

TOWN AND COUNTRY PLANNING ACT 1990
(as amended)

Appeal by Fort Estates Limited

**LAND AT CRABTREE FARM, HINCKLEY ROAD,
BARWELL, LEICESTERSHIRE**

EDUCATION AND HEALTHCARE MATTERS
Education and Healthcare Provision in Barwell

**Leicestershire County Council and
NHS Leicester, Leicestershire and Rutland Integrated Care Board**

EDUCATION AND HEALTHCARE STATEMENT OF CASE

Ben James Hunter
BA DipMS

PINS Reference: TBC

LPA Refs: 23/01175/FUL, 23/01177/FUL, 23/01184/FUL, and 23/01186/FUL

Date: 10th August 2025 (Version 1)

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1. Background

- 1.1 My name is Ben James Hunter. I hold a Bachelor of Arts and Diploma in Management Studies. I have been a 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. Prior to this I was responsible for negotiating, securing, and managing Section 106 planning obligations in an Officer role between 2008 and 2012. The last 17 years of my professional career have been related to the provision of development infrastructure.
- 1.2 I am experienced in giving evidence for Planning Inquiries and Hearings, 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.
- 1.3 I am instructed to act for the Appellant in respect of this Hearing.
- 1.4 I confirm that the opinions expressed are my true and professional opinions.
- 1.5 EFM was instructed by Fort Estates Limited ("**the Appellant**") in May 2024. 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 NHS Leicester, Leicestershire and Rutland Integrated Care Board ("**ICB**") were Community Infrastructure Levy ("**CIL**") Regulation 122 ("**Reg 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.

1.6 I was subsequently instructed by the Appellant to prepare a Statement of Case to assist the Inspector in determining whether the Education and Healthcare contribution requests from LCC and the ICB respectively fulfilled the tests of CIL Reg 122 (2) and could therefore be embedded in the Legal Agreement.

1.7 The Appellant, LCC, and the 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 Statement of Case.

1.8 The Statement of Case will demonstrate the following:

- (a) The request for secondary education planning obligations from LCC are unjustified; and
- (b) There is demonstrably no education-related reason to refuse this development application; also,
- (c) The NHS Leicester, Leicestershire and Rutland ICB's request for planning obligations does not meet the tests of CIL Reg 122 (2) and should be removed from the Section 106 agreement;
- (d) There is demonstrably no Healthcare-related reason to refuse this development application.

2 Introduction

2.1 This Hearing relates to four full planning applications made by Fort Estates Limited (“the Appellant”) to Hinckley and Bosworth Borough Council (“HBBC”) seeking permission for the following proposed development:

- 23/01175/FUL – 51 dwellings, a revision of the allowed appeal for 51 dwellings (21/00695/FUL) on the eastern part of the site;
- 23/01177/FUL – 44 dwellings, a revision of the approved application for 45 dwellings (22/01053/FUL) on the western part of the site;
- 23/01184/FUL – 14 additional dwellings on the eastern part of the site;
- , 23/01186/FUL – 16 additional dwellings on the western part of the site

2.2 The approximate redline boundary of the development sites can be seen below in Map 1:



Map 1: Approximate Development Boundary



Map 2: Approximate Development Boundary



Map 3: Approximate Development Boundary



Map 4: Approximate Development Boundary

- 2.3 The four full planning applications have a combined housing yield of 125 dwellings. The remainder of this Statement of Case will focus on the combined developments as one, and thus considers the impact of 125 dwellings on the education and healthcare landscape.
- 2.4 HBBC considered its position in relation to these applications at a meeting of its Planning Committee, and published the decision notice on the 11th July 2025. The applications, considered together, were refused.
- 2.5 Reason for Refusal (“RfR”) 01 states the following:

The applicant is unwilling to agree Section 106 contributions for the delivery of library services, education provision, health services, or travel packs. As such the applications 23/01175/FUL, 23/01177/FUL, 23/01184/FUL and 23/01186/FUL fail to make necessary, fair and reasonable contributions towards the provision and maintenance of necessary infrastructure to mitigate the impact of additional development on community services and facilities contrary to Policy DM3 of the Site Allocations and Development Management Policies Development Plan Document and Policy 19 of the Core Strategy.

2.6 This Statement of Case will deal specifically with the education and health services request, and will demonstrate why the applicant came to the conclusion that these requests were not necessary to make the development acceptable in planning terms.

