

TOWN AND COUNTRY PLANNING ACT 1990
(as amended)

Appeal by David Wilson Homes

**LAND AT BARKBY ROAD,
QUENIBOROUGH, LEICESTERSHIRE**

HEALTHCARE MATTERS
Healthcare Provision in Queniborough, Leicestershire

Leicester, Leicestershire, and Rutland Integrated Care Board

PROOF OF EVIDENCE

Ben James Hunter
BA DipMS

PINS Reference: APP/X2410/W/23/3316574

LPA Ref: P/20/2380/2

Date: 23rd May 2023

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1. Background

- 1.2 My name is Ben James Hunter. I hold a Bachelor of Arts and Diploma in Management Studies. I have been an Education and Social Infrastructure Consultant for Education Facilities Management Ltd (EFM) since September 2017, and Associate Director of EFM since April 2022. Prior to this I was a Development Management Project Manager for Northamptonshire County Council (as was) since 2012, responsible for negotiating and securing Section 106 planning obligations for Education. Prior to this I was responsible for negotiating, securing, and managing Section 106 planning obligations, predominantly Education-related, in an Officer role between 2008 and 2012. Most of my professional career has been related to the provision of development infrastructure.
- 1.3 I am experienced in giving evidence for Planning Inquiries including Local Plan Inquiries and Public Examinations. I am therefore aware of the application of the planning system in relation to these matters from both a developer and local authority perspective. I confirm that I understand that notwithstanding my instructions my primary duty is to help achieve the overriding objective by giving objective, unbiased opinion on matters within my expertise.
- 1.4 I am instructed to act for the Appellants in respect of this Appeal.
- 1.5 I confirm that the opinions expressed are my true and professional opinions.
- 1.6 If called to give evidence, I can confirm that I will confirm that the opinions expressed are my true and professional opinions.
- 1.7 EFM was instructed by David Wilson Homes ("**the Appellants**") in January 2023. I was appointed to review the Education and Healthcare landscape to establish whether harm was likely to be caused by this development proceeding, whether the existing facilities were able to accommodate the expected number of children (and people) that will be resident in the new housing, and whether new infrastructure would be required on site to accommodate the new residents. I was also appointed to establish whether the planning obligations requested by Leicestershire County Council ("**LCC**") and Leicester, Leicestershire, and Rutland Integrated Care Board ("**ICB**") were Community Infrastructure Levy ("**CIL**") Regulation 122 (2) compliant, in that they were:

- (a) Necessary to make the development acceptable in planning terms;
- (b) Directly related to the development; and
- (c) Fairly and reasonably related in scale and kind to the development.

- 1.8 I was subsequently instructed by the Appellants to prepare a Report that could be utilised as a Proof of Evidence to assist the Inspector in determining whether any harm is likely to arise in Queniborough, from an Education and Healthcare perspective, if this development was to receive a positive determination. I have subsequently prepared this separate Proof of Evidence which focuses solely on the need for Healthcare contributions.
- 1.9 The Appellants and LCC agree in relation to the level of Education development mitigation necessary to accommodate the pupils that will be living on this development site. This is reflected in the Section 106 Agreement, which is not a matter of dispute, and is also confirmed in the Statement of Common Ground.
- 1.10 The Appellants and the Leicester, Leicestershire, and Rutland ICB are not in agreement regarding whether planning obligations are necessary to make the development acceptable in planning terms. This is discussed further in the following Proof of Evidence.
- 1.11 The Proof will demonstrate the following:
- (a) The Leicester, Leicestershire, and Rutland ICB's request for planning obligations does not fulfil the tests of CIL Regulation 122 (2) and should be removed from the Section 106 agreement, and
 - (b) There is demonstrably no Healthcare-related reason to refuse this development application.
- 1.12 I would be happy to discuss this further during the Planning Appeal.

