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LEADER OF THE COUNCIL

(Labour, Ravensbury Ward)

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Dear Mr Newman

Re: Providing High Quality Health Services 2020-2030

I am writing to you concerning the “Involvement Document” recently published by the Trust called “Providing high- quality healthcare services: 2020 to 2030”.

You will be aware that the publication of this document has caused some disquiet amongst Merton residents because it floats the possibility that the comprehensive range of services presently provided at the St Helier Hospital site may be moved away from its present location where it is hugely convenient to Merton residents to a site in Belmont or to the site presently occupied by the Royal Marsden Hospital.

Merton Council fully accepts that there are significant challenges for the Trust in delivering high quality acute services on the St Helier Hospital site. However, as you will no doubt be aware, there have been plans to improve facilities on the St Helier Hospital site so as to meet these challenges. The 2010 national government budget included an investment of £219M in order to improve facilities on the St Helier Hospital site. However, despite being published in the HM Treasury “Red Book”, it does not appear that steps were ever taken by the NHS to develop plans in accordance with this commitment. You will also be aware that, following another attempt to consider moving services away from the St Helier Hospital site, the then Prime Minister gave a commitment in 2015 that the services at the St Helier Hospital site would remain.

This Council was therefore somewhat surprised that, notwithstanding the clear commitments that have been given by the government in favour of retaining and developing services at the St Helier Hospital site, your Trust has floated proposals which may lead to the services being moved away from the existing site and to a location that will be substantially more inconvenient to the residents of the London Borough of Merton. In the light of these clear commitments I would have expected any plans developed by the Trust to have focused on delivering on these existing commitments as opposed to attempting to develop plans which may renege on them.

I was also interested to read the observations in the document you have published which appeared to suggest that decisions about the future configuration of NHS services will be matters for decision solely within the NHS. You have referred at page 20 of the document to the South West London Sustainability and Transformation Plan (“STP”) Board and the Local Transformation Boards which have been set up under the STP process.

It seems unfortunate that the document you provided to the public failed to explain that the STP/LTB process is an entirely non-statutory process. As a non-statutory process it is purely advisory and cannot provide an alternative decision-making process to the statutory process set up by the Local Government and Public Involvement in Health Act 2007 (“**the 2007 Act**”), as amended and reinforced by the Health and Social Care Act 2012 (“**the 2012 Act**”).

The Council accepts that the expertise contained within STP/LTB process can provide valuable insight and assistance to decision-makers in making recommendations about the future configuration of NHS services. However the STP/LTB process has no statutory standing and therefore it can only make recommendations to feed into the statutory decision-making process which must be followed in order to give effect to any changes to NHS services.

Any proposed changes to NHS services must, in the first instance, be considered by the Health and Wellbeing Board (“**HWB**”), which consists of representatives of both the NHS and social care providers. The HWB has a specific duty to prepare a Joint Strategic Needs Assessment (“**JSNA**”) to define the NHS and social care services which are required for its area under section 116 of the 2007 Act. Once the JSNA has been undertaken, the next step is for the local authority and the CCGs to work together through the HWB to produce a Joint Health and Wellbeing Strategy (“**JHWS**”). The legal duty on the HWB to produce a JHWS is in section 116A of the 2007 Act.

Decisions about the services to be commissioned by each CCG are required to have regard to the JSNA and the JHWS. The Council’s lawyers have advised us that the duty to “have regard” to the JSNA and the JHWS is critically important for the CCG in developing any plans that it has for the commissioning of future health services in this area. They have pointed out to us that the High Court has recently confirmed that there is no difference between the duty on an NHS body to “have regard” to a factor and the duty on public bodies to have “due regard” to factors: see *R (The Pharmaceutical Services Negotiating Committee & Anor) v Secretary of State for Health* [2017] EWHC 1147 (Admin) at §48.

It follows that, whilst your Trust is entitled to develop proposals for the future shape of its acute services, if it wishes lawful decisions to be taken to implement these proposals, the first public body to whom any proposals must be referred is the HWB. We have invited your Chief Executive to attend the HWB on 19 September in order that he can explain his proposed decision making processes and the principles that will underpin them. We hope that he will provide the HWB with clear reassurance that the Trust recognises that it needs to work within the statutory decision making processes we have set out above. We hope that the Chief Executive will recognise that, under the statutory decision making process, the HWB is the primary decision maker to determine how services should best be configured to meet the health and social care needs of local people.

The views of the HWB are vitally important because changes to NHS acute hospital services may, from the perspective of an NHS Trust, appear to be both sensible and appropriate. However the same changes may be wholly unjustifiable once they are seen within the wider context of the local NHS and social care economy. The role undertaken by the HWB is to assess the needs of the local population for health and social care services and then to devise a strategy to determine how best those needs can be met. Notwithstanding the non-statutory arrangements devised by NHS England as part of the STP process, I confirm that it is the intention of this Council to ensure that the statutory decision making process is followed. That process must start with the development of a JSNA, and then (but only then) feed into the overall strategy for the future development of health and social care services. The statutory role of making decisions about the JSNA and the JHWS falls exclusively to the HWB. We therefore look forward to the Trust working with us, as part of that process, so that any proposals that it may wish to make for changes to local NHS services are properly fed into the statutory decision making processes.

The HWB is also focused on the needs of local people and, in particular, the duty to ensure that any changes to NHS services deliver on the duty to tackle health inequalities. The Council has a commitment to tackling health inequalities. Any attempt to relocate acute services away from an area of relative deprivation in favour of an affluent area would be plainly incompatible with the duty on the CCG under section 14T of the NHS Act to have regard to the need to tackle health inequalities because it would make accessing acute health services significantly more difficult for those in our population who suffer the greatest level of inequality. I was somewhat surprised not to see any reference to this factor in your engagement document since this is an important duty which rests on the Secretary of State, NHS England and on all clinical commissioning groups.

Merton HWB has not considered or approved any changes to the shape or configuration of acute hospital services serving the needs of the residents of Merton. I have written to the Chair of the HWB today to invite him urgently to call the Trust before the HWB to explain why it has published proposals for making changes to the configuration of NHS services for the residents of Merton without any prior engagement with the HWB in order to determine whether these proposed changes accord with either the needs assessment or the strategy developed by the HWB for the future of NHS services serving residents of Merton.

I would also expect the HWB to enquire why the public had been given the impression in your document the changes to the configuration of the NHS services provided by the Trust is a matter for decision making by the Trust Board without any reference being made to the HWB when the statutory process provides for the key needs assessment and strategic development plans for the future health services serving the residents of Merton to be prepared by the HWB.

Whilst I do not suggest that the publication of this document was, of itself, unlawful it is clear to me that it was regrettably incomplete in that it suggested that decisions about the future of NHS services serving the residents of Merton were decisions which fell to be taken entirely by NHS bodies. It would have been far better if the document had appreciated the essential approach of partnership between NHS commissioners and local authorities which underpins the statutory scheme for managing change within the NHS in the 2007 Act, as amended and reinforced by the 2012 Act.

Can I therefore ask you to ensure that when your Chief Executive attends the HWB on 19 September he is able to commit the Trust to working with the HWB to develop any plans for the future shape and configuration of NHS acute services. Those plans need to feed into and be consistent with the needs assessment and strategic plans developed by HWBs. It thus seems to the Council essential that the Trust recognises the need to ensure that, before any further steps are taken by the Trust to propose changes to the future shape and configuration of NHS acute services, the Trust will ensure that any changes it is contemplating are consistent with the needs assessments and strategic plans prepared by the relevant HWBs.

Yours sincerely

Councillor Stephen Alambritis
Leader of Merton Council