2.7 The specific financial contributions for both Education and Healthcare were included in the Committee Report (pages 6 and 7) as shown below:

6.5. **LCC Planning Obligations** – Contributions are required as follows:

- Waste - £5,881.93
- Libraries - £3,933.04
- Primary Education – No contribution required
- Secondary Education - £364,293.87
- Post 16 Education - £73,983.76

6.13. **NHS England Integrated Care Board** – The applicant has argued that the standard approach of estimating 2.42 people per dwelling is flawed as it assumes all people that move on to a new development will require the use of local GP services. It is also argued that many, if not most, people who move into a new development will stay registered with their current GP.

In response the Integrated Care Board rejects the applicant's views and considers that the general view reached by Inspectors at appeal is that new developments strain existing health infrastructure and therefore developer contributions are essential to continue the delivery of local healthcare.

In their initial consultation response, the ICB considered that the four applications generated a requirement for a total financial contribution of £97,574.40 towards the Barwell Medical Centre.

2.8 There is no dispute between the Appellant and LCC on primary school provision. There is, however, a dispute in relation to secondary and post 16, and NHS contributions.

2.9 This Statement of Case confirms that not only is there no need for planning obligations for either secondary and sixth form education, or healthcare provision, but also that there is no education or healthcare related reason for this development not to receive a positive determination.

2.10 Firstly, this Statement of Case will look at the Statutory and Policy Matters that govern both Education and Healthcare:

3 Statutory and Policy Matters

- 3.1 With regards to Education, there is a covenant between the State and its populace that has had statutory force for 155 years¹, namely that; **wherever** <my emphasis> a child shall live, who is not otherwise provided for, the State will provide a school in accordance with the statutory arrangements, from the State or developers, as appropriate.² The covenant is not caveated by considerations of transience, fixed or temporary abode, nationality, residential status or home education authority, and means that however children arrive within an area (or are housed within an area) the local authority's statutory duty has to be met.
- 3.2 **The Education Act 1996 (as amended) ("EA96"):** The primary Act relating to education is the Education Act 1996, which is; (a) a consolidating Act and (b) an Act amended from time to time by subsequent legislation. Unless otherwise indicated in this Statement of Case as applying to education, all references are to the Education Act 1996 (as amended).
- 3.3 EA96 (at section 14(1)) states,
- A local education authority³ shall secure that sufficient schools for providing – (a) primary education and (b) secondary education... are available for their area.*
- 3.4 Sections 14(2) to 14(6) go on to explain what is meant by sufficient schools and that it includes implicitly that the requirement is for sufficient appropriate school places.
- 3.5 EA96 (at Section 7) imposes a duty on *"every parent of every child of compulsory school age to cause him to receive efficient full-time education either by regular attendance at school or otherwise"*.

¹ The Elementary Education Act 1870 (section 5) thereafter Education Act 1921 (section 17), Education Act 1944 (section 8), Education Act 1996 (section 14)

² The Act actually says, "5. *There shall be provided for every school district a sufficient amount of accommodation in public elementary schools (as hereinafter defined) available for all the children resident in such district for whose elementary education efficient and suitable provision is not otherwise made, and where there is an insufficient amount of such accommodation, in this Act referred to as "public school accommodation," the deficiency shall be supplied in a manner provided by this Act*".

³ The local education authority has since 2010 been somewhat confusingly renamed 'local authority' to take account of the authority incorporating the duties of the children's services authority.

- 3.6 Section 14(1), together with s7, derives directly from s5 Education Act 1870 via s17 Education Act 1921 and s8 Education Act 1944. There have been no material changes over time, merely consolidating legislation, changes to school leaving ages and changes to terminology from time to time. It is, thus, a longstanding duty for the Education Authority as successor to the local school boards.
- 3.7 EA 96 Section 11 requires the Education Secretary of State for Education (i.e. the State) to exercise their powers in respect of those bodies in receipt of public funds which carry responsibility for securing school provision for promoting school education. The duty of the education authority (to secure sufficiency of provision) is to enable the State to discharge its responsibilities within the covenant. Thus, the original premise still holds true: for all children of statutory school age, who are not otherwise provided for, **the State provides a school**, *<my emphasis>* in accordance with the prevailing statutory provisions.
- 3.8 EA96 Section 14 Subsection 3A is a more recent modification to its duty through a requirement for the education authority to exercise its functions under this section with a view to increasing: (a) diversity in the provision of schools, and (b) increasing opportunities for parental choice, and was inserted into Section 14 by Section 2 Education and Inspections Act 2006 with effect from 25th May 2007.
- 3.9 Thus, the duty of the education authority is to enable the State to discharge its responsibilities within the covenant: but, with sufficient headroom to allow for the discharge of its S14 (3A) duties.
- 3.10 In securing sufficient schools for its area, an Education Authority assesses existing capacity and pupil numbers, data on births and migration, and how parental preferences are manifested. It forecasts (usually with a high degree of accuracy) the need for additional capacity in each school planning area for the ensuing five years for primary schools and seven years for secondary schools.
- 3.11 The Education Authority then passes this information to the State [currently the Education and Skills Funding Agency ("**ESFA**")], being the school's operational arm of the Department for Education ("**DfE**") by way of the School Capacity Returns ("**SCAP**"). The State then allocates additional school places as and where shown to be necessary. Each additional school place is accompanied by central government

