

APPEAL BY BRANDON ESTATES LIMITED

LAND AT COVENTRY STADIUM, RUGBY ROAD, COVENTRY, CV8 3GP

PINS REF: APP/E3715/W/23/3322013 - LPA REF: R18/0186

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SPEAKING NOTE ON BEHALF OF:

UNIVERSITY HOSPITALS & WARWICKSHIRE NHS TRUST

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1. The Trust provides acute and specialist hospital care. The Integrated Care Board (“ICB”) purchases (or commissions) those services from the Trust.
2. In its initial consultation response, the Trust requested £160,091.83 to meet the additional year 1 costs caused by the occupation of the scheme. That was calculated on the basis of 137 dwellings. However, the Trust notes the scheme has been amended to 124 dwellings and accordingly the Trust amends its request to £133,754.
3. In its CIL Compliance Statement filed on 15 September 2023, the Local Planning Authority submitted, **for the first time**, that the Trust’s request is not CIL compliant. At no point prior to 15 September had the LPA questioned the Trust’s request, nor had it done so on other applications.
4. The LPA’s reasons are set out at paras.2.18-2.20 of its CIL Compliance Statement. These are all flawed:
5. **First**, it is said that a contribution to a service provider funded by national taxation is unlawful as a matter of principle. That proposition is advanced without authority and is plainly wrong. The LPA (and Warwickshire County Council) seek funding towards a range of public bodies already funded via (local) taxation, see for example:
  - a. Highways.
  - b. Education.

- c. Public Rights of Way.
6. **Second**, it appears to be said the contribution would not serve a planning purpose or have a substantial connection to the development and must not be marginal or trivial. If that is what is said, it does not bear out on the evidence:
- a. The Rugby Local Plan identifies, as part of its spatial vision “*to ensure access to ... health services*” and Policy H1 provides that new proposals will be supported which “*deliver, or contribute to, new and improved health services and facilities ...*”. To which end under the reasoned justification to Policy D4 (para.11.18) the adequacy of “*secondary health care provision*” (such as that provided by the Trust) is specifically identified as being sought via planning obligations. It is therefore not open to the LPA to now say the contribution sought by the Trust would not serve a planning purpose when it, itself, has identified such matters as serving a planning purpose via its statutory development plan.
  - b. In its initial consultation response (and in the witness statement of Daniel Gilks), the Trust has demonstrated the impact of additional presentations caused by the development on the provision of its services. The LPA does not engage with that evidence.
  - c. The impact on the Trust cannot sensibly be described as marginal or trivial.
7. **Third**, the LPA says the contribution is not “necessary” because NHS care is intended to be provided via general taxation. This approach is both contrary to principle and internally inconsistent:
- a. Holgate J rejected the notion that a provider of state services, funded by taxation, is precluded *per se* from being funded through a planning obligation, see: *R(University Hospitals of Leicester NHS Trust) v Harborough DC* [2023] EWHC 263 (Admin) at [139]. Rather the question is a factual one, namely whether there is a gap in funding which would give rise to land-use consequences as a direct consequence of the implementation of the planning permission.

- b. In any event, the LPA does not dispute the need for additional funding to provide extra education capacity.<sup>1</sup> The education authority is also funded by general taxation and, like the Trust, is under a statutory duty to meet the education needs of its area, see s.13 Education Act 1996. The approach of the LPA is therefore internally inconsistent and thereby irrational.
8. Without the funding contribution, the scheme would fail to sustain the existing health facilities contrary to Policy H1 and the spatial vision of the development plan. As explained in the unchallenged evidence of the Trust, the scheme would give rise to a reduction in service provision for local people if the additional staff capacity cannot be funded. Accordingly, the contribution it is necessary to make the development acceptable in planning terms and is therefore “necessary” within the meaning of Regulation 122 CIL Regulations 2010.
9. **Fourth**, the LPA say that it has not been demonstrated that the burden on services arises directly from the development. The original consultation response annexed the LSOA data for the ward in which the development is proposed and demonstrated the additional cost of providing services to patients likely to draw upon its services. In much the same fashion as the education authority calculates the additional need for capacity created by the development.
10. **Fifth**, the LPA challenges whether it is likely the need will arise from new residents or existing ones and therefore whether the development is fairly related to the development in scale and kind. In response, the Trust submits it has only accounted for likely new residents as follows:
- a. Affordable housing occupiers have been excluded on the basis that they will likely be filled by people already registered for a GP locally and therefore will have been accounted for in the Trust’s funding settlement.

