

Appeal Statement of Case

Local Planning Authority

Town and Country Planning Act 1990
Section 78 appeal against the refusal of planning permission

Appeal: APP/W0340/W/22/3312261

Site: The Hollies Reading Road Burghfield Common Reading
RG7 3BH

Proposal: Erection of 32 dwellings including affordable housing,
parking, and landscaping. Access via Regis Manor Road.

Date: 03 May 2024

Council Reference: 22/00244/FULEXT



West Berkshire
C O U N C I L

Appeal Statement of Case

West Berkshire Council
Development and Regulation
Market Street
Newbury
Berkshire
RG14 5LD

T: 01635 519111

E: appeals@westberks.gov.uk
www.westberks.gov.uk/planning

Contents

GLOSSARY OF TERMS	4
1. INTRODUCTION	5
SCOPE OF STATEMENT OF CASE	5
2. INSPECTORS QUESTIONS ON PREVIOUS APPEAL.....	6
PREVIOUSLY QUASHED DECISION.....	6
WHAT HAS CHANGED SINCE LAST APPEAL	7
3. PROCEDURAL MATTERS	11
PLANNING APPEAL FORMAT.....	11
REASONS FOR REFUSAL.....	11
4. APPEAL SITE AND PROPOSAL	13
APPEAL SITE.....	13
5. PLANNING POLICY.....	16
STATUTORY DEVELOPMENT PLAN.....	16
WEIGHT TO BE GIVEN TO DEVELOPMENT PLAN POLICIES.....	16
MATERIAL CONSIDERATIONS	17
EMERGING POLICIES	20
EMERGING PLANS	22
6. MAIN ISSUES	24
7. LOCAL PLANNING POLICY	25
CURRENT LOCAL PLAN POLICIES	25
ASSESSMENT OF APPEAL PROPOSAL.....	26
8. EMERGING LOCAL PLAN	35
REGULATION 18 LOCAL PLAN REVIEW EMERGING DRAFT	35
REGULATION 19 LOCAL PLAN REVIEW PROPOSED SUBMISSION.....	37
THE REMOVAL OF THE HOLLIES FROM THE LOCAL PLAN REVIEW	38
9. 5 YEAR LAND SUPPLY	40
10. AFFORDABLE HOUSING PROVISION	42
11. DETAILED EMERGENCY PLANNING ZONE (DEPZ).....	43
RELEVANT PLANNING POLICIES	43
BACKGROUND.....	45
DETAILED EMERGENCY PLANNING ZONE (DEPZ).....	50
AWE OFF-SITE EMERGENCY PLAN (AWE OSEP)	52
DEVELOPMENT MANAGEMENT ASSESSMENT PROCESS	55
12. IMPACT ON TREES.....	58
TREE PRESERVATION ORDERS AND SITE HISTORY.....	58
RELEVANT POLICIES.....	58
ASSESSMENT OF APPEAL PROPOSAL.....	60
POLICY TESTS	63
13. PLANNING BALANCE	64
CONCLUSION.....	66
SUGGESTED LIST OF CONDITIONS	66

Appendices

1	Appeal Ref: APP/X0360/W/22/3304042. Land west of Kingfisher Grove, Three Mile Cross, Reading, Berkshire, RG7 1LZ
2	1281 Stringer v Minister of Housing and Local Government 1970 1 WLR 1281
3	293 Trusthouse Forte Hotels Ltd. v Secretary of State for the Environment (1987) 53 PCR 293
4	ATOMIC WEAPONS ESTABLISHMENT AWE BURGFIELD Declaration of No Change REPPIR 2019 Issue 1 November 2022. Reference O1AAIG-69573752-866
5	ATOMIC WEAPONS ESTABLISHMENT AWE BURGFIELD CONSEQUENCES REPORT. Issue 1. November 2019
6	AWE DEPZ Determination Report 19 Jan 2023
7	Appeal Ref: APP/H1705/W/23/3326959. Land at 1-9 Shyshack Lane, Baughurst, Tadley, RG26 5NH
8	Letter to WBC from ONR raising concerns post ALDEX exercise date 29/11/2023
9	Letter from WBC in response to ONR letter 06/02/2024