formula driven capital funding associated with that place. This is known as Basic Need funding. Basic Need allocations to an education authority are aggregated into a single capital sum to be dispensed by the education authority to each project according to its needs.

- 3.12 Basic Need funding on a per-pupil-place basis covers increases in pupil numbers forecast, by the Education Authority, beyond existing and planned capacity, to arise because of rising birth rates, rising survival rates, rising inward migration rates and new housing (except when covered by Section 106 agreements or CIL).
- 3.13 The Basic Need pupil place funding system recognises that, whether or not a Section 106 agreement or a CIL charge has been applied by an LPA to a planning permission, is a matter purely for the LPA. It recognises the duty of the LPA to secure sufficient housing for its population and its growth agenda. The ability (or not) of a planned housing scheme to fund the accompanying school places should not sway the determination of a planning application for that scheme by the LPA. The disapplication of Basic Need provision where there is a Section 106 agreement or CIL is simply to avoid double-funding.
- 3.14 **Securing developer contributions for education (August 2023):**
- 3.15 In order to provide further clarity to education authorities, the DfE produced and published two Best Practice Guidance documents related to delivering schools to support housing growth under the Education Act 1996. These are non-statutory Guidance documents for local authorities planning for education to support housing growth and seeking associated developer contributions. The second of these Guidance documents is related to education provision in garden communities, and is therefore not relevant to this Hearing. The first, however, is related specifically to securing developer contributions for education.
- 3.16 The Guidance document is clear that (paragraph 7, page 8):

It is important that the impacts of development are adequately mitigated, requiring an understanding of:

- *The education needs arising from development, based on up-to-date pupil yield factors.*
- *The capacity of existing schools that will serve development, taking account of pupil migration across planning areas and local authority boundaries.*
- *Available sources of funding to increase capacity where required.*
- *The extent to which developer contributions are required and the degree of certainty that these will be secured at the appropriate time.*

3.17 **Leicestershire Planning Obligations Policy 2019**

3.18 LCC adopted their planning obligations guidance in July 2019. Appendix 3 of the guidance covers education. It includes their child yields for new dwellings (known as “yield rates” – page 20 of the guidance).

3.19 The methodology of LCC for calculating the need for planning obligations for education is included on page 21. It states:

Methodology

42. The need for a contribution will be established by comparing the number of pupils generated by the development with:

- a. The net capacity of the catchment school in terms of primary provision, and **the nearest school in terms of secondary provision**, and any other school within a 2 mile available walking route for primary school or **3 mile available walking route for secondary school from the development**. The capacity figure used for this purpose is the net capacity. Studio schools will only be included in the calculation where they are within a 3 mile available walking route of a development and the secondary schools in the relevant location are organised in a two phase system e.g. 11-14 years and 14 – 19 years.*

- b. The forecast number on roll for the catchment or nearest school as appropriate to the above, and any other school within a 2 mile available walking route of the development site for primary schools and 3 miles for secondary schools. Pupil places funded by S106 contributions from other new developments in the area will be discounted. The average of the two and four year forecast figures for each school will be used when calculating the surplus or deficit of places. In some circumstances the forecast which is most relevant to the size and scale of the proposed development will be used.*
 - c. Any planned changes to the organisation of the school and/or the premises which will affect the net capacity.*
 - d. Any other housing developments with outline or full planning permission which will generate the need for pupil places at the catchment school for the development*
 - e. Temporary accommodation (usually mobile classrooms) will be included in calculating the net capacity of the school and is therefore counted in S106 calculations. However the Council may at its sole discretion discount temporary accommodation capacity where it is expected that existing planning consents due to expire before the expected date of commencement of the development are unlikely to be renewed for example as may be the case with temporary accommodation having short term planning consent within conservation areas.*
- 43. Having taken all the above factors into account, where it can be demonstrated that the number of pupils generated by a development is greater than the spare capacity in the local schools the County Council will require a contribution to fund the provision of the additional school places required.*

3.20 What will be demonstrated in Section 4 of this Statement of Case is that LCC has deviated in its policy in relation to the request for planning obligations for this development, as it has included schools outside of an available walking route. There is only one school within an available walking route of these developments: Heath Lane Academy.