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<sup>1</sup> 8 additional early years places, 42 additional primary school places, 30 additional secondary school places and 6 additional post 16 spaces, in addition to 2 additional pupils with special educational needs.

- b. Planned care already covered by the Elective Recovery Fund is also excluded.
  - c. It is common ground between the Appellant and the Council that there is a 5.6 years' supply of market housing.<sup>2</sup> Accordingly, it is likely the market element of the scheme will be filled by residents from the wider area, rather than those presently registered for a GP locally.
  - d. Indeed, as the Local Plan explains, the adopted housing requirement not only meets the OAN for Rugby it also incorporates an element of unmet need for Coventry.<sup>3</sup> Accordingly, the 5.6 years' land supply against that requirement indicates the new market occupiers are likely to be drawn from beyond the Coventry and Rugby areas.
  - e. Finally, it is notable that the County Council also use GP records to calculate the need for additional school places.<sup>4</sup> That methodology is accepted by the LPA, even though it makes no adjustment for existing residents or those which are home schooled or using the private sector.
11. Accordingly, the Trust has demonstrated that the contribution is fairly and reasonably related in scale and kind to the development proposed, given that local market housing needs are already being met.
12. **Finally**, the LPA say that because the funding settlement to ICBs includes an element of population growth, population increases (such as represented by the appeal scheme) should already have been accounted for when the funding settlement for the Trust was agreed. The answer to that is as follows:
- a. As Mr Gilks explains in his statement, the ONS population projections are only one part of considerations which inform the level of funding each ICB receives

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<sup>2</sup> SoCG, para.4.1.

<sup>3</sup> Para.4.7.

<sup>4</sup> *Education Services Developers' Guide to Contribution for Education and Early Years' Provision* (August 2019), p.7.

from central government, other factors such as levels of deprivation and health inequalities are also factored-in (para.6.3).

- b. The relevant population for ICBs is the GP registration list, not the ONS projections (para.6.6). That is obvious because it is the GP registered population is known, whereas ONS projections may never come to fruition. For example, a local planning authority may plan to meet more or (more commonly) less than the ONS figures would suggest is required. Alternatively, housing may not come forward in accordance with the trajectory envisaged by the development plan or grants of planning permissions.
- c. The funding formula used by the ICB to commission acute and specialist hospital services from the Trust is based on the previous year's GP registration (para.7.1). It follows from the manner in which the ICB is funded that, even if the Trust requested an uplift on the funding settlement calculated in accordance with the GP registration to account for projections uplifts in population, the ICB would not have the funds to oblige the request (para.7.2).
- d. On the basis that the market element of the scheme (not otherwise funded by the ERF) is not registered at a local GP surgery for the first year of the occupation, then the additional impact on capacity has not been accounted for in the funding settlement. As the unchallenged evidence is that the Trust is operating at full capacity, it follows that the £133,754 is the difference between the funding it receives from the ICB and the cost (on the basis of 124 dwellings).

## CONCLUSION

13. In summary, the contribution is:

- a. **Necessary**, because without it there would be a detrimental effect on acute and specialist hospital provision locally, contrary to the development plan.
- b. **Directly related to the development**, because that impact on that public service would be caused by the increased demand placed by the increase in local population occupying the development.

- c. **Reasonably related in scale and kind**, because the Trust is operating at full capacity and its funding only accounts for last year's GP list of patients. The non-EFR funded occupiers of the market housing are highly unlikely to be registered for GP services locally and therefore will not have been accounted for in the GP list.
- d. That is all the more likely given the development is: (a) not allocated in the development plan and (b) would represent growth over and above the market housing requirement locally.

14. Accordingly, the contribution should be found to be CIL compliant and approved.

**ASHLEY BOWES**

CORNERSTONE BARRISTERS  
2-3 GRAY'S INN SQUARE  
LONDON, WC1R 5JH

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