

Healthier Communities and Older People Overview and Scrutiny Panel

Date: 21 July 2020

Agenda item:

Subject: Improving Health Care Together – Proposals for St Helier Hospital

Lead officer: Hannah Doody, Director of Communities and Housing

Lead member: Councillor Peter McCabe Chair of the Healthier Communities and Older People overview and scrutiny panel.

Contact officer: Louise Round, Managing Director, South London Legal Partnership

Recommendations:

- A. To agree to exercise the Committee's powers to refer the decision of the Committees in Common of the South West London and Surrey Heartlands NHS Clinical Commissioning Group made on 3 July 2020 to the Secretary of State for Health and Social Care, pursuant to Regulation 23(9) (a) and (c) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013; and
 - B. To approve the terms of the proposed reference set out in the letter attached as Appendix A and to delegate authority to the Director of Communities and Housing, in consultation with the Chair of this Committee, to make such minor drafting changes as they consider prudent before submission.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. This Committee has previously considered reports relating to the proposal of the South West London and Surrey Heartlands NHS Clinical Groups to make changes to the clinical model of care in the acute sector covering their areas. In essence, the proposal is to amalgamate all the acute and emergency services currently provided at St Helier and Epsom Hospitals on to one site and for that site to be a new build hospital in Belmont, Sutton.
- 1.2. Following a consultation exercise with relevant stakeholders which the Council responded to, a draft business case was produced and considered by a joint Committees in Common ("CIC") established by the two CCGs at a meeting on 3 July. The CIC agreed to proceed with the proposal on the basis of a decision making business case. Acting through its scrutiny function, the Council has the right under the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 ("the Health Scrutiny Regulations") to refer that decision to the Secretary of State for Health and Social Care and to ask him to seek a reconsideration of the decision by an independent reconfiguration panel. This report seeks the Committee's agreement to make that reference. The draft letter of reference is attached as appendix A.

2 DETAILS

- 2.1. There is a long history to the proposals to reconfigure hospital provision in this part of London. The proposals currently under consideration were first formulated in 17/18 and the formal consultation period closed on 7 April this year. The Leader of the Council submitted a detailed response on behalf of the Council which is attached as appendix B. It includes a report prepared by the Council's instructed expert, Roger Steer.
- 2.2. In summary, that response called into significant doubt the clinical model proposed in the consultation business case prepared by the CCGs which would see emergency and other acute services concentrated in a new build hospital in Belmont, Sutton and a downgrading of the services currently on offer to Merton residents on the St Helier site. That site would be rebadged a "district hospital". However, the proposal does not include the range of services which would usually be delivered at a "district hospital". For example, there will be no A & E service, no consultant-led maternity service or access to emergency surgery, intensive care and other back up provision. Further, there are no coherent proposals to develop new or improve existing community services considered necessary to support the reconfiguration of services at the hospital. The advent of the Covid-19 pandemic has given further cause for concern about proceeding with the proposals at this point, before the full impact is known, not only in the acute sector, but also in the wider social care economy.
- 2.3. Under the Health Scrutiny Regulations, because the proposals cover more than one local authority area, the Council was required to participate in an Improving HealthCare Together Joint Health Scrutiny Committee (JHSC) with the London Boroughs of Sutton, Wandsworth, Croydon, Kingston and Surrey County Council. The JHSC met on 4 June and heard from the CCGs and from Roger Steer. Councillor Peter McCabe is Merton's member of that committee. Given the divergence of views held by its constituent councils, the JHSC was not able to make any formal recommendations but did submit a number of comments to the CCGs. A copy of those comments is attached as appendix C.
- 2.4. Although those comments are supported by the Council, they do not go the heart of the Council's objection to the proposal which, as stated above, is that the proposed clinical model is fundamentally flawed and if it were to proceed, which the Council contends it should not, the most appropriate site for the consolidation of acute services is the current St Helier site. Despite the existence of the JHSC, the Health Scrutiny Regulations allow the Council to exercise the right contained in regulation 23(9) to refer the proposed decision to the Secretary of State for Health and Social Care.
- 2.5. If a referral is made, the Secretary of State may ask for advice from the Independent Reconfiguration Panel (IRP), an advisory non-departmental public body. The IRP will undertake an initial assessment of any referral to the Secretary of State where its advice is requested. It may then be asked to carry out a full review. Not all referrals to the Secretary of State will automatically be reviewed in full by the IRP – this is at the Secretary of State's discretion. Depending on the outcome of any review by the IRP, the

Secretary of State may then make the final decision on the proposed reconfiguration which may differ from that made by the CCGs. Alternatively he can give directions to the health bodies themselves.

2.6. There are a number of grounds on which a referral to the Secretary of State can be made and the ones upon which the Council would propose to rely are those set out in regulation 23(9)(a) and (c) namely that:

(a) the authority is not satisfied that consultation on any proposal has been adequate in relation to content or time allowed; and

(c) the authority considers that the proposal would not be in the interests of the health service in its area.

2.7. The Secretary of State has issued guidance on the Health Scrutiny Regulations and this has been taken into account in drafting the attached letter of referral (Appendix A). The letter cross refers to a number of other stakeholder submissions and sets out in some detail the reasons why the Council considers the grounds in regulation 29(3)(a) and (c) are met.

2.8. The Committee is asked to agree to exercise its power to make a referral to the Secretary of State and to approve the letter attached at Appendix A. In the event that it may subsequently become necessary to make any minor drafting amendments following the meeting of the Committee, authority is sought for the Director of Housing and Communities to make such changes in consultation with the Chair of this Committee.

3 ALTERNATIVE OPTIONS

3.1. The alternative course of action to making this referral is to do nothing and simply to accept that the decision of the CIC on 3 July will proceed to implementation. For all the reasons set out in this report and the draft referral letter, that would not be interests of the health service and residents of Merton.

4 CONSULTATION UNDERTAKEN OR PROPOSED

4.1. The reconfiguration proposals have been the subject of consultation with a number of bodies and in order to inform the response submitted by the Leader on behalf of the Council, the Council carried out its own consultation exercise.

5 TIMETABLE

5.1. If the recommendations in this report are agreed, then subject to any final changes to the letter of referral, it is proposed that it be sent forthwith. There do not appear to be any timescales either in the guidance or the Health

Scrutiny Regulations within which the Secretary of State is required to respond.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

6.1. At this stage, there are no direct financial implications in making the proposed referral to the Secretary of State.

7 LEGAL AND STATUTORY IMPLICATIONS

7.1. As stated above, the process of referral is governed by the Health Scrutiny Regulations. Full Council agreed at its meeting on 21 November 2018 to reserve the right to make that referral notwithstanding its participation in the JHSC.

7.2. The Council will argue that any approach which fails to give proper regard to health inequalities breaches the CCGs' duties under section 14T of the National Health Service Act 2006 ("the NHS Act"). Endorsing such an approach would breach the Secretary of State's duties under section 1C of the NHS Act.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

8.1. The provision of accessible comprehensive health services, particularly in areas of deprivation, as is the case in many wards in this borough, are fundamental to addressing health inequalities.

9 CRIME AND DISORDER IMPLICATIONS

9.1. None for this report

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1. None for this report.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix A – Proposed letter of referral to the Secretary of State for Health and Social Care
- Appendix B - Consultation response submitted on behalf of the Council
- Appendix C – Comments submitted by the an Improving HealthCare Together Joint Health Scrutiny Committee

12 BACKGROUND PAPERS

12.1.