3.21 **Healthcare**

- 3.22 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.
- 3.23 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.
- 3.24 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.

- 3.25 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 Education Provision

- 4.1 Schools should be operationally full to meet the financial audit requirement for best value from public assets. This is demonstrative of a properly functioning school system. School funding is predicated on the number of pupils that are on a school's roll, so it is in the best interest of schools to maximise intake within their capacity. Accordingly, many schools take from a wide catchment area and some enrol over capacity.
- 4.2 The statutory rules on enrolment are that whilst schools may have a catchment area and ordered criteria for admissions, the rules only apply if the school is oversubscribed. Otherwise, whoever applies is admitted irrespective of where they live. This is known as 'More Open Enrolment'. It fosters the expression of parental preferences for schools that are not necessarily those closest to home.
- 4.3 LCC operates under a statutory duty (S14 Education Act 1996) 'to secure sufficient schools'. The term 'sufficient' is not defined and thus reliance is placed on the dictionary definition – enough – adequate – not too little and not too much. Thus, as set out above, the normal state for a school is that it is operationally full.
- 4.4 In our assessment, we consider all secondary schools⁴ within a three-mile walking distance. The three-mile criteria is the distance prescribed in the Education Act beyond which local authorities are required to provide/fund transport where the nearest available school is further away.

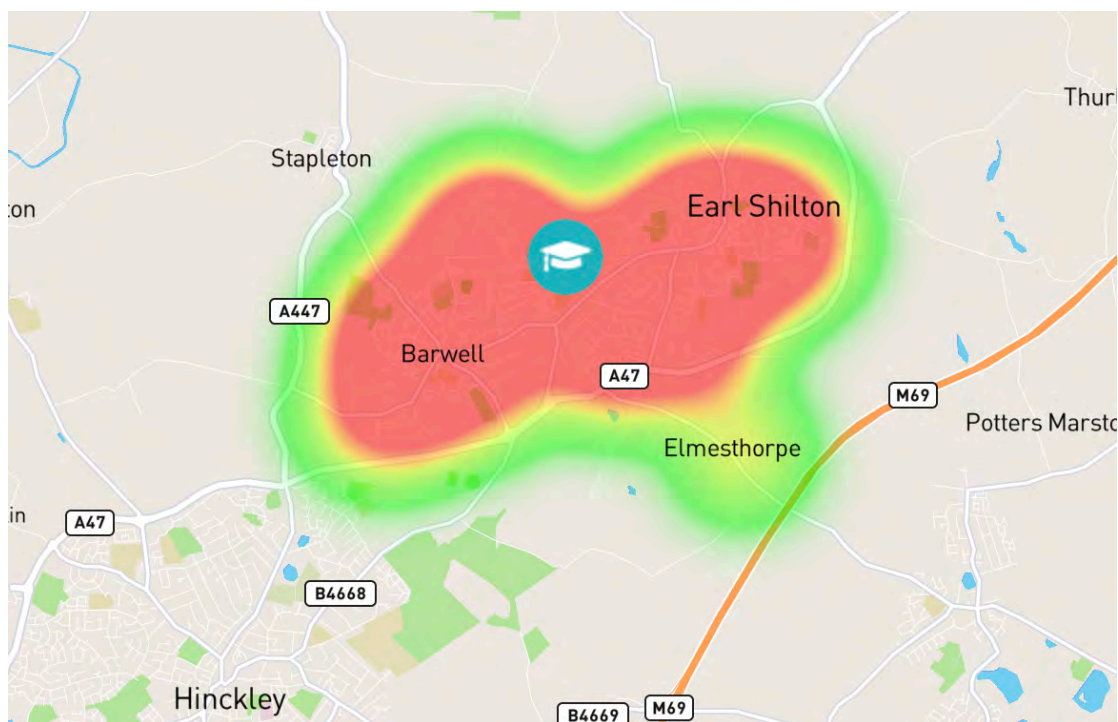
Secondary Education

- 4.5 There are five independent, state funded schools accommodating secondary school aged children within a two-mile radius of the development site. The schools are all within the LCC administrative area, and are organised in the same Secondary Planning Areas.
- 4.6 The schools in relation to the development site can be seen in the map below:

⁴ Distances have been calculated based upon coordinates near to the development. Once the development is built out, some parts of the site will be further/closer than shown.

secondary school aged pupils prior to one bedroom dwellings or flats being taken in to account; therefore, the actual number is expected to be lower).

