

Examples of Appeal Decisions Supporting Acute Health, Primary Care and/or Community Care Services

Appeal Ref: APP/Q3305/W/22/3311900

Appeal Decision: Allowed – 11 May 2023

Planning Inspector: Tom Bristow BA MSc MRTPI AssocRICS

Appellants: Waddeton Park Ltd

Lowerside Lane, Glastonbury, BA6 9GY

The development proposed is described on the application form as ‘outline planning application for the erection of up to 90 dwellings along with associated open space and infrastructure (means of access to be determined only).’

Application: 2021/2466/OTS – Mendip District Council

75. *There is a CIL Regulation 122 compliance statement before me. There is now no dispute between the main parties over the justification for any elements of the S106. However over the course of the appeal the appellant disputed the £542 contribution per dwelling sought by the NHS Somerset Integrated Care Board (‘ICB’). The appellant argued that it would fund healthcare provision that was also centrally funded, and, by extension, that the contribution sought was not fairly and reasonably related to the development proposed.*
76. *Local primary health care funding derives principally, in sequence, from the Department for Health, NHS England Improvement (‘NHSI’) and the relevant ICB, formerly Clinical Commissioning Group (‘CCG’), for a given area. Healthcare funding is intricate, inevitably dealing with people who have differing needs.*
77. *In that context the appellant directed me to the methodology for ICB allocations from NHSI.2 That is a longstanding methodology altered successively over time. That prompted me to bring the parties’ attention to the judgement in The University Hospitals of Leicester. 3 Paragraph 66 of that judgement states ‘it would be wrong to infer that there is no connection between an ONS [Office for National Statistics] projection of population growth in an area, used in the funding of CCGs, and new development in an area to accommodate that growth. On the contrary, the two are related.’*
78. *I thank Malcolm Dicken and Leenamari Aantaa-Collier for attending the inquiry at my invitation. They clarified that the foregoing methodology relates solely to revenue funding, not capital. Crudely that is healthcare services not premises. I was told that there is no way in which funding derived from the foregoing methodology could be used to create more physical capacity at facilities.*
79. *Via correspondence of 2 March 2023 Malcolm Dicken also set out that had ONS projections been factored into capital expenditure, some £4,075,750 would have been allocated to the Somerset ICB for premises upgrades between 2020 and 2023. The actual level of funding provided was £883,000 over that period. It is logically challenging to reconcile that ICB funding acknowledges population growth in respect of revenue, but not in respect of capital.*

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Nonetheless sufficient floorspace must be available to enable appointments for patients, thereby ensuring effectiveness of service delivery.

80. *As at 22 November 2021 the two nearest primary care facilities to the appeal site were over capacity, having a capacity for 19,671 patients relative to a patient list of 19,929. At the inquiry I was told that the situation has since worsened, with capacity remaining the same but the patient list now standing at 20,252. The reasons for that change are intricate and relate in part to patient registrations, population growth and demographic change.*
81. *Nevertheless the foregoing demonstrates that the development proposed would be unacceptable without a proportionate contribution to healthcare premises in accordance with criterion 2 of LP1 policy DP19. Based on household size data from 2016 to reflect additional patients, applying a floorspace calculation methodology of 2018 used across the south west along with indexation since that date, the contribution sought amounts to £542 per dwelling (consistent with the S106). That represents an appropriate evidence base.*
82. *More broadly there is no countervailing evidence before me to the commonality between the main parties as to the appropriateness of the UU and S106. I note that provisions other than financial contributions are also necessary to achieve compliance with relevant development plan policies (including in respect of affordable housing in accordance with LP1 policy DP11 and open space in accordance with LP1 policy DP16 and the associated Supplementary Planning Document on Greenspace adopted on 6 February 2023). Accordingly the obligations contained with the UU and S106 are necessary to make the development proposed acceptable and in accordance with the provisions of NPPF paragraph 57 and CIL Regulation 122.*

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Appeal Ref: APP/E3715/W/20/3265601

Appeal Decision: Allowed – 11 June 2021

Planning Inspector: Graham Wright BA(Hons) MSc MRTPI

Appellants: Rosconn Strategic Land

Wolston Allotments, Stretton Road, Wolston, CV8 3FR

The development proposed is the development of up to 48 dwellings with associated public open space, landscaping and infrastructure

Application: R19/1411 – Rugby Borough Council

30. *NHS Contribution: Extensive representations were made on behalf of the NHS both in written form and at the hearing. In summary, the current NHS funding model means that there is no mechanism to anticipate the provision of new housing coming forward, which results in a funding gap during the first year of occupation. This funding gap is not recovered in future years. The contribution sought by the NHS is £86,293, which is to cover an identified shortfall that would arise. On that basis, I am satisfied that the statutory tests are met.*

