Land to the rear of The Hollies Nursing Home, Reading Road, Burghfield Common

LPA ref: 22/00244/FULEXT

PINS ref: APP/W0340/W/22/3312261

APPELLANTS' CLOSING SUBMISSIONS

INTRODUCTION

1 As the Inspector is aware, this Appeal concerns a proposal for 32 new homes (of which 40% would be affordable) comprising what is in effect Phase 2 of a site allocated for such development in the Development Plan (HSA16), and lying within the settlement boundaries of Burghfield Common. The Appeal Site is locationally sustainable for the scale of development proposed, and a high quality scheme in a verdant and attractive setting is achievable. Phase 1 has been consented, built out and occupied.

2 For the reasons set out below, the Appellant submits that the Appeal Scheme is Development Plan compliant, and no sufficient reason has been provided by the Council or other opposing parties as to why the allocation should be overridden.

MAIN ISSUE 1: The effect of the proposal on the safety and wellbeing of future residents of the proposed development, and wider public, with regard to the proximity of the Atomic Weapons Establishment (AWE) site at Burghfield.

MAIN ISSUE 2: The effect of the proposal on the future capability and capacity of AWE Burghfield to operate effectively.

[1] Risk of harm to the residents of the Appeal Scheme

3 This case is not concerned with a nuclear detonation (CD5.20, §2.8), a reactor accident (CD5.20, §2.8), release of tritium (Richardson Reb §1.17) or (per CD5.20, p17) any

other form of fission material release (akin to a reactor accident). It is concerned with a detonation in a hot cell leading to a release of Pu (and possibly U) particles in an airborne plume. As Person AW confirmed in XX, there is no evidence before the Inquiry of any other type of event (greater, lesser or comparable) with possible radiological consequences for the Appeal Site.

4 It is a fundamental starting-point for this Inquiry that, notwithstanding the expansion of the DEPZ, **the risk has not changed**. Expansion of the DEPZ via REPPIR 2019 reflects a more precautionary approach to the area where advance emergency planning should be in place, to cater for less likely (ie, here, Category F weather) circumstances. Confirmation that the risk has not changed is evident from a number of documents before the Inquiry, including: (i) Ms Richardson's March 2020 report to the Council's Corporate Board [CD5.19, p2]; (ii) AWE's website [Pearce Reb App 2 – "the increase is not indicative of any change in processing, safety standards, or process risk in respect of our operations or facilities"]; (iii) Person AW's confirmation [her 1st proof §5.12] that there have been no material changes in terms of pathways or "for the person exposed" "due to the release being the same", the significant change being inclusion of Category F conditions; and (iv) ONR's evidence to like effect summarised by Thornton J at ***Crest Nicholson*** §§46, 51, 61.

5 Even AWE accept that the current, unaltered risk is at least "tolerable" and "very low" for the surrounding population (Person AW's 1st proof, §10.5; and rebuttal §2.6), and that this would not change if the Appeal Scheme were built out. A "tolerable" risk is defined by HSE as one where there is "a willingness by society as a whole to live with a risk so as to secure certain benefits in the confidence that the risk is one that is worth taking and that it is being properly controlled" [CD16.22, para 12 (p8)].

6 Indeed, it is extremely revealing that (unlike legislative requirements affecting nuclear sites run by the private sector) AWE's operations are not insured, but MOD chooses instead to "self-insure". It is inconceivable that this is anything other than a conscious decision made following a cost/benefit analysis. The position is, therefore, that MOD does not consider that the risk of an off-site emergency (let alone the reference accident) justifies the payment of insurance premia.

7 As to how remote the reference accident is, the Inspector is invited to accept, as a reasonable basis for the judgments required in this case, Dr Pearce's "precautionary" (see his 1st proof, §39, §131, §133) assessment of 1 in 10,000 years. Further:

7.1 His assessment of 1 in 10,000 years reflects Dr Pearce's explanation at §§101-2 of his 1st proof, based on published material relating to earlier "consequence assessments". This is a credible and reliable approach for present purposes in circumstances where the reference accident is the same (and all that has materially changed are the weather conditions assumed). Dr Pearce's extrapolations were not specifically challenged in XX by AWE.

7.2 Dr Pearce's precautionary approach is evident when one considers the ONR's 2015 paper at [CD12.19] which (at §2.3.4, p9 of the PDF) states:

> "… if the goals set by ONR are met in full for a nuclear site, the likelihood of a radiation emergency occurring that could justify any short term or urgent offsite actions to protect the public would be around 1 chance in 100,000 per year or even less. For perspective, emergencies of this low likelihood fall at the lower limit of events considered to be worthwhile including within the UK National Risk Register".

ONR confirmed (per Mr Rogers in XX) that the AWE sites operate at ALARP and in the manner ONR requires. Nonetheless, Dr Pearce has used an event frequency 10 times more likely than ONR's "full" safety level objective.

7.3 AWE has chosen to put no material before the Inquiry on the topic of reference accident frequency. AWE could have sought closed hearings to do so, and the Appellant would not have resisted these. In consequence of the tactical choice made by AWE, there is no evidence before the Inquiry questioning Dr Pearce's precautionary figure. It is of course possible that this means Dr Pearce has been overly cautious (or, at any rate, more cautious than AWE in the material it has elected not to seek to place before the Inquiry). At any rate, AWE can hardly now complain if the sole reasoned assessment placed before the Inquiry is adopted as a reasonable surrogate for decision-making.

7.4 It is particularly significant in this regard that, at the Kingfisher Grove inquiry, Dr Thorne reached the same conclusion (reference accident frequency assumed at 1 in 10,000 years), and the Inspector (again in the absence of any specific competing information) cited this analysis with apparent approval at DL12 [CD8.3]. The principles of consistency in planning decision-making require any party wishing to dispute such a conclusion at a subsequent Inquiry to produce specific new evidence on the matter at hand.

7.5 The Council pursued questions of Dr Pearce in XX based on the absence of the words "reasonable foreseeability" from REPPIR 2019. With due respect, this line of question missed the point. There is a difference between the reference accident and the consequences that might (depending on the weather assumed) be caused. REPPIR 2019 has not substantively changed the approach to the selection of the worst-case reference accident (as Dr Pearce confirmed by reference to the risk matrix in Appendix 2 of the Guidance [CD5.39, p180-1]), nor has the worst-case reference accident for relevant purposes in fact changed (as AWE and ONR have confirmed). Thus, as the reference accident is the same, it is appropriate (as has Dr Pearce) to approach its assumed frequency in the same way as earlier published material did. It is a confusion on the Council's part to mix these matters up with the need to factor in "less likely" consequences caused by "less likely" weather conditions.

8 Next, as Person AW agreed in XX, it is appropriate to take account of the chances of the weather conditions causing material radiological consequences at the Appeal Site. Person AW also agrees (her rebuttal at §10.3.3) that it is appropriate to use the wind rose for RAF Benson, and no party has put forward any other meteorological analysis. What emerges is:

8.1 Category F conditions with the wind blowing towards the Appeal Site occur 0.5% of the time (as agreed by Person AW in XX) – accounting for the light and dark blues shown at p34 of Dr Pearce's main proof.

8.2 Category F conditions typically occur "on cold clear nights with slight winds which produce very little turbulence in the atmosphere so very little spreading":

Pearce §105 and f/n 48. The Inspector can form his own judgment as to whether windows and doors in the Appeal Scheme would for the most part already be closed during such conditions.

