Royal Devon University Healthcare NHS Foundation Trust

Hearing Statement

Regulation 19 Local Plan Examination

Exeter City Council Local Plan

Secondary (Acute) Healthcare Infrastructure

Royal Devon University Healthcare NHS Foundation Trust

Status of Representation:

Regulation 19 | Soundness and Legal Compliance
Examination into the Exeter City Council Local Plan

Date: 24/04/2026

Hearing Statement for Regulation 19 on behalf of the Royal Devon University Healthcare NHS Foundation Trust

Overview

1. This document is prepared on behalf of the Royal Devon University Healthcare NHS Foundation Trust ("RDUH") in response to the Regulation 19 consultation and will set out, in summary, why the emerging Exeter City Council local plan is not currently sound or legally compliant in so far as it fails to plan for, and secure, the secondary (acute) healthcare infrastructure required to support the known, cumulative impact on acute health care infrastructure created by the planned significant growth in its emerging Exeter City Local Plan (2021-2940) (the Plan).

Introduction

2. NHS Foundation Trusts were created in April 2004 under the Health and Social Care (Community Health and Standards) Act 2003. This legislation introduced them as independent, self-governing public benefit corporations. The Foundation Trust status gives the Trust greater autonomy and ability to respond to local community needs.

Royal Devon University Healthcare NHS Foundation Trust and its role within the local community.

3. RDUH has a primary obligation to provide NHS services to NHS patients and users according to NHS principles and standards; free care, based on need and not ability to pay. The Trust is an independent legal entity and is a secondary care acute services provider. It delivers a range of planned and emergency hospital services directly to the residents of the Exeter City Council's ("ECC") catchment area.
4. The Trust operates two acute hospitals, North Devon District Hospital and the Royal Devon and Exeter Hospital (Wonford) along with 17 community hospitals and is therefore a major health provider for ECC catchment area which will be affected by each development coming through the Plan as demonstrated to ECC in various meetings and consultation responses[1].
5. The Trust's current capacity is already maximised and the Plan proposes significant growth which will generate a foreseeable, cumulative increase in demand for the

[1] Appendix 1

acute healthcare infrastructure that the Trust cannot absorb without mitigation. Therefore, any additional population through this proposed development plan will cause detrimental impact on the secondary health care infrastructure through the lifetime of each development as explained in detail in the consultation responses and meetings with the ECC[2]. Well-documented harm, include the physical and mental deterioration of patients, increased reliance on emergency services, reduced effectiveness of treatment, increased waiting times -all of this has significant impact on the socio-economic wellbeing of the local community.

Legal Framework

6. The Planning and Compulsory Purchase Act 2004 ("PCPA 2004") is the backbone to plan making. The key sections are Section 19(1) which sets out that local plans must be prepared in accordance with prescribed procedures. Section 19 (2) sets out that plans must have regard to national polices and sustainable development. While Section 19 focuses on *preparing* plans, Section 38(6) of the same Act dictates how they are used: planning decisions must be made in accordance with the development plan unless "material considerations" indicate otherwise. Plan- making and decision-taking are interlinked.
7. The procedure and how the local planning authority prepares and adopts a local plan is set out in the Town and Country Planning (Local Planning) (England) Regulations 2012 and now the Town and Country Planning (Local Planning) (England) Regulations 2026.

Inspector's Duty

8. In order for the plan to be considered "Sound". It must be positively prepared; justified (proportionate evidence); effective (deliverable over plan period) and consistent with national policy.