Glossary of Terms

AWE	Atomic Weapons Establishment
DEPZ	Detailed Emergency Planning Zone (Emergency Planning)
PCZ	Outer Consultation Zone (Development Control)
OPZ	Outline Planning Zone (Emergency Planning)
UPA	Urgent Protection Actions (Emergency Planning)
REPPIR 19	Radiation [Emergency Preparedness and Public Information) Regulations 2019
OSEP	Off-Site Emergency Plan
OSPG	Off-Site Planning Group
ONR	Office for Nuclear Regulation
WBC	West Berkshire District Council
LPR	Local Plan Review
WBC CS	West Berkshire Council Core Strategy
HAS DPD	(West Berkshire) House Site Allocation Development Plan Document.

1. Introduction

- 1.1 This Statement of Case has been prepared in respect of an appeal lodged against the refusal of planning permission (Council reference 22/00244/FULEXT) for development within the Detailed Emergency Planning Zone around the Atomic Weapons Establishment Burghfield comprised of the Erection of 32 dwellings including affordable housing, parking, and landscaping with access via Regis Manor Road.

Scope of Statement of Case

- 1.2 This Statement of Case has been prepared in accordance with the Planning Inspectorate's *Procedural Guide (Planning Appeals – England)*. It supports the Council's reasons for refusing (and now for opposing) the development.
- 1.3 This statement of case has been updated in full due to the decision to quash the previous decision and remit the determination of the appeal back to the Planning Inspectorate. The Council has received the letter dated 15th March 2024 from the Planning Inspectorate notifying that following a High Court challenge to the Inspector's decision on this appeal dated 8th August 2023 the Court has ordered that the appeal be re-determined.
- 1.4 The letter invited the Council to do the following:
- To send further representations (including any statement of case and copies of any documents to which you intend to refer) covering any material change in circumstances (which would include any changes to the development plan position and new or altered material considerations which you think should/should no longer be considered) which may have arisen since the original appeal decision was issued.
 - To comment on the specific issue(s) upon which the appeal was quashed.
- 1.5 The Council has therefore reviewed its statement of case updating it to cover all the material changes in circumstances and to reflect its up-to-date position to defend this appeal.

2. Inspectors Questions on Previous Appeal

Previously Quashed Decision

- 2.1 Policy CS8 has at its centre the Office of Nuclear Regulation (ONR). Giving them a key role in responding to applications around AWE sites in West Berkshire. The previous appeal decision as quashed due to the Inspector not giving the ONR's evidence sufficient weight in the decision-making process. The Council notes that the policy as explained earlier gives a key role to the ONR and its consultation response. To disregard the evidence of the ONR to an extent is to not give the current local plan sufficient adherence in its policy criteria.
- 2.2 Despite the ONR raising legitimate concerns in regard to the Off-Site Emergency Plan (OSEP) not being infinitely scalable, that the ONR has concerns about the OSEP and has communicated this with the WBC Emergency Planning, the previous inspector preferred to not give weight to these concerns and instead prefer the assessment of an expert witness for the appellant rather than the expertise of the regulator and those experts involved directly with the development and ultimately the delivery as necessary of the OSEP. The inspector sought to make their own decision on the OSEP and its ability to scale the plan rather than listen to the ONR's and other expert witnesses expertise and concerns. The inspector did not give sufficient weight and consideration to the ONR's evidence of the scalability and intricacies of the OSEP. Whilst a planning inquiry is the avenue to test and consider evidence such as the OSEP the ONR's evidence stated they had concerns with the OSEP but the inspector dismissed these concerns with very little by way of evidence to do so.
- 2.3 The Council's evidence will therefore explain its view that future public safety, by way of public health and wellbeing, environmental issues in the short and long term associated with this application but also those already existing in the community, would be compromised if the development were to proceed. The Council's evidence will further demonstrate the significant complexities in relation to the OSEP and the response processes and capabilities. The subsequent impact is that potential harm would occur to the future capability and capacity of AWE Burghfield to operate effectively, in the light of the above. These are clear material planning considerations which, despite the site being allocated for housing in the Local Plan, are factors which a responsible LPA cannot set aside.