- 4.10 In spite of this considerable surplus capacity, with Year 7 having more spare capacity than the entirety of the child yield of 125 dwellings, LCC has persisted with the request for planning obligations.
- 4.11 To first look at the home locations of schools in the area: Heath Lane Academy is a school for the pupils of Barwell, Earl Shilton, and small numbers from Elmeſthorpe, as shown in the map below. No other areas within the HBBC administrative area are seeing sufficient numbers of children attending this school to trigger the heat map:



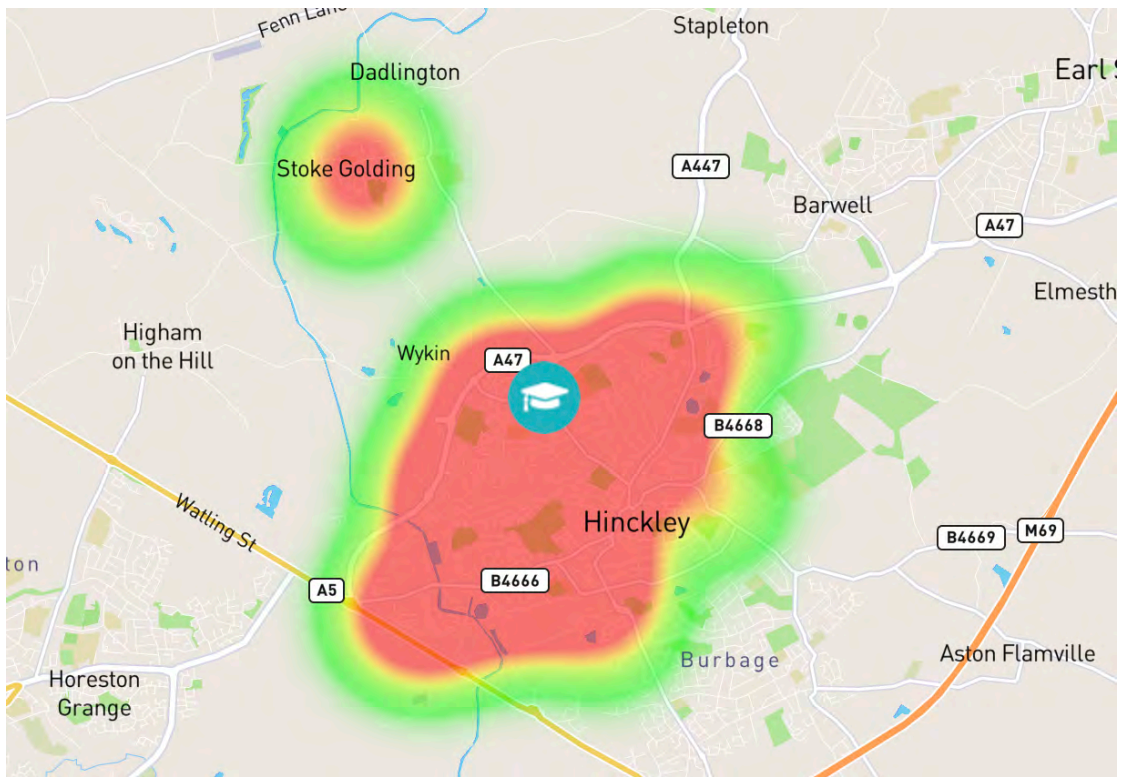
Map 6: Heath Lane Academy Catchment Area Heat Map (via schoolguide.co.uk)

- 4.12 Heat map data is not available for The Hinckley School due to its recent conversion to Academy status. However, due to the Sixth Form link (discussed further below) it is assumed that there is a proportion of pupils from Barwell attending this school.