NPPF

9. The NPPF does not distinguish between primary healthcare and secondary healthcare.
10. The primary objective of national planning policy is to facilitate enduring sustainable growth. Councils are expected to proactively integrate the three pillars of sustainable

[2] Appendix 1

development: economic, environmental, and **social** into their local planning strategies. *[emphasis added]*

11. During ECC's development plan process, the RDUH has submitted multiple documents evaluating the potential adverse effects of proposed developments in the emerging local plan on its infrastructure. The documentation sets out amongst other thing the following:
    - RDHU infrastructure requirements linked to anticipated housing growth to mitigate the cumulative harmful impact caused by the planned growth.
    - S106 methodology documents, including draft approaches for assessing development impacts on RDUH and proposed mitigation costs.
12. Although the RDUH submitted substantial information and proportionate evidence, the Plan excludes secondary care infrastructure from the policy and infrastructure Delivery Plan without explanation. That omission constitutes plan-making failure relevant to Regulation 19 soundness and legal compliance.
13. The Framework prioritises sustainable development in plan-making and decision-taking[3].

Plan-making

14. Paragraphs 15 to 37 of the Framework relate specifically to 'plan-making'.
15. Paragraph 15 states that the planning system should be genuinely plan-led. Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, **social** and environmental priorities; and a platform for local people to shape their surroundings.
16. Paragraph 20 stipulates that strategic policies must articulate a comprehensive approach regarding the pattern, scale, and quality of development. It is evident that policies related to health within a development plan is classified as strategic policies as they are crucial for fostering healthy communities and addressing health inequalities.
17. Paragraph 32 requires that the preparation of policies should be underpinned by relevant, up-to-date, adequate and proportionate evidence.
18. Paragraph 33 states that local plans are to be developed with continuous reference to a sustainability appraisal, ensuring compliance with legal requirements and demonstrating consideration of economic, **social,** and environmental objectives. It is

[3] Paragraph 11 of the NPPF

essential to avoid significant adverse effects on these objectives. Where feasible, alternative approaches that minimise or eliminate such impacts should be explored. If significant adverse impacts cannot be avoided, appropriate mitigation measures must be proposed; if mitigation is not possible, compensatory actions should be evaluated.

19. Paragraph 36 explains that local plans and spatial development strategies are reviewed to ensure legal compliance, correct procedures, and soundness. Plans are considered 'sound' if they meet these criteria:

> *"a) Positively prepared – providing a strategy which, as a minimum, seeks to meet the area's objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;*
>
> *b) Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;*
>
> *c) Effective – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and*
>
> *d) Consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant."*

20. Paragraph 35 states:

> *"Plans should set out the contributions expected from development. This should include… other infrastructure (such as that needed for education,* ***health,*** *transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan".*

Decision Making

21. The NPPF requires planning decisions and policies to meet community needs and support healthy and safe communities (Section 8). It then lists (in paragraph 98) practical expectations for decision-making.

Paragraph 98

"To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:

a) plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;

b) take into account and ***support the delivery of local strategies to improve health****, social and cultural well-being for all sections of the community;*

c) ***guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs;*** *(our emphasis)*

d) ensure that established shops, facilities and services are able to developand modernise, and are retained for the benefit of the community; and

e) ensure an integrated approach to considering the location of housing, economic uses and community facilities and services."

22. Paragraph 101 (below) then emphasises ways to speed up delivery of public service infrastructure (including hospitals) reinforcing the need for local planning authorities to work proactively with stakeholders to plan for required facilities and resolve key issues before applications are submitted.

Paragraph 101:

"To ensure faster delivery of ***other public service infrastructure*** *such as further education colleges,* ***hospitals*** *and criminal justice accommodation, local planning authorities should also work proactively and positively with promoters, delivery partners and statutory* ***bodies to plan for required facilities and resolve key planning issues before applications are submitted.*** *Significant weight should be placed on the importance of new, expanded or upgraded public service infrastructure when considering proposals for development." (our emphasis)*

Section 1 Paragraph 2

"Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and ***statutory requirements" (our emphasis)***

Health and Social Care Act 2022 (Statutory Requirements)

23. Local authorities are members of Integrated Care Partnerships as created under the Health and Social Care Act (2022) amended from Local Government and Public Involvement in Health Act 2007. The act sets out a duty to cooperation for local authorities in relation to developing, agreeing, supporting and delivering the shared and agreed health and care priorities as defined in the jointly developed and agreed Integrated Care Strategy.

