



Your ref. APP/W0340/W/22/3312261  
Our ref: 50929/KM  
Project Name: Land to the rear of The Hollies, Burghfield Common

Mr R Wordsworth  
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3 May 2024

Dear Mr Wordsworth

**Town and Country Planning Act 1990**  
**Appeal by T A Fisher & Sons Ltd**  
**Site Address: Land to the rear of The Hollies Nursing Home, Reading Road,**  
**Burghfield Common, RG7 3LZ**

I write further to your letter of 15 March 2024 regarding the re-determination of my client's appeal. Please regard this letter as the Appellant's further representations in response to your letter.

The Appellant intends to rely upon the evidence previously prepared for the re-determination of this appeal.

The Appellant will continue to refer to the Core Documents agreed and used during the first appeal (as determined 8 August 2023). We consider however that the Core Document library should also be updated to include the following:

- First Appeal Decision 3312261
- High Court Order quashing Appeal Decision 3312261
- Grounds and Statement of Facts prepared by the Parties in respect of the High Court challenge.
- National Planning Policy Framework December 2023 (and Word doc tracking changes from the July 2021 version – that was the latest version of the NPPF in the Core Docs previously – as CD6.12)
- Local Plan Examiner questions in relation to Matter 3 (relevant questions highlighted)
- West Berkshire Council Matter 3 Statement (responses to AWE questions highlighted)
- Quod Statement obo AWE to Matter 3
- ONR Statement to Matter 3
- T A Fisher Statement to Matter 3

A copy of the updated Core Document List is attached, and the various documents are available via this Google Drive link: [https://drive.google.com/drive/folders/1K-UPJgdgrxQyjcDs4-1Q7y\\_WVHzJrzJL?usp=drive\\_link](https://drive.google.com/drive/folders/1K-UPJgdgrxQyjcDs4-1Q7y_WVHzJrzJL?usp=drive_link). We assume in due course the Council will update the Core Document library via its website for this appeal: <https://www.westberks.gov.uk/the-hollies-appeal>

The Appellant will likely need to produce further evidence in the form of a Proof(s) of Evidence as necessary and in response to any further representations of other parties on this appeal.

### Material changes

Your letter asks for further representations in relation to any material change in circumstances that have arisen since the first appeal.

An updated and revised National Planning Policy Framework was published in December 2023. It is agreed that the re-determined appeal will be considered with regard to the December 2023 version of the Framework. Paragraphs 15, 57 and 97 of the July 2021 Framework were cited in the first Inspectors decision. However, we consider there has been no material change to the content of these Paragraphs through the updated Framework. This is discussed below:

- Paragraph 15 – This Paragraph states that the planning system should be genuinely plan-led. The first Inspector, at Paragraph 59 of his decision said:

*“I agree with the Inspector’s point in recent Appeal Decision Ref: APP/Z0116/W/22/3308537 on another site that for this to mean something, an applicant must be able to rely on specific site allocations in adopted Development Plans. As established earlier, the appeal site is part of an allocated housing site in the local development plan, the locational sustainability credentials of which relatively recently commended its allocation. Part of the allocated site has recently been developed for housing, and completing the development of the remainder of this allocated housing site would contribute positively to supporting a plan-led system. This is a compelling material consideration in favour of the proposed development”.*

It is considered that there has been no material change in circumstances which would lead to a differing conclusion in this case as the Appeal site is still an allocated site in the Adopted Development Plan.

- Paragraph 57 sets out the tests in relation to Planning Obligations and considerations, and these remain unchanged. As such, the conclusions of the first Inspector that the submitted legal agreement complies with the CIL Regulations and the Framework should remain unaffected by the revised Framework.
- Paragraph 97 of the July 2021 version of the Framework is referred to in the First Inspectors decision. This is now paragraph 101 of the December 2023 Framework. There has been no change to the wording of the text as it appears in Paragraph 101. It is noted that the First Inspector found conflict with Paragraph 97 but gave substantial weight in the planning balance to the benefits of the scheme which the first Inspector concluded was sufficient to outweigh the harm identified. It is noted that this will be a matter for the re-determination appeal.

In summary therefore, whilst the publication of the December 2023 Framework is a change, the policies of the Framework relevant to the determination of this appeal have not materially changed.