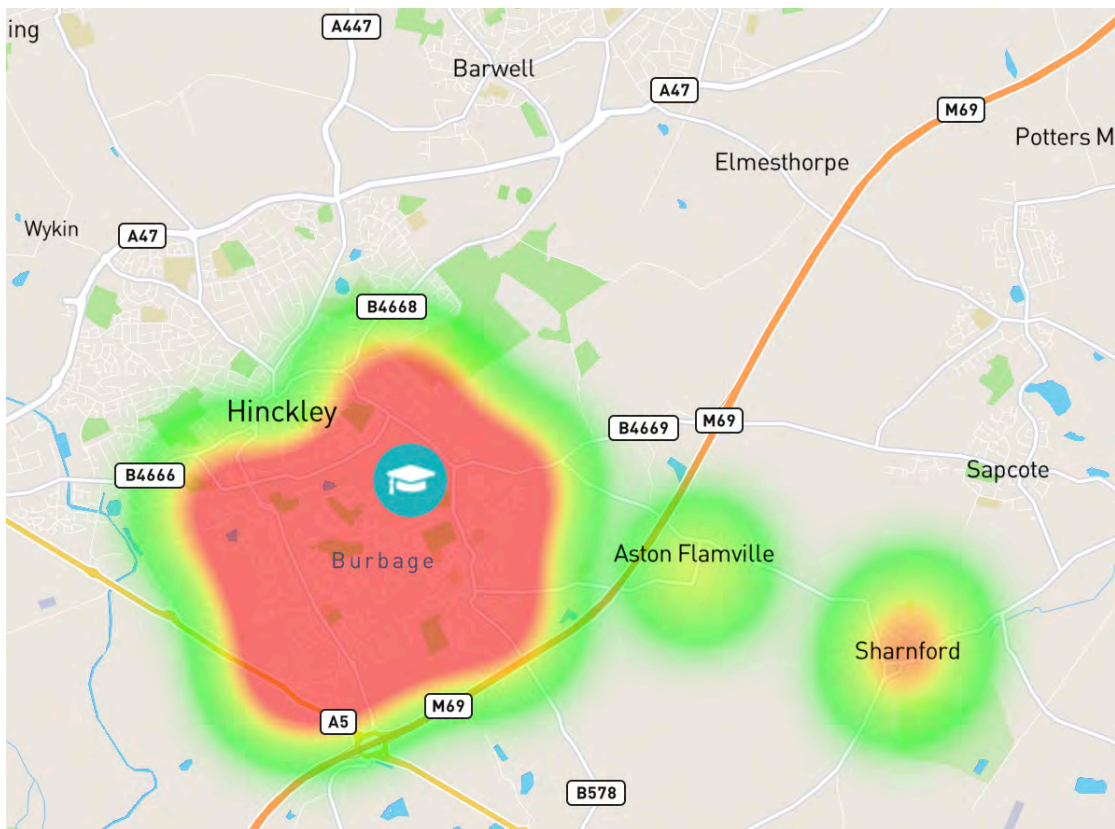
Map 7: Heath Lane and Hinckley Schools in relation to the developments

- 4.13 Redmoor Academy does not serve Barwell, being a school for Hinckley and Stoke Golding-based pupils, as shown in the map below:



Map 8: Redmoor Academy Catchment Area Heat Map (via schoolguide.co.uk)

- 4.14 Hastings High School serves children who live in Hinckley, Aston Flamville, and Sharnford, as shown in the map below:



Map 9: Hastings High School Catchment Area Heat Map

- 4.15 The final school is a Catholic School that has an admission criteria that favours those Baptised Catholic. LCC has not considered this school appropriate capacity for these developments.
- 4.16 What the above demonstrates is that you have a catchment school for Barwell (Heath Lane Academy), a school that likely has links due to Sixth Form capacity (the Hinckley School) and then three additional schools with no ties to Barwell pupils.
- 4.17 All four consultation responses dated 3rd October 2024 state a version of the following statement which LCC is utilising to justify planning obligations:

The development yields 3 secondary aged children. Heath Lane Academy is the catchment secondary school for the development and has a net capacity of 750 places and there will be a deficit of 47 places if this development goes ahead. The overall deficit including all secondary schools within a three mile walking distance of

the development is 357 pupil places. A total of 321 pupil places have been deducted that are being funded from S106 agreements for other developments in the area, meaning the overall deficit is 36 pupil places. The 3 places created by this development cannot therefore be accommodated at nearby schools. Therefore, there is a justified full claim for a developer contribution towards the secondary sector of £41,794.09

