to enhancing access to pharmacy services within the identified Forest Hill community. Our objective is to offer not only the essential and advanced NHSE services but also all locally commissioned services to help meet the pharmaceutical needs of residents.”

In the box below please explain how you intend to meet the identified current need either in whole or in part.

- 1.9 “As an experienced community health services pharmacist, I am well-prepared to oversee the necessary pharmacy services, including locally commissioned ones.
- 1.10 Drawing from my expertise in pharmacy contract monitoring and the development of service level agreement (SLAs) for local ICB pharmacy commissioned services, I am proficient in this field.
- 1.11 Our strategy involves recruiting suitably trained professionals and health assistants to form our pharmacy team. Each team member will undergo necessary training to maintain competency and ensure the highest standard of service delivery.
- 1.12 We are committed to adhering to standards set by the General Pharmaceutical Council (GPhC), NHS England (NHSE), local commissioning bodies (including the ICB), and Lewisham Council (led by Public Health Lewisham). Our compliance extends to national and local guidance, including MHRA alerts and NICE guidelines. Additionally, we will invest in up-to-date pharmacy software to enhance service delivery and mitigate risks.
- 1.13 Continuing Professional Development (CPD) is integral to our practice. Each team member is dedicated to ongoing learning and skill enhancement to provide exceptional service. Additionally, we prioritise staff well-being, ensuring mental health support and welfare.
- 1.14 In our commitment to continuous improvement, we highly value feedback from both patients and customers. Their insights and perspectives will play a pivotal role in enhancing our service delivery. We actively seek to incorporate their feedback into our processes, ensuring that we consistently meet the highest standards of care and satisfaction.”

## 2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 6 January 2025 states:

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

London  
E14 4PU”.

Extract from decision report

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

2.4 **“CAS reference number** - ME3527- CAS-317654-Z0Z6Q2

2.5 **Name of applicant** - 3CEES LTD

2.6 **Fitness to practise** - Cleared for inclusion.

2.7 **Address/best estimate of proposed premises** - 20-22 Dartmouth Road, Forest Hill, London, Greater London, SE23 3DH

2.8 **Identified current need that the applicant is offering to meet, as stated in the HWB’s PNA**

2.8.1 Pages 56, 59 and 80 of the PNA.

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

2.10 **Relevant regulations and guidance**

2.10.1 Regulations 13 and 14 – current needs: additional matters and consequences.

2.10.2 Regulation 31 – refusal: same or adjacent premises.

2.10.3 Regulation 65 – core opening hours conditions1.

2.10.4 Regulation 66 – conditions relating to providing directed services.

2.10.5 DH market entry guidance chapter 5.

Interested parties notified of the application – Representation Submitted			
Name	Address	Postcode	Reason appeal rights – given or reason why not given
Perfucare Pharmacy	136 Kirkdale	SE26 4BB	Appeal rights given if granted
Medicos Pharmacy	197 Stanstead Road	SE23 1HU	Appeal rights given if granted
Touchwood Pharmacy	264 Kirkdale	SE26 4RS	Appeal rights given if granted
Touchwood Pharmacy	62 Sydenham Road	SE26 5QE	Appeal rights given if granted

Touchwood Pharmacy	9 St Georges Parade	SE6 4DT	Appeal rights given if granted
Touchwood Pharmacy	363 Sydenham Road	SE26 5SL	Appeal rights given if granted
Day Lewis Pharmacy	34 Forest Hill Road	SE22 0RR	Appeal rights given if granted
Crofton Park Pharmacy	435 Brockley Road	SE4 2PJ	Appeal rights given if granted
Boots	55 Sydenham Road	SE26 5EX	Appeal rights given if granted
Community Pharmacy South East London (LPC)			Appeal rights not given as not a pharmacy
Londonwide LMC			

<b>Interested Parties notified of the application – Representations not submitted</b>		
<b>Name</b>	<b>Address</b>	<b>Postcode</b>
Perry Vale Pharmacy	Shop 1, 193 Perry Vale	SE23 2JF
Superdrug Pharmacy	73-77 Sydenham Road	SE26 5UA
Sadlers Pharmacy	389 Lordship Lane	SE22 8JN
Foster & Sons Chemist	14 Forest Hill Road	SE22 0RR
Lewisham HWB		
Healthwatch Lewisham,		
Southwark HWBB		
Southwark Healthwatch		

**2.11 Additional information**

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

**2.13 Regulation 31**

2.14 There is currently no contractor included in the Pharmaceutical List at the proposed premises or adjacent to these premises.

**2.15 Regulation 32**

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

- 2.17 **Applicant's Comments from the application** [see 1.4 – 1.14 above]
- 2.18 **Boots Comments**
- 2.19 The applicant has submitted an application under Regulation 13 of the NHS Pharmaceutical and Local Pharmaceutical Services regulations 2013 offering to meet an identified current need within the relevant pharmaceutical needs assessment (PNA). The applicant has not stated what the current need is and where this need has been identified within the (PNA). They refer to pages within the PNA, but there does not appear to be an actual need recognised on these pages, or anywhere within the PNA?
- 2.20 At this time, we are unaware of any supplementary statements that have been produced reflecting any change regarding a need for additional pharmaceutical services.
- 2.21 We submit that the applicant has failed to demonstrate that granting the application would secure a current need as identified within the PNA and therefore the application should be refused.
- 2.22 Please be aware that we may wish to make further representations at a later stage and attend any oral hearing that may be held in relation to the application. We would therefore be most grateful if you could keep us informed of the progress of this application.
- 2.23 **Touchwood Comments**
- 2.24 In respect of the above application. We urge South East London ICB to reject the application as there are no current needs identified in the The [sic] Lewisham Pharmaceutical Needs Assessment (PNA).
- 2.25 We wish to object the application and may wish to make further representations at a later stage and attend any oral hearing that may be held. We look forward to hearing from you in due course.
- 2.26 **Day Lewis Comments**
- 2.27 We would like to object to this application for the following reasons:
- 2.28 This application has been submitted under Regulation 13 which states the following [Regulation 13(1) quoted in full]:
- 2.29 It is clear from the above statement that in order for an application under Regulation 13 to be approved the current need identified by the applicant must be included within the relevant PNA.
- 2.30 We have reviewed the Lewisham 2022 PNA, and it is clearly stated that there are no current needs identified.
- 2.31 In addition to reviewing the 2022 PNA we have also reviewed a supplementary statement issued by the Lewisham HWB dated 24th July 2024 and once again there is no current need identified within that document.
- 2.32 That being the case the test in Regulation 13 (1)(b) has clearly not been met so this application must be refused.