What has changed since last appeal

- 2.4 The Council notes that a decision from the Planning Inspectorate has been made since the previous appeal has been dismissed this is Appeal Decision at 1-9 Shyshack Lane, Baughurst (Planning Inspectorate reference: APP/H1705/W/23/3326959 (Appendices 7). This decision was made on evidence heard at a public hearing on 21 November 2023. The inspector noted in his decision that the Council's Emergency Planning Officer should be given considerable weight:

"...population increase of around 7 residents. Although such an increase would be comparatively small, it is recognised that the plan is not infinitely scaleable. An increase in population would increase the need for, and demand placed upon, emergency responders, reception centres, rest centres and radiation monitoring exacerbating the difficulties of delivery emergency care in a complex multi-agency emergency. Given the specific area of expertise of the WBC's Emergency Planning function, its concern with respect to the deliverability of the OSEP carries considerable weight." [paragraph 10]

- 2.5 In that appeal the inspector was concerned about an increase of just 7 residents. The appeal being considered at the Hollies would increase the population by 77 residents. It follows that this increase should be unacceptable also.

- 2.6 The inspector found the following:

*"15. Consequently, the chance of a release of radioactive material is low and if it were to happen the level of exposure would also be low. However, whilst comforting, this does not take into account the key purpose of the REPPIR to reduce exposure during a radiation emergency through the effective deployment of the OSEP. Furthermore, it is noted that ONR identifies that "there must be robust emergency preparedness and response arrangements in place for radiological emergencies, however unlikely they may be"*2.

16. Also, these points do not account for the effect of an emergency event to the emergency services and the local population. The demands on emergency resources would be substantial creating short term and possibly long-term efforts to effectively manage such an emergency. This would need to take into account social, economic and environmental affects, that could require the local environment and community

many years to fully recover. Furthermore, the anticipated low emission and exposure effects of any release would not diminish the statutory requirement for a robust OSEP to be in place, or the need for such a plan to be of sufficient rigor to ensure it can be delivered effectively in the interests of protecting public safety.”

- 2.7 A key purpose of REPPIR 19 is to reduce exposure during a radiation emergency through the effective deployment of the OSEP.

17. Accordingly, I find that the proposal would adversely impact on the functioning of the OSEP contrary to the interests of public safety. Hence, it would conflict with LP policy SS7 and paragraph 97 of the National Planning Policy Framework (the Framework) which, among other matters, states that planning decisions should promote public safety and take into account wider security and defence requirements.”

- 2.8 It is precisely the same situation in this appeal as is considered in Shyshack Lane appeal that public safety for future occupants, and the impact on the existing occupants, would be adversely impacted and this material consideration outweighs that of the previous allocation.

- 2.9 Furthermore, this decision was made in a situation where the local authority could not display a 5-year supply of housing which stood at 4.2 years. It is the case that West Berkshire Council can display a 5 year housing land supply.

- 2.10 It follows that this appeal for an even greater level of population increase should be dismissed following the same logic and planning balance as the Shyshack appeal.

- 2.11 The Council's Evidence will therefore explain its view that future public safety would be compromised if the development were to proceed, and potential harm would occur to the future capability and capacity of AWE Burghfield to operate effectively, in the light of the above. These are clear material planning considerations which, despite the site being allocated for housing in the Local Plan, are factors which a responsible LPA cannot set aside.

- 2.12 Furthermore, the Council will explore with its evidence the technical experience and advice given to the Council by bodies such as the Environment Agency and UKHSA and how this has shaped the Council's response to this application and the OSEP.

2.13 The Government has reaffirmed its commitment to the Nuclear Deterrent¹. In doing so it has outlined its commitment to funding projects and development of new warheads whilst also maintain its current warheads. The site at AWE Aldermaston and Burghfield are the only two sites in the Country where this occurs. This, the government states, is an enduring statement of commitment for decades ahead. There should be no question that the role of AWE sites in West Berkshire play a key role in the Country's defence and that local development plan policy contributes to this key role. The Government's commitment contains the following statement:

"It is also a call to action to everyone who contributes to safeguarding the security and prosperity of our nation by supporting the nuclear deterrent."

2.14 The Council's planning officers have committed to working proactively with its Emergency Planning counter parts but also the ONR, the Ministry of Defence and AWE plc to contribute to maintaining the role of the nuclear deterrent and contribute to the principles of defence in depth principles to which the population density around sites and the WBC OSEP play a key role in.