- 4.18 However, this does not correspond with the tables in the consultation response. The tables show that both Heath lane Academy and The Hinckley School are forecast to have significant surplus capacity, with the only shortfall being in schools that do not serve Barwell:

Claim:	Per Pupil	x No.	TOTAL		
Pupil No. shown to up to 5 DP	£18,356.00	0.00	£0.00		
Secondary 11-16					
Catchment school (top) and schools within 3 miles walking distance of the development	School Capacity	Pupil Forecast	Surplus/ Deficit +/-	S106 Funded Places Discounted	+/- after S106 funded places discounted
Heath Lane Academy	750	797	-47	57	10
The Hinckley School	1150	1,020	130	0	130
Hastings High School	800	1,003	-203	57	54
Redmoor Academy	925	1,162	-237	207	165
			-357	321	-36

Table 2: LCC Projections

- 4.19 Table 2 demonstrates that there is currently more than sufficient surplus capacity for the pupils from this development in the catchment area school. The two schools that serve Barwell are forecast to be under capacity according to LCC. Accordingly, there is no justification for planning obligations for secondary school provision.

4.20 **Sixth Form**

- 4.21 The closest school to Barwell that offers Sixth Form, and the school considered by LCC when assessing if planning obligations are justified, is The Hinckley School. This has a capacity of 300 pupil places in Sixth Form.

4.22 The combination of the four development applications are expected to accommodate a maximum of 6 Sixth Form aged children on site when fully built out. The Hinckley School currently (2024/24 academic year) has a roll of 252, which is 48 spare places, or eight times the child yield of these sites:

la name	school name	F/T Yr 12	F/T Yr 13
Leicestershire	The Hinckley School	127	125

Table 3: The Hinckley School Sixth Form Roll (January 2025)

4.23 LCC has not provided sufficient evidence to demonstrate why Sixth Form contributions are necessary. The significant number of surplus places currently does not support their assertions that these planning obligations are necessary to make the development acceptable in planning terms. Accordingly, the request should be blue-pencilled from the Section 106 agreement.

5 Education Summary and Conclusion

- 5.1 LCC and the Appellant are in agreement with regards to the approach to Early Years provision, primary school provision, and SEN provision.
- 5.2 The only area of dispute remains the appropriateness of development of this size and scale paying for additional places when the local school to the development (as LCC describe it as the “catchment” school) has significant surplus capacity far exceeding the combined yield of these four developments.
- 5.3 On the basis of the above, if there is currently more than sufficient surplus capacity for the pupils from this development in the catchment area school, and the two schools that serve Barwell are forecast to be under capacity based on LCC’s calculations, then there is no justification for planning obligations.
- 5.4 As discussed in Section 3 of this Statement of Case, LCC Policy states that they look at ***the nearest school in terms of secondary provision, and any other school within a 2 mile available walking route for primary school or 3 mile available walking route for secondary school from the development...*** when establishing if planning obligations are justified. They have deviated from this approach in relation to these sites, and are instead pulling in schools that a) are not within a three-mile available walking route, and b) do not serve Barwell.
- 5.5 Based on the information outlined above, it is the outcome of this Statement of Case, and my professional opinion, that planning obligations for secondary school provision and sixth form provision do not fulfil the tests of CIL Reg 122 (2) and should therefore not be taken in to account in any decision relating to these sites.

6 Health Care Provision

6.1 The Leicester, Leicestershire and Rutland ICB have requested funding towards expanded provision to serve this development. However, the consultation responses, dated December 2023, are now out of date, and infrastructure has moved on since the submission of these requests.

6.2 The closest GP Surgery to the development sites can be seen in the Map below:



Map 6: Closest GP Surgeries to the development site

6.3 The ICB is requesting funding in order to *expand GP facilities to meet the population increase*. However, what this does not take in to account is that this has already been undertaken, completed, and open. On the 6th November 2024, Barwell Medical Centre opened at its new site, in a large modern building large enough to accommodate significant growth in population in the Barwell area:



Image 1: New Barwell Medical Centre

- 6.4 It has been reported that demand at the Surgery was expected to grow from 6,400 Patients to over 11,000 Patients over the next five to ten years. These small developments will be part of that growth. However, as discussed, the project is already fully funded and open, and thus there is nothing to contribute from a financial perspective from any of these development sites.
- 6.5 The national approach to assessing existing Healthcare capacity at GP Surgeries is detailed in the Health Building Note 11-01: facilities for Primary and Community Care Services ("HBN11-01"). According to HBN11-03, the standard per-sqm formula for GP provision per person is circa 0.07sqm per person. The ICB has not demonstrated how large the new facility is, nor how much additional space is required for the Patients that will be living on this site. Accordingly, there is no audit trail to confirm that the planning obligation is warranted.
- 6.6 The HBN 11-01 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.