- 2.33 Should the ICB decide to hold an oral hearing I can confirm that either we or our appointed representative would wish to attend.
- 2.34 **Crofton Park Pharmacy Comments**
- 2.35 This application has been submitted under Regulation 13 which states the following [Regulation 13(1) quoted in full]:
- 2.36 It is clear from the above statement that in order for an application under Regulation 13 to be approved the current need identified by the applicant must be included within the relevant Pharmaceutical Needs Assessment (PNA).
- 2.37 We have reviewed the Lewisham Health & Wellbeing Board 2022 PNA and it is clearly stated that there are no current needs identified.
- 2.38 In addition to reviewing the 2022 PNA we have also reviewed a supplementary statement issued by the Lewisham HWB dated 24th July 2024 and once again there is no current need identified within that document.
- 2.39 That being the case the test in Regulation 13 (1)(b) has clearly not been met so this application must be refused.
- 2.40 Should the ICB decide to hold an oral hearing I can confirm that either I or my appointed representative would wish to attend.
- 2.41 **Perfucare Comments**
- 2.42 My pharmacy is located at 136 Kirkdale, Forest Hill, London, SE26 4BB and is a short walk from the applicants proposed site and has been serving the community for the past 44 years.
- 2.43 Having reviewed the application and the current Lewisham PNA, it is clear to see that there are NO gaps in provision of any pharmaceutical services in this area, neighbourhood or the entirety of the Lewisham borough for that matter.
- 2.44 The applicant has not shown any evidence that there are any gaps in provision, and therefore I strongly urge for NHS Market Entry to reject this application.
- 2.45 It is also to note that the applicant has submitted multiple applications in the same area in hope that they will succeed with at least one. In a time where the community pharmacy sector is under huge financial constraints and daily closures of existing pharmacies, I find it hard to understand why new applications are being considered in such challenging times.
- 2.46 I look forward to any future correspondence and am happy for any further input that may be required.
- 2.47 **Medicos Comments**
- 2.48 My pharmacy, located at 197 Stanstead Road, Forest Hill, SE23 1HU, has been serving the community for the past 35 years. After reviewing the Pharmaceutical Needs Assessment (PNA), it is evident that there are no current needs in the area. Therefore, I strongly urge the NHS Market Entry to reject this application.
- 2.49 It seems apparent that the applicant is submitting multiple applications in the same area, hoping one will succeed. I find it hard to understand why NHS Market Entry would

approve new applications when so many pharmacies are closing due to financial challenges within the sector.

2.50 Please include us in any future correspondence so we can provide further input if needed.

2.51 **Community Pharmacy South East London (LPC) Comments**

2.52 Community Pharmacy South East London (CPSEL) notes that the letter from Primary Care Support Services for a routine application under Regulation 13 of the NHS Regulations 2013, which relates to applications intended to meet an identified current need.

2.53 CPSEL notes that the Applicant has not addressed Regulation 13 (1)(b) with respect to meet an identified current need, no current need has been demonstrated.

2.54 The Lewisham Health & Wellbeing Board Pharmaceutical Needs Assessment 20221 after extensive and detailed data-driven analysis, considering various factors on pharmaceutical services in Lewisham concluded:

2.55 Essential Services: There is no gap in the provision of necessary services (essential services) during normal working hours across the whole borough and there are no gaps in the provision of necessary services (essential services) outside of normal working hours across the whole borough.

2.56 Advance Services: There are no gaps in the provision of other advanced services across the whole borough.

2.57 Enhanced Services: There are no gaps in the provision of enhanced services across the whole borough.

2.58 Locally Commissioned Services: There are no gaps in the provision of locally commissioned services across the whole borough.

2.59 In addition, the PNA underlines this evaluation with “the conclusions reached in this PNA report include assessments that have addressed protected characteristics of groups living in the borough localities in relation to access to pharmacies. The assessments show no evidence of any overall differences between or within the localities in Lewisham.”

2.60 The Applicant has not met the burden of proof required under Regulation 13 to demonstrate that the proposed pharmacy services meet an identified current need. The lack of evidence provided by the Applicant undermines the validity of the application and renders it insufficient for approval under the current regulatory framework.

2.61 As such, the application must be refused and CPSEL would like to be kept informed of all subsequent correspondence, appeals process and the LPC would like to attend any hearings.

2.62 **Londonwide LMC Comments**

2.63 Londonwide LMCs has approached local GPs to seek their views on the application and has received no representations. We therefore do not have any comments to make on this occasion, but we would be grateful if you would keep us informed of developments.