2.15 A further update since the original appeal is the correspondence from the ONR after the ALDEX-23 exercise.

2.16 The letter to the Council confirms that the Council had complied with the REPIR 19 (Reg 12) by testing the OSEP and undertaking a debrief to identify lessons. However, it goes on to state (with our **emphasis added**):

'The significant expansion of the Burghfield detailed emergency planning zone in 2019 (to accommodate changes introduced in REPIR'19), together with proposals for development of land surrounding the AWE sites, has substantially increased the number of people requiring protection in the event of a radiation emergency. This is resulting in pressures that impact on the practical implementation of the OSEP. ONR is concerned that apparent issues with the delivery of the plan will be exacerbated by further increases in population and improvements are required to address these.'

¹ ["Defence Nuclear Enterprise Command Paper - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

In ONR's opinion, the ALDEX have highlighted that key areas for improvement relate to the management of people displaced by the response to the radiation emergency, either by urgent evacuation or subsequent relocation after the period of sheltering (the protective action during the early phase of an emergency). This relates to the movement of people and the provision of monitoring and personal decontamination, in addition to welfare support.

Noting the pressures indicated, I request that the Council provides a formal response to this letter setting out the proposed actions that it will undertake to implement improvements to the OSEP to address any capacity or capability-related concerns. It should clearly identify any improvements needed for the current level of population and also identify those improvements that may be needed for any future population increases that are already committed. I would ask that a response is provided by 31st January 2024.

To provide the relevant level of regulatory oversight moving forward, we intend to carry out a series of targeted formal regulatory interventions involving the Joint Emergency Planning Unit. The purpose of these will be to gain confidence that the necessary OSEP improvements have been correctly identified and scoped, are being managed and progressed, and that these will deliver the reasonably practicable improvements to the OSEP required to satisfactorily address and mitigate current concerns.'

2.17 The testing of the OSEP with the focus on AWE Burghfield site was the first opportunity to do so since the changes in the DEPZ. Testing is considered to be the best means of assessing the adequacy of the AWE OSEP. Therefore, the outcome and the feedback from ONR with the clear concerns they highlight represents a material change since the First Decision and clearly emphasis the concerns that were previously highlighted. The full letter from ONR is at Appendix 8 along with the Councils response at Appendix 9.

3. Procedural Matters

- 3.1 It is considered that reason for refusal no.1 in regard to affordable housing could be dealt with by way of an agreed Unilateral Undertaking to which was drafted during the course of the previous appeal. It is considered that the UU will likely be submitted to the appeal again and if so this issue can be removed.

Planning Appeal Format

- 3.2 The Council is still content for the appeal to be heard by Public Inquiry.

Reasons for Refusal

- 3.3 The application was refused for the following reasons:

1. *The applicant has failed to complete and enter into a s106 obligation under the 1990 Act, which would secure and ensure the delivery of the required 40% affordable housing (13 affordable dwellings of which 70% i.e. 9 units should be for social rent) on the application site as required under policy HSA16 in the HSADPD of 2017 and under policy CS6 in the West Berkshire Core Strategy of 2006 to 2026. Given the existing high need for affordable housing across the District, the application is accordingly unacceptable, and is contrary to and non-compliant with the above mentioned policies in respect of the necessary affordable housing requirements.*

2. *The application is part of an allocated housing site in the Council Local Plan [HSADPD of 2017]. In addition, it lies in the inner protection zone of the DEPZ for AWE site [B] at Burghfield. This public protection zone was formally altered in 2019, after the site was allocated and accepted in the HSADP. Policy CS8 in the WBCS of 2006 to 2026 notes that [inter alia] within the inner zone, in order to be consistent with ONR advice, nearly all new housing will be rejected [para 5.43 of the supporting text] , as the additional resident population would compromise the safety of the public in the case of an incident at AWE. This accords with the advice to the application provided by the Council Emergency Planning Service, and the ONR.*

In addition, para 97 of the NPPF of 2021 notes that [inter alia] "planning policies and decisions should promote public safety, and take into account wider security and defence requirements by—b] ensuring that operational sites are not affected adversely by the impact of other development in the area. Given the clear objection from both the AWE and the ONR to the application on this basis it is apparent that the application is unacceptable in the context of this advice.