2 Introduction

2.1 This Planning Appeal relates to an outline planning application (P/20/2380/2) made by David Wilson Homes (“the Appellants”) for a development of up to 150 dwellings, together with new open space, landscaping and drainage infrastructure, with all matters reserved except for access (as amended to include proposed junction improvement works at Barkby Road cross roads, received 20/05/2022) at Barkby Road, Queniborough, Leicestershire. The approximate development outline can be seen below in Map 1:



Map 1: Approximate Development Boundary

2.2 The proposal was considered by Charnwood Borough Council (“CBC”) Planning Committee on 24th November 2022, and Refused, with the Decision Notice dated 9th December.

2.3 The Committee Report states:

<p>NHS (Leicester, Leicestershire and Rutland Integrated Care Board)</p>	<p>Comments assess capacity at local GP surgeries (The County Practice, Syston Health Centre and The Jubilee Medical Practice, Syston Health Centre) and find that existing practices are operating at full capacity and request contributions of £76,366.47 to provide approximately 30sqm of additional accommodation to meet their proportionate share of the population increase of 363 patients arising from this development.</p>
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Table 1: Committee Report – ICB Planning Obligations

2.4 The Committee Report also states (page 23):

In terms of impact on health care, the NHS have advised that there is limited capacity at The County Practice and Jubilee Medical Practice to be able to accommodate the additional demand from this development. However, the consultation response sets out that S106 contributions could facilitate the extension of these practices to meet the additional demand which would be generated by this development but it is noted that there are existing capacity issues and the NHS request that if contributions are to be secured that they are scheduled to accommodate early occupations.

It is noted that comments on the original submission were received on behalf of University Hospitals, Leicester. While it is appreciated that the development could give rise to a degree of impact on hospitals in the area, the information provided does not provide sufficient clarity to show that there would be an increase in demand directly attributed to this development to meet the requirements of The Community Infrastructure Levy Regulations 2010 (Regulation 122).

The development would create additional demand on open spaces and civic amenity. However, similarly to education and NHS needs, consultee comments do not object to the principle of the development and set out financial contributions which would provide new facilities and improvements to existing facilities to cope with the extra demand arising from this development to be secured in a s106 legal agreement.

The limited range of services and facilities in Queniborough would result in residents of this site being required to travel for some of their day to day needs but S106 contributions can reasonably mitigate the additional demand on specific local services and facilities that could arise from this development to the extent that it is

considered that the development would not cause significant adverse impact on the capacity of local services and facilities.

- 2.5 The second Reason for Refusal (“RfR”) is related to the lack of a signed Section 106 Agreement. The Section 106 will be agreed prior to the close of the Appeal; however, as the NHS contribution request from the ICB has yet to be agreed, for the reasons outlined below, it is at the discretion of the Inspector as to whether the planning obligation remains, or is removed from the Section 106 agreement.
- 2.6 This Proof will discuss the reasons why the Planning Obligation requested does not fulfil the tests of CIL Regulation 122 (2) but will first discuss the relevant Statutory and Policy matters in relation to Healthcare:

3 Statutory and Policy Matters

- 3.1 With regards to the provision of Healthcare at Practices that will serve this development, the primary statutory duty rests with the Secretary of State for Health, as per the National Health Service Act 2006 (“NHSA06”), with the mandate for delivery resting with NHS England.
- 3.2 Responsibility for commissioning primary care services, including general practice, sits formally with NHS England. However, over time Integrated Care Boards (ICBs) have increasingly taken on full or partial delegation of these commissioning powers for primary care. This now means most ICBs have at least some responsibility for commissioning general practice in their local area, while keeping to national guidelines to ensure consistency.
- 3.3 The Handbook to the NHS Constitution for England (updated 4th February 2021) states the following:

Right: ‘You have the right to choose your GP practice, and to be accepted by that practice unless there are reasonable grounds to refuse, in which case you will be informed of those reasons.’