- 2.64 **General comments.**
- 2.65 The relevant PNA for this application is the PNA that was published in the Lewisham HWBB area dated 2022 and published in April 2023. For the purposes of this application, this is the relevant PNA.
- 2.66 PSRC considered the PNA dated 2023 ("the PNA") prepared by Lewisham Health and Wellbeing Board, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. PSRC 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 published April 2023 and that there had been one supplementary statement issued, in November 2024. This latest statement detailed changes that have occurred since the PNA was published
- 2.67 The supplementary statement listed details of pharmacies that had closed or where there had been a change of ownership. The statement notes that this was not an update on pharmaceutical need.
- 2.68 The 2023 PNA states the following on page 8:
- 2.68.1 No gaps have been identified in necessary services (essential services) that if provided either now or over the next three years would secure improvements of better access to essential services across the whole borough.
- 2.68.2 There is no gap in the provision of necessary services (essential services) during normal working hours across the whole borough.
- 2.68.3 There are no gaps in the provision of necessary services (essential services) outside of normal working hours across the whole borough
- 2.69 Whilst one of the Boots closures is in the Forest Hill area, the PNA supplementary statement lists this as a closure but also notes that this was not an update on pharmaceutical need. Therefore, this cannot be taken into account within the assessment.
- 2.70 The applicant has offered more than 40 core hours, if the application were granted the additional core hours will be accepted and a direction will be issued.
- 2.71 *13(2)(d) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, there have been changes to the needs for pharmaceutical services in the area of the relevant HWB that are such that refusing the application is essential in order to prevent significant detriment to the provision of pharmaceutical services in its area;*
- 2.72 Whilst there have been some changes in terms of pharmacies closing, there is nothing that are such that refusing the application is essential in order to prevent significant detriment to the provision of pharmaceutical services in its area;
- 2.73 **PSRC have determined that since the publication of the PNA there have been no changes in pharmaceutical needs for the HWBB that are such that refusing the**

**application is essential to prevent significant detriment to the provision of pharmaceutical services.**

- 2.74 13(2)(e) whether it is satisfied that-
- 2.74.1 *granting the application would only meet the current need mentioned in paragraph (1) in part, and*
- 2.74.2 *if the application were granted, it would be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met;*
- 2.75 The relevant PNA, published in April 2023 as detailed above, does not list any current needs within this document, therefore the applicant cannot submit an application to meet those needs.
- 2.76 **PSRC have determined that if granted the application would not meet the current need (as there has been none identified). Therefore, this criteria has not been met.**
- 2.77 13(2)(f) whether-
- 2.77.1 *It is satisfied that granting the application would only meet the current need mentioned in paragraph (1) in part, but*
- 2.77.2 *it considers that, if the application were granted, it would not be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met;*
- 2.78 The relevant PNA, published in April 2023 as detailed above, does not list any current needs within this document, as detailed above, therefore the applicant cannot submit an application to meet those needs.
- 2.79 **PSRC have determined that if granted the application would not meet the current need (as there has been none identified). Therefore, this criteria is has not been met.**
- 2.80 13(2)(g) whether it is satisfied that-
- 2.80.1 *the current need mentioned in paragraph (1) was for services other than essential services, and*
- 2.80.2 *granting the application would result in an increase in the availability of essential services in the area of the relevant HWB.*
- 2.81 The relevant PNA, published in April 2023 as detailed above, does not list any current needs within this document, as detailed above, therefore the applicant cannot submit an application to meet those needs.
- 2.82 PSRC have determined that if granted the application would not meet the current need (as there has been none identified). Therefore, this criteria is has not been met.
- 2.83 13(2)(h) whether it is satisfied that, since the publication of the HWB's pharmaceutical needs assessment, the current need mentioned in paragraph (1)(b) has been met by another person who is providing, or is due to be met by another person who has undertaken to provide, either in the relevant HWB's area or in the area of another HWB-

2.83.1 *pharmaceutical services from listed chemist premises, or*

2.83.2 *local pharmaceutical services from LPS premises;*

- 2.84 The relevant PNA, published in April 2023 as detailed above, does not list any current needs within this document, as detailed above, therefore the applicant cannot submit an application to meet those needs.
- 2.85 **PSRC have determined that if granted the application would not meet the current need (as there has been none identified) and that no other parties have met this need either. Therefore, this criteria is has not been met.**
- 2.86 *13(2)(i) whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.*
- 2.87 The application was not deferred.
- 2.88 Consider impact of decision on those with protected characteristics under the Equalities Act 2010 and is this in accordance with NHS England's Public Sector Equality Duty
- 2.89 Consider impact of decision on NHS England's duty on health inequality
- 2.90 None identified
- 2.91 **Decision**
- 2.92 PSRC have determined that there is enough information within the papers to decide the application without an oral hearing.
- 2.93 With regard to 13(2)(d) PSRC have determined that since the publication of the PNA there have been no changes in pharmaceutical needs for the HWBB that are such that refusing the application is essential to prevent significant detriment to the provision of pharmaceutical services.
- 2.94 With regard to 13(2)(e) PSRC have determined that granting the application would not meet the current need (as there has been none identified).
- 2.95 With regard to 13(2)(f) PSRC have determined that granting the application would not meet the current need (as there has been none identified).
- 2.96 With regard to 13(2)(g) PSRC have determined that granting the application would not meet the current need (as there has been none identified).
- 2.97 With regard to 13(2)(h) PSRC have determined that granting the application would not meet the current need (as there has been none identified) and that no other parties have met this need either.
- 2.98 PSRC have determined that the applicant as above has NOT fulfilled the criteria as required in regulation 13 and therefore the Pharmaceutical Services Regulations Committee have determined to **refuse** the application.
- 2.99 **Determination made by London PSRC on behalf of NHS South East London ICB."**