8.3 It is striking that the wind rose shows that the prospects of Category F conditions in the direction of the (open air) Madejski stadium (capacity: >24,000 – but with permission to expand by a further 12,000) are 3 times higher. There has been no suggestion from any party that AWE limits its operations (or is required to do so) to avoid relevant activities when the stadium in question is full. On this basis alone, it is very hard to follow the suggestion that 32 homes at the Appeal Site risks causing disruption to (or cessation of) activities at AWE(B).

9 Putting together reference accident frequency and the chances of Category F weather blowing towards the Appeal Site, the chances of the reference accident affecting the Appeal Site are 1 in 2,000,000 years. If using the more precautionary 1.5% at Pearce §133, the chances are 1 in 666,667 years.

10 Turning to impact on those living at the Appeal Site, Person AW agreed in XX that a reasonable surrogate for the dose caused by the reference accident is 11.3mSv, assuming (somewhat unrealistically) that a person stays outside for the 2 day duration of the plume. Person AW also agreed that around a 40% dose reduction (ie, to around 6.78mSv) was a reasonable surrogate for a person who takes shelter[1]. (These doses were calculated by Dr Pearce using models derived by senior NII Inspectors: see Pearce §§105, §120-1). While substantial steps are, and must be, taken to avoid such unnecessary doses, a proportionate approach to planning decision-making requires a level-headed appraisal of what such doses mean. In this regard:

10.1 There is no material evidence before the Inquiry which places in serious question Dr Pearce's assessment [main proof, §39, §129] that: "The doses likely to be received are comparable to those met in everyday life and these would pose no material threat to the health and wellbeing of the occupants of the

[1] Person AW's oral evidence on this matter was an abandonment of the quibbles set out in §10.3.1 of her main proof.

development". Indeed, the average naturally occurring annual dose in the UK is 2.7mSv (6.2mSv for those living in the USA), with the figure at 8mSv for those living in Cornwall (as the Kingfisher Grove Inspector took into account: see [CD8.3, DL18]).

10.2 An IAEA publication in 2012 [CD5.40, p36] states: "*At doses below 100 mSv there would not be any detectable cancers or other severe health effects even to the foetus. The termination of a pregnancy at foetal doses of less than 100 mSv is NOT justified based upon the radiation risk. An increase in the cancer rate has not been detected in any group of people who received a whole-body dose from external exposure below about 100 mSv".* Person AW confirmed in XX that there has been no subsequent recalibration in respect of this conclusion by the IAEA.

10.3 The REPPIR Risk Framework [CD5.39, p38-39; and App 2, fig 1, p180] shows doses 1-10 mSv as "minor" with no potential for deterministic effects. 10-100 mSv is "moderate", and 11.3mSv is at lowest end of this band, with 0.06% risk of harm: Pearce §126.

10.4 Those who choose to live (and work) in the vicinity of the AWE sites do so in the knowledge of the proximity of those facilities, and the remote risk of a radiation emergency, not least because of the leaflets circulated by the Council. People choose to do so for their own many and varied reasons, whether it is proximity to a workplace or to friends and family living in the area. Anyone newly moving to the area will do their research first, and can be expected to make such a decision in full knowledge of the AWE sites. Thus, those who choose to live and remain in the DEPZ accept the remote risk of a radiation emergency, considering that the benefits of living there outweigh.

11 Putting relevant matters together, Dr Pearce at §133 assesses the risk of harm to a resident of the Appeal Site at 1 in 1,000,000,000 years. It can be noted that 3 of the 4 inputs were agreed by Person AW as justified during XX, and in relation to the 4th (frequency of the reference accident) AWE has elected to put no material before the Inquiry of its own conclusions.

12 The significance of such an individual risk level can be assessed in the context of HSE's advice [CD16.22, §130, p45]: "HSE believes that an individual risk of death of one in a million per annum for both workers and the public corresponds to a very low level of risk and should be used as a guideline for the boundary between the broadly acceptable and tolerable regions". Dr Pearce's assessment places individual risk 3 orders of magnitude (ie, a thousand times) below the identified threshold.

13 In summary, the level of risk to those living at the Appeal Site provides no justification whatsoever for refusing this Appeal. Any other conclusion would be unjustified in light of the analysis summarised above, and would no doubt be a very considerable shock to the existing residents of the DEPZs. Such a conclusion is also consistent with the ONR (Mr Rogers) confirming in XX that the residual risk to the 7000+ FTEs on the AWE sites (which includes risk of death from criticality events) is within acceptable ranges.

[2] REPPIR 2019

14 It is fundamental to appreciate that REPPIR 2019 are emergency planning regulations and not land use planning regulations. There is a clear confusion on this matter in the evidence of the Council and AWE. The ***Crest Nicholson*** judgment at §76 [CD8.4] could not be clearer, Thornton J summarising (emphasis added):

> "The purpose of the DEPZ is to set a zone around a site where it is proportionate to pre-define "protective actions" which can be implemented for public safety in the event of a radiation emergency. The word 'planning' in the term DEPZ is used in the sense of planning to deal with a radiation emergency to mitigate radiological risk to members of the public. **The Regulations are not land use planning regulations**".

15 A number of important consequences flow from this (beyond the obvious point that the Appeal Site is now within the zone for which it is "proportionate to pre-define 'protective actions'"):

15.1 REPPIR 2019 says nothing at all about what might be described as "planning balance" considerations. That is unsurprising – it is not a land use planning

regime. Thus, REPPIR 2019 has nothing at all to say about issues such as (i) the remoteness of a reference accident affecting the Appeal Site, (ii) the remoteness of harm befalling a resident of the Appeal Site, (iii) the status of the Appeal Site as a recent allocation (the only one in the DEPZ without planning consent), and (iv) the wider benefits of the Appeal Scheme. Similarly, and as confirmed by ONR at the Planning RTS and reflecting its published material [CD12.7 §4.3; and CD16.51], the above-listed matters of planning judgment are outside ONR's "brief" and are not factored into ONR's advice or evidence to the Inquiry in any way. These matters of planning judgment are left to the Inspector, in the same way as they were left to the Secretary of State in the Boundary Hall, Tadley appeal.

15.2 It is, however, striking to note that Parliament could have imposed via REPPIR 2019 some sort of restriction or moratorium on residential development in the DEPZ. Parliament clearly considered that such a step was neither proportionate nor necessary.

15.3 Further, it is striking that, if thought justified, Central Government could have consulted on and promulgated a national policy to like effect, either generally or in respect of particular nuclear sites. Again, this has plainly not been considered proportionate or necessary.

15.4 Indeed, the "Defence in Depth" approach says nothing about restricting population levels or density.

[3] Alleged risk of the Appeal Scheme impacting on the effectiveness and/or adequacy of the OSEP

16 The starting point here is to recall the clear evidence of Ms Richardson in XX in the morning of Day 2 (prior to her afternoon evidence in which she sought repeatedly to pass OSEP adequacy questions to ONR) that:

16.1 If the Appeal Scheme had (like phase 1 of HSA16, and other schemes) been consented prior to REPPIR 2019, it would have been adequately accommodated within the OSEP; and

16.2 Her assessment that the OSEP is adequate and that the Council has discharged its obligations under REPPIR reg 11(1)-(2) includes (as also stated at §7.12 of her main proof) her taking account of the consented but unbuilt development which the Council is not proposing to take any steps to prevent (eg, through revocation).