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Appeal Ref: APP/X1165/W/20/3245011

Appeal Decision: Allowed – 26 April 2021

Planning Inspector: Andrew Dawe BSc(Hons) MSc MPhil MRTPI

Appellants: Abacus Projects Limited/Deeley Freed Limited

Land to the south of White Rock, adjacent to Brixham Road

The development proposed is outline application for residential led development of up to 400 dwellings (C3) together with the means of vehicular and pedestrian/cycle access together with the principle of a public house (A3/A4 use), primary school with nursery (D1), internal access roads and the provision of public open space (formal and informal) and strategic mitigation. Details of access to be determined with all other matters.

Application: P/2017/1133 – Torbay Council

90. A Planning Obligation has been submitted making provision for the following:

- *Appropriate financial contributions towards provision of additional consulting and clinic rooms at the local medical centre to enable residents of the proposed development to be served; and a new health and wellbeing centre to mitigate for the additional demands upon local health service provision. I have had regard to evidence provided by the Torbay and South Devon NHS Foundation Trust which sets out that it is operating at full capacity in the provision of acute and community healthcare and that it cannot plan for unanticipated additional growth in the short to medium term. It states that the contract is agreed annually based on the previous year's activity plus any pre-agreed additional activity for clinical service development and predicted population growth, which does not include ad-hoc housing developments and does not take into consideration the Council's housing need or housing projections. It goes on to state that the following year's contract does not pay for the previous year's increased activity and that it is not possible for the Trust to predict when planning applications are made and delivered and therefore cannot plan for additional occupants of such a development. Its strategy takes account the trend for the increased delivery of healthcare in the community, but the commissioning operates based on previous year's performance and does not take into account potential increase in population caused by a prospective development. It does not take into account housing land supply, housing need or housing projections. An appropriate financial contribution would therefore be necessary to maintain service delivery during the first year of occupation of each dwelling. As such, without the contribution concerned, the proposed development would be likely to have a detrimental impact on the safe delivery and quality of the service. Provision for it would accord with policies SS7, SS11 and SC1 of the Local Plan.*

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Appeal Ref: APP/W1850/W/20/3244410

Secretary of State Decision: Allowed – 15 March 2021

Planning Inspector: Lesley Coffey BA(Hons) BTP MRTPI

Appellants: Bloor Homes Western

Land North of Viaduct, Adjacent to Orchard Business Park, Ledbury

- The development proposed is a mixed use development including the erection of up to 625 new homes (including affordable housing), up to 2.9 hectares of B1 employment land, a canal corridor, public open space (including a linear park), access, drainage and ground modelling works and other associated works.
- The proposal is for outline planning permission with all matters reserved for future consideration with the exception of access. Only the means of access into the site is sought as part of this outline application, not the internal site access arrangements (i.e. they are not formally part of the application). Vehicular access is proposed off the Bromyard Road.

Application: 171532 – Herefordshire Council

34. *Having had regard to the Inspector's analysis at IR15.1-15.25, the planning obligation dated 2 October 2020, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR15.26-15.27 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.*

9.103 *With the Wye Valley NHS Trust Contribution, the appellant is aware of the fact the Secretary of State has disallowed this in respect of a recent proposal in Devon. However, Bloor Homes is not adopting a position of challenging this contribution and presents no evidence against it.*

10.8 *For the reasons set out in the representations made by the Wye Valley NHS Trust on 21 September 2020, and during the inquiry session on the s.106 agreement, the Council considers that the Hospital Contribution meets the tests in regulation 122(2).*

12.27 *The Trust made written submissions in relation to its request for a financial contribution towards Hereford Hospital and General Medical services in Ledbury. These are set out in the Council's Statement of Compliance with CIL Regulations.*

12.28 *At the inquiry it was explained that the need for the funding was due to the lag between the need for services to be available once residents started to occupy the development and the timing of funding from the CCG.*

15.13 *The Wye Valley NHS Trust seeks a contribution toward Hereford Hospital. It submitted details of the additional interventions required based on the projected population of the proposed*

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development. The contribution sought would assist with providing capacity for the Trust to maintain service delivery during the first year of occupation of each unit of the accommodation on/in the development. This is necessary since the Trust will not receive the full funding required to meet the healthcare demand due to the baseline rules on emergency funding and there is no mechanism for the Trust to recover these costs retrospectively in subsequent years.