### 3 The Appeal

In an email dated 6 January 2025, the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

- 3.1 "Thank you for your recent correspondence. I am writing to appeal appeal [sic] the decision made by Lewisham Health and Wellbeing Board (HWB) [sic] to refuse the market entry application referenced above.
- 3.2 This appeal is based on the grounds that the decision is premised on an incorrect material fact.
- 3.3 Lewisham HWB [sic] cited Regulation 31 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as the basis for the refusal. Thus, the proposed 3CEES premises is same site or adjacent to an existing provider of pharmaceutical services. This is wholly untrue.
- 3.4 The proposed 3CEES site is neither part of the same premises nor adjacent to any existing provider, as asserted in the grounds for the refusal.
- 3.5 Therefore, I am challenging the market entry refusal decision on the grounds that it is predicated on an erroneous material fact.
- 3.6 In its refusal, the Lewisham HWB [sic] cited Regulation 31 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, positing that the proposed location for 3CEES either occupies the same site or is adjacent to an existing provider of pharmaceutical services. This assertion is categorically inaccurate.
- 3.7 Contrary to the grounds outlined for refusal, the proposed location for 3CEES is neither situated within the same premises nor is it adjacent to any existing provider of pharmaceutical services.
- 3.8 Therefore, I am challenging the market entry refusal decision on the grounds that it is based on an erroneous material fact.
- 3.9 I look forward to your response".

#### 4 **Summary of Representations**

This is a summary of representations received.

##### 4.1 **Medicos Pharmacy**

- 4.1.1 "This response is submitted in support of the original decision to refuse the contract application. The appeal made by the Applicant does not provide sufficient grounds to overturn the decision, as it fails to meet the necessary regulatory requirements under the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations.
- 4.1.2 Regulation 31 – Appeal Invalidity
- 4.1.3 The Pharmacy Services Regulations Committee (PSRC) has accepted Regulation 31. Consequently, the Applicant's appeal based on Regulation 31 is null and void, rendering the appeal invalid. Therefore, no reconsideration of the application is warranted on this basis.
- 4.1.4 Regulation 13 – Burden of Proof Not Met

- 4.1.5 The Applicant has not met the burden of proof under Regulation 13, which further invalidates the appeal. For clarity, the PSRC has determined the following regarding Regulation 13(2):
- 4.1.5.1 **Regulation 13(2)(e):** The PSRC has found no evidence that granting the application would meet any identified current need.
- 4.1.5.2 **Regulation 13(2)(f):** The PSRC has determined that the application does not address any existing need for pharmaceutical services.
- 4.1.5.3 **Regulation 13(2)(g):** The PSRC has concluded that granting the application would not fulfill [sic] any necessary or identified demand for services.
- 4.1.5.4 **Regulation 13(2)(h):** The PSRC has further established that no other parties have demonstrated an unmet need that would justify granting the application.
- 4.1.6 Evidence from the Lewisham Pharmaceutical Needs Assessment (PNA)
- 4.1.7 The Lewisham PNA provides a comprehensive and transparent analysis, demonstrating that no gaps exist in pharmaceutical service provision that would justify the approval of this application. The key findings are as follows:
- 4.1.8 Necessary Services (Essential Services):
- 4.1.9 No gaps have been identified in necessary services that, would improve or provide better access to essential services across the borough.
- 4.1.10 There is no gap in the provision of necessary services during normal working hours or outside of normal working hours across the borough.
- 4.1.11 Advanced Services:
- 4.1.12 While a small number of pharmacies currently provide Stoma Appliance Customisation, Appliance Use Review, and Hepatitis C Antibody Testing Service, seven pharmacies in Lewisham have indicated they will provide Stoma Appliance Customisation within the next 12 months. This service can only be provided if community pharmacists receive prescriptions for the DT listed products, however all appliance prescriptions are sent directly to Appliance Contractor (DAC), specialist in dispensing medical appliances like stoma bags and incontinence products, rather than medications. Therefore access to these services for patients is via DACs.
- 4.1.13 There are no other gaps in the provision of advanced services across the borough.
- 4.1.14 Enhanced Services:
- 4.1.15 No gaps have been identified that, if provided now or in the future, would secure improvements or better access to enhanced services.
- 4.1.16 There are no identified gaps in the provision of enhanced services across the borough.
- 4.1.17 The Applicant's appeal must be rejected on the following grounds:

4.1.17.1 Regulation 31 has been satisfied, rendering the appeal invalid.

4.1.17.2 The Applicant has failed to provide any substantive evidence to satisfy the requirements of Regulation 13.

4.1.17.3 The Lewisham PNA provides clear evidence that there is no unmet need or service gap that would justify granting the application.

4.1.18 Accordingly, the original decision to refuse the application must stand, and the appeal should be dismissed in its entirety. We request to be kept informed of all subsequent correspondence and formally request the opportunity to attend any hearings related to this appeal”.

## 4.2 Community Pharmacy South East London

4.2.1 “CPSEL has the following comments to make on the above appeal:

4.2.2 Introduction This response is submitted in support of the original decision to refuse the contract application. The appeal made by the Applicant does not provide sufficient grounds to overturn the decision, as it fails to meet the necessary regulatory requirements under the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations.

4.2.3 Regulation 31 – Appeal Invalidity The Pharmacy Services Regulations Committee (PSRC) has accepted Regulation 31. Consequently, the Applicant’s appeal based on Regulation 31 is null and void, rendering the appeal invalid. Therefore, no reconsideration of the application is warranted on this basis.