17 Against such clear acceptances in evidence, there needs to be a coherent explanation as to why a modest scheme of 32 new homes creates a material risk[2] that the OSEP would slip into inadequacy. The Appellant's primary position, supported by expert evidence from in particular Dr Pearce (a highly qualified and experienced nuclear physicist and emergency planner), is that the existence of any such material risk has not been justified.

18 Significantly, it can be noted that none of the parties opposing the Appeal Scheme has produced a "tipping point" assessment (whether focusing on one or more aspects of the OSEP, or whether looking at the different sectors/areas within the DEPZ), nor a credible explanation as to why 32 homes within the settlement boundary at Burghfield Common risks making the alleged critical difference.

19 Further, the adequacy of the OSEP with the Appeal Scheme built out is supported by the following circumstances of seemingly greater off-site consequences which no-one suggests the OSEP does not already adequately address:

19.1 Tadley is a town of 14,800 residents, and it is immediately south of the boundary of AWE(A). The OSEP before the Inquiry [CD5.20] relates to both AWE(A) and AWE(B). No rationale has been put forward by any opposing party as to why the OSEP is adequate to cater for a plume heading over Tadley, but not for a plume heading over Burghfield Common. Given the width of the town of

[2] None of the opposing parties alleges the OSEP "would" fail or lapse into inadequacy. Accordingly, the argument is addressed in these Closing Submissions in terms of the claimed material risk of this occurring.

Tadley (spanning much of sectors H-L of the plan at [CD7.75, p9]), general population spread/density appears to be materially greater than Burghfield Common – compare in this regard the plan of Tadley at [CD7.75, p9] and that of Burghfield Common at [Richardson 1st proof, p43]. Indeed, it appears that most of the c7154 homes [CD5.19, p8] in the AWE(A) DEPZ are located within Tadley. Reflecting greater proximity, the potential dose is higher too, there being no evidence that the 30 mSv used to assess the Boundary Hall scheme has materially altered. In short, in circumstances where the OSEP is adjudged by all (including the Council and ONR) as adequate to address the Tadley scenario (where the population is greater, closer and is assumed to receive a materially higher dose), a structured and specific explanation is required why it would not be adequate to accommodate the Appeal Scheme. No such explanation has been offered, by any opposing party.

19.2 The Madejski stadium (where Reading FC play, but which also hosts concerts etc) has a capacity of 24,161 (with permission to expand by an additional 12,000, per the recent lists of consented DEPZ sites). It is an open-air stadium, so any initial plume blown in this direction could not be sheltered from. There would indisputably be significant calls for "reassurance monitoring" in such an event. Given that the OSEP is adjudged adequate (no doubt with the assistance of UK plc's resources) for this scenario, it is not easy to follow why a plume over Burghfield Common could not be adequately addressed in terms of "reassurance monitoring". There are less than 2900 homes in sectors L-M (Richardson 1st proof, p24). Assuming (at a rate of 2.4) this equates to c7000 residents, it is 3.5 times less than the Madejski's capacity.

20 Further, looking more specifically at population patterns in the AWE(B) DEPZ, it can be noted that:

20.1 The Burghfield Common sectors (L-N) are <u>not</u> the most populous sectors in the AWE(B) DEPZ. This distinction belongs to the Reading / Three Mile Cross sectors (sectors C-E), as explained next.

20.2 Richardson (1st proof, p24) showed March 2022 residential property figures of 2,893 for sectors L-N and 3,007 for sectors C-E. These figures need to be updated to take account of completions in the subsequent 12+ months.

20.3 For sectors L-N (Burghfield Common), the tables submitted yesterday indicate that around 5 new homes have been completed since March 2022.

20.4 By contrast, there has been significant development in the last 12 months in sectors C and D (the Reading/Three Mile Cross side). Updates from Appendix B of Ms Richardson's rebuttal [CD11.14] contained in the tables submitted yesterday show that there have been additional completions at the following larger sites:

- Green Park Village [sector C]. There are now 75 unbuilt homes whereas Ms Richardson's appendix B referenced 836. Thus, (836 – 75 = 761) new homes fall to be added to the sector C home count.
- Croft Road, Spencers Hill [sector D]. The scheme is now fully built out, whereas Ms Richardson's appendix B referenced 363 consented but unbuilt homes. Thus, 363 new homes fall to be added to the sector D home count.
- Parkland, Three Mile Cross [sector D]. 35 of the 55 homes consented have been built out since Ms Richardson's appendix B. This adds a further 35 homes to the sector D tally.
- On this basis, residential figures (as built) in sectors C-E are now at 3,007 + 761 + 363 + 35 = 4,166.
- This is around 44% greater than the Burghfield Common sectors (totalling 2,898).

20.5 If one is looking for "headroom", it can also be noted that the 126 unit Shinfield scheme (shown on page 1 of Richardson Rebuttal Appendix B) has been fully built out, but (contrary to Appendix B) is not located within the DEPZ. Ms Richardson's confirmation of OSEP adequacy in the event all listed schemes

were built out appears therefore (if considered on a DEPZ-wide basis) to have some available headroom.

20.6 The above figures do not incorporate consented but unbuilt development. But what is striking here is that the **vast bulk** of this category is located in the same broad part of the DEPZ – the Reading / Three Mile Cross direction. This is shown on the plan submitted yesterday by the Appellant to accompany its table of consented/unbuilt homes. From this plan it is apparent that:

- Scheme B (422 units) is in sector C. Schemes A (75 units) and F (169 units) are in sector B. Together, these schemes represent 75% of consented/unbuilt homes in the DEPZ.
- By contrast, the only material consented but unbuilt residential development in the Burghfield Common direction (sectors L-N), pending this Appeal, is the 100 unit scheme at Pondhouse Farm (HSA15).

20.7 The analysis above exposes a further misconceived argument advanced by the Council. Dr Pearce was XXd by the Council about the cumulative impacts of the Kingfisher Grove consent and the Appeal Scheme. But this is almost entirely a misnomer. As Dr Pearce explained (and as is anyway apparent from Person AW's evidence), there is no credible scenario in which the reference accident has radiological consequences for two sites separated by just under 180 degrees of the compass. Limited issues such as residents away from home at the time of a reference accident are not materially impacted by an additional 32 homes at the Appeal Site, and anyway are likely to be expeditiously reduced once it is confirmed which way the plume is blowing.

20.8 Overall, and as with the Tadley comparison, if the OSEP is adequate for sectors C-E [Reading / Three Mile Cross], there is no good reason why the Appeal Scheme cannot be accommodated. It must be recalled that ONR's confirmation that they regard the OSEP as adequate for extant, already built-out development

necessarily endorses the OSEP's capability to address sectors where the residential population is 44% greater than the Burghfield Common sectors.

20.9 The analysis above allows a further clear conclusion to be drawn – the lack of causative link between the Appeal Scheme and the worries advanced by AWE et al. Should adequacy concerns be pursued by ONR hereafter, these will no doubt focus on the most populous sectors on the principle that, if the OSEP works there, it will work in less populous sectors. For this reason, and in light of the analysis above, it can safely be concluded that **the Appeal Scheme will not be the effective cause** of any legitimate concerns about future adequacy arising (if this occurs).