You can choose which GP practice you would like to register with. That GP practice should accept you onto its list of NHS patients unless there are good grounds for not doing so, for instance because you live outside the boundaries that it has agreed with NHS England or because they have approval to close their list to new patients. In rare circumstances, the GP practice may not accept you if there has been a breakdown in the doctor-patient relationship or because you have behaved violently at the practice. If a GP practice does not accept you onto its list, it should tell you why. If for any reason you are unable to register with your preferred GP practice, NHS England will help you to find another one.

Source of the right

The right is derived from the duties imposed on the provider of GP services by regulations made under the NHS Act 2006, in particular paragraphs 15 to 17 of Schedule 6 to the National Health Service (General Medical Services Contracts) Regulations 2004 and paragraphs 14 to 16 of Schedule 5 to the National Health Service (Personal Medical Services Agreements) Regulations 2004.

- 3.4 What is evident from the NHS Constitution is that a Health Contribution via Section 106 planning obligation cannot be necessary under the tests of CIL Regulation 122, as the NHS Constitution prevents it from being necessary. If an NHS Practice is full, there is a statutory process to go through to close it to new patients. In that eventuality, they will recommend an alternative facility to the Patient.

4 Health Care Provision

- 4.1 The consultation response from the ICB dated 30th September 2022 states:

The practices that are close to this development:

The County Practice
Syston Health Centre
Melton Road, Syston
Leicester
LE7 2EQ
List Size 12,658

The Jubilee Medical Practice
Syston Health Centre
1330 Melton Road, Syston
Leicester
LE7 2EQ
List Size 12,331

4.2 This is accurate, as both GP Surgeries are within walking distance of this proposed development:



Map 2: GP Surgeries in relation to the Development Site

4.3 When looking at the population of the Ward, there are 4,865 people registered with a GP Practice. Of these people, 3,693 (76%) are registered at one of the two Surgeries shown in Map 2. The remaining 1,172 people are registered with one of 35 additional GP Surgeries, some in very small numbers:

Practice Code	Practice Name	LSOA Code	Patient Numbers	Ward Code	Ward Name	LA Code	LA Name	County	Postcode	Patient Total
C82042	THE COUNTY PRACTICE	E01025730	1937	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82078	THE JUBILEE MEDICAL PRACTICE	E01025731	1756	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82031	JOHNSON MEDICAL PRACTICE	E01025730	651	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82033	HUMBERSTONE MEDICAL CENTRE (JP JONES)	E01025730	87	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82676	ST ELIZABETH'S MEDICAL CENTRE (JA WOOD)	E01025730	66	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82678	THURMASTON HEALTH CENTRE	E01025730	56	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82627	SILVERDALE MEDICAL CENTRE	E01025730	50	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82667	THE CHARNWOOD PRACTICE	E01025730	37	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82018	PARKER DRIVE SURGERY	E01025730	30	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82063	EAST LEICESTER MED PRACT(S LONGWORTH)	E01025730	26	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82600	THE BANKS SURGERY	E01025730	19	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82022	THE BILLESDON SURGERY	E01025730	17	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82088	HORIZON HEALTHCARE	E01025730	15	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82644	DR MK LAKHANI'S PRACTICE	E01025731	13	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82038	LATHAM HOUSE MEDICAL PRACTICE	E01025730	12	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
Y00252	DR SIC CLAY'S PRACTICE	E01025730	10	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82680	RUSHEY MEAD HEALTH CENTRE	E01025730	10	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82091	BIRSTALL MEDICAL CENTRE	E01025731	9	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82037	EAST PARK MEDICAL CENTRE (RP PANDYA)	E01025730	8	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82084	DR B MODI	E01025730	6	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82099	AL-WAQAS MEDICAL CENTRE	E01025730	5	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
Y02469	HERON GP PRACTICE	E01025730	5	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82642	HIGHFIELDS MEDICAL CENTRE	E01025730	5	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82030	DOWNING DRIVE SURGERY (AJ BENTLEY)	E01025730	4	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82623	HEATHERBROOK SURGERY (RP ARCHER)	E01025730	4	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82016	LONG CLAWSON MEDICAL PRACTICE	E01025731	4	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
Y00137	THE WILLOWS MEDICAL CENTRE	E01025730	4	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82671	DR GANDICHA & PARTNER	E01025730	3	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82114	DR U K ROY	E01025730	3	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82116	HIGHFIELDS SURGERY (R WADHWA)	E01025730	3	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82092	AYLSTONE HEALTH CENTRE	E01025730	2	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82029	WILLOWBROOK MEDICAL CENTRE (JG ASTLES)	E01025730	2	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82097	CHARNWOOD SURGERY	E01025731	1	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82643	COMMUNITY HEALTH CENTRE (ZS OSAMA)	E01025730	1	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82659	DR R KAPUR & PARTNERS	E01025730	1	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82019	STURDEE ROAD HEALTH AND WELLBEING CENTRE	E01025730	1	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865
C82624	THE PRACTICE BEAUMONT LEYS	E01025730	1	E05005443	Queniborough	E07000130	Charnwood	Leicestershire	LE7 3	4865