4.2.4 Regulation 13 – Burden of Proof Not Met The Applicant has not met the burden of proof under Regulation 13, which further invalidates the appeal. For clarity, the PSRC has determined the following regarding Regulation 13(2):

4.2.4.1 Regulation 13(2)(d): The PSRC has noted no change to the provision of services with the PNA and refusing the application is essential to prevent significant detriment to the provision of pharmaceutical services

4.2.4.2 Regulation 13(2)(e): The PSRC has found no evidence that granting the application would meet any identified current need.

4.2.4.3 Regulation 13(2)(f): The PSRC has determined that the application does not address any existing need for pharmaceutical services.

4.2.4.4 Regulation 13(2)(g): The PSRC has concluded that granting the application would not fulfil any necessary or identified need for services.

4.2.4.5 Regulation 13(2)(h): The PSRC has further established that no other parties have demonstrated an unmet need that would justify granting the application.

4.2.5 Evidence from the Lewisham Pharmaceutical Needs Assessment (PNA) The Lewisham PNA provides a comprehensive and transparent analysis, demonstrating that no gaps exist in pharmaceutical service provision that would justify the approval of this application. The key findings are as follows:

- 4.2.5.1 Necessary Services (Essential Services): No gaps have been identified in necessary services that, would improve or provide better access to essential services across the borough.
- 4.2.5.2 There is no gap in the provision of necessary services during normal working hours or outside of normal working hours across the borough.
- 4.2.5.3 Advanced Services: While a small number of pharmacies currently provide Stoma Appliance Customisation, Appliance Use Review, and Hepatitis C Antibody Testing Service, seven pharmacies in Lewisham have indicated they will provide Stoma Appliance Customisation within the next 12 months. This service can only be provided if community pharmacists receive prescriptions for the DT listed products, however all appliance prescriptions are sent directly to Dispensing Appliance Contractor (DAC), specialist in dispensing medical appliances like stoma bags and incontinence products, rather than medications. Therefore, access to these services for patients is via DACs.
- 4.2.5.4 There are no other gaps in the provision of advanced services across the borough.
- 4.2.5.5 Enhanced Services: No gaps have been identified that, if provided now or in the future, would secure improvements or better access to enhanced services.
- 4.2.5.6 There are no identified gaps in the provision of enhanced services across the borough.
- 4.2.6 The NHS Shape Atlas provides a comprehensive and accurate representation of primary care provision across the region, and it should be considered as part of this appeal. This authoritative tool clearly demonstrates that the population residing to the east of the A2216, particularly towards Catford, already benefits from a high density of accessible and appropriately located pharmaceutical services. There is ample choice for residents in these areas, with existing general practice and pharmacy providers adequately meeting local needs.
- 4.2.7 In contrast, the area west of the A2216 towards Dulwich, falling within the London Borough of Southwark, is characterised by significant green space and a lower population density. Primary care provision in this region is primarily served by Southwark-based providers, who continue to deliver appropriate and effective services to their communities. The current configuration of services ensures equity and accessibility across borough boundaries.
- 4.2.8 In light of these factors, it is submitted that the proposed application does not meet a demonstrable gap in provision, and existing services are sufficient to meet the needs of local populations as mapped and evidenced.
- 4.2.9 Conclusion The Applicant's appeal must be rejected on the following grounds:
  - 4.2.9.1 Regulation 31 has been satisfied, rendering the appeal invalid.
  - 4.2.9.2 The Applicant has failed to provide any substantive evidence to satisfy the requirements of Regulation 13.
  - 4.2.9.3 The Lewisham PNA provides clear evidence that there is no unmet need or service gap that would justify granting the application.

- 4.2.10 Accordingly, the original decision to refuse the application must stand, and the appeal should be dismissed in its entirety. We request to be kept informed of all subsequent correspondence and formally request the opportunity to attend any hearings related to this appeal.”

#### 4.3 Perfucare Pharmacy Ltd

- 4.3.1 “I note this appeal has been sent following an original rejection of the application whereby the applicant has failed to meet the necessary regulatory requirements under the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations. The appeal still does not show any evidence of these being met and therefore the original decision must not be overturned.

##### 4.3.2 Regulation 31 – Appeal Invalidity

- 4.3.3 The Pharmacy Services Regulations Committee (PSRC) has accepted Regulation 31. Consequently, the Applicant’s appeal based on Regulation 31 is null and void, rendering the appeal invalid. Therefore, no reconsideration of the application is warranted on this basis.

##### 4.3.4 Regulation 13 – Burden of Proof Not Met

- 4.3.5 The Applicant has not met the burden of proof under Regulation 13, which further invalidates the appeal. For clarity, the PSRC has determined the following regarding Regulation 13(2):

4.3.5.1 Regulation 13(2)(e): The PSRC has found no evidence that granting the application would meet any identified current need.

4.3.5.2 Regulation 13(2)(f): The PSRC has determined that the application does not address any existing need for pharmaceutical services.

4.3.5.3 Regulation 13(2)(g): The PSRC has concluded that granting the application would not fulfil any necessary or identified demand for services.

4.3.5.4 Regulation 13(2)(h): The PSRC has further established that no other parties have demonstrated an unmet need that would justify granting the application.

##### 4.3.6 Evidence from the Lewisham Pharmaceutical Needs Assessment (PNA)

- 4.3.7 The key findings are as follows:

##### 4.3.8 Necessary Services (Essential Services):

4.3.8.1 No gaps have been identified in necessary services that, would improve or provide better access to essential services across the borough.