The Council accordingly considers that future public safety would be compromised if the development were to proceed, and potential harm would occur to the future capability and capacity of AWE Burghfield to operate effectively, in the light of the above. These are clear material planning considerations which, despite the site being allocated for housing in the Local Plan, are factors which a responsible LPA cannot set aside.

The proposal is accordingly unacceptable.

- 3 *The proposed development by virtue of its size and siting, would result in the direct loss of trees the subject of TPO 201/21/0989. The loss of the trees is unacceptable especially as the proposal has not sought to minimise the impact on the existing TPO trees and also does not allow sufficient space on site to replace the trees that would be lost and this would have an adverse impact on the amenity and character of the area in which it is located.*

The proposal is therefore contrary to policies ADPP1, CS14, CS18 and CS19 of the West Berkshire Core Strategy 2006 - 2026 (adopted 2012) and advice contained within the NPPF.

4. Appeal Site and Proposal

Appeal Site

- 4.1 The appeal site is 1.83ha in size and is currently open pastureland. The Planning Application sought full planning permission for the erection of 32 dwellings on land to the rear of the Hollies Nursing Home, within the settlement of Burghfield Common. With associated works, landscaping and access points. It proposed that 13 of the dwellings [40%] would be affordable.
- 4.2 The application site will be accessed off Regis Manor Road; a non-adopted road lying to the east of the application site which presently serves 28 dwellings which are completed and occupied. The application site is wooded on all sides and is steeply sloping towards the northern boundary. Further existing housing lies to the south of the site.
- 4.3 With a mix of garages and car ports plus open parking spaces, a total of 77 vehicle parking spaces are to be provided on the application site.
- 4.4 There are no designated ecological sites on the site, although ancient woodland is to the boundary of the site. The site lies in flood zone 1 and no assets of heritage significance lie in or just beyond the site red line. A Tree Protection Order lies on the application site.
- 4.5 The site lies within the middle consultation zone of policy CS8. This zone is 3-5km away from the AWE premise and drawn as concentric circles. There is a need to consult ONR on applications whereby they are residential accommodation or non-residential accommodation exceeding 50 people, 20 or more dwellings, 1000 sqm of B1 and 2,400 sqm of B8.
- 4.6 The site lies within the Detailed Emergency Planning Zone (DEPZ) due to its proximity to Atomic Weapons Establishment Burghfield (AWE (B)) and Outline Planning Zone (OPZ) for the Atomic Weapons Establishment Aldermaston (AWE (A)).
- 4.7 The radius of the DEPZ was extended in 2020 as a result of the Government's changed status on risk appetite towards radiation emergencies and the subsequent

coming into force of the Radiation (Emergency Preparedness and Public Information) Regulations 2019 on the 22nd May 2019.

- 4.8 The change in the size of the DEPZ took place following a submission of a Consequence Report by AWE plc in relation to, and for the purposes of this appeal, the AWE Burghfield site in November 2019. The Consequence Report established the minimum radius of the Detailed Emergency Planning Zone by detailing the area of Urgent Protective Actions (UPA) pursuant to Schedule 4 of those Regulations and as was set out in Appendix A: Map A (found in Appendices 5). The resulting minimum diameter (UPA) of the new radius was applied by the local planning authority to establish “AWE Burghfield – DEPZ” shown on the Local Plan Map.
- 4.9 The change in the DEPZ around the AWE Burghfield site resulted in this application site now being included within the DEPZ which previously it was not.
- 4.10 This alteration occurred before the application was made and after the allocation of the land in the West Berkshire Housing Site Allocations Development Plan Document and after the previous grant of planning permission for adjacent land.
- 4.11 The consequence of the change was that whilst the application site was previously an allocated site for housing, from the date of the change it became covered by the Detailed Emergency Planning Zone. Consequently, it is proposed to be de-allocated for housing under the Local Plan Review. This is because the law around emergency planning and preparedness (REPPiR 19) has changed in light of lessons identified from the Fukushima radiation emergency as well as changes in international standards. This change in law led to the expansion of the DEPZ to include this application site and therefore giving rise to one of the reasons the Council refused the planning application on the grounds of public safety.