21 The conclusions indicated above are supported by the fact that (even in the REPPIR 2019 era, and following promulgation and adoption of the extended DEPZ) the Appeal Scheme was acceptable to the Council's emergency planners, and to ONR and AWE, before it allegedly became unacceptable. Thus:

21.1 On 14 January 2021, the Council advised the Appellant, in response to a pre-app inquiry, that [CD5.15] "the principle of development is established" and correctly noted that the emerging Local Plan (then at Reg 18 stage) intended to roll forward HSA16 [CD7.6, p58 and p112-3].

21.2 Ms Richardson confirmed in XX that it would be reasonable for the Inspector to proceed on the basis that the Council's emergency planners had been consulted (either on the Reg 18 Local Plan – which had gone out to consultation in December 2020; or on the specific pre-app inquiry) and had not objected to the Appeal Scheme.

21.3 Neither ONR nor AWE objected to the reg 18 Local Plan rolling forward HSA16. (AWE's objection – on other matters – is at Bashforth App 1).

22 What changed? No coherent explanation has been put forward. Specifically:

22.1 The Council has sought to explain away its post-REPPIR 2019 support for the Appeal Scheme by pointing to the ***Crest Nicholson*** judgment handed down in February 2021. This is no explanation. The ***Crest Nicholson*** judicial review was brought between March and July 2020, with permission to proceed to a full hearing granted on 21 July 2020 (judgment §6). The First Defendant in that litigation was the Council. Neither the Reg 18 Local Plan nor the Principal Planning Officer's January 2021 letter stated that the Council's continuing support for the Appeal Site was dependent on the outcome of the ***Crest Nicholson*** judgment. Nor is there any reason why they should have. The "presumption of regularity" (that an administrative decision remains valid unless and until quashed) would have applied, and all parties would have proceeded on the basis that the revised DEPZ was lawful unless and until quashed by the Court. In any event, it would have been misleading for the Council to indicate to the Appellant a position which assumed the new DEPZ was quashed by the Court – without stating that this was the basis of the advice. Plainly, the Council's January 2021 letter was not misleading in this or any other respect. It articulated clear and continuing support for the Appeal Site's development – without caveat.

22.2 AWE has not sought to offer any explanation as to why it did not object to rolling forward HSA16 in the Reg 18 Local Plan, and it is presumed it has no good reason.

22.3 ONR's stance (advise against, absent assurance from the local emergency planners) is essentially parasitic on what the Council's emergency planners say. Thus, while this explains ONR following the Council (then and now), it does not assist the search for a justification for the Council's subsequent *volte face*.

23 It is respectfully submitted that this history is relevant to the cogency and substance of the objection now pursued by the Council, AWE and ONR. Had matters been as those parties now contend, objections would have been made at the first post-REPPIR 2019 opportunity to do so (alternatively there would be coherent explanations why this was not done). The history undermines the credibility and force of the objections advanced by opposing parties. Once again, this focuses the spotlight on the need for a cogent and

specific explanation as to how a modest scheme for 32 new homes on the only remaining unconsented allocation in the DEPZ can credibly be said to risk the dramatic impacts which are at the heart of the worries brought to the Inquiry by AWE et al.

24 I turn to consider some of the specific OSEP issues mentioned at the Inquiry:

24.1 Residents away from their homes at the time of a reference event. Although her proof is silent on this, Ms Richardson accepted in XX that (based on CD16.12, p3) there is rest centre capacity of 4,500 across 4 Councils. The position is not likely to be materially impacted by an additional 32 homes at the Appeal Site, and anyway it is likely to be possible expeditiously to reduce entry restrictions into the DEPZ once it is confirmed which way the plume is blowing / has blown.

24.2 Support for the vulnerable. Again, it is unclear how an additional 32 homes (in a less populous area than Tadley or the Reading / Three Mile Cross direction) materially affects or undermines the position. This same argument was advanced by Ms Richardson [CD16.12, p2] and the Wokingham emergency planner (Mr Williamson) at the Kingfisher Grove inquiry. It was rejected by the Inspector, essentially because no reason was offered why the plan for immediately adjacent housing estates would not cover the position: [CD8.3, DL17]. The argument has not improved on its second outing.

24.3 Well-being issues. Accurate and well-informed public announcements which properly explain the actual risk level are fundamental, as the OSEP recognizes [CD5.20, §5.6]. The pandemic has underscored the wisdom of this approach, and it is (rightly) what the OSEP plans for.

24.4 Monitoring – how to do it. While it is necessary to collect samples and send them to a lab for analysis (as further explained in Dr Thorne's rebuttal proof), the key point is that (as one would expect) the OSEP anticipates this and makes provision for it. AWE (at both sites A and B) has the capacity to undertake initial monitoring: see OSEP [CD5.20, §6.4]. Together with actual weather patterns and computer modelling, the OSEP makes appropriate provision so that

a relevant picture as to the scale of the radiation emergency will quickly be available.

24.5 Reassurance monitoring. As noted above in relation to the Madejski stadium, as the OSEP is adequate to cover the possibility of 24000+ (or 36,000+) people in the open air, it is unclear why it is not adequate to address a situation where the plume heads west not north-east. Further, all parties have been clear that the issue in question relates to "reassurance" monitoring. Radiation levels on the Appeal Site are not such as to cause material health impacts – see above. In any event, Dr Pearce's unchallenged evidence is that the time taken before initial monitoring is not critical in terms of any health outcome: see Pearce 1st proof, §174.

24.6 Impact on the roads. Self-evacuation is discouraged by the OSEP §6.7.2, but anyway traffic would be heading in the opposite direction, with the Appeal Scheme adding no more than an immaterial additional contribution. Similar concerns have been rejected as carrying weight at both Boundary Hall (where the 115 unit scheme was very close to the AWE(A) main entrance) and at Kingfisher Grove [CD8.3, DL20]. The argument is no better on its third outing.

25 There was much discussion at the Inquiry of evacuation / relocation and decontamination issues at the Appeal Site. While these are (apart from any consideration of immediate evacuation) "recovery stage" issues and not emergency protective issues, the Appellant does not accept the concerns raised by opposing parties. Specifically:

25.1 Person AW accepted that from "a radiation dose point of view" there would be no justification for evacuation / relocation of Appeal Scheme residents, nor for extensive or destructive decontamination activities at the Appeal Site. (Although Person AW's rebuttal evidence also mentioned – for the first time - "hotspots" and "building wake effects", there is no accompanying analysis to show that such considerations could have any material impact at the Appeal Site. Indeed, Dr Pearce's response during EiC was that building wake effects would be *de minimis* at this distance and in Category F conditions. Further, Dr

Pearce's evidence was that a "hotspot" at the distance of the Appeal Site was likely to imply a very limited range above the assumed 0.1 mSv or so post-plume level.)

25.2 Person AW's concession as to the "radiation point of view" is an acceptance of Dr Pearce's evidence to the same effect. Dr Pearce's rationale takes into account the following matters in particular:

(i) That there is no justification for immediate / urgent evacuation because reference accident dose levels at the Appeal Site are 11.3mSv, which is well below the lowest "avertable dose" (30mSv – see CD13.28, page 18) that might justify the disruptions and stress of evacuating people from their homes.

