

CASE MANAGEMENT CONFERENCE (CMC) SUMMARY NOTE

Appeal Ref: APP/W0340/W/22/3312261

**Appeal by Mr Richard Barter, T A Fisher
against the decision of West Berkshire Council**

**Erection of 32 dwellings including affordable housing, parking,
and landscaping. Access via Regis Manor Road
at Land to the rear of The Hollies Nursing Home, Reading Road,
Burghfield Common RG7 3LZ**

1. The CMC, which started at 10:00 on 25 April 2023, was led by the Inquiry Inspector William Cooper.
2. The Inquiry is scheduled to open at 10.00 on Tuesday 6 June and sit for six days. This will comprise: four days sitting in Week 1 (6 June to 9 June) at the Council Chamber, West Berkshire Council Offices, Market Street Newbury RG14 5LD; followed by two days sitting virtually, online in Week 2 (13 to 14 June); and the Inspector intends to undertake a formal site visit, on the morning of Thursday 15 June.

Main Issues

3. The Main Issues in this appeal case are likely to relate to:
 - 1) The effect of the proposal on the safety and wellbeing of future residents of the proposed development, and the wider public, with regard to the proximity of the Atomic Weapons Establishment (AWE) site at Burghfield;
 - 2) The effect of the proposal on the future capability and capacity of AWE Burghfield to operate effectively;
 - 3) The effect of the proposed development on the character and appearance of the area, with particular reference to local tree cover; and
 - 4) Whether the proposal would make adequate provision for affordable housing.
4. Among other things, the requirements of relevant development plan policies will be considered in relation to the main issues.

5. Where parties have referred to the Three Mile Cross appeal decision (Appeal Ref: APP/X0360/W/22/3304042), it would be helpful for them to as clear as possible about what they consider to be comparable and/or different about the current case.

Other Matters

6. Other Matters are likely to include the following local residents’ concerns, which go beyond the reasons for refusal: construction stage safety/management and impact on roadway; effect on neighbours’ living conditions in terms of noise (e.g. from a bin store) and privacy; highway safety (e.g. from footpath access onto Reading Road); strain on local health facilities (e. g. doctors and dentists); wildlife; light pollution.
7. Also, the Inquiry will look at benefits of the proposed development, including contribution to housing land supply, to be weighed in the planning balance.

Parties, advocates and likely witnesses

8. The parties’ advocates and witnesses for the Inquiry were confirmed as:

For the Appellant, Mr Richard Barter, T A Fisher	
Advocate	Andrew Tabachnik of King’s Counsel
Witnesses:	
Emergency Planning	Keith Pearce
Trees	Jago Keen
Planning	Katherine Miles

For West Berkshire Council	
Advocate	Christian Zwaart of Counsel
Witnesses:	
Emergency Planning	Carolyn Richardson
Trees	Jon Thomas
Planning	Bryan Lyttle Matthew Shepherd

For the joint Rule 6 party AWE plc and the Ministry of Defence (the first Rule 6 party)	
Advocate	Rose Grogan of Counsel
Witnesses:	
Safety Assessment Specialist	Anon
National Security and Defence	Anon (provisional)
Planning	Sean Bashforth

For the Rule 6 party the Office of Nuclear Regulation (the second Rule 6 party)	
Advocate	Michael Fry of Counsel
Witnesses:	
Emergency Planning	To be confirmed
Regulatory	To be confirmed
Planning	To be confirmed

Statements of Common Ground

9. An initial draft Statement of Common Ground is to be agreed by the Council and appellant, and submitted by no later than 2 May 2023.
10. A fuller Statement of Common Ground, to include matters of agreement (common ground) and disagreement (uncommon ground), is to be agreed by the Council and appellant, and submitted after exchange of proofs of evidence.
11. The Rule 6 parties are requested to: i) produce a statement summarising matters of agreement between them, and any points of departure from the Council and appellant's initial draft Statement of Common Ground, and submit this with their proofs; ii) produce and submit, within five working days of receipt of the Council and appellant's fuller Statement of Common Ground, a summary of any points of departure from the Council and appellant's fuller Statement of Common Ground.

Dealing with the Evidence, Inquiry Programme and Format

12. In the light of discussion at the CMC, the Inspector proposes the following revised draft outline timetable. Parties are asked to review this and confirm their broad agreement, or any suggested further amendments to this within five working days of receipt of this Note.

13. The advocates are requested to work collaboratively on time estimates for each stage of their respective cases, with timings for openings and closings, evidence in chief and cross-examination to be submitted no later than **24 May**. Other than in exceptional circumstances, parties will be expected to take no longer than the timings indicated, which will require the cooperation of both advocates and witnesses. After receipt of the time estimates, a programme will be issued.

Week 1: In-Person Inquiry at the Council Chamber: Main timetable elements			
Day 1: Tues 6 June	Day 2: Wed 7 June	Day 3: Thurs 8 June	Day 4: Fri (correction 9) June
<p>(Morning) Session 1a</p> <p>Introduction and Openings</p> <p>Interested Parties</p>	<p>(Morning) Session 2a</p> <p>Evidence and Examination of the Council's witnesses on Main Issues 1 and 2</p>	<p>(Morning) Session 3a</p> <p>Evidence and Examination of the second Rule 6 Party's witnesses on Main Issues 1 and 2</p>	<p>(Morning) Session 4a</p> <p>Evidence and Examination of the first Rule 6 Party's witnesses on Main Issues 1 and 2 (cont.)</p> <p>Inspector's questions</p> <p>Evidence and Examination of Appellant's witnesses on Main Issues 1 and 2</p>
Lunch	Lunch	Lunch	Lunch
<p>(Afternoon) Session 1b</p> <p>Interested Parties</p> <p>Inspector's Inquiry management update (IMU)</p>	<p>(Afternoon) Session 2b</p> <p>Evidence and Examination of the Council's witnesses on Main Issues 1 and 2 (cont.)</p> <p>Inspector's questions and IMU</p>	<p>(Afternoon) Session 3b</p> <p>Evidence and Examination of the first Rule 6 Party's witnesses on Main Issues 1 and 2</p> <p>Inspector's IMU</p>	<p>(Afternoon) Session 4b</p> <p>Evidence and Examination of Appellant's witnesses on Main Issues 1 and 2 (cont.)</p> <p>Inspector's questions and IMU</p>

Week 2: Virtual Online Sessions	
Day 5: Tues 13 June	Day 6: Wed 14 June
<p>Morning</p> <p>Round table discussion of Main Issues 3 and 4 (inc Planning Obligation)</p> <p>Round table discussion of Other Matters and Planning Balance</p>	<p>Morning</p> <p>Conditions</p> <p>Costs</p>
Lunch	Lunch
<p>Afternoon</p> <p>Round table discussion of Other Matters and Planning Balance (cont.)</p> <p>Inspector's IMU</p>	<p>Afternoon</p> <p>Closing Statements</p> <p>Inspector's IMU</p>

14. For the round table discussions, the Inspector would lead those sessions informed by relevant proofs and statements.

15. The Council anticipates that the Inquiry room will be sufficient to accommodate anticipated numbers of attendees. The Council will make appropriate provision to help with the efficient running of the Inquiry, including: Inquiry website, retiring rooms for the Inspector and main parties, microphones, photocopying and a parking space for the Inspector.

Site Visit

16. In addition to an informal unaccompanied visit to the area prior to the Inquiry opening, the Inspector will undertake a formal, accompanied site visit after the Inquiry has opened. Following discussion at the CMC of potential dates for the site visit, the Inspector envisages undertaking the site visit on the morning of Thursday 15 June, subject to finalising visit details with the parties.

Conditions

17. Please can the appellant and Council make clear in the Statement of Common Ground which conditions are agreed and which are in dispute between them. The conditions will need to be properly justified, having regard to the tests for conditions. Any suggested pre-commencement conditions should have express written confirmation of their acceptance by the appellant.

Planning Obligation

18. The appellant indicates that they intend to submit a legal agreement to bind the provision of affordable housing. If necessary, a short time will be allowed after the Inquiry for submission of a signed version, with the timescale for this to be agreed before the close of the Inquiry.
19. The Council shall produce a CIL Compliance Statement containing detailed justification for any obligation sought, setting out how it complies with the CIL Regulations. It shall also include reference to any policy support and, in relation to the payments that would be secured, exactly how they have been calculated and on precisely what the money would be spent.

Core Documents

20. The main parties will need to discuss and agree a list of core documents in advance of preparing proofs so they can be properly referenced in the proofs. That list is to be co-ordinated by the appellant and must be submitted with the proofs. A template for that list is provided in Annex A to this Note.
21. The Core Documents should comprise only those documents to which parties will be referring and do not need to include a copy of the National Planning Policy Framework or deal with areas where there is no dispute. Any Appeal Decisions and/or legal authorities on which any party intends to rely will need to be prefaced with a note explaining the relevance of the document to the issues arising in the Inquiry case, together with the propositions on which parties seek to rely, with the relevant paragraphs flagged up.
22. Where any documents on which it is intended to rely are lengthy, only relevant extracts need to be supplied, as opposed to the whole document. Such extracts should, however, be prefaced with the front cover of the relevant document and include any accompanying relevant contextual text.
23. Regarding the requirements for Content and Format of Proofs and Appendices, these were set out in the Annex at the end of the Inspector's Pre-Conference Note. Please can the parties make sure they are familiar with that.
24. The Inspector is content to receive digital copies of the documents and does not require a full hard copy set to be provided in this case.
25. In terms of availability of the documents for interested parties, the Council have indicated that they will provide and update a website for the Inquiry. In addition to this, the Inspector requests that the appellant provides a hard copy set of the parties' proofs of evidence (or summaries thereof where these are provided) and a key drawings pack at the Inquiry venue, for interested parties to view, should they wish to during the Inquiry.

26. There is no reference in the Rules or the Procedural Guide to rebuttal proofs and PINS does not encourage the provision of such. However, where they are necessary to save Inquiry time, it is important that any rebuttal proofs do not introduce new issues. As an alternative to a rebuttal, it may be that the matter could more succinctly be addressed through an addendum Statement of Common Ground.

Timetable for submission of documents

27. Following discussion at the CMC, revised key dates for submission of documents are as follows:

Date	Submission/Action
2 May 2023	<ul style="list-style-type: none"> ● Council to submit a copy of the Inquiry notification letter and list of those notified and site notice ● Initial draft Statement of Common Ground between the Council and appellant
11 May 2023	<ul style="list-style-type: none"> ● All proofs of evidence, appendices and, as appropriate summaries of proofs ● Main Statement of Common Ground including suggested planning conditions ● Core Documents and list thereof (electronic versions) ● Initial draft s106 Agreement
24 May 2023	<ul style="list-style-type: none"> ● Estimated timings ● Draft agendas for the round table sessions ● Any addendum/revised Statements of Common Ground or necessary rebuttal proofs ● Key drawings pack (i.e. those likely to be referred to during EiC and XX) (electronic versions) ● Final draft S106 agreement ● Proof of title (appellant) ● CIL Compliance statement (Council) ● Draft Site Visit itinerary (appellant to lead)
6 June 2023	<ul style="list-style-type: none"> ● Provide hard copy set of the parties' proofs of evidence (or summaries thereof where these are provided) and a key drawings pack at the Inquiry venue, for interested parties to view (appellant) ● Inquiry opens at 10.00

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Any other applications (Costs)

28. At present there are no applications for costs and the Planning Practice Guidance makes it clear that as a matter of good practice, they should be made in writing to the Inspector before the inquiry. The parties indicated at the CMC that currently they do not intend to apply for costs.

29. Costs can be awarded in relation to unreasonable behaviour which may include not complying with the prescribed timetables. Parties are also reminded that to support an effective and timely planning system in which parties are required to behave reasonably, the Inspector has the ability to initiate an award of costs.

Close

30. Thank you for your input and cooperation.

William Cooper

INSPECTOR

26 April 2023

ANNEX 1.
TEMPLATE FOR CORE DOCUMENTS LIST
(Headings / subheadings may be adapted to suit)

1 Application documents and plans

CD1.1
CD1.2
etc

2 Additional/amended reports and/or plans submitted after validation

CD2.1
CD2.2

3 Committee report and decision notice

CD3.1 Offer's report and minute of committee meeting
CD3.2 Decision notice
CD3.3

4 The Development Plan

CD4.1 Policies
CD4.2 Supplementary planning documents
CD4.2

5 Relevant appeal decisions*

CD5.1
CD5.2

6 Relevant judgements*

CD6.1
CD6.2

7 Appeal documents

CD7.1 Statements of common ground
CD7.2 Proofs of evidence

8 Pre-Inquiry documents

CD8.1 Inspector's pre-conference note
CD8.2 Inspector's case management conference agenda
CD8.3 Inspector's case management conference summary

8 Other

CD8.1
CD8.2

*Any appeal decisions or judgements/citations on which a party intends to rely must each be prefaced with a note explaining its relevance to the issues arising in the current appeal case, together with the propositions relied on, with the relevant paragraphs marked up.