

RE: 3244410, and North of Viaduct, Adjoining Orchard Business Park, Ledbury

Wye Valley NHS Trust.

In the addition to the Wye Valley NHS Trust's (the Trust) submissions, to assist the Inspector, the Trust has the following comments on the latest Secretary of State's Appeal decision related to the land at Wolborough Barton, Coach Road, Newton Abbot TQ12 1EJ (Ref: APP/P1133/W/18/3205558) (the Teignbridge Decision).

It is noted that in the Teignbridge decision no issue was taken with the Trust's funding model, the impacts of the proposed development on the delivery of healthcare services to the proposed occupants of the development and the wider community served by the Claimant, the lawfulness of the previous decisions taken by the Secretary of State and his Inspectors, and the legal and policy framework for requiring developments to mitigate their own impacts.

However, when making the decision, the Inspector and the Secretary of State mistakenly believed that NHS England can take into consideration all Local Plans and allocated Sites in England, plan accordingly, and pay for the impact that the new developments will create if it is made aware of those plans. In other words, that NHS England will mitigate the impact created by the developments (Decision letter paragraph 358) in relation to allocated Sites in the Local Plan irrespective of when (or indeed if) those allocations are delivered.

It is also noted that the decision gave no explanation of why the impacts of the proposed development on the provision of healthcare services by the Claimant are not to be mitigated by the proposed development (in accordance with established legal and policy principles) but to be borne by the wider community, particularly as this is wholly inconsistent with previous decisions of the Secretary of State and his Inspectors. Moreover, there was and is no provision for a decision-maker to simply ignore the NHS Trust funding model when making an assessment against the CIL tests or suggest that the funding model should be set aside because the Parliament could, theoretically in the future, decide to fund the NHS differently.

The funding model for NHS Trusts as approved by Parliament is not affected or otherwise influenced by planned development through allocations in an adopted development plan.

CCGs are allocated NHS funding to carry out their role using a nationally determined formula. The formula is based on independent academic research overseen by an independent external group, the Advisory Committee on Resource Allocation. Allocations are based on a weighted capitation. The

starting point for determining the target CCG allocation is the latest estimate of the number of patients registered with a GP practice located within the CCG area (the registered GP population). However, the allocation to CCGs is then ‘weighted’ according to a number of factors such as age, health inequalities, deprivation levels. A per capita rate of NHS funding is calculated for each CCG area and multiplied by the number of people registered with GP practices¹.

Allowance for growth in the number of people registered with GP practices is applied to projected CCG allocations by NHS England. This population growth is based on midyear estimates from Office for National Statistics’ age-sex specific population projections. This does not take into consideration local housing projections, local housing land supply or existing planning permissions. CCG projected funding allocations comprise indicative amounts that are adjusted, year on year, to account for in-year factors, policy changes or NHS-wide based financial out-turns, most particularly national deficits. Despite recent multi-year financial settlements for the NHS, multi-year financial allocations are subject to annual confirmation or amendment within the framework set by each year’s Comprehensive Spending Review.

As to the issues raised in relation to the function of the Health and Wellbeing Boards (on behalf of CCGs and the local authority) to prepare joint strategic needs assessments² including assessing the likely need, this is not directly related to the budget given to the CCG. Although the CCG has to take the assessment into the consideration it can only commission so many services as its budget allows.

The Health and Wellbeing Board has a strategic overview function and can make decisions as to where the Board would like to spend the monies but not how much. Developments in a local plan may be part of the strategic plan for what is needed and help to shape the future. However, the NHS has a limited budget and does not take into consideration developments that may be delivered, or not as the case may be as the NHS simply does not operate in such a way.

The Trust is the ultimate direct health service provider to the local population and is impacted by this development as explained. It’s funding is based on the existing activities not what it is predicted in the development plan even if it had knowledge of it. This includes existing planning permissions as the CCG does not have a budget for developments that may, or may not, be built during the contract period.

The Trust’s contribution does not differ significantly from the Education Contribution. In fact the Government provides funding to local authorities for the provision of new school places, based on

¹ <https://www.england.nhs.uk/wp-content/uploads/2019/01/note-on-ccg-allocations-2019-20-202324.pdf>

² s. 116(6) 116A of the Local Government and Public Involvement in Health Act 2007

forecast shortfall in school capacity including new schools. Funding is reduced to take into account of the developer contribution³.

In the case of the Trust and GP contributions there are no reduction in the budget to take into account the developer contribution, which makes it even more necessary to mitigate the impact.

Finally, in the *Tesco Stores Ltd* case⁴ Lord Hoffmann examined the evolution of planning obligations in the context of, inter alia, mitigating the impacts of development proposals upon community facilities and services that are usually funded by the public purse. The Court took the view that Government has accepted that the market forces are distorted if commercial developments are not required to bear their own costs and developer should contribute towards costs, which normally be responsible of the public sector.

If the impact is not borne by the developer then effectively the taxpayer will be providing a subsidy and the services to the community will be adversely affected.

This issue was also dealt in the *Spring Lane, Radford Semele, Leamington Spa* appeal⁵ Inspector Hand considered the request from SWFT for a contribution from the developer for the unfunded revenue requirements to ensure delivery of its healthcare services. Although he considered the National Tariff funding model may be illogical “*unfortunately it is how the system appears to operate*”.⁶ The Inspector considered that the contribution sought met the requirements of the CIL regulations and expressly rejected as irrelevant the contention that because residents may pay taxes that would address the needs of the NHS⁷.

The proposed development will create an impact on the services. The Trust’s hospital is currently operating at capacity and as such, any additional increase in patient levels will have a profound negative impact on service levels provided, should the impact not be mitigated. The most immediate example will be on the waiting times for an appointment, as these are likely to increase. Any unnecessary delay in patient care is unacceptable and can detrimentally affect a patient’s physical and mental wellbeing. For a cancer patient requiring a time-critical diagnostic test or treatment, this delay may lead to a devastating outcome.

The mitigation is carefully and conservatively calculated and considered to be effective for the Trust to deal with the increased pressure created by the development. Further, new activity which is not

³ Planning Practice Guidance :Paragraph: 007 Reference ID: 23b-007-20190315

⁴ *Tesco Stores Ltd v SSE* [1995] 1 WLR 759, at 780.

⁵ APP/T3725/A/14/2221858 (DL dated 10 March 2015).

⁶ DL para 36.

⁷ DL, paras 36-37

mitigated creates not only a long term financial deficit but it will have a knock on effect on the services. It will never be recovered retrospectively. The mitigation of adverse impacts arising from residential development upon the delivery of healthcare services is crucially important issue to the Trust and in particular, the ability to access health services is critical to the residents of this development and to the existing local population.

Lastly, the Teignbridge decision has been challenged and leave has been given to proceed to the final hearing.

21.9.2020