15.14 I am satisfied that the contribution is necessary to make the development acceptable in planning terms. In the absence of the contribution there would be inadequate healthcare services available to support the population increase arising from the proposed development and it would also adversely impact on the delivery of healthcare not only for the development but for others in the Trust's area. The contribution is directly related to the development and is fair and reasonable in terms of scale and kind.

15.15 The Trust also seeks a surgery contribution. It would provide for the provision of additional accommodation for primary medical care facilities in Ledbury. The existing GP practices do not have capacity for the additional growth resulting from the proposal. The practices would need to accommodate an additional 0.87 whole time equivalent GPs together with an increase in nursing and nonclinical staff to provide services to these patients which is not possible within their current premises.

15.16 I am satisfied that the contribution sought is necessary to make the development acceptable and is directly related to the development and is fair and reasonable in scale.

15.26 If the Secretary of State is minded granting planning permission for the development I am satisfied that the financial contributions requested are necessary to render the proposal acceptable in planning terms and they are directly related to the development. Having regard to the costings set out in the justification statement I am also satisfied that they are fairly and reasonably related in scale and kind to the development proposed.

15.27 Overall, I conclude that the obligations in the s106 agreement meet the tests in CIL regulation 122 and the same policy tests in the Framework and I would recommend that they be taken into account in assessing the application.

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Appeal Ref: APP/P1805/W/20/3245111

Appeal Decision: Allowed – 09 February 2021

Planning Inspector: Richard Clegg BA(Hons) DMS MRTPI

Appellants: Catesby Estates Ltd & Miller Homes Ltd

Land at Whitford Road and Land at Albert Road, Bromsgrove

The development proposed is: on site A (land off Whitford Road), provision of up to 490 dwellings, class A1 retail local shop (up to 400m²), two new priority accesses onto Whitford Road, public open space, landscaping, and sustainable urban drainage; on site B (land off Albert Road), demolition of the Greyhound public house, provision of up to 15 dwellings, a new priority access onto Albert Road, landscaping, and sustainable drainage.

Application: 16/1132 – Bromsgrove District Council

3. *Worcestershire Acute Hospitals NHS Trust had served a statement of case in accordance with Rule 6(6) of The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, and it participated in the inquiry. The Trust's concern is to ensure that a planning obligation secures a financial contribution towards its services. A statement of common ground on this matter was agreed with the Appellants (Core Document K1 (CD K1)), and the Local Planning Authority (LPA) had made it clear that it considered that the question of whether a financial contribution would be fairly and reasonably related to the development would be a matter for the Inspector and the Appellants. Having regard to the views expressed by the main parties, I took the view that formal oral evidence was not necessary on this subject. Proofs of evidence submitted on behalf of the Trust have been considered as written representations, and the Trust's representatives referred to the financial contribution sought during the session on planning obligations.*
76. *The NHS Trust provides planned and emergency hospital services for Worcestershire, and a contribution is sought towards its services. The Trust explained that its hospitals were operating at full capacity (without taking account of the current covid-19 pandemic), and that the development would bring new people into the area who would make use of its services. I have read that 85% bed occupancy is taken as a benchmark for patient safety, whereas in the three years from 2016/17 – 2018/19 occupancy of the general bed base exceeded 93%³⁴. In response to increasing demand, programmes have been introduced to improve patient flow and the efficiency of outpatient clinics. Funding is not provided until at least eighteen months after the new population has occupied the development, and does not apply retrospectively. The Trust argued in its written representations that the only way in which it can maintain its 'on time' service delivery without compromising quality requirements is with the receipt of contributions towards the cost of providing the necessary additional capacity during the first year of the occupation of each phase of the development.*

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77. *The Appellants and the LPA agree that a payment should be made towards the Trust's services. This is a view which I share: the occupants of the new development would clearly make use of healthcare services, and a contribution is needed to bridge the gap until the funding mechanism reflects the increased activity. A detailed explanation of how the contribution sought has been calculated is set out in the evidence of the Trust's planning witness³⁵. Having regard to migration rates, it is calculated that 44% of the population of sites A and B (603 persons) would be new to Worcestershire. The level of healthcare activities in the local area and their cost have been applied to the incoming population of 603 persons to provide the cost of 12 months service provision. On this basis, a contribution of £289,027.87 is sought, and this amount would be provided by means of a planning obligation. No other calculation is before me, and the methodology employed by the NHS Trust has not been disputed by the other main parties. I am satisfied that the payment of this contribution is necessary to make the development acceptable in planning terms, and that it would meet the other requirements in Regulation 122(2) of The Community Infrastructure Regulations 2010.*

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Appeal Ref: APP/R3705/W/18/3196890

Appeal Decision: Dismissed – 01 April 2019

Planning Inspector: Brendan Lyons BArch MA MRTPI IHBC

Appellants: Taylor Wimpey UK Ltd

Land to the south of Tamworth Road and to the west of the M42, Tamworth, B78 1HU

The development proposed is described as residential development of up to 150 dwellings, open space, landscaping, drainage features and associated infrastructure, with full approval of the principal means of access and all other matters reserved.