Health and Social Care Act (2022) Section 26

116B Duty to have regard to assessments and strategies

(1)A responsible local authority and each of its partner integrated care boards must, ***in exercising any functions, have regard to the following so far as relevant—***

(a)any assessment of relevant needs prepared under section 116 in relation to the responsible local authority's area,

(b)any integrated care strategy prepared under section 116ZB in relation to an area that coincides with or includes the whole or part of the responsible local authority's area, and

(c)any joint local health and wellbeing strategy prepared under section 116A by the responsible local authority and its partner integrated care boards.

24. The purpose of the Section 26 is to bring health**, local government and wider partners together** to build a healthier future for local people with the shared vision: "***equal chances for everyone in Devon to lead long, happy and healthy lives."*** [4]
25. The **priorities shared** by the Integrated Care Partnership (ICP) partners, including District Councils', are:
    - Facilitating joint action to improve people's health and care, and reduce inequalities
    - Influencing wider factors that affect health (like housing) to create healthier environments
    - Building a culture of collaboration to promote and support wellbeing, and involve people
26. Local Plans are integral part of working together to achieve a healthy community and strategic alignment. Access to secondary care is requisite part of the providing healthcare to the entire community.

Planning Practice Guidance (PPG)

27. The key PPG sections are Healthy and Safe Communities, Achieving Healthy and Inclusive Communities Plan Making, Planning Obligations, and Viability. Each chapter provides plan-making guidance; the following summaries highlight sections most relevant to RDUH in this context.
28. Paragraph under the heading 'Achieving Healthy and Inclusive Communities', states:

> *"Planning and health need to be considered together in two ways: in terms of creating environments that support and encourage healthy lifestyles, and in terms of identifying and* ***securing the facilities needed for primary, secondary and tertiary care,*** *and the wider health and care system (taking into account the changing needs of the population)."* [5] *(our emphasis).*

29. Paragraph 003 describes of healthy place being:

> *"one which supports and promotes healthy behaviours and environments and a reduction in health inequalities for people of all ages".*

[4] One Devon
[5] 001 Reference ID:53-001-20190722

30. Access to all health services (including secondary care) is paramount in reducing health inequalities.
31. The legal status of the NPPF and the PPG is essentially the same; no legal distinction exists between them; therefore, the PPG is also material planning consideration.[6]

Planning Obligations

32. The relevant paragraphs of this guidance chapter, re-iterate various sections of planning law, in particular regulation 122 of the CIL Regulations, which is applicable to planning obligations, which means it is necessary to demonstrate that planning obligations are
    - Necessary to make the development acceptable in planning terms
    - Directly related to the development; and
    - Fairly and reasonably related in scale and kind to the development
33. Paragraph 004 of the chapter sets out that policies for obligations should be set out in plans and not within supplementary guidance.

RDUH engagement with ECC and evidence provided

34. In line with the requirements of the Framework regarding plan-making, the RDUH has engaged proactively with the officers of the ECC throughout. This collaborative approach had included roundtable discussions, formal consultation responses, and the submission of an infrastructure development plan, all of which produced robust evidence on the health impacts of the development of the Plan and the necessity for mitigation measures. Notably, the RDUHs responded to the Local Plan consultation in December 2023, as well as the infrastructure development plan submission, highlighted the requirement for contributions towards two principal capital schemes in Exeter: community diagnostics and a new surgical hub. Subsequent work has also identified capital constraints relating to pathology and cardiology services, further underscoring the need for comprehensive policy support and investment.
35. To underpin the effectiveness and justification of the plan, RDUH has regularly provided detailed analyses on the projected impact of housing schemes, based on a fixed (£575/dwelling) cost calculation which incorporates an assumed migration factor of 35%. Although this figure is based on 2019 reference costs and requires some inflation adjustments to bring it up to date, this evidence offered a

[6] Mead Realisations Ltd v Secretary of State for Housing, Communities and Local Government [2025] EWCA Civ

proportionate and assessment of the demand placed on local secondary health infrastructure and supports the case for developer contributions through Section 106 agreements. The Trust has also explored case studies, including cardiology service investment, to illustrate how such contributions can help manage service pressures in the absence of available NHS capital.