Table 2: People in the Queniborough Ward Registered with a GP Surgery

- 4.4 The fact that there are a large number of people within the Ward not attending one of the closest GP Surgeries indicates a reluctance of migrant households to change GP, as is common. It is very likely that the population that will be living on this development will in many cases not change GP Practice, or equally in many cases, will select a GP Practice on the basis of the free choice enshrined in the NHS Constitution, and not necessarily proximity (or, for example, Babylon Health which, being online and increasingly popular, has no premise).
- 4.5 What is evident from the NHS Constitution is that a Health Contribution via Section 106 planning obligation cannot be necessary under the tests of CIL Regulation 122, as the NHS Constitution prevents it from being necessary. If an NHS Practice is full, there is a statutory process to go through to close it to new patients. In that eventuality, they will recommend an alternative facility to the Patient.
- 4.6 When establishing if either GP Surgery that serves this development is at capacity, and has gone through the statutory process to close the roll, it is evident that they have open rolls, and are accepting new Patients.

4.7 The County Practice is accepting new Patients:

How To Register

We have an open list and welcome requests for registration from patients living in or moving to [the practice area](#).

You can register by completing a form available from reception.

To save time you can also download and print the following registration forms:

For Adult Registrations

[Download an Adult Registration Form](#) and an [Online Services form](#)

For Children's Registrations

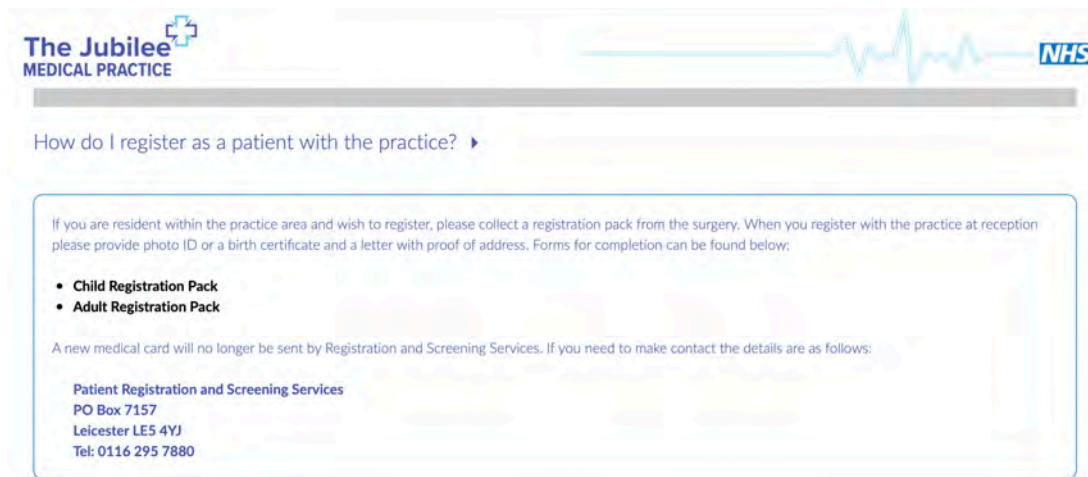
Please download and complete **both** a [Child Registration Form](#) and a [Child Health Services form](#)