(ii) That following the initial 2-day plume (during which time residents will be advised to shelter) doses will be negligible. This is confirmed by ONR's 2018 report at [CD13.40, pages 6-7], with various "pathways" excluded, and "resuspension" noted as providing c1% of the initial dose – over the course of the next year. This equates to around an annual dose of 0.1mSv – which is one-tenth of the long-term "clean up target" of 1 mSv stated in the OSEP [CD5.20 at p121].

25.3 Dr Pearce's analysis is aligned with the advice to STAC set out at p235 of the OSEP – that "urgent" evacuation should be considered out to 150m from the site fence, and "subsequent evacuation" out to 600m from the site fence. The Appeal Site is well beyond these distances. The Council's attempts to circumvent p235 of the OSEP (and the relevant definitions at §6.7 [p80]) led to a series of surprising contentions on its part. It was suggested to Dr Pearce in XX that the advice in question only relates to "urgent" evacuation, but that is a clear mis-reading of the text. Further, Ms Richardson claimed in XX that the advice at p235 could be a mistake. This unheralded permutation is entirely absent from either of her long proofs of evidence, and has enjoyed no support whatsoever from any expert or regulator giving evidence to the Inquiry. It should, with due respect, be entirely disregarded.

25.4 Person AW's contention [rebuttal §3.16] that evacuation from a non-radiological point of view might be considered to spare residents from seeing people in PPE conducting monitoring is not realistic, and has not been supported by any other witness. Those sheltering will be well aware from the media of images of people in PPE in and around AWE(B) and the DEPZ. Post-pandemic, these are hardly especially novel images. What is required is, again and as the OSEP already anticipates, high quality and accurate public information as to the correct radiological position.

25.5 It is not credible that AWE would engage in disruptive clean-up activities (or increase their own burden of waste to deal with) at residual levels which are safe, and (because they are 1/10th of the ultimate target) unnecessary.

25.6 Person AW's citation of the ***Blue Circle*** litigation (arising from a 1989 flood) does not assist AWE's position here. The judgment does not provide contamination levels at the adjacent site so no sensible comparison is possible, nor is there a full explanation of the circumstances in which AWE agreed (outside Court) to the clean-up works undertaken. Generally, the ***Blue Circle*** case is a clear example of AWE litigating up to the Court of Appeal to ensure it is not ordered to pay compensation beyond its legal obligations as set out in the Nuclear Installations Act 1965.

26 Accordingly, relocation of the Appeal Site's residents is not realistic, alternatively is highly unlikely. It is unfortunately the case that there is material exaggeration on this topic in the Council's evidence. Ms Richardson is plainly in error in asserting that the homes at the Appeal Site could be deemed unfit for human habitation (her 1st proof §9.21). This error appears to have resulted from her failure to accept (unlike Person AW) the reasonableness of Dr Pearce's analysis of post-plume dose levels (c0.1 mSv). Similarly, she is wrong to assess matters (as she has – see her 1st proof §9.6j) on the basis that evacuation of "all" of the properties in the DEPZ could be required. This is not in any way a credible scenario from the reference accident, as Person AW in effect confirmed in XX.

27 Unfortunately, these and other errors also permeate the paper at Ms Richardson's appendix 5 of her main proof. As well as relying on unrealistic assumptions as to the likelihood of evacuation / relocation from the Appeal Site (see page 3 in particular), this paper also wrongly places apparent reliance on (i) claimed impact on access routes, and (ii) inability for residents to secure insurance policies (with no regard to AWE's strict liability to pay compensation pursuant to the 1965 Act).

28 In summary, there is no material risk that the Appeal Scheme will have a material adverse effect on the OSEP's adequacy.

[4] Prejudice to AWE(B)'s operations

29 AWE raises worries that the Appeal Scheme's impact on the adequacy of the OSEP could lead to it being banned from operating with ionizing radiation pursuant to REPPIR reg 10(4). For the reasons given in the preceding section of these Closing Submissions, a modest scheme such as the Appeal Scheme will not have such an effect (either in principle, or noting that the OSEP is adjudged "adequate" by all to address circumstances with greater/closer population). Nor (as explained next) would the Appeal Scheme be allowed to result in AWE's operations being shut down, even if there were before the Inquiry (which there is not) some cogent evidence that the OSEP (or some relevant aspect of it) is close to a "tipping point".

30 As regards concerns expressed at the Inquiry regarding a possible risk that the OSEP may fall into inadequacy at some point in the future, it is likely any such concern will be swiftly redressed, certainly in so far as any very limited additional burden introduced by the Appeal Scheme is concerned. In particular:

30.1 There is no evidence that ONR has (eg) written to AWE to raise a "regulation 10(4) concern" if this Appeal were allowed. This whole debate is – as opposing parties acknowledge - a purely theoretical and speculative one.

30.2 If ONR did ever raise such a concern with AWE (and the Council), both (but in particular, AWE) would no doubt respond in the first instance by requiring

robust justification from ONR as to how any concern potentially affects "adequacy". AWE will be well within its legal rights to insist on credible "tipping point" analysis and to refuse to accept vague generalisations (and, as a responsible regulator, ONR would doubtless not pursue matters formally on such a basis). As noted above, such "tipping point" analysis is strikingly absent from the opposition of the Council, AWE and ONR to the Appeal Scheme.

30.3 Assuming (hypothetically and speculatively) the above hurdles were surmounted, there would then be significant efforts by all relevant parties (the Council, ONR and AWE) to provide the necessary assurances / amendments to the OSEP to assuage any "adequacy" concern. All of Person MD, Mr Ingham and Ms Richardson accepted that these 3 parties would be fully engaged in any necessary exercise to improve the OSEP. In essence, this would be a more urgent manifestation of the constant testing and improvement work which continues at all times. No-one has given evidence that there is <u>both</u> risk to the adequacy of the OSEP <u>and</u> an inability to redress or improve the position.

30.4 At the Planning RTS, AWE sought to suggest that any requirement on AWE to fund improvements to the OSEP would infringe the "agent of change" policy at NPPF 187. But in fact:

(i) Such an argument is again in the realms of theory and catastrophizing speculation. Absent a clear and coherent basis being identified as to why the OSEP is or might be inadequate, it is impossible to know what improvement is required. There is currently no basis for thinking the "fix" might involve AWE funding specific items. It is likely to involve a greater degree of advance preparation and organization so that (in an emergency) resources can be deployed as quickly and efficiently as possible. Further, it may well involve greater co-ordination requirements with other parts of UK plc (who may control assets that can be made available in the event of any significant emergency in the country). Of course, it must be remembered that the costs of any response to a radiation emergency will fall on AWE. None of that means

that any necessary "fix" to the OSEP at this time would involve (eg) AWE paying for specified matters.

(ii) In any event, it is frankly not an "unreasonable" restriction on AWE were it (as operator and potential polluter) required to fund any necessary remedies to the OSEP (if any). As above, this is consistent with AWE's strict liability for the consequences of a radiation emergency under the Nuclear Installations Act 1965. And in any event, REPPIR regulation 16 already stipulates that AWE must pay for the Council's work in preparing, reviewing, testing and updating the OSEP – so the policy that the operator funds the off-site consequences of its actions (preventative and remedial) is already established and endorsed by Parliament.