Application: PAP/2017/0602 – North Warwickshire Borough Council

7. *Before the Hearing, the appellant submitted drafts of two unilateral undertakings ('UUs') intended to provide planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended). The UU to WCC was to cover the payment of financial contributions for education, biodiversity offsetting, rights of way and highways infrastructure. The UU to North Warwickshire District Council ('NWDC') was to deal with the provision and management of open space and affordable housing and with financial contributions towards healthcare provision and policing. Following discussion at the Hearing, amended forms of the two UUs, each executed as a deed, were later provided in accordance with an agreed timetable.*

46. *I also accept that the other obligations of that UU, involving financial contributions to mitigate impacts on hospital, healthcare and police services would be policy and legally compliant.*

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Appeal Ref: APP/T3725/A/14/2221613

Secretary of State Decision: Allowed - 14 January 2016

Planning Inspector: Jennifer A Vyse DipTP DipPBM MRTPI

Appellant: Barwood Strategic Land II LLP

Land at The Asps, bound by Europa Way (A452) to the east and Banbury Road (A425) to the west

The development proposed is described on the application form as residential development (use class C3) for up to 900 dwellings, a primary school (use class D1), a local centre (use classes A1 to A5) and D1) and a Park and Ride facility for up to 500 spaces (sui generis) with access from Europa Way and Banbury Road, areas of public open space, landscaping enhancements and archaeological mitigation.

Application: W/14/0300 - Warwick District Council

32. *The Secretary of State has had regard to the matters raised by the Inspector at IR13.1 – 13.5 and agrees with the Inspector’s reasoning and conclusions on the two Unilateral Undertakings at IR14.137-14.161. In making his decision on this case, the Secretary of State has taken into account the provisions in the Unilateral Undertakings that do accord with Paragraph 204 of the Framework and do meet the tests in the CIL Regulations 2010 as amended.*
- 11.3 *South Warwickshire NHS Clinical Commissioning Group: A letter from the group was submitted during the Inquiry. The Group is responsible for ensuring that the primary healthcare needs of South Warwickshire are met. In response to the planning application a request was made for a contribution towards the cost of a new GP surgery. Without the contribution, the development would have an unacceptable adverse impact on existing healthcare provision. Although a contribution is included in the S106, the document includes a strikeout clause should the Secretary of State conclude that the obligation does not meet the statutory tests. The submission sets out the legal framework within which the request is made, the planning policy framework, current GP surgery infrastructure in the locality, the likely impact of the appeal scheme and the mitigation requested and the means by which it should be secured. It concludes that, if left unchecked the appeal scheme would have an unacceptable impact on an already over-stretched infrastructure with serious adverse consequences for existing residents and future residents of the scheme. Two ways of mitigating that impact are identified, but the most sustainable and appropriate is a contribution towards the construction of a new GP surgery in the Gallows Hill area.*
- 11.4 *South Warwickshire NHS Foundation Trust (SWFT): SWFT is the major provider of acute and community healthcare services to the population of south Warwickshire. It is a secondary care provider delivering a range of planned and emergency hospital services and is the sole, capable provider of urgent and emergency care services in South Warwickshire. It is currently operating at full capacity. Although the Trust has plans to cater for the ageing population and growth, it will not be able to plan for growth in a piecemeal manner due to its retrospective funding*

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mechanism and the Payments by Results regime. Without the contribution sought, the strain on existing services would be unacceptable with consequences for the safety and care quality for the existing and new population. That is not sustainable. The contribution sought would not support a government body: rather it would enable the body to provide services needed by the occupants of the new homes proposed. The written statement sets out the background and justification for the contribution sought and is supported by Counsel's opinion