You will need to complete these forms by hand and bring to the surgery.

You will have a named, accountable doctor who is responsible for coordinating your care. You can still talk to or make appointments to see any of our doctors or nurses, not just your named GP.

We recommend that new patients undertake a health check with a practice nurse.

4.8 The Jubilee Medical Practice is also accepting new Patients:



- 4.9 On that basis, it cannot be said that this development will take the GP Surgeries over capacity and cause harm. If there is no demonstrable deficit that would be made worse by new development, the contribution is not necessary to make the development acceptable in planning terms.
- 4.10 It should also be highlighted that the vast majority of NHS Practices have patient rolls that are inflated. As UK Parliament reported, mid 2015 ONS estimates put the population of England at 54.8 million people, whereas there were 57.1 million people registered with GPs. In addition, the impact on local services would only be from a subset of the total population living on the site, as the remainder would have moved from somewhere else in the Borough, and would be unlikely to change GPs (they would already be registered).
- 4.11 Capacity at NHS Practices is not calculated in the same way as, say, Schools. That is because it is not about “capacity” but about “patient utilisation”. If an NHS Practice opens for an hour longer every day, or opens at weekends, its capacity grows. What is evident is that there is a statutory process to go through if an NHS Practice is full. Neither of the NHS Practices have gone through this process.
- 4.12 There are two recent Planning Inquiries, discussed further below, which have specifically addressed the issue funding for GP Surgeries. The outcome of these Planning Inspectorate decisions was to blue-pencil the requests from the Section 106 on the basis that the planning obligations did not fulfil the tests of CIL Reg 122 (2).

The main issue is that the ICB has not sufficiently identified that harm would occur if the developments came forward.

4.13 These arguments were put to an Inspector recently in an Appeal¹ in Nottinghamshire in 2021 (CD6.46). The Inspector said:

Health Contribution

- 55. A figure of £316,403.64 is sought from the Nottingham and Nottinghamshire Clinical Commissioning Group (CCG) on the basis that the nearest surgeries to the appeal site are at capacity. The justification for the contribution rests on CCG’s consultation response²⁰ supplemented by an email²¹. These explain that ‘at capacity’ means the practices have no more space available to them either within their building or the ability to convert space internally.
- 56. As the Council’s planning witness accepted, this does not mean; 1) that the surgeries are unable to accommodate new patients, or 2) that existing or projected appointment wait times would be unacceptably long. There is no dispute that the nearest surgeries are accepting new patients and no evidence of excessive waiting times or any other operational issues was put to the Inquiry.
- 57. The contribution has been calculated via a standard formula which assumes each unit on the site would be equivalent to the average house size in the Borough. That approach ignores the site-specific housing mix set out above. Based on an average 2.3 people per dwelling, it is then calculated that the appeal scheme would generate an increased patient population of 810. However, in light of the Appellant’s evidence on the likely origin of future residents²², that assumption is fundamentally flawed.
- 58. There is nothing in the responses to demonstrate that the CCG has looked at the specific impact of the proposed development on GP practices in the area. Instead it has relied on a standard, per dwelling, approach which fails to accord with the approach to contributions advocated for in the SPD.
- 59. Finally, the supplementary email draws attention to the CCG’s intention to relocate one of the four surgeries to a new building with sufficient space to accommodate one of the other practices. However, there is nothing to suggest that the delivery of this programme, which appears at an advanced stage, is dependent on s106 funding from this development or any others.