4.3.8.2 There is no gap in the provision of necessary services during normal working hours or outside of normal working hours across the borough.

##### 4.3.9 Advanced Services:

4.3.9.1 While a small number of pharmacies currently provide Stoma Appliance Customisation, Appliance Use Review, and Hepatitis C Antibody Testing Service, seven pharmacies in Lewisham have indicated they will provide Stoma Appliance Customisation within the next 12 months. This service can only be provided if community pharmacists receive prescriptions for the DT listed products, however all appliance prescriptions are sent directly to Appliance Contractor (DAC), specialist in dispensing medical appliances like stoma bags and incontinence products, rather than medications. Therefore access to these services for patients is via DACs.

4.3.9.2 There are no other gaps in the provision of advanced services across the borough.

4.3.10 Enhanced Services:

4.3.10.1 No gaps have been identified that, if provided now or in the future, would secure improvements or better access to enhanced services.

4.3.10.2 There are no identified gaps in the provision of enhanced services across the borough.

4.3.11 Summary

4.3.12 The applicants appeal must be rejected on clear grounds that

4.3.12.1 NO gaps have been identified in any of the services in the Lewisham PNA; which was already acknowledged by the original decision

4.3.12.2 Regulation 31 has been satisfied, rendering the appeal invalid

4.3.12.3 The Applicant has failed to provide any substantive evidence to satisfy the requirements of Regulation 13

4.3.13 Therefore, the original decision to refuse the application must stand, and the appeal should be dismissed in its entirety. We request to be kept informed of all subsequent correspondence and formally request the opportunity to attend any hearings related to this appeal.”

4.4 Boots UK Limited

4.4.1 “Thank you for your letter dated 2nd June 2025 informing us of the above appeal. Boots UK LTD agree with the ICB and their reasoning for refusing the application.

4.4.2 The appeal appears to be based on the citing of Regulation 31; however, we can clearly see in the decision report that it states that there is currently no contractor included in the Pharmaceutical List at the proposed premises or adjacent to these premises. Whilst this regulation must be considered in regard to this application, they have not refused it on this basis. The refusal is based on the fact that there are no current identified needs within the Pharmaceutical Needs Assessment (PNA) and therefore the regulation is not met.

4.4.3 We have no further comments to make, and we would be grateful if you would inform us of the outcome of this appeal in due course.”

- 4.5 Pharmacy Sales and Consultancy on behalf of Sinclair Dalapa Limited t/a as Crofton Park Pharmacy
- 4.5.1 “We act for Sinclair Dalapa Ltd t/a Crofton Park Pharmacy, and have enclosed a letter of authorisation confirming our instructions in this matter.
- 4.5.2 Our client has passed us a copy of your letter dated 2nd June enclosing the above appeal. On behalf of our client we wish to make the following representations in respect of this matter.
- 4.5.3 We note that the key ground of appeal cited by the appellant is as follows:
- 4.5.4 *This appeal is based on the assertion that the decision was founded on an incorrect material fact.*
- 4.5.5 *The Lewisham HWB cited Regulation 31, concerning the same or adjacent premises, as the basis for the refusal. However, contrary to the grounds outlined for the refusal, the proposed site by 3CEES is neither part of the same premises nor adjacent to any existing pharmacy provider. This assertion is wholly inaccurate.*
- 4.5.6 *Therefore, I am challenging the market entry refusal decision on the grounds that it is predicated on an erroneous material fact.*
- 4.5.7 It appears that the appellant has misunderstood the decision report published by the PSRC [sic] on behalf of the ICB.
- 4.5.8 In respect of Regulation 31, the report states:
- 4.5.9 *“There is currently no contractor included in the Pharmaceutical List at the proposed premises or adjacent to these premises.”*
- 4.5.10 It is clear, therefore, that the application was not refused under Regulation 31.
- 4.5.11 The actual reasons for refusal are provided at the end of the decision report as follows:
- 4.5.12 *“With regard to 13(2)(d) the PSRC have determined that it is satisfied that since the publication of the PNA there have been no changes in pharmaceutical needs for the HWBB that are such that refusing the application is essential to prevent significant detriment to the provision of pharmaceutical services.*
- 4.5.13 *With regard to 13(2)(e) the PSRC has determined that granting of the application would not meet the current need (as there has been none identified).*
- 4.5.14 *With regard to 13(2)(f) the PSRC has determined that granting of the application would not meet the current need (as there has been none identified).*
- 4.5.15 *With regard to 13(2)(g) the PSRC has determined that granting of the application would not meet the current need (as there has been none identified).*

- 4.5.16 *With regard to 13(2)(h) the PSRC has determined that granting of the application would not meet the current need (as there has been none identified) and that no other parties have met this need either.*
- 4.5.17 ***The PSRC has determined that the applicant as above has NOT fulfilled the criteria as required in regulation 13 and therefore the Pharmaceutical Services Regulations Committee has refused the application.”***
- 4.5.18 It is clear therefore that the application was refused under Regulation 13 not Regulation 31.
- 4.5.19 We are conscious, however, that Primary Care Appeals will consider this matter afresh, so we wish to comment further on Regulation 13 as follows:
- 4.5.20 This application has been submitted under Regulation 13 which states the following: [Regulation 13(1) quoted in full]
- 4.5.21 Paragraph 2(a) of Schedule 1 states: [quoted in full]
- 4.5.22 For the sake of clarity, for an application to be approved in accordance with Regulation 13, the PNA must include a statement to the effect that there are services which are not currently being provided that need to be provided and the application must offer to provide those services.
- 4.5.23 Within its application, the applicant stated that the needs that had been identified were discussed on pages 56, 59 & 80 of the PNA. However, it is clear that there is nothing on any of these pages (or in fact anywhere else in the PNA) that constitutes a statement as envisaged by Paragraph 2(a) of Schedule 1. Furthermore, there have been no supplementary statements issued which refer to gaps in provision that have arisen since the PNA was published.
- 4.5.24 In its decision report, the PSRC stated:
- 4.5.25 *The supplementary statement listed details of pharmacies that had closed or where there had been a change of ownership. The statement notes that this was not an update on pharmaceutical need.*
- 4.5.26 The 2023 PNA states the following on page 8:
- 4.5.26.1 *No gaps have been identified in necessary services (essential services) that if provided either now or over the next three years would secure improvements of better access to essential services across the whole borough.*
- 4.5.26.2 *There is no gap in the provision of necessary services (essential services) during normal working hours across the whole borough.*
- 4.5.26.3 *There are no gaps in the provision of necessary services (essential services) outside of normal working hours across the whole borough.*
- 4.5.27 None of the pharmacies noted are near to the applicant’s site.
- 4.5.28 We agree with the PSRC’s findings in this respect.