- 13.16 *GP Surgery (NHS): The community facilities referred to in Local Plan policy SC14 include healthcare. Policy HS6 of the emerging Plan also seeks to ensure that new development contributes to the delivery of additional healthcare provision and infrastructure, with policy DM1 requiring contributions towards infrastructure provision taking account of the cumulative impact of new developments. To that end, a contribution of £341,789.40 is secured towards the development of a GP practice to serve the development proposed.*
- 13.17 *Healthcare (South Warwickshire Foundation Trust - SWFT): a contribution of £1085.18 per dwelling is secured, payable to the Council for onward payment to SWFT for the provision of acute and community health care facilities serving Warwick.*
- 14.145 *GP Surgery (NHS): At the time that the CIL Schedule was compiled, the Council felt that it had not seen sufficient evidence to confirm that that the contribution sought was CIL compliant and the appellant was of the view that the contribution was not compliant. However, no evidence was before the Inquiry to support those concerns.*
- 14.146 *Having seen the comments of the main parties, the South Warwickshire NHS Clinical Commissioning Group submitted a further statement to the Inquiry in support of its request.406 It confirms that the two existing GP practices to the south of Warwick, who would be under the greatest pressure to accommodate patients from the development proposed, are already overburdened with no spare capacity. Without mitigation therefore, I have no doubt that the scheme would have an unacceptable impact on healthcare provision in the area.*
- 14.147 *The NHS confirms that the most sustainable and appropriate way to deal with the primary healthcare needs of future residents of The Asps scheme, and the various other residential developments planned for the southern side of the town, is a new facility in a central location, large enough to accommodate a practice of five (whole time equivalent) GPs plus nursing and support staff. I am advised that this is likely to be delivered on land close to the Gallows Hill roundabout, within a site that already benefits from planning permission407 and which lies within 1 kilometre of the appeal site.*
- 14.148 *The written submission sets out how the contribution sought has been calculated. However, there is potential for it to be pooled with others to provide the facility. That said, there was no suggestion that the contribution would not be compliant with CIL Regulation 123, which limits pooled obligations to five. Accordingly, on the basis of the evidence that is before me, I have no reason to suppose that the contribution would not meet the relevant tests. In the alternative, if the contribution fell foul of the Regulations, the NHS submission indicates that it would be used to extend the existing Warwick Gates Family Health Centre to provide the additional capacity directly required as a consequence of the development proposed, although I recognise that it would not be as sustainable an option as would be the construction of a new surgery in*

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the Gallows Hill area. Again, I am satisfied that that arrangement would meet the relevant tests.

- 14.149 Healthcare (South Warwickshire NHS Foundation Trust - SWFT): In support of the contribution sought, SWFT provided a statement supported by Counsel's opinion.⁴⁰⁸ SWFT is the major provider of acute and community health services to the local population. The Counsel's opinion provided suggests that those services (and consequential additional costs) do not fall within the definition of 'infrastructure' for the purposes of the CIL regime and, consequently, can lawfully be the subject of planning obligation following April 2015 (so long as the sums sought meet the statutory tests in regulation 122). Whilst the Council felt that it had not seen sufficient evidence to confirm that the contribution sought was CIL compliant, with the appellant being of the view that the contribution was not compliant, no evidence was before the Inquiry to support those concerns.*
- 14.150 The evidence provided by SWFT, which includes an Impact Assessment Formula, demonstrates the financial implications placed upon the service by new development proposals and how these would adversely impact upon the health of the community (a core planning principle in the Framework⁴⁰⁹). The Formula demonstrates what is necessary to make the development acceptable in planning terms by addressing those adverse impacts and is based upon robust and up-to-date data producing a clear and transparent correlation between the size of a proposed development and its likely impact on SWFT.*
- 14.151 Although SWFT is paid a set rate for the eligible activities it delivers, that is limited to a 'ceiling activity volume' that is premised upon the previous year. As a consequence, residents from new developments would burden SWFT with additional and unfunded costs for a limited period. These external costs associated with new development, and calculated pursuant to the SWFT Formula, are focussed only upon the additional expenditure in providing the required NHS services pursuant to the obligations in their licence.*
- 14.152 It has prepared to address planned and predicted population and demographic projections through the provision of new capital infrastructure at Warwick and Stratford, for which no developer contributions are sought. However, unanticipated population increases, such as that associated with the development proposed, generate additional activity beyond the 'ceiling activity volume' until the following year, when contracted activity volumes are raised to accommodate the population increase. In essence, there is no funding for those additional activities during the first year in which they are generated and there is no retrospective element in the National Tariff Payment by Results System (or loan scheme) to reimburse SWFT for the additional activities they are obliged to undertake. Moreover, the terms of its licence mean that SWFT cannot refuse to admit or treat a patient on the grounds that it lacks the capacity to provide the services required.*
- 14.153 I am satisfied therefore, that the sum sought meets the tests and does not amount to a generalised tariff on development and would not be a pooled contribution. Whilst each application is to be considered on its individual merits I note, in this regard, that this approach has recently been endorsed in an appeal decision concerning development at Radford Semele, Leamington Spa.*