4.14 What this Inspector recognised in the Nottinghamshire Appeal is that applying a standard formula of, in the case of this Appeal, 2.42 people per dwelling, and assuming that 100% of these people will utilise a GP Surgery within the vicinity of the development, is “fundamentally flawed”. To be CIL Regulation 122 compliant (fair and reasonably related in scale and kind to the development) the ICB should be

¹ APP/B3030/W/20/3260970

looking at the Net impact of people moving on this development site, not housing occupancy (Gross impact).

4.15 The impact on local services would be from a subset of the total population living on the site. This is because many of the residents would be expected to have moved from elsewhere in the town or the district and would already be accessing local services. However, the ICB is requesting funding from 100% of the expected population of the site. This is excessive, and not CIL Reg 122 Compliant.

4.16 The same arguments as detailed above were put the Inspector of the neighbouring Sibley Appeal² (CD6.07) in 2022. The Inspector said (paragraph 58, page 11):

However, I have limited information to demonstrate how the number of additional patients generated by this development would impact significantly on the provision of healthcare services locally, or that other options to improve capacity such as longer opening hours have been explored and ruled out. The financial request from the CCG is based on a standard formula and it is not clear how capacity would be increased. Therefore, it is not possible to say that the Healthcare Contribution is necessary to make the development acceptable in planning terms.

4.17 It is clear that the standard formula approach applied to Surgeries with open rolls is not an appropriate approach to establishing whether harm would arise from the people from new developments.

4.18 The generally held view is that contributions to the NHS are not appropriate. This view has been supported explicitly in older Appeal Decisions. The Secretary of State (“SoS”) said in the Decision Letter to Appeal APP/C3430/A/06/2027165 (CD6.49) the following:

[The SoS] agrees with the Inspector that the issue of funding any additional GP(s) is very much a matter for the PCT and not something that can be reasonably expected to be funded by the Appellants

² Appeal Decision APP/X2410/W/21/3287864

4.19 In the case above, the PCT refers to the Primary Care Trust, which preceded the Care Commissioning Groups (“CCG) which preceded the ICBs.

4.20 The Inspector at the Moat House Farm Inquiry (**CD6.48**) Decision (21st February 2012)³ said the following:

Beyond facilitating the provision of a site [not sought on this Appeal Site], the planning system cannot be held responsible for the expansion of the existing healthcare infrastructure; that is a matter for the GPs and the PCT. But the planning system can and should be held responsible for providing sufficient quantities of housing. The PCT, in turn has a statutory duty to provide the population with access to healthcare

4.21 The Inspector continued:

I agree with the Council that requesting a financial contribution towards health infrastructure from the appellant, through the mechanism of a S.106 planning obligation, would be inappropriate; since the use to which such a contribution would be put is currently unknown, it could not meet the tests of CIL Regulation 122. In any event, advice in Circular 05/2005 Planning Obligations explains that while developers may reasonably be expected to pay for infrastructure provision which would not have been necessary but for their development, planning obligations should not be used to resolve existing deficiencies in infrastructure provision.

4.22 The Moat House Farm Inquiry is particularly pertinent to this Appeal because it covers all of the relevant points with regards to the current request for funding. Firstly, there is a statutory duty to provide the health service (funded from general taxation) and to provide all that is necessary (Section 3 NHSA06). Healthcare is available at all of the facilities that serve this Appeal Site if the Appeal is upheld. There is no indication where any contribution would be spent and so it could not meet the requirements of CIL Regulation 122.