- 6.7 Arguments about the delivery programme and funding of a new facility were put to an Inspector in an Appeal⁵ in Nottinghamshire in 2021. 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.

- 6.8 What this Inspector recognised in the Nottinghamshire Appeal is that applying a standard formula of, in the case of this Hearing, 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 (fairly and reasonably related in scale and kind to the development) the ICB should be looking at the Net impact of people moving on this development site, not housing occupancy (Gross impact).

⁵ APP/B3030/W/20/3260970

6.9 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.

6.10 The same arguments as detailed above were put the Inspector of an Appeal in Sileby, Leicestershire⁶ 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.

6.11 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. Obviously in this case Barwell Medical Centre has an open roll because it has just significant grown in size.

6.12 Furthermore, a 2023 Appeal in Queniborough, Leicestershire⁷ came to the same conclusion – this time in relation to the standard approach of assuming that 100% of the people who move on to the site will require GP provision:

⁶ Appeal Decision APP/X2410/W/21/3287864

⁷ Appeal Decision APP/X2410/W/23/3316574

36. I have had regard to the assessment of clinical rooms and the practice workforce at the surgeries¹¹. The requested contribution has been calculated using a standard formula and whilst it is difficult to anticipate the exact level of new patients that would arise from the proposed development, the formula doesn't seem to take into account the fact that some people may be moving in from the existing area and therefore already be registered at these practices, or may wish to remain at their existing practices. Accordingly, whilst I accept that many people want to be registered at their local practice and being registered elsewhere can have implications for referrals, it has not been demonstrated how the development would significantly impact on the identified local practices and I am not satisfied that the formula is sufficient to make it clear how the capacity would be increased and accordingly justify the amount requested. I therefore find that, based on the evidence before me, it has not been justified that the healthcare contribution is necessary to make the development acceptable and therefore fails to meet the relevant tests.

6.13 In all three cases, the Planning Inspectorate found that planning obligations towards additional GP Surgery provision failed the tests of CIL Reg 122 (2) and were then blue-pencilled from the Section 106 agreement.

6.14 This demonstrates that 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 (Cat and Kittens Lane, Featherstone, Staffordshire) found 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

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

6.16 The Inspector at the Moat House Farm Inquiry Decision (21st February 2012)⁸ said the following:

⁸ APP/Q4625/A/11/2157515 Moat House Farm Marston Green Solihull

Beyond facilitating the provision of a 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

6.17 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.

6.18 The Moat House Farm Inquiry is particularly pertinent to this Hearing 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 NHS Act 2012). Healthcare is available at all of the facilities closest to these sites if the Hearing is upheld.

6.19 The Inspector at the Mallory Road, Bishop's Tachbrook Appeal (4th November 2014)⁹ said the following:

*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.*

⁹ APP/T3725/A/14/2216200 Mallory Road, Bishop's Tachbrook, Warwickshire

- 6.20 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.
- 6.21 Furthermore, GP practice premises are funded via a separate funding stream that is driven by rateable value and rental value. There is a vibrant funding market for partner owner (mortgaged) practices with the rateable value funding stream paying off the debt. This means that expanding a GP practice for any reason is fully funded by the NHS. Thus, any funds derived from a developer are double funding. Unlike school places, there is no clawback mechanism to prevent this double funding like there is in Basic Need funding from the Department for Education.
- 6.22 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.
- 6.23 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. There is no evidence that planning obligations are justified towards additional Primary Healthcare Infrastructure.

7 Healthcare Summary and Conclusion

- 7.1 This Statement of Case demonstrates that Health contributions are unnecessary, because there is capacity available to serve this development, making the request inappropriate.
- 7.2 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 (2), due to the current availability of provision.
- 7.3 The ICB cannot say that new facilities are at capacity when the closest facility has just been relocated and expanded.
- 7.4 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 (2) is not met.
- 7.5 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 Regulation 122 (2) Compliant.
- 7.6 As outlined above, it is the Appellant's view that the planning obligation should be removed from the Section 106 agreement in its entirety.



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EFM

10th August 2025