(iii) Even if (contrary to the above) evidence later emerged that OSEP adequacy could be addressed by funding various matters, the proper way to address the same would be by the Council via CIL or through an SPD setting out a funding requirement on development in the District. The latter could be an adjunct to policy SP4.

31 Even in the remote event that AWE and the Council could not provide relevant assurances / improvements, national security considerations would allow the Secretary of State for Defence to take advantage of the exemption in REPPIR regulation 25(2) ("in the interests of national security"), in the first instance for the period necessary to re-establish "adequacy". Moreover:

31.1 The Secretary of State's policy on the use of such exemptions would not be offended because the objective of having in place arrangements "at least as good as those required by UK legislation" is qualified by the words "so far as is reasonably practicable".

31.2 In any event, the Secretary of State's policy is a policy (not a statute). In accordance with ordinary principles, a policy (no matter how robustly expressed) can be departed from for good reason – see the Court of Appeal's decision in ***West Berkshire v Secretary of State*** [2016] 1 WLR 3923 at §§16-

21 [CD16.50]. National security considerations offer an obvious justification for doing so (if required), which is precisely what reg 25(2) legislates for.

31.3 AWE's evidence speculatively asserts that it would reduce or curtail site operations in the event of the OSEP being found to be inadequate. This unenforceable representation is not credible, nor is it consistent with the rest of AWE's evidence that emphasizes the national security importance of the AWE sites and the CASD program. Such national security considerations can be expected to take precedence, given the terms of regulation 25(2) and the very low residual risks involved. But in any event, a serious question about inadequacy of the OSEP would undoubtedly focus minds, and any reduction in activity at AWE (if, contrary to the above, it occurs) can be expected to be of short duration while relevant improvements were made to re-establish adequacy. It is hard to see how any improvement necessary to re-establish adequacy to accommodate a 32 home scheme would be challenging to achieve.

32 For all these reasons, the suggestion that the Appeal Scheme might lead to national security being compromised is not realistic. The Appeal Scheme is a 32 unit scheme 2.4km from the centre of the UPA. It is not a ticket to uncontrolled growth within the DEPZ, and it is not a proposal for 15,000 homes at Grazeley (c1-1.5km away).

33 The proof of this may be thought to be in the pudding of the fact that AWE has not sought the revocation of any residential scheme with consent in the expanded DEPZ.

34 The Inspector is respectfully invited to agree with Dr Pearce's conclusion (main poof, §203), which was not seriously challenged during XX that:

> "It therefore seems farfetched to believe that inadequate emergency preparedness from the local authority would be allowed to result in any threat to the operations of an AWE site. The site and local authority would be given ample opportunity to remedy any deficiency and even if they failed in that and ONR wished to curtail activity on the site the Secretary of State could trigger exemptions for a short time citing national security while the plan is improved".

35 Next, Person MD's proof set out a series of further worries about the impact of this appeal setting a precedent which leads to uncontrolled development in the DEPZ. However:

35.1 This appeal will set no precedent opening the floodgates to uncontrolled development, in particular on countryside sites outside development limits throughout the DEPZ. The Appeal Site is the only allocated site within the DEPZ without planning consent.

35.2 The matters raised by Person MD are put forward via vague conjectures and unparticularized speculations. The absence of specificity makes it impossible to understand how the modest sized Appeal Scheme will or could risk causing the prejudice alleged.

35.3 AWE placed the exact same laundry list of worries before the Kingfisher Grove Inquiry: see CD16.11 §§15-22. They were rejected by the Inspector: see CD8.3 at DL22 ("The development would not adversely affect the continued operation of the AWE site and there would be no conflict with the NPPF"). AWE recycles the precise same worries at this Inquiry, and in doing so fails to explain (i) what the Inspector missed, or (ii) why the principle of consistency in planning decision-making is not engaged on these matters.

35.4 ONR has not supported any of AWE's relevant worries.

36 In summary, AWE's claims of prejudice to its activities and national security are unevidenced, and amount to little more than mere assertions.

MAIN ISSUE 3: The effect of the proposed development on the character and appearance of the area, with particular reference to local tree cover.

37 In light of the RTS discussion of this issue and the site visit, only brief commentary is necessary. Mr Keen's evidence explained why it is not practical to retain the 4 TPOd oaks which lie within the "developable area" shown on the HSA16 plan [CD6.3, p47]

(very significant slopes on the Site make this unrealistic), and that the many other (retained) trees means that the 4 to be lost make at most a limited contribution to the character of the area. It is unclear why the Council maintains its argument about overgrown hedge 91, or why a condition could not secure a satisfactory degree of new planting (including of larger trees) and ancient woodland protection.

38 In the final analysis, the Appeal Scheme accords with the expectations of the allocation, and its impacts on character do not extend beyond what was envisaged by policy HSA16.

MAIN ISSUE 4: Whether the proposal would make adequate provision for affordable housing.

39 40% of the Appeal Scheme (13 units) will be affordable. These are secured in the s106 obligation which the Inquiry will soon receive in final form. On this basis, reason for refusal 1 falls away, and the Appeal Scheme's contribution to the Council's admittedly high affordable housing needs is secured. Such needs are a weighty material consideration in circumstances where:

39.1 West Berkshire is (per the Council's submitted draft Local Plan [CD7.12, p71]) "an area of high property prices and many local people have difficulty gaining access to suitable housing on the open market. Provision of affordable housing is seen as a priority as housing has wide implications on health, education and employment opportunities". Indeed, reason for refusal 1 itself refers to "the existing high need for affordable housing across the District".

39.2 There are a very large number of households (**3947**) living in unsuitable conditions within the District (**778** in the Eastern Area): see Miles §8.10, quoting from §4.32 of the SHMA [CD7.62]. The inevitable knock-on well-being issues from living in unsuitable accommodation can be addressed for 13 households through the Appeal Scheme. These well-being issues are real and currently being experienced, in contrast to some of the speculative permutations raised by opposing parties as arising from the "extremely remote" possibility of the reference accident occurring at AWE(B).

39.3 There are 1023 applicants on the Council's Housing Register, of whom 209 have expressed an interest in living in Burghfield. Indeed, net affordable need is assessed at 330dpa (Miles §8.7), but only about 50% of this need either has been delivered over the last 10 years or is likely to be delivered in the future (Miles §8.13).

DEVELOPMENT PLAN COMPLIANCE and PLANNING BALANCE

[1] Development Plan compliance

40 The first issue under this heading is to consider Core Strategy policy CS8.

41 The Council and AWE firmly root their objections in the first sentence of Core Strategy policy CS8 (Mr Bashforth's "limb 1"), and contend that this sets up a very strong presumption against the Appeal Scheme (as well as resulting in non-compliance with the Development Plan). But on any fair reading, the first sentence of policy CS8 is not engaged. Specifically:

41.1 It is absolutely clear from the policy structure and wording (as well as footnote 60's reference to "Consultation Zones as defined by the ONR and shown on the West Berkshire Proposals Map") that the "inner zone" to which the first sentence relates does not encompass the Appeal Site. The "inner zone" is both defined in the table within policy CS8 (as extending "0 - 1.5km"), and shown in the Proposals Map [CD6.2, shown at Miles p11]. The Court of Appeal stated in ***Corbett v Cornwall*** [CD13.48, appendix] at §19(3) that:

> "The words of a policy should be understood as they are stated, rather than through gloss or substitution. The court must consider the language of the policy itself, and avoid the seduction of paraphrase."

41.2 The Council's / AWE's interpretation results in impermissibly attempting to re-write the policy, or substituting words – in breach of the Supreme Court's injunction that planning authorities "cannot make the development plan mean whatever they would like it to mean" (cited in ***Corbett*** at §19(1)).

41.3 Nothing in policy CS8 allows for some sort of automatic increase in coverage.

41.4 The Council's / AWE's reliance in this regard on the explanatory text of the Core Strategy at §5.44 does not take the matter forwards. Explanatory text cannot add a new requirement to a policy: see ***Cherkley Campaign v Mole Valley*** [2014] EWCA Civ 567 at paras 16-18, 21 [KMR1] (where an apparent requirement to show "need" set out in explanatory text was of no effect because there was nothing in the policy itself which required that "need" be shown). In any event, the text at §5.44 does not assist the Council / AWE. The text only contemplates a possible contraction of the areas affected resulting in a consequential tempering of ONR advice for part of the "inner zone". It says nothing about any consequences of a theoretical expansion. But even if it had, this would (in light of ***Cherkley***) have no present significance in the absence of some provision within the CS8 policy wording itself which specifically provided for automatic expansion of the areas affected in given circumstances.

41.5 There is nothing surprising about CS8 being construed such that the very strong presumption against envisaged by the first sentence (when engaged) only applies to the specific area to which it expressly relates (rather than an area of land 5-6 times larger). As stated at §§84-85 of his report, the Core Strategy Inspector wanted to provide suitable discouragement to developers in respect of land within the "inner zone" [Bashforth App 1]. It would fundamentally undermine that objective to allow the "inner zone" to expand, with the same accompanying strong presumption against. While the CS Inspector plainly thought the first sentence of CS8 a sound proposal for the specified "inner zone" (which "largely encompasses countryside" per the CS text), nothing in his report suggests that the CS Inspector was endorsing (or that the policy he drafted could be read as intending) that the same planning judgment would necessarily be applicable to a much wider area. All the more so where the Council / AWE now contend that the "inner zone" means an area of land 5-6 times larger. And where (as established above) the level of risk (as distinct from the weather conditions which drive the radius of the UPA) has not altered.

41.6 It is properly a matter for the next Local Plan examination (considering draft policy SP4) to consider whether such a very strong presumption can be justified in respect of the enlarged area – but for our purposes, this carries no material weight.[3]

42 The rest of policy CS8 (in particular the 2nd sentence) addresses consultation arrangements for proposals beyond the defined "inner" zone; creates no presumption for any particular outcome; and is not offended by a proposal on an allocated site contained in a subsequent DPD. Indeed, the 2nd sentence calls for a broad planning judgment on relevant matters, including "other planning criteria" (ie, here, the allocation in HSA16). There is no material difference between Mr Bashforth's "limb 2" and "limb 3" approaches (identified in his rebuttal).

43 The Council's argument based on policy GS1 of the HSADPD goes nowhere. The relevant wording of policy GS1 refers to the allocated sites being "delivered in accordance with the West Berkshire development plan". That wording is a provision relating to <u>how</u> sites are to be "delivered" (ie developed out), not <u>whether</u> they will be. This general introductory language of policy GS1 does not somehow reserve to the Council the possibility of revisiting the <u>principle</u> of the allocations – it relates to the <u>manner</u> in which they will be built out. Anyway, for reasons above, the Appeal Scheme does not infringe policy CS8 when it is lawfully construed.

44 Finally, although not contained in any reason for refusal and not re-ventilated at the Planning RTS, the Council's proofs have complained about alleged non-compliance of

[3] Even if the Appeal Scheme were found to breach policy CS8, this is statutorily overridden by section 38(5). If the Appeal Scheme accorded with the allocation in policy HSA16 but was in breach of policy CS8, there would be a clear "conflict" in the terms of section 38(5). A site-specific policy would be supportive of the Site's release for residential development while policy CS8 (on this hypothesis) would not be. That conflict falls to be resolved "in favour of the policy which is contained in the last document to become part of the development plan". Self-evidently, that is policy HSA16, which became part of the development plan in May 2017, 5 years after the Core Strategy. That HSA16 takes precedence over CS8 does not just respect the statutory regime fixed by Parliament in section 38(5), it also accords with common sense. An allocation is intended to establish the principle of development of a site for the identified uses. It is unrealistic to treat an allocation as capable of being nullified by a policy in an earlier DPD – which in any event was specifically thought about and applied (with no objections from emergency planners , ONR or AWE) as the allocation was emerging.

the Appeal Scheme with policy HSA16. None of these unheralded arguments stands up to scrutiny. In particular:

44.1 It is not reasonable to make a point about HSA16 coming forward comprehensively in circumstances where the Council was content to grant Phase 1.

44.2 It is not reasonable to complain that access is taken from Phase 2 via Regis Manor Rd (the road through Phase 1) to Reading Road, and not directly to Reading Road. This is the situation which necessarily arose when the Council consented Phase 1 without Phase 2. Material before the Council at the time of the Phase 1 application showed Phase 2's access arrangements would be through Phase 1, in precisely the manner now proposed.

44.3 It is not reasonable to complain about the absence of a secondary access. No secondary access was required by policy HSA16, nor was it required for Phase 1.

45 In short, the Appeal Scheme accords with its allocation (HSA16), and is not in breach of CS8 (or any such breach is subject to statutory override) nor of any other Development Plan policy. Accordingly, assessed overall, the Appeal Scheme accords with the Development Plan.

[2] Planning Balance

46 As I identified in opening, the Appellant does not submit that, just because the Appeal Scheme is Development Plan compliant, that is the end of the matter. Rather, the Appellant's submission is that the questions raised by Main Issues 1 and 2 have to be put in their proper place, in order to facilitate structured decision-making as set out in s38(6) of the 2004 Act. (One arrives at the same place via Bashforth "limbs 2 and 3" also). These issues are potential "material considerations", and the essential question is whether the array of matters raised amount to "material considerations" which

outweigh the HSA16 allocation (and the benefits it will bring) and indicate that the decision should be otherwise than in accordance with the Development Plan.

47 Contrary to AWE's argument, it puts the cart before the horse to say that the weight of the allocation is reduced by REPPIR19 (etc). The correct analysis is that there is an indisputable allocation of the Appeal Site for residential development in a relatively recent DPD which is supported not just by the statutory presumption in s38(6) but also by the fundamental precept of planning policy that development should be "genuinely plan-led" (NPPF §15). The allocation is therefore the strong starting-point and as NPPF §15 intends it should be accorded full weight.

48 Inspector Woodwards' recent Broomhill DL [KM4] is a striking example of "plan-led" decision-making in operation. At DL9, the Inspector recorded that the Council's argument was that an allocation had been superceded by "the declaration of the ecological emergency by the Council". This argument was rejected. At DL14, the Inspector reasoned (emphasis added):

> "Paragraph 15 of the Framework states that the planning system should be genuinely plan-led. **For this to mean something, an applicant must be able to rely on specific site allocations in adopted Development Plans**."

49 As well as the fundamental respect to "genuinely plan-led" decision-making which allowing the Appeal would enhance, additional planning benefits which weigh materially in favour of the Appeal Scheme include:

49.1 The benefits of a scheme bringing forward 40% affordable housing in a District with substantial needs for this form of development. These have been enumerated above.

49.2 The provision of market housing. While the Council can currently demonstrate a 5 year supply, this is not a ceiling (as has been emphasized in many other decision letters: see, eg, [CD8.5 at DL47; and CD8.6 at DL18-19]). Relevant Core Strategy policies (CS1) refer to "minimum" requirements, and this is consistent with NPPF §74 and §60, and the need significantly to boost the delivery of housing. That is particularly so where:

(i) The Council's future housing provision (beyond the 5 year period) is open to greater doubt. It is unknown whether the emerging Local Plan will be taken forward by the new administration voted in last month. Even if it is, there are significant levels of objection on housing provision, including to the proposed requirement figure; to the Council's single proposed large allocation in Thatcham where its own SFRA highlights that the development could be susceptible to flooding and could increase the risk of off-site flooding; and to its claims to a very large windfall allowance: see Miles proof, §§4.56-4.57. It is entirely possible the Council has not yet identified all necessary land to meet emerging plan period needs.

(ii) West Berkshire is a constrained area: see HSADPD §4.1 [CD6.3, p81]. 90% of the District is rural. 74% is within the North Wessex Downs AONB. Reasonable opportunities such as the Appeal Site - which lie within defined Settlement Boundaries (see Miles figure 5 [p16] and HSADPD at p142 [CD6.3]) - need to be taken.

49.3 <u>The economic benefits which the Appeal Scheme will bring</u>. The specifics are listed in Ms Miles' evidence. Further, it must be recalled that the purpose of the HSADPD making East Kennet Valley allocations was (inter alia) to assist the vitality and viability of local shops and services, and thereby to protect Burghfield Common's status as a Rural Service Centre. This is specifically confirmed in the HSADPD at §2.30 [CD6.3, p43], as well as policy ADPP6 of the Core Strategy.

49.4 <u>Residential development at a site which is reasonably sustainably located for the scale of housing proposed</u>. Burghfield Common is a Rural Service Centre (CS policy ADPP1). As described at Miles §§3.7, 8.19-8.20, there is a reasonable array of facilities at Burghfield Common, and the Appeal Site has excellent connectivity by public transport to Reading, other nearby conurbations and to the AWE sites. The latter point is relevant because AWE is already one of the foremost employers in the area (with 7,000 FTEs across the

two sites, and – per Person MD - more expected once the works at AWE(B) are complete). Indeed, Bashforth §2.6 claims that AWE wishes to "attract and retain world leaders in the fields of science and engineering". New staff at AWE will need to have access to new housing – including affordable housing - in the local area (if they are to travel to work sustainably). Commuting from Newbury (where much of the Council's present 5 year supply is coming forward) to AWE(B) is not sustainable. In sum, the Appeal Site is in the right place to contribute to meeting local housing needs (market and affordable), including those relating to the substantial and growing workforce at the AWE sites.

50 The Appeal Site's allocation, the statutory presumption in section 38(6) and the clear and tangible planning benefits that the Appeal Scheme will bring are not outweighed by the "material considerations" to which opposing parties refer, in particular taking into account:

50.1 The miniscule risk of the reference accident affecting the Appeal Site (Person AW having accepted in XX that the Inquiry has no evidence of any other possible event having radiological implications for the Appeal Site). Taking account of the chances of the reference accident occurring (1 in 10,000 years) and the wind blowing in the direction of the Appeal Site at 2m/s in Cat F conditions (0.5%), the risk is around 1 in 2,000,000 years.

50.2 The even more miniscule risk of harm to individuals on the Appeal Site, even on the assumption they stayed outside for 2 days without taking shelter and experiencing a dose of 11.3mSv. The risk is calculated by Dr Pearce as 1 in 1,000,000,000 years (1st proof, §133). AWE has decided to place no evidence before the Inquiry on one input to this calculation, and has essentially agreed with the other three.

50.3 These miniscule risks are well within the acceptable range, and even AWE accepts that the current position is at least "tolerable" with "very low" risks.

50.4 What has changed with REPPIR 2019 is that a more precautionary approach has been taken as to where emergency planning should be in place, to account

for less likely (but – obviously - pre-existing) considerations such as Category F weather. But as agreed in XX by both the Council and Person AW, the risk level at the Appeal Site has not changed.

50.5 A scheme of 32 houses over 2.4 km away from the centre of the UPA cannot seriously be said to add such a degree of additional population or difficulties that the OSEP would be materially prejudiced. This is not a scheme for 15,000 homes at Grazeley, nor for unlimited development at countryside locations throughout the DEPZ, nor will it create a precedent for any other proposal on (by definition) an unallocated site.

50.6 Even if (contrary to the Appellant's primary argument) the Inspector considered there was some risk that the Appeal Scheme (despite its modest proportions) might affect the effective rolling out and/or adequacy of the OSEP, this carries limited weight only (and certainly insufficient weight to outweigh the allocation and corresponding benefits of the Scheme) taking into account that:

(i) Work will continue to improve and amend the OSEP, including to address the implications of this Appeal being allowed (if it is). It will be at least 12-18 months before there are new homes on the Appeal Site. The reasonable expectation must be that this is a more than sufficient window to make any changes required to accommodate a modest additional scheme.

(ii) It is not credible that the OSEP will lead to AWE being shut down (whether voluntarily or otherwise). Even if serious adequacy questions arose (and if they did it is not possible to understand how the Appeal Scheme would have caused them), ONR would provide ample opportunity to relevant parties (including AWE / the Ministry of Defence) to facilitate necessary improvements. And, in any event, regulation 25(2) of REPPIR allows the Secretary of State to exempt AWE(B) from the regime on "national security" grounds. No credible reason was offered by Person MD as to why such an exemption would not be used if "national security" (which is the whole basis of

AWE/MOD's intervention into this appeal) would otherwise be imperiled.

(iii) At worst, the speculative and remote risk of a modest scheme such as the Appeal Scheme causing a shutdown, or other unspecified "restriction" on activities, at AWE(B) does not provide sufficient justification for overriding a recent allocation. There is no substantive merit to AWE's tenuous and unparticularized claims that its operations or national security will or might be affected by a development on the Appeal Site. Identical worries were placed before the Kingfisher Grove Inquiry and rejected (see DL22). Person MD could not identify any specific step AWE has taken in relation to the OSEP or its activities since the Kingfisher Grove decision. This, despite the identical prognostications of gloom and doom in Mr Steele's representations to the Kingfisher Grove Inquiry. In short, Inspector Rollings concluded that a 49 unit scheme at the Kingfisher Grove site posed no material threat to the continuing activities at AWE(B), and there is nothing before this Inquiry that should lead to a different conclusion about a 32 unit scheme on the other side of the DEPZ.

50.7 The Appeal Site is the only allocated site which is within the DEPZ and does not already have planning permission. While every case turns on its own facts, that is a very significant fact for this case. The various "floodgates" arguments pursued by (and underlying the concerns of) opposing parties ignore this reality, and do not arise on this Appeal.

CONCLUSION

51 For these reasons, the Inspector is respectfully invited to allow the Appeal and grant planning permission.

ANDREW TABACHNIK KC

39 ESSEX CHAMBERS

LONDON

14 June 2023