4.23 The Inspector at the Mallory Road, Bishop’s Tachbrook Appeal (4th November 2014)⁴ (**CD6.47**) said the following:

³ APP/Q4625/A/11/2157515 Moat House Farm Marston Green Solihull

*I am circumspect about some of the other claimed benefits. These include the contributions towards **healthcare**, education and libraries. For these to be taken into account they must be fairly and reasonably related in scale and kind to the development. They have been sought to avoid incoming residents placing undue strain on existing infrastructure. Notwithstanding the appellant's assertions, there is no cogent evidence to demonstrate that such contributions would provide any meaningful benefits to the wider local community.*

- 4.24 The same is true of this Appeal site.
- 4.25 It should also be mentioned that GP Practices are funded in the major part per patient using the Carr-Hill formula, that uses patient age and sex plus additional needs to determine the core sum. New housing is attractive because new housing is primarily young households. Young households use GP services less than older households. Thus, in GP time consumption terms, new housing subsidises older patients in stock housing.
- 4.26 Furthermore, GP practice premises are funded via a separate funding stream that is driven by rateable value and rental value. This means that expanding a GP practice for any reason, confirmed by the ICB, is fully funded by the NHS. Thus, any funds derived from a developer is double funding. Unlike school places, there is no clawback mechanism to prevent this double funding like there is in Basic Need funding from the DfE.
- 4.27 The NHS is a national service funded from taxation. The duty to provide all that is necessary rests with the Secretary of State and NHS England, thus the necessity requirement in CIL Regulation 122 is not met. The impact on local services would be from a subset of the total population living on the site, because many of the residents would be expected to have moved from elsewhere in the Borough and would already be accessing local services. However, the ICB is requesting funding from 100% of the expected population of the site. This is excessive, and not CIL Reg 122 Compliant.

- 4.28 The ICB has used NHS Health Building Note 11-01 'Facilities for primary and community care services' to quantify the physical space required by the ICB, and as a follow on the cost to provide. They have ignored the purpose of HBN 11-01 which is a design guide for sizing new facilities. Specifically, they have ignored the chapter heading 'Sizing a development and creating a briefing schedule'. It is not a formula for the de minimis enlargement of premises in response to a perceived and exaggerated increase in patient numbers on a per patient basis. This is best achieved through utilisation. Note that the formula is predicated on 'anticipated annual contacts'; assumed 100% of patients accessing a consulting room in a 12 month period', 'assumed opening weeks for the practice', 'assumed appointment duration', and 'assumed weekly opening hours'. This is not a method compliant with the specificities of CIL Reg 122.
- 4.29 On the basis of the above, there is not sufficient evidence provided by the ICB to demonstrate that harm would occur if planning obligations were not secured. The Planning Inspectorate has ruled against this approach in at least two very recent Planning Inquiries, as well as older decisions. There is no evidence that planning obligations are justified towards additional Primary Healthcare Infrastructure.

5 Summary and Conclusion

- 5.1 This Proof of Evidence demonstrates that Health contributions are unnecessary, because there is capacity available to serve this development, making the request inappropriate.
- 5.2 In my opinion, there are no circumstances under which a Healthcare contribution should be sought, or could be sought, within the constraints of CIL Regulation 122, due to the current availability of provision.
- 5.3 The ICB is attempting to justify a planning obligation on the basis that the two Practices that are closest to this development are at capacity. If these facilities were at capacity, they would not be accepting new patients, whereas all currently are.
- 5.4 The NHS is a national service funded from taxation. The duty to provide all that is necessary rests with the Secretary of State and NHS England, thus the necessity requirement in CIL Regulation 122 is not met.

- 5.5 The impact on local services would be from a subset of the total population living on the site. This is because many of the residents would be expected to have moved from elsewhere in the Borough and would already be accessing local services. However, the ICB is requesting funding from 100% of the expected population of the site. This is excessive, and not CIL Reg 122 Compliant.
- 5.6 Accordingly, the planning obligation should be removed from the Section 106 agreement.

Signed:

A handwritten signature in black ink, appearing to read 'Ben Hunter'.

Ben Hunter

Associate Director – Education and Social Infrastructure

EFM