In Paragraph 13 of the first Inspectors appeal decision, reference was made to Policy SP4 of the emerging West Berkshire Local Plan Review (LPR). The First Inspector considered that *“Examination of the LPR is at an early stage and the LPR, including any potential future policy on this aspect, is some way from being finalised and adopted. As such, at this stage emerging LPR Policy SP4 as drafted cannot be taken to be a certain future approach. Therefore, I attach limited weight to emerging draft LPR Policy SP4.”*

At the time of the first appeal, the West Berkshire Local Plan Review had been submitted for Examination. The Examination into the LPR has yet to commence, and therefore at the time of writing, there has been no material change of circumstance from the first appeal. It is noted that the Examination of the West Berkshire LPR is scheduled to open on 8 May 2024, however it remains the case that there are significant objections to the plan as a whole and including draft Policy SP4, and as such it is the Appellants view that limited weight should be attached to the emerging LPR.

### Quashing Order

Your letter also asks for comment on the specific issue upon which the appeal was quashed.

The s288 Challenge was made by AWE PLC in September 2023. The Claim was brought on four grounds which are set out in the quashing order.

The Secretary of State for Levelling Up, Housing and Communities (First Defendant) initially defended the decision, submitting summary grounds for defence. Within those grounds, it was stated that the defendant *“resists this claim in its entirety and submits that all the grounds of challenge are unarguable.”*

At paragraph 13, the first defendant said:

*“The grounds of challenge have no merit and disclose no legal error in the Decision. They adopt an unduly narrow approach to the reasoning in the DL and fail to consider it fairly and as a whole. Grounds 1, 3 and 4 are ultimately no more than a reasons challenge, and fail because the Inspector’s reasoning on the main issues is clear on the face of the DL. In relation to Ground 2, this is in reality a challenge to the application, not interpretation, of Policy CS8 which was a matter for the planning judgment of the Inspector.”*

On behalf of the Appellant, summary grounds of defence had been provided and these are included in the updated Core Document List. The position of the Appellant was that grounds of challenge were unarguable.

However, subsequently the First Defendant agreed to the decision being quashed on Ground 1 only before a substantive hearing on the claim could take place. The First Defendant accepted that the Inspectors reasons for disagreeing with the position of the Office of Nuclear Regulation (Fourth Defendant) in relation to the off-site emergency plan, were not legally adequate.

The effect of the quashing order is that the appeal must be re-determined afresh.

The Appellant considers that it is clear that the Office of Nuclear Regulation has “advised against” the development as new housing development *may* impact the adequacy of the Off-Site Emergency Plan (OSEP). The Appellant considers that it is a matter of planning judgement for the decision maker as to the impact of the appeal scheme on the OSEP. In the re-determination appeal, the Appellant will refer to the evidence of Dr Pearce (the Appellants expert nuclear physicist and emergency planner) as well as to other evidence produced during the first appeal relating to population, the DEPZ, and the planning benefits of the scheme in terms of affordable housing provision, economic benefits at a sustainable and established Rural Service Centre and respecting the Site’s allocation in an adopted Development Plan. The Appellant will continue to present its case that the planning benefits of this scheme outweigh the “limited” risk of harm to safety and wellbeing of residents and the “very limited” risk of adverse impact on AWE’s operations.

Inquiry Format

The Appellant agrees that the appeal should be determined on the basis of a local inquiry.

During the first appeal, the Appellant reached agreement with the Council on a number of matters. It is assumed that re-negotiation on those matters will not be necessary. It is considered that there is also scope to extend the Common Ground between the Council and the Appellant to include planning conditions, the legal agreement which addressed the Council's first reason for refusal in relation to securing affordable housing, and in relation to the Council's third reason for refusal which related to the impact on protected trees. Reaching agreement on these issues ahead of the opening of the redetermination appeal will save Inquiry time but importantly also reduce the additional costs to the Appellant associated with the re-determination appeal.

Therefore, we consider that the re-determination Inquiry need only focus on the Council's second reason for refusal. We consider this could be discussed at a Case Management Conference in due course.

Yours sincerely



**KATHERINE MILES** BSc (Hons) MSc MRTPI

Director

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Enc. Updated Core Document List