36. The Trust's engagement and evidence provision align with Paragraphs 15–37 of the Framework, ensuring that strategic policies address health inequalities and support the creation of healthy communities. The ongoing dialogue with ECC and the establishment of a task and finish group during summer/autumn 2025 further demonstrated joint working and a commitment to delivering sustainable development. As plans are reviewed for soundness and legal compliance, it is essential that contributions expected from development encompass also secondary health infrastructure, as set out in Paragraph 35, without undermining overall deliverability

ECC's Strategic policy

37. Section 19(1B)-(1E) of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to set strategic priorities with corresponding policies in their development plans. One of the key strategic priorities in the Exeter Plan is "Healthy and Inclusive Communities," including health infrastructure.
38. However, policy **HW1**: Health and Wellbeing fails to address the needs of those requiring secondary care without explanation, undermining inclusivity and efforts to reduce health inequalities.

Infrastructure Delivery Plan September 2025

39. The Infrastructure Delivery Plan does not consider that any of the needed infrastructure Surgical Hub Healthcare, Community Diagnostic Centre Healthcare and Strategic improvements to hospital facilities in Exeter were considered desirable and not important or critical. They were considered strategic not specifically related to development requirements (any more than this infrastructure would support existing development). Yet the evidence provided to the ECC demonstrate the contrary as follows:
40. All activity undertaken by the Trust is traceable to a patient through the patient's address, NHS number and registered GP. These are recorded each time a patient is treated. This data is anonymised, validated and submitted by every acute trust

monthly to a national NHS data warehouse so that it is available nationally and publicly. Note this activity count does not represent discrete patients, but the amount of activity undertaken. The data calculates the adverse impact of the development on the Trust and mitigates this by creating a financial claim to increase capacity. The infrastructure required is directly linked to each proposed development coming through the local plan.

41. To say that the infrastructure needs are not related to development requirements is factually incorrect as facts demonstrate otherwise.

Infrastructure policy

42. The infrastructure policy entirely ignores the secondary care infrastructure, which is contrary to the NPPF policies, guidance and statutory requirement.

Relevant Case law

43. The Trust is not seeking 'gap funding' contribution as defined in the case of (R & Another on the Application of University Hospitals of Leicester NHS Trust and Harborough District Council CO/2298/2022). In this case the Court (in paragraph 138-139) Judge Holgate (as he was at the time) confirmed that:

> *"If for example, a development would itself cause direct harm to the public facility, so that the three tests in Reg.122(2) of the CIL Regulations 2010 are satisfied, the local planning authority would be entitled to require the developer to mitigate the harm under a Section 106 obligation, irrespective of whether the authority responsible for that specifically is able to raise taxes or has borrowing powers."* [7]

44. As explained above, the RDUH is able to estimate how many patients from each development are likely to use RDUH services in a year. The calculation methodology takes into consideration the location and likely patient level coming from each proposed location. Costs are calculated per patient, as this is the most practical method for estimating contributions towards necessary infrastructure. Note that the requested amount covers only a fraction of total infrastructure costs; for instance, building one square meter of A&E capacity will cost £13,121 per sqm, operating theatre costs £18,243 per sqm or adding a CT scanner (costing £900k/year in hire

[7] (R & Another on the Application of University Hospitals of Leicester NHS Trust and Harborough District Council CO/2298/2022

and requiring replacement every 10–15 years) are substantial expenses, so the Trust is currently requesting a very small proportion of these costs to ensure that their requests are proportionate in scale.

45. Therefore, the proposed financial contribution will not offset the considerable strain that new residents will place on acute health services throughout the lifetime of the development. The suggested contribution methodology does not obviate the caused impact but will mitigate it. It is therefore likely that the requested figure is reasonable to the scale and kind[8]

Most recent Appeal decisions

46. Appeal Ref: APP/Q1825/W/24/3350905 Land West of Hither Green Lane, Redditch. A residential development (Class C3) with a vehicular access point onto Hither Green Lane, play areas, public open space including footways and cycleways, sustainable urban drainage systems and all other ancillary and enabling infrastructure at Land West of Hither Green Lane, Redditch in accordance with the terms of the application, Ref 21/01830/FUL. This is appended at Appendix 2.

Conclusion

47. Secondary care must be address at the plan making stage because the scale of the growth proposed by the Plan creates a known, cumulative impact on acute health infrastructure which cannot be deferred without undermining the Plan's effectiveness. This is not matter of individual applications, but a strategic infrastructure issues integral to whether the plan can be delivered over its lifetime, engaging the "effective" and "positively prepared "tests of soundness. A plan is not positively prepared if it proposes substantial growth while knowingly failing to provide for secondary health infrastructure required to support the growth.
48. The secondary care infrastructure is directly related to development as demonstrated above. The fact that infrastructure also serves existing population does not negate development impact. Regulation 122 does not require infrastructure to serve only new development, merely that it is necessary to mitigate harm caused by the development which is clearly demonstrated here.

[8] Please see *The Queen on the Application of Tesco Stores Limited v Forest of Dean District Council v JD Norman Lydney Limited, ASDA Stores Limited, Windmill Limited, MMC Land & Regeneration Limited.* Court of Appeal (Civil Division) [2015] EWCA Civ 800, 2015 WL 4401465

49. As the secondary care is wholly omitted without explanation, despite being demonstrably affected by the Plan. The NPPF expressly includes "health" with required infrastructure, and PPG confirms that plan-making must identify and secure facilities for **primary, secondary and tertiary care.** By excluding secondary care entirely, the Plan fails to address an objectively assessed infrastructure needs and creates an internal inconsistency between its growth and infrastructure strategy**.**
50. The case law confirms that where development causes direct harm to infrastructure, mitigation can lawfully be required through Section 106 regardless of other funding powers. The Plan's failure lies in excluding the policy framework required to enable that mitigation rendering it ineffective. Furthermore, a growth strategy which cannot be supported by essential health infrastructure cannot be said to be deliverable and therefore fails the effectiveness test.
51. Although the delivery of health care is the responsibility of the RDHU, but planning for the impacts of the development on the healthcare infrastructure is a statutory planning function. The Health and Care Act 2022 reinforce duties of cooperation and strategic alignment between local authorities and health provides. The planning system must therefore ensure that growth does not undermine access to healthcare, which is essential component of sustainable growth.
52. Whilst work towards a Statement of Common Ground is welcomed, on its own, it is unlikely to remedy a plan which fails to plan for known infrastructure needs. That omission must be corrected within the plan itself to render it sound.
53. In summary, the Plan is unsound and legally deficient because it proposes substantial housing growth whilst failing to make reasonable provision for secondary healthcare infrastructure required to support that growth.

<u>Suggested amendments to the plan</u>

HW1: Health and wellbeing (Strategic policy)

Applications for large scale residential development proposals will be accompanied by a proportionate Health Impact Assessment demonstrating how the proposal will:

a. *Promote community inclusion;*
b. *Encourage healthy neighbourhoods;*
c. *Promote active lifestyles;*
d. *Have a positive impact on health and wellbeing; and*
e. *Ensure public safety and minimise crime through appropriate design.*

Where any potential adverse health and wellbeing impacts are identified, the applicant will be expected to demonstrate how these will be mitigated.

Contributions towards improved GP provision and improved secondary care will be sought where necessary. Contributions for secondary care will be made towards the Royal Devon University Healthcare NHS Foundation Trust to improve the healthcare infrastructure facilities.

Development proposals for new healthcare facilities will be supported where they are easily accessible by public transport and link effectively to walking and cycling routes.

Development proposals for the multi-use and co-location of healthcare provision with other services and facilities to support the convenient coordination of local services will be supported.