Application Site

- 4.12 Under the Housing Site Allocations DPD of the Local Plan (2006-2026), Adopted May 2017, under Policy HAS 16, Land to the Rear of the Hollies, (Site Reference BUR002, 002A, 004), the application site is allocated for housing development.
- 4.13 There is no relevant development management planning history of the appeal site prior 2000.

4.14 In 2019, the application site became overlaid with the Detailed Emergency Planning Zone relating to the Atomic Weapons Establishment Burghfield.

4.15 The West Berkshire Local Plan Review 2022-2039 submitted to the Secretary of State on 31st March 2023 does not identify the application site as allocated for housing. See also Policy SP4 that describes the approach to development for housing within the DEPZ, and Figure 4 that identifies the changed increased radius of the DEPZ.

Adjacent Sites

4.16 The adjacent site for 28 dwellings was granted under the following permission:

- 16/01685/OUTMAJ. Permission granted for 28 dwellings on the 30th October 2018.
- 19/00772/RESMAJ. Reserved matters approval granted on the 8th August 2019.

5. Planning Policy

5.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise². The development plan is therefore the starting point for decision making. Where a planning application/appeal conflicts with an up-to-date development plan, permission should not usually be granted. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

Statutory Development Plan

5.2 The statutory development plan for West Berkshire is currently made up of a number of different documents³. Table 3.1 sets out those development plan documents that are relevant to the appeal proposal, together with a list of the relevant policies.

Table 3.1: Statutory Development Plan

Development Plan Document	Relevant Policies
West Berkshire Core Strategy 2006-2026 (WBCS) http://info.westberks.gov.uk/corestrategy	ADPP1, ADPP6, CS1, CS6, CS8, CS13, CS14, CS17, CS19.
Housing Site Allocations Development Plan Document 2006-2026 (HSA DPD) http://info.westberks.gov.uk/hsa	GS1, HSA16, P1.

Weight to be given to development plan policies

5.3 It is a fundamental principle of the planning system that the weight to be afforded to each issue is solely a matter for the decision maker. The NPPF provides some guidance on what weight should be given to development plan policies given the

² Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

³ Full development plan: West Berkshire Core Strategy 2006-2026 (adopted July 2012); Housing Site Allocations DPD 2006-2026 (adopted May 2017); West Berkshire District Local Plan 1991-2006 Saved Policies 2007 (as amended in July 2012 and May 2017); Stratfield Mortimer Neighbourhood Development Plan (adopted June 2017); Compton Neighbourhood Development Plan (adopted Feb 2022); South East Plan, Natural Resource Management Policy 6 (relating to the Thames Basin Heaths Special Protection Area; West Berkshire Minerals and Waste Local Plan 2022-2037 (adopted Dec 2022)

status of the NPPF as a material consideration in deciding planning applications/appeals. Paragraphs 218 and 219 state:

“218. The policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication. Plans may also need to be revised to reflect policy changes which this Framework has made.

219. However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”

- 5.4 The weight to be given to the relevant policies is discussed in this statement under the headings relating to each consideration, as appropriate.

Material Considerations

- 5.5 A number of considerations material to this appeal including as follows.
- 5.6 The **National Planning Policy Framework (NPPF)** sets out the Government’s planning policies for England and how these should be applied. The NPPF is a material consideration in planning decision, which should be read as a whole (including its footnotes and annexes). The latest version was published in December 2023.
- 5.7 Emphasis is made on considered material considerations alongside the NPPF and the development plan.

“2. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise³. The National Planning Policy Framework must be taken into account in preparing the development plan and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.”

5.8 Healthy and safe places is also emphasised in the NPPF.

“96. Planning policies and decisions should aim to achieve healthy, inclusive and safe places and beautiful buildings which:

a) promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other – for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages;

b) are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of beautiful, well-designed, clear and legible pedestrian and cycle routes, and high quality public space, which encourage the active and continual use of public areas; and

c) enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling.”

