

IN THE MATTER OF
LAND TO THE REAR OF THE HOLLIES NURSING HOME, READING ROAD
BURGHFIELD COMMONS RG7 3LZ
PLANNING APPEAL REF: APP/W0340/W/22/3312261

OPENING STATEMENT ON BEHALF OF
THE OFFICE OF NUCLEAR REGULATION (2ND R6 PARTY)

INTRODUCTION

1. The Second Rule 6 Party, the Office of Nuclear Regulation (“ONR”) is the UK’s independent nuclear regulator for safety, security, and safeguards. It exists to protect people by securing safe nuclear operations.
2. ONR is in a unique and uncommon position at this Inquiry: it attends in its capacity as regulator with two main purposes:
 - a. To assist the Inspector in respect of ONR’s statutory duties and processes; and
 - b. To ensure that the position of ONR is not misunderstood by any party to the Inquiry.
3. To that extent, although ONR opposes the proposed development, it does so on the basis that it supports and agrees with the Council’s assessment as regards issues of relevance to ONR. It would not be appropriate for ONR to seek to step into the Council’s decision-making process, nor for ONR to second guess the Council. It is therefore on a limited basis that ONR advances a positive case against the proposed development.

THE LEGAL POSITION

4. It is worthwhile setting out the four corners of the context of nuclear regulation in opening, with apologies for going straight to judicial authority. However, in 2021, Mrs Justice Thornton handed down judgment in *Crest Nicholson v West Berkshire Council*¹. The written

¹ [2021] EWHC 289 (Admin)

evidence submitted to this Inquiry suggests that by and large, there is no serious disagreement between the parties that Crest Nicholson accurately reflects the legal position.

5. In Crest Nicholson, the judge:
 - a. explains in detail the framework of the Radiation (Emergency Preparedness and Public Information) Regulations 2019 (“REPPIR19”);
 - b. sets out how Detailed Emergency Planning Zones (“DEPZ”) are designated;
 - c. explains the regulatory position of ONR, and considers that role in depth;
 - d. endorses the Approved Code of Practice published by ONR; and
 - e. Considers the relative positions of the operator, the local council and the regulator.
6. ONR relies on the judgment, and to save Inquiry time, does not seek to repeat matters which are addressed within it. In respect of the issues in this Inquiry, ONR considers that it is important that the judge noted the “multi-layered” nature of regulatory oversight.

THE CRITICAL QUESTION

7. The ONR notes some focus in the written evidence from the parties in respect of hypothetical scenarios and theories. It questions the extent to which this is relevant to the issues in this Inquiry, which occurs in circumstances where there is an Offsite Emergency Plan (“OSEP”) in place.
8. The OSEP needs to deal with whatever it is presented with. It does not take a view on the likelihood of a certain event occurring, so a discussion of likelihood may not assist the Inquiry. When evaluating the adequacy of the OSEP, the underlying assumption is that the radiation emergency has happened; however likely or unlikely that might be.
9. Similarly, ONR suggests that evidence seeking to minimise harms or to reduce the planned emergency response would also be of no assistance: an OSEP is the response to a radiation emergency with serious consequences. It is unsurprising that a precautionary approach must be adopted, given the nature of the subject matter.
10. Further, the ONR consider that the nature of a radiation emergency is relevant. It is more than a dose of radiation. It is a multi-faceted, multi-agency, local and national event with serious consequences.

11. It follows that so far as ONR is concerned, the critical question for this Inquiry is whether the proposed development can be accommodated within the OSEP.
12. ONR's view as regulator is that further development in the DEPZ may have the potential to impact upon adequate implementation of the OSEP.
13. As a result of its regulatory engagement, the ONR has assured itself that the Council's decision-making arrangements for recommendations are suitable. The Council is the guardian and implementor of the OSEP. If the Council cannot make a positive case that the proposed development can be accommodated within the OSEP, the ONR's position is that that proposed development should be refused.

CONCLUSION

14. The Council has not made a case that the OSEP can accommodate the proposed development. Accordingly, in due course, the Inspector will be invited to dismiss the appeal.

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