- 4.5.29 In the absence of any 'current need' having been identified within the PNA, it is clear that the requirements of Regulation 13 have not been met and therefore the application should be refused.
- 4.5.30 We therefore urge Primary Care Appeals to reach the same conclusion as the ICB and refuse this application accordingly.
- 4.5.31 Our clients would wish to attend an oral hearing should the committee decide to convene one."
- 4.6 The Commissioner
- 4.6.1 "I am writing in response to the above application where an appeal has been lodged against our decision to refuse the application.
- 4.6.2 The appeal from the applicant states the following: [see 3.1 to 3.8 above].
- 4.6.3 This particular application was refused due to the PNA not specifying any current needs in the latest version of the PNA published in 2023 and the supplementary statement published in November 2024 that listed pharmacies that had closed. Therefore, there is no published current need that they could apply to meet.
- 4.6.4 In relation to regulation 31, the decision report states the following:
- 4.6.5 *There is currently no contractor included in the Pharmaceutical List at the proposed premises or adjacent to these premises.*
- 4.6.6 For clarity, please see below the reasons for the refusal as per the decision report.
- 4.6.7 With regard to 13(2)(d) PSRC have determined that since the publication of the PNA there have been no changes in pharmaceutical needs for the HWBB that are such that refusing the application is essential to prevent significant detriment to the provision of pharmaceutical services.
- 4.6.8 With regard to 13(2)(e) PSRC have determined that granting the application would not meet the current need (as there has been none identified).
- 4.6.9 With regard to 13(2)(f) PSRC have determined that granting the application would not meet the current need (as there has been none identified).
- 4.6.10 With regard to 13(2)(g) PSRC have determined that granting the application would not meet the current need (as there has been none identified).
- 4.6.11 With regard to 13(2)(h) PSRC have determined that granting the application would not meet the current need (as there has been none identified) and that no other parties have met this need either.
- 4.6.12 PSRC have determined that the applicant as above has NOT fulfilled the criteria as required in regulation 13 and therefore the Pharmaceutical Services Regulations Committee have determined to refuse the application.
- 4.6.13 Determination made by London PSRC on behalf of NHS South East London ICB.

4.6.14 We would therefore ask that this appeal be dismissed, and the application refused.”

## 5 Summary of Observations

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

## 6 Consideration

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

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

6.3 The Committee had before it a copy of the Lewisham Pharmaceutical Needs Assessment (“PNA”) dated 2022 and prepared by Lewisham Health and Wellbeing Board (“HWB”), which had been provided by the Commissioner. The Commissioner also provided a copy of a supplementary statement dated November 2024 which lists the pharmacy closures, openings and changes of ownerships in the area.

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

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

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

### Regulation 31

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

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

*(2) This paragraph applies where -*

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

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

*(ii) adjacent premises; and*

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

6.8 The Committee noted that the Applicant had not provided any information in the application form on this point but the Committee noted that the wording of the

application form only required the Applicant to include information in the relevant section if the proposed premises were adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee considered it reasonable to determine that the lack of information in the application form on this point when read with the wording of the application form allowed it to be reasonably satisfied that the Applicant considered that the proposed premises were not adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises.

- 6.9 The Committee noted the conclusions of the Commissioner on this matter *"There is currently no contractor included in the Pharmaceutical List at the proposed premises or adjacent to these premises"* and that this had not been disputed either on appeal or in subsequent representations.
- 6.10 The Committee noted that in its appeal, the Applicant had stated that *"Lewisham HWB [sic] cited Regulation 31 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as the basis for the refusal"*. However as noted above, the Commissioner had determined that it was not required to refuse the application under Regulation 31 and it therefore appeared to the Committee that the appeal was based on a misunderstanding of how Regulation 31 was considered.
- 6.11 Taking the above into account, the Committee was not required to refuse the application under the provisions of Regulation 31.