5.9 The NPPF provides scope to consider public safety and wider security and defence issues.

“101. Planning policies and decisions should promote public safety and take into account wider security and defence requirements by:

a) anticipating and addressing possible malicious threats and natural hazards, especially in locations where large numbers of people are expected to congregate⁴⁵. Policies for relevant areas (such as town centre and regeneration frameworks), and the layout and design of developments, should be informed by the most up-to-date information available from the police and other agencies about the nature of potential threats and their implications. This includes appropriate and proportionate steps that can be taken to reduce vulnerability, increase resilience and ensure public safety and security; and

b) recognising and supporting development required for operational defence and security purposes, and ensuring that operational sites are not affected adversely by the impact of other development proposed in the area.”

5.10 The NPPF again supports the effective use of and to provide homes that have safe and health living conditions.

“123. Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or ‘brownfield’ land⁴⁹.”

5.11 The Government’s policies include paragraph 97 that makes clear that “decisions should promote public safety and take into account wider security and defence requirements”. Paragraphs (a) and (b) provide detailed policy, requiring anticipation and addressing of malicious threats and natural hazards, and that policies, layouts and design should be informed about the nature of potential threats and their implications, including, in particular, appropriate and proportionate steps that can be taken to reduce vulnerability, increase resilience and ensure public safety and security. Paragraphs 189, 191-193 are also relevant.

5.12 **The introduction of the Radiation (Emergency Preparedness and Public Information) Regulations 2019 (REPPiR) is considered to be a significant material consideration that must be weighed in the planning balance.**

5.13 The **West Berkshire Local Plan Review 2022-2039** submitted to the Secretary of State on 31 March 2023 is a material consideration.

5.14 The **Planning Practice Guidance (PPG)** is an online publication which supplements the NPPF and may also be material when deciding applications/appeals.

5.15 The **Quality Design SPD (2006)** aims to help developers create places of high quality design which are sustainable, secure and accessible to all. The SPD series is made up of 10 documents.

- 5.16 The **Planning Obligations SPD (2014)** was adopted by the Council in December 2014, following a period of consultation which took place in Summer 2014. It sets out the Council's approach for securing contributions and obligations from development, alongside the Community Infrastructure Levy (CIL). This approach is in accordance with national CIL Regulations and the council's pdf CIL Regulation 123 List.
- 5.17 The **Sustainable Drainage Systems (SuDS) SPD (2018)** was adopted by the Council in December 2018, following a period of consultation which took place in Summer 2018. It provides guidance on the approach to SuDS in new developments in West Berkshire so as to manage and mitigate surface water flood risk.
- 5.18 The **Cycle and Motorcycle Advice and Standards for New Development (2014)** was published by the Council in November 2014. Policy P1 of the HSA DPD, cycle and motorcycle parking shall be provided in accordance with this document.
- 5.19 The **Secretary of State's decision, reference APP/X0360/W/22/3304042**, permitting development of land west of Kingfisher Grove, Three Mile Cross, Reading, Berkshire RG7 1LZ for 49 dwellings within the Detailed Emergency Planning Zone relating to the Atomic Weapons Establishment Burghfield is a material consideration. (Appendices 1)
- 5.20 The **question of safety of the public occupiers of the proposed development** from irradiation in the event of irradiation emanating from AWE Burghfield. See *Stringer v Minister for Housing and Local Government* [1970] 1 WLR 1281. (Appendices 2)
- 5.21 **Precedent Effect** of a grant of planning permission here. The Local Planning Authority has drawn its Emerging Local Plan on the basis of the changed radii of the DEPZ. A grant of planning permission would undermine its resulting housing policy basis. Further, the Secretary of State determining this appeal has no jurisdiction to prejudge the outcome of the Secretary of State's evaluation of the said resulting housing policy.

Emerging Policies

- 5.22 The application site was removed as a proposed allocation in the Regulation 19 proposed submission Local Plan Review 2022 – 2039 by Council (December 2022) and the Regulation 22 Local Plan Review 2022 - 2039 formally submitted to the planning inspectorate 31st March 2023.

5.23 The Local Plan Review (LPR) plans for sustainable development including supporting infrastructure for the period up to 2039. Proposed Policy SP4 Atomic Weapons Establishment (AWE) Aldermaston and Atomic Weapons Establishment (AWE) Burghfield updates the adopted Core Strