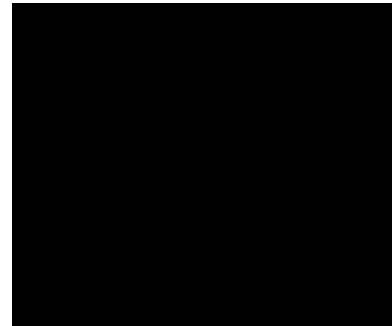


Inspector W Cooper B.A.Hons; M.A.; CMLI;  
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Your Ref: APP/W0340/W/22/3312261

17<sup>th</sup> April 2023

Dear Inspector Cooper,

**Land to the rear of The Hollies Nursing Home, Burghfield Common, West Berkshire – Appeal Ref: APP/W0340/W/22/3312261 – Public Inquiry commencing Tuesday 6<sup>th</sup> June 2023.**

I make the following submissions in support of the Appellants' case in this matter. It is appropriate that I set out the relevant locus that I have for making these submissions:

**Firstly**, I hold the degree of B.A. Hons (TCP) from the University of Newcastle-upon-Tyne. I am Fellow of the Royal Town Planning Institute. After a career in local government I founded Bell Cornwell LLP, one of the largest firms of independent Chartered Town Planners in the United Kingdom. I retired from Bell Cornwell LLP in 2013 but continue with a minor level of professional practice on my own account. I have over 48 years' professional experience in Town Planning.

**Second**, I have lived in Burghfield Common since 1984, a total of 39 years. I know the area very well both as a resident, and also the planning policy context to the area over that time.

**Third**, I was the West Berkshire Councillor for Burghfield Ward for 7 years from 1996 to 2003.

**Finally**, I have been closely professionally involved in issues surrounding the implementation of the DEPZ areas around both Aldermaston and Burghfield for more than 10 years, in the course of advising clients with sites at Pamber Heath (on the edge of Tadley in Basingstoke and Deane Borough area and within

the Aldermaston DEPZ); and also advising the landowners on this Appeal Site, helping to secure its allocation in the current Adopted West Berkshire Local Plan. I am therefore very well versed in the implications of the application of DEPZ policy, and specifically as it affects this Appeal Site.

It is against this background that I make these submissions. It is the case that I have never come across a planning policy that is so poorly thought out and inconsistently and unreasonably applied in the whole of my professional career, and I welcome this opportunity to make my concerns clear.

### **The Context to, and Determination of, the Appeal Application 22/00224/FULEXT.**

The original DEPZ was amended on 19<sup>th</sup> March 2020 following a re-examination of the matter under the REPPiR Regulations. The Aldermaston DEPZ was not amended, but the Burghfield DEPZ was increased from a radius of 1.5 kilometres to a radius of 3.16 kilometres because it was considered necessary to base the assessment of risk on a less likely weather category that could result in different dispersal characteristics. This revision to the Burghfield DEPZ brought the Appeal Site, an allocated housing site in an Adopted Local Plan, within the DEPZ.

The Appeal Site, allocated under Policy HSA16 in the Adopted Local Plan was under several ownerships. It was effectively split into two areas. Phase 1, to the north, comprised a flat area under one ownership immediately behind The Hollies Nursing Home. It was controlled by a developer, Crest Homes, who pursued development of the site, secured planning consent before the DEPZ boundary revision, and completed implementation of the Phase 1 area during 2022. Phase 2, this Appeal Site was in three ownerships. Because of the more difficult topography of the site the landowners were frustrated in their attempts to secure a developer to promote the site through to a detailed planning consent. Eventually the Appellant Company secured an option to develop the site. Because the site was allocated and Phase 1 was already well under implementation at the time the Appellant Company determined to move straight to a detailed planning application for the site to save time, rather than go through the submission of an outline application first. The detailed application took a considerable time to prepare because of the technical details necessary, especially the ecological matters. The application was eventually submitted and registered on 3rd February 2022 under reference 22/00244/FULEXT. The Appellant Company did not expect there to be any 'in principle' objections to the application. The scheme was the subject of discussions and amendments with the Council's Planning Officers whose view was that the scheme was acceptable. During this time the Appellant Company was not aware of the Council's response to the submissions made into the Draft Local Plan Review, which was not published until December 2022 (**Appendix 1 refers**)

It was not until very late in the day that the Council's Emergency Planning Officer issued an objection to the principle of the development. This came as

something of a shock not only to the Appellant Company and myself, but also to the Council's Planning Case Officer. The Appellant Company sought an Opinion from Gregory Jones KC, which is attached as **Appendix 2** to these submissions. The salient conclusion is set out at Page 2. King's Counsel notes that (under 'I'):

***'...there is no apparent reason why, at the very least, a public version of the off-site emergency plan should not be published...'***

The non-availability of this Emergency Plan from the Council on which the proposed development should have been assessed was of serious concern and others will discuss this in more detail at the Inquiry. And then, under 'ii':

***'The Regulations and Guidance do not ban development within the DEPZ. On the contrary, they envisage that development will come forward within the DEPZ. The Council must therefore consider whether the Proposed Development can be accommodated within the off-site emergency plan rather than treating the DEPZ as a blanket ban on developments'***

It is painfully apparent that this application proposal was **not** assessed against the Emergency Plan by the Council as it should have been. Representations were made to the Council at the time that they set out the reasoning as to how the proposed development contravened the DEPZ issues, but none was forthcoming. Certainly, neither the Officer's Report on the application, or the Refusal Notice provide any such reasoning. This is not surprising because it transpired that the Emergency Plan was out of date, should have been reviewed some considerable time before, and was not even then in course of Review. But despite this the Council resolved, under officer delegated powers, to refuse the application by Notice dated 1<sup>st</sup> June 2022, effectively under the sole reason for being contrary to the DEPZ policy. It is the purpose of this Public Inquiry to determine the matter. In discussion with the Council's Case Officer I sought at the time to understand the rigid line being taken by the Emergency Planning Officer. The view was that the Emergency Planning Officer had taken the view that *'a line had to be drawn somewhere.'* The DEPZ was being regarded as a blanket ban on development by the Emergency Planning Officer. The Appellant Company had no alternative but to appeal, which was made to PINS on 2<sup>nd</sup> December 2022.

**The Kingfisher Grove, Three Mile Cross, Reading Appeal Decision of 31<sup>st</sup> January 2023 (APP/X0360/W/22/3304042 refers).**

Some 8 weeks after the submission of this appeal an appeal decision was issued by PINS relating to the above site, on 31<sup>st</sup> January 2023. It is of great significance to this appeal for several reasons, and is attached as **Appendix 3** to these submissions.

**Firstly**, that site, within the Burghfield DEPZ, was for a larger development than for this appeal (49 dwellings against 32 on this Appeal Site), and the site itself is larger in area.

**Second**, the site was not allocated for housing in an Adopted Local Plan, unlike this Appeal Site.

**Third**, the site was downwind of ROF Burghfield in respect of the prevailing wind for the area (from the south-west), whereas this Appeal Site is upwind of ROF Burghfield and any radioactive discharge from ROF Burghfield would almost certainly not pass across this Appeal Site, unlike the Three Mile Cross site.

All of these factors militate in favour of this Appeal Site securing planning consent for the proposed development. But it is the terms under which Inspector Rollings came to his decision that are so relevant to this Appeal. The key paragraphs are 8-22. I draw out the following excerpts from this Appeal Decision which are highly relevant:

**'9 National Planning Policy Framework (2021) (the Framework) paragraph 95 suggests amongst other considerations, that operational sites for defence and security purposes should not be affected adversely by the impact of other developments....**

**12 The Council and the appellant agree that such a risk, or the risk of an incident occurring, is very small....such an event could occur on a 1 in 10,000-year basis. The consideration of additional factors such as meteorological and wind conditions and adherence to the REPPiR Plan reduces the risk of a person on the appeal site being harmed by such an incident to a single event in many more thousands or millions of years...**

**13....The same low risk factors mean that the requirement to shelter would be over a short period of no more than two days...**

**16....Given that the plan has the capacity to cover an incident in those sector areas, and that service resources would be predominantly focused on only one sector area, I consider that the addition of the proposed dwellings on the appeal site would not compromise the delivery of the plan....**

**18 Based on the appellant's modelling, were an incident to occur, a person at the appeal site who was not sheltering might be exposed to a radiation dose of 1.5 milliSieverts (mSv). Advice from the Health and Safety Executive categorises the risk impact of such a dose to 'minor'....WBDCs public advice provides example levels of 0.02 mSv from a single chest X-Ray, 1 mSv as the average annual dose in the UK from naturally occurring radon in homes and 2 mSv as the average total annual dose in the UK from natural radiation sources, 8 mSv as the average annual dose from all radiation in Cornwall...**

**19 The effective dose received by anyone within the zone within the conditions set out previously would therefore be low, and lessened if REPPIR advice is followed...**

**20....road traffic levels are unlikely to be greater than normal and the ability of services to access the zone would not be adversely affected..**

**21 I have been made aware of other appeal decisions in which siting within the DEPZ have been factors in their dismissal. In each of these cases the evidence was considered by way of written representations. The Inspector in the Diana Close appeal adopted a precautionary approach in the absence of detailed evidence. In comparison the evidence presented to me in this appeal has been examined and tested....**

**22 I therefore conclude that the proposal would not present a barrier to the ability of blue light services to safely carry out their duties, and nor would it affect the Council's ability to execute and manage its obligations under the REPPIR plan. Furthermore, people living in or using the appeal site could be safely accommodated. Together, these considerations form the thrust of MDD Policy TB04 and, as such, I find no conflict with this policy. Additionally, the development would not adversely affect the continued operation of the AWE site, and there would be no conflict with the NPPF.'**

Inspector Rollings is very careful, at the end of paragraph 21 to note that:

**'....Given its bespoke circumstances, I do not consider that it would result in the creation of a precedent for allowing other development in the DEPZ that in any case must be assessed on its own merits..'**

Nevertheless, the parallels between this case and this Appeal Site are too similar to ignore. The Inspector's findings are of a fundamental and 'in principle' nature which apply to both sites. Indeed, this Appeal Site is less impacted by the DEPZ location than the Kingfisher Grove site for the reasons stated above. It is, with respect, difficult to believe that any decision could be arrived at other than to allow this Appeal.

### **The Inconsistent Approach to the Appeal Site by the Emergency Planning Officer, AWE Burghfield and ONR.**

The DEPZ boundary was amended on 18<sup>th</sup> March 2020. It brought the Appeal Site within the DEPZ boundary. At that time the Appeal Site was an allocated Housing Site in the Adopted West Berkshire Local Plan, and the northern half of the allocation was already under implementation. In September 2020 the Council published the Draft Version of its Local Plan Review to 2037. In this document the HSA16 Appeal Site housing allocation was to be retained. This document went out to public consultation from 11<sup>th</sup> December 2020 to 5<sup>th</sup> February 2021. This public consultation period therefore began nine months **after** the Appeal Site had come within the DEPZ boundary.

The Consultation Responses to Policy RSA16 made to this Draft Local Plan Review, were published in December 2022 (**Appendix 1 refers**). The site was removed from the Local Plan at the request of Emergency Planning Officer. It states:

***The site lies within the inner DEPZ of AWE Burghfield. Development will increase the population density of the area, which will inevitably compromise the effectiveness of emergency evacuation procedures in the event of an incident at AWE. There is potential harm to future public safety.'***

The basis on which the development will **inevitably** compromise the effectiveness of emergency evacuation procedures given the lack of an up to date Emergency Plan to assess the site against, and the conclusions reached by Inspector Rollings at Three Mile Cross appeal is not stated. The Appellant Company submitted the Appeal Application Ref 22/00244/FULEXT on 3<sup>rd</sup> February 2022, a year after the close of that consultation period. They were not aware of the Council's response to the consultation responses to the Draft Local Plan and for much of the intervening year the Appellant Company was expending significant time and financial resources in undertaking the many necessary technical appraisals and design issues necessary to prepare a detailed planning application for the Appeal Site. Given that:

- 1 The Appeal Site was a statutorily adopted housing allocation in the Adopted Local Plan; and
- 2 Was already in course of implementation on the northern part of the allocation area, with Crest Homes putting in all services and utilities of a sufficient scale to accommodate the full development of the allocation site, including the appeal site; and also constructing the access road to a standard able to accommodate the whole of the allocation site development, and built up to the boundary between Phases 1 and 2 of the allocation site to prevent any ransom strips, a requirement that had been a condition of the detailed planning consent for Phase 1; and
- 3 With no objections to the continued allocation of the Appeal Site as a continuing housing allocation in the Draft Local Plan Review from the Emergency Planning Officer, AWE Burghfield or ONR;

it is not surprising that the Appellant Company felt secure in undertaking this substantial commitment. It is also not surprising that the late objection to the proposed development by the Emergency Planning Officer during the determination of Application Ref 22/00244/FULEXT came as a profound shock to the Appellant Company, especially given that the objection was made without any assessment of the proposed development against the Council's out of date Emergency Plan; and also against the background of the comment that '*Well, the line had to be drawn somewhere!*' It seemed then, and seems now to be an unreasonable view to take. Even more so following the findings of Inspector Rollings at the subsequent Three Mile Cross Inquiry.

### **The prospect of a Judicial Review of the Three Mile Cross Appeal Decision.**

On 22<sup>nd</sup> March 2023 Pinsent Masons Solicitors, acting for AWE plc, sent the attached letter (**Appendix 4 refers**) to the Appellant Company's Planning Consultants, Provision. The letter seeks to explain why AWE plc did not seek a judicial review of the Three Mile Cross Appeal Decision. They state:

***'...AWE considers that the Inspector erred in their application of national defence and security policy, the 'agent of change' principle and in their approach to public safety considerations more generally. The Inspector also failed to have adequate regard to AWE's objection to the development, as put before the Inspector in the local planning authority's Emergency Planning Proof of Evidence. AWE also finds errors in the technical emergency planning evidence before the Inspector.***

***However, AWE understands that statutory challenges are not an opportunity to revisit the merits of a particular planning decision and that there are limited grounds for introducing new evidence that was not before the Inspector at the time of determination. On this basis, AWE has elected not to proceed with a legal challenge in this particular case.'***

I find this to be a disturbing statement. It would appear from the above comments that AWE plc considers that Inspector Rollings was nothing short of incompetent in the way that he determined that Appeal Decision. It is as though AWE not only takes offence at any questioning of their decisions, but seemingly cannot even comprehend how anyone could do so. It suggests an arrogant attitude that their view is overriding of all other planning considerations. They casually throw around emotive phrases designed to scare, such as '*national defence and security policy*' as sufficient issues in and of themselves to render any opposition wrong by definition. AWE have even stated in one of their communications that this Appeal Site '*...is a threat to National Security*'. Presumably the Three Mile Cross site was of the same status in their eyes. Such emotive statements do their case little good, especially when, time and again their decisions, when examined against their own policies, are found to be severely wanting, and their application of their policy to be excessive and unreasonable. This is clear from the view taken by Inspector Rollings. They also fail to take into account that a Planning Inspector is not there just to sign off on their objection, but has a wider remit to consider their issue against the wider planning context and the proper planning of the area. Theirs is just one of many issues that the Inspector must take into account and balance, as Inspector Rollings clearly did so; that much is self-evident from reading his decision letter.

Any agency, seeking a judicial review of a decision has to meet the following test: '***Could the decision maker reasonably have come to the decision that they did based on the evidence before them.***' That is a fairly high test. But, given the gross errors that AWE plc consider Inspector Rollings to have made it is the case that AWE plc would have had a sound case to proceed. And had they been successful the appeal decision would have been quashed, which is presumably what they wanted to happen. Their arguments in this matter are otiose.

This attitude by AWE has been apparent for many years. In 2012 the current West Berkshire Local Plan was subject to an Examination in Public before Inspector Simon Emerson. I attended that EiP. In dealing with the policies relating to the nuclear facilities in the area (AWEs Aldermaston and Burghfield). Inspector Emerson became frustrated at the lack of coherence and the implications of the proposed policy. He therefore suspended the Examination of the matter and requested that a representative from AWE and/or/ONR attend the Examination to answer questions to clarify the situation. The result was a session in which that representative simply could not answer Inspector Emerson's questions clearly. The situation became so 'Kafkaesque' that Inspector Emerson felt that he had no other recourse but to proceed to approve the Local



Plan, but requiring West Berkshire Council to agree its approach with all of the other adjoining local authorities affected (Wokingham, Reading and Basingstoke and Deane) within a two or three year period, (I forget which) not wanting to delay the adoption of the Local Plan any further than was necessary.

### **A Revised Approach.**

Current Adopted Local Plan Policy CS8 states, in its Explanatory Text, that **nearly** all new housing within the DEPZ will be rejected. That statement clearly indicates there will be some circumstances in which that some new housing can be provided within the DEPZ. It does not give any guidance as to under what circumstances such housing would be acceptable other than that it should not contravene the Emergency Plan. But the Emergency Plan is out of date and has not been reviewed. And the Emergency Planning Officer objected to the proposed development without assessing this appeal scheme against the Emergency Plan anyway. This Policy CS8 is applied as if it were a prohibition on all new housing development in the DEPZ. Yet that is manifestly **not** what the Regulations and Guidance say (Appendix 2 refers) or what the Explanatory Text to the policy makes clear.

This Policy has been so inconsistently applied across the years that it is seriously undermined. Some proposal for new development have received no objections from the Emergency Planning Officer, while others have been rejected outright. The situation becomes really serious in the adjoining Borough of Basingstoke and Deane where the second largest settlement in the Borough, Tadley, has been sterilised to new housing development for more than a decade because of its close proximity to AWE Aldermaston. On several occasions Councillors have become so concerned that they have overtly gone against objections from the Emergency Planning Officers and allowed significant new housing because they are worried about the continuing viability of the settlement, with all of its highly sustainable services and facilities. AND I AM AWARE THAT THE Council's Planning Policy Officers are very dissatisfied with the situation. The proper planning of the second largest settlement within their Borough cannot be undertaken, with the knock-on implications that has for the effective planning of the whole Borough.

The Basingstoke And Deane Local Plan Update Issues and Consultation took place during October and November 2020. I submitted representations to that document and to later public consultations on that Review. In those I submitted a revised Local Plan Policy to give clearer and more effective guidance to overcome the current unsatisfactory position, I drafted this Policy and discussed it with Dr Mike Thorne, who is a recognised Radiological Impact Expert and who gave evidence for the Appellant Company at the Three Mile Cross Inquiry before Inspector Rollings. I have also submitted a similar proposal at the public consultation stages of the West Berkshire Local Plan Review and particularly the Proposed Submission version of that document on 4th February 2023. A copy of those submissions is attached (**Appendix 5 refers**).

In those submissions I argue for the retention of this appeal site as a housing allocation under Policy RSA19; and I also address issues arising from the revised approach to AWE Burghfield as set out in Proposed Policy SP4. I then propose a Draft Revised Policy SP4, as follows:

**'Policy SP4 'Atomic Weapons Establishment (AWE) Aldermaston and Atomic Weapons Establishment (AWE) Burghfield.**

**The Council requires that any development that falls into the categories set out in the Table below in the land use planning consultation zones surrounding (1) Aldermaston and (2) Burghfield to be managed in the interest of public safety.**

**Relevant development proposals within the Consultation Zones, and especially those within the DEPZ, will be required to be accompanied by a Radiological Impact Assessment (RIA) prepared by a recognised specialist. The RIA will evaluate the potential impact of the proposed development on the Offsite Emergency Plan, including the use and scale of development proposed, and the location of the development, against the following criteria:**

- A) Warning and informing of the affected population;**
- B) Short-term and long-term sheltering;**
- C) Evacuation and relocation/resettlement needs;**
- D) Access and egress for emergency vehicles;**
- E) Requirements for resettlement, decontamination and long-term recovery;**
- F) Any other notified appropriate issues.**

**If the RIA demonstrates to the satisfaction of the Council that the Offsite Emergency Plan can accommodate the needs of the population in the event of an emergency then the proposed development will normally be considered acceptable under the terms of this policy.**

*This revised policy wording is intended to enable Proposed Policy SP4 to be clearer, criteria-specific and robust, whilst allowing for appropriate development which meets the policy tests. It will give much greater clarity to developers, and also allow the Council some agency in the application of the policy, rather than the current indiscriminate objection to all new development within the DEPZ.'*

The Council's response to these submissions is to state, in their response to the consultation submissions that *'the proposed wording does not align with national guidance and is therefore not proposed.'* I do not understand how that is the

case, and no further explanation is given in the Council's response. The Proposed Submission Local Plan Review was submitted to the Secretary of State on 31<sup>st</sup> March 2023, with Proposed Policy SP4 going forward unamended and the Appeal Site deleted as an allocation.

## **Conclusion**

The application of the restriction of new development within the DEPZ to the extent that it is routinely applied as a complete ban on new development by the Emergency Planning Officer on the basis of no effective Emergency Plan to assess schemes against within the zone has been both unreasonable and out of all proportion to the actual risks involved. The implication is given that a major loss of life could occur if an event were to take place. The Three Mile Cross decision gives the lie to that statement. Yet when the evidence is actually drilled into, the maximum likely exposure would be similar to me taking my family to Cornwall for two weeks and being subject to the radon emitted by the granite there. That is not a reasonable or proportionate view to take. Cathode ray tubes in pre-LED televisions, which we all grew up with, emitted significantly more radiation than any spill from AWE Burghfield is likely to emit. The risk is so remote as to be vanishingly small, and any adverse effect to be 'minor' according to the Health and Safety Executive. The attitude to risk is simply unreasonable.

Planning policy officers cannot plan effectively for their communities. Applicants have no guidance against which to either assess their own schemes, or against which the Emergency Planning Officer can assess the proposal. The Emergency Plan, when requested, was said by the Council not to be available, despite the fact that it is supposed to be a public document. It was eventually released in a highly redacted form by the Council despite being out-of-date and with no programme for its update available. And on this basis the appeal application was summarily refused. That is unreasonable.

The Appeal Site is an allocated housing site in an Adopted Local Plan, a major part of which has already been built out and with upsized services, utilities and road access implemented to accommodate the development proposed. That is a gross waste of land and is unreasonable.

Notwithstanding Inspector Rollings' view that his decision could not be taken as a precedent (of course, because we all know each site is unique) it is the case that the parallels between the Three Mile Cross site and the Appeal Site are so glaringly similar that a different conclusion is difficult to contemplate. Indeed, the Appeal Site is better to development in respect of this issue than the Three Mile Cross site in several key respects, being smaller in scale and size of site; upwind, rather than downwind, of AWE Burghfield; and allocated for housing in an Adopted Local Plan. To prevent its development in those circumstances would seem to be to be unreasonable.

Finally, I have been struck over the years by the conundrum that, if development within these large urban areas, including major towns such as Reading, Wokingham and Tadley, let alone Burghfield is so at risk from the activities occurring within AWEs Aldermaston and Burghfield, then why on earth were these facilities located where they are in the first place. In very recent years literally hundreds of millions of pounds has been spent on AWE Burghfield to modernise and refurbish the facility and to render it much safer than it used to be. That being the case why is such a disproportionate attitude being taken to the risk involved now, when that expenditure has presumably significantly reduced the minimal risk even further.

I do apologise for the length of these submissions but the issues involved are serious and go to the heart of the competent and sensible planning of these communities, which is being frustrated by the unreasonable attitudes to the risk of new development taken by the Emergency Planning Officer and AWE Burghfield. I thank you for taking these submissions into account in your determination of this appeal.

Yours sincerely,

**JOHN W CORNWELL FRTPI,**  
**Chartered Town Planner**