### **Regulation 13**

- 6.12 The application (which was to be determined in accordance with the procedures in Schedule 2) was submitted by the Applicant based on addressing current need for pharmaceutical services.
- 6.13 The Committee considered whether the need on which the Applicant based its application satisfied the elements of Regulation 13(1) which reads as follows:

*"(1) If - —*

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

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

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

- 6.14 Paragraph 2(a) of Schedule 1 reads as follows:

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

*(a) need to be provided (whether or not they are located in the area of the HWB) in order to meet a current need for pharmaceutical services, or pharmaceutical services of a specified type, in its area"*

- 6.15 The Committee noted that the Applicant is proposing to meet a current need in the Forest Hill area of Lewisham, London.
- 6.16 The Committee noted that the Applicant indicates that the recent pharmacy closures in the area have created a gap in the provision of pharmaceutical services which it *“aims to address...by entering the market and enhancing access to general pharmacy services in that area”*. The Committee was of the view that stating that there is a gap in pharmaceutical services following a decrease in the number of pharmacies in the area is not the criteria for current need applications as such applications are based on the findings of the PNA. The Committee therefore went on to consider any identified current need against the PNA.
- 6.17 In its application, the Committee noted the Applicant had referred to the following:
- 6.17.1 *“Page, 56 - average number of pharmacies per 100,000 population*
- 6.17.2 *Page 59 - location of pharmacies*
- 6.17.3 *Page 80 - Pharmacy users views of the HWB's pharmaceutical needs assessment”*.
- 6.18 Section 5.7 “Community Pharmacies in Lewisham” on page 56 states:
- “There are 52 community pharmacies in Lewisham (as of April 2022) for a population of 305,309. This is an average of 17.0 pharmacies per 100,000 population, lower than the London (20.7) and England (20.5). The highest rate was in Central (2) at 23.1 per 100,000 population.*
- The information on community pharmacies, opening hours and core/supplementary hours correlates with the data provided by NHS Choices website. This information is updated from time to time. Current information on individual pharmacies can be found on the NHS Choices website.”*
- 6.19 The Committee was of the view that these are statements of fact which set out the provision of pharmaceutical services in the Lewisham area, as opposed to statements indicating that there was a gap in provision which a “current need” application could meet.
- 6.20 The Committee had regard to page 59 and noted this includes a figure outlining the “location of pharmacies in Lewisham by locality” which are “open on weekdays”. However, the Committee noted that no further information had been provided by the Applicant as to why this factual statement demonstrated that there was a current need for pharmaceutical provision that would be secured by its application.
- 6.21 Section 7.4 “Pharmacy Users Views – Community Pharmacy Patient Questionnaire Highlights” on page 80 states:
- “The final question in the survey asked the pharmacies the following – “All pharmacies are required to conduct an annual Community Pharmacy Patient Questionnaire (CPPQ). Using the results from your most recent CPPQ please identify the five most frequent requests from patients as either improvements or additions to your services.”*
- Most of the CPPQ survey were completed between 2020-2022 (26/34), and had 50-150 number of respondents (27/32). For a summary of the key findings*

from the pharmacies CPPQ results in Lewisham, please see the word cloud on the following page.

Figure 24 CPPQ results (Word Cloud)”

6.22 The Committee noted that the Applicant had not expanded further as to how this survey demonstrated that there was a current need in the PNA which its application could secure.

6.23 The Committee had regard to Section 8 of the PNA, ‘Conclusions’, which states:

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

**8.1 Necessary Services (Essential Services)**

- *No gaps have been identified in necessary services (essential services) that if provided either now or over the next three years would secure improvements, or better access, to essential services across the whole borough.*
- *There is no gap in the provision of necessary services (essential services) during normal working hours across the whole borough.*
- *There are no gaps in the provision of necessary services (essential services) outside of normal working hours across the whole borough.*

**8.2 Advanced Services**

- *Only a few pharmacies reported they were providing Stoma Appliance Customisation, Appliance Use Review and Hepatitis C Antibody Testing Service, this could be seen as a gap in Advanced services; however, 7 pharmacies in Lewisham stated they intend to provide Stoma Appliance Customisation within the next 12 months. If in 12 months there are 7 pharmacies providing this service in Lewisham, there will be no gaps in the provision of advanced services over the next three years that would secure improvement or better access to advanced services across the whole borough.*
- *There are no gaps in the provision of other advanced services across the whole borough.*

**8.3 Enhanced Services**

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

**8.4 Locally Commissioned Services**

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

6.24 The Committee was of the view that the Applicant had not identified a statement in the PNA in accordance with paragraph 2(a) of Schedule 1 indicating services that are not

provided in the area of the HWB but which the HWB is satisfied would, if they were provided, meet a current need for pharmaceutical services, in Forest Hill, Lewisham, which the proposed pharmacy can meet.

- 6.25 The Committee noted the Applicant had provided information regarding the number of pharmacies in Lewisham, access to pharmacies on foot in Forest Hill and goes on to highlight health issues in the area. However, the Committee was mindful that these are not relevant considerations for an application made in accordance with Regulation 13. The Committee noted that it is open to the Applicant to submit an application under an alternative Regulation.
- 6.26 The Committee was of the view that any purported “need” identified by the Applicant in its application does not constitute a “current need” as that term is used in the Regulations and which is specifically set out in paragraph 2(a) of Schedule 1.
- 6.27 In this case, the provisions of Regulation 13(1) were not met.
- 6.28 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.28.1 confirm the Commissioner’s decision;
  - 6.28.2 quash the Commissioner’s decision and redetermine the application;
  - 6.28.3 quash the Commissioner’s decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.
- 6.29 Although the Committee had reached the same conclusion as the Commissioner, it noted that the Commissioner considered the tests in Regulation 13(2) without specific mention of Regulation 13(1). Given the lack of clarity in this respect, the Committee determined that the decision of the Commissioner must be quashed.
- 6.30 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application.
- 6.31 The Committee noted that representations on Regulation 13 had already been made by parties to the Commissioner, and these had been circulated and seen by all parties as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 13.
- 6.32 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

## **7 Decision**

- 7.1 The Pharmacy Appeals Committee (“Committee”), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.
- 7.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.

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

7.3.1 The PNA has not identified a current need which this application could meet.

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