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Appeal Ref: APP/T3725/A/14/2229398

Secretary of State Decision: Allowed - 14 January 2016

Planning Inspector: Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

Appellant: Gallagher Estates Ltd

Land South of Gallows Hill / West of Europa Way, Heathcote, Warwick

The development proposed is a residential development up to a maximum of 450 dwellings; provision of two points of access (one from Europa Way and one from Gallows Hill); comprehensive green infrastructure and open spaces including potential children's play space; potential footpaths and cycleways; foul and surface water drainage infrastructure and ground modelling.

Application: W/14/0681 - Warwick District Council

33. *Having examined the completed and signed S106 Planning Agreement and considered the commentary and views at IR349 - 356 and the Inspector's assessment at IR462 - 467, the Secretary of State concludes that the obligations in the Agreement accord with Paragraph 204 of the Framework and meet the tests in the CIL Regulations 2010 as amended.*
352. *The main provisions in the Schedules are as follows...*
- *Part 8 (unnumbered in the Document) makes provision for financial contributions to: the expansion of the Warwick Gates Health Centre 9GP Surgery); other acute and planned NHS health services; and itemised police services and equipment.*
355. *Ms A Graham Paul represents the South Warks NHS Foundation Trust which covers Warwick and Stratford but not Coventry. She appeared at the Inquiry in a round table session to provide further evidence in support of the need for the financial contribution for health services that is included in the submitted S106 planning obligation agreement. There is supporting written evidence at OIP9 and OIP24 including Counsels' opinion. The financial contribution would be used for staff, equipment and medicine rather than for accommodation. NHS funding is provided through an activity based payment. However the sum is calculated according to the demographic figures for the previous year. When the local population rises during the year as a result of new housing development a funding shortfall arises and this is not made good subsequently by any retrospective payment. The financial contribution would address the funding gap.*
356. *This approach is considered by the Trust to be crude but effective. It has been supported in principle by the Inspectors for 2 appeals for which the decisions are included in Document OIP9(Refs APP/T3725/A/14/2221858 and APP/J3720/A/14/2221748). However the Inspector for the latter appeal concerning Campden Road, Shipston on Stour had not understood that there were no retrospective payments. That decision is currently subject to a High Court challenge on that point which would be heard in December 2015. The parties for the present appeal dispute whether the Secretary of State is intending to defend that decision.*

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465. *The contribution to health services provided by the South Warks NHS Foundation Trust are similar to those previously supported in principle by Inspectors at both cited appeals as compliant with the CIL regulations [355]. In particular the payments are justified in circumstances (as here) where no retrospective payments would be available through the NHS funding system to recover the cost of local increases in the population served by the Trust. The Inspector for the Shipston on Stour appeal appears to have mistakenly understood that these sums could be recovered from other sources when the Trust's evidence now is that they cannot [356]. Thus the contributions are justified as necessary.*
466. *The contribution towards the expansion of the Warwick Gates GP Surgery meets the test of Regulations 122 and 123.*
467. *In conclusion it is considered that all of the planning obligations satisfy the tests of the regulations and should come into effect in the event that the appeal is allowed*

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Appeal Ref: APP/J3720/W/15/3010653

Appeal Decision: Allowed – 06 June 2016

Planning Inspector: Mike Fox BA(Hons) DipTP MRTPI

Appellants: Persimmon Homes (South Midlands)

Marriage Hill Nurseries, 45 Salford Road, Bidford-on-Avon, Alcester, Warwickshire, B50 4EY

The development proposed is the demolition of no. 45 Salford Road and existing nursery buildings, and construction of up to 75 dwellings with access, associated open space, landscaping, infrastructure and parking provision

Application: 14/03028/OUT – Stratford-on-Avon District Council

102. *The Appellant also submitted a Unilateral Undertaking for a healthcare contribution of £808.70 per dwelling. Paragraph 17 [12] of the Framework states that decision-taking should take account of and support strategies to improve health facilities. This policy stance is supported in the PPG, which states that the views of NHS England should be sought regarding the impact of new development which would have a cumulatively significant effect on the demand for healthcare services. The relevance of health care to planning is therefore not in dispute*
103. *In response to the question of why health care provision should be funded by the proposed development when NHS expenditure is planned to serve a given population, it was explained at the Inquiry that the budget is based on the previous years' activity, with no retrospective funding to cover year one, whilst it is not possible for financial provision to be made for planned future growth. This seems to be an extremely unsatisfactory way to plan to meet the health needs of future population, but I was assured that this is the way the NHS funding system operates.*
104. *It was also explained that financial penalties are incurred by the South Warwickshire NHS Trust if key targets for patient care are not met. The shortfall in health care which would arise if no additional funding were to be made available is likely to result in a significant adverse effect on health care provision which would be related to the proposed development. It follows that if any shortfall is attributable to the proposed development, the calculated sum to make up this shortfall – and there was no dispute with the figures produced by the NHS Trust at the Inquiry - would be directly related to the proposed development and compliant with the CIL tests. The staggered payment, which would not be made until the occupation of no more than 50% of the proposed dwellings, seems to be a proportionate response in accordance with the CIL Regulations.*

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105. *Two appeal decisions were brought to my attention which allowed payments to the NHS54, and one which did not. I am not aware how clearly the issues were presented to the Inquiry where the Inspector did not allow payments to the NHS Trust. The clear explanation that was explained at the Inquiry by the representatives of the NHS Trust demonstrated that the payments were compliant with both Regulations 122 and 123. Moreover, although the Appellant has declared himself 'agnostic' on the issue of contribution, no one challenged the Trust's evidence.*
106. *For the above reasons I conclude that the provision in the Unilateral Undertaking relating to health care meets the tests in the CIL Regulations and paragraph 204 of the Framework.*

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Appeal Ref: APP/J3720/W/15/3004380

Appeal Decision: Allowed – 03 December 2015

Planning Inspector: David Nicholson RIBA MRTPI

Appellants: Gallagher Estates

Land at Arden Heath Farm, Stratford upon Avon, CV37 7DU

The development proposed is outline planning permission with means of access to be determined (layout, scale, appearance and landscaping reserved for subsequent approval) for the erection of up to 270 dwellings; public open space, structural landscaping, and other ancillary and enabling works.

Application: 14/00262/OUT – Stratford-on-Avon District Council

40. *Schedule 4 specifies the healthcare contribution sought by the South Warwickshire NHS Foundation Trust (NHS Trust) and this is supported by a detailed justification. The contribution would be entirely for running costs and so would not be caught by the pooling requirements in CIL Regulation 123. The quantum has been carefully calculated so that it would closely equate to the shortfall. The Council produced evidence to show that new occupiers would be from inward migration from other parts of the UK rather than existing residents of the District and so there would be an overall increase in population in the area covered by the NHS Trust. The calculation would take account of staggered occupation over the year. It would therefore be fairly and reasonably related in scale and kind. It would cover an identified funding gap in the area covered by the NHS Trust, with no double counting in terms of taxation, which would arise as a consequence of the development and so would be directly related to it.*
41. *Whether or not the contribution would be necessary to make the development acceptable in planning terms is more difficult to assess. The NHS Trust has referred to NPPF 17, and the last bullet point, which sets out the principles including: that planning should: ... take account of and support local strategies to improve health ... and deliver sufficient community and cultural facilities and services to meet local needs. There is further support in the PPG for health being considered in planning decisions and for the use of s106 obligations to address identified impact. The NHS Trust claimed that this justifies a contribution for services which are needed and would not be funded otherwise. Moreover, on account of the system of fines which can be imposed on the NHS Trust, the impact could be disproportionate to the funding shortfall.*
42. *While the appellant has declared itself 'agnostic' on the issue of contributions, I am required to assess it against the CIL Regulations and the NPPF. I can see no requirement for the contribution in terms of land use or spatial planning and, other than to meet the identified short term budgetary gap in healthcare funding, there would be no harm to the area or the community. Nevertheless, the unchallenged evidence of the NHS Trust is that, without the contribution, the development would harm the health of the community, albeit only on account of central NHS funding rules. I therefore conclude that this part of the obligation would accord with NPPF 204. For the reasons set out by the NHS Trust and its supporting Opinions²⁷ I accept that the*

Examples of Appeal Decisions Supporting Acute Health, Primary Care and/or Community Care Services

arguments before me are distinguishable from those in Land north of Campden Road Decision²⁸. Rather, I accept the findings of the Inspector in the Spring Lane Decision²⁹ that, illogical though it may sound, that is how the system works.

43. *I am therefore persuaded by the evidence before me that the NHS contribution would satisfy the tests in the CIL regulations and the NPPF. Consequently, having regard to the specific provision under the s106 Agreement, I do not exclude it from the Agreement. Notwithstanding this conclusion, in the event that the Courts subsequently reach a different conclusion on very similar facts, and this conclusion is accepted via the Resolution of Disputes provision in the s106 Agreement, I accept that the specific provision may be used to exclude the contribution such that it should not be enforced.*

Examples of Appeal Decisions Supporting Acute Health, Primary Care and/or Community Care Services

Appeal Ref: APP/T3725/A/14/2221858

Appeal Decision: Allowed – 10 March 2015

Planning Inspector: Simon Hand MA

Appellants: A C Lloyd Homes Ltd

Land at Spring Lane, Radford Semele, Leamington Spa, CV31 1XD

The development proposed is outline application for up to 65 residential dwellings together with associated access, open space and landscaping.

Application: W/14/0433 – Warwick District Council

35. *The appellant opposed the hospital contribution on three grounds, firstly that the hospital service was funded by the NHS, itself funded by the taxpayer which would include the new residents of the estate, leading to double counting. Secondly, the SW Trust has planned for an 11% growth and is not seeking any s106 contribution for the capital element of this, but funding it itself, why should they not do the same for running costs? Thirdly the costs generated by occupiers of the new houses will not fall in the next year, as the houses are not likely to be built and occupied for at least 18 months after the date of the decision. Two appeal decisions were provided where Inspectors had agreed that NHS contributions were not required in areas covered by the same NHS trust as this appeal.*
36. *I do not pretend to be an expert in NHS funding, but it was explained at the Inquiry that the running costs of the service were funded on the basis of current costs. So next year's budget will be based on this year's population figures. Even if a trust is well aware of population growth that will effect next year that cannot be built into the budget. That may be illogical, as the appellant argued, but unfortunately it is how the system appears to operate. The year after, the budget will catch up, so there is always a shortfall of one year in the funding arrangements. It seems from the evidence before me that the local trust is already fully stretched financially. Therefore, insofar as any shortfall is attributable to the housing development subject to this appeal, and there is no dispute about the calculation of the actual sums involved, it would seem to me to be directly related to the development and so compliant with the CIL tests.*
37. *The fact that the occupiers of the houses may pay taxes is irrelevant, as they will pay taxes that would contribute, in some small way, to most of the elements of the s106 obligation, and indeed of all s106 obligations. The obligation is also worded so that the payments are triggered by 50% and 90% occupation of the houses, so there is no question of the developer paying up front for a cost that will not fall to the SW Trust for several years.*
38. *I do not know how the case was presented at the Inquiries where my colleagues decided against the SW Trust, but from the contents of the decision letters it seems that neither had the matter explained in the same clear way that was presented to me.*

Examples of Appeal Decisions Supporting Acute Health, Primary Care and/or Community Care Services

46. *In conclusion I consider the proposed hospital payments are CIL compliant and should be paid, but the evidence for the education payments is lacking. On the basis of the evidence put before me, I am not satisfied that there will be shortfall in spaces for early years, primary, secondary or sixth form and so the proposed education payments in Schedule 4 of the obligation are not CIL compliant and should not be made.*
47. *I understand that the NHS Trust's position has been evolving over time and the fact that other developers or Inspectors may have had different views on whether to make these payments or not does not affect my conclusions above, which are based on the evidence put before me.*

Examples of Appeal Decisions Supporting Acute Health, Primary Care and/or Community Care Services

Appeal Ref: APP/J3720/A/13/2194850

Appeal Decision: Allowed – 23 February 2015

Planning Inspector: Phillip J G Ware BSc(Hons) DipTP MRTPI

Appellants: Ainscough Strategic Land

Land north of Campden Road, Shipston-on-Stour, Warwickshire

The development proposed is a supermarket (Use Class A1) with associated petrol station, customer parking and servicing; an 'extra care' retirement development (Use Class C2) comprising up to 80 cottages and 50 apartments with associated care and staff facilities; up to 54 residential dwellings (including 35% affordable housing provision) (Use Class C3); a community use (Use Class D1/D2); and associated access arrangements, open space, allotments and landscaping.

Application: 12/00403/OUT – Stratford-on-Avon District Council

76. *The Council has set out the background and justification to the provisions in a submitted document. In summary...*
- *The Healthcare Contribution is based on LP policies COM.3 and IMP.4, and would be targeted at the nearby Medical Centre, which is nearing capacity. The justification for the quantum of the development has been set out.*
77. *As summarised above, the Obligation accords with the policy in paragraph 204 of the Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. The Obligation is a material consideration in this case. Many of its provisions are designed to mitigate the impact of the proposal and these elements therefore do not provide benefits in favour of the appeal. However other matters, most notably the provision of affordable housing, weigh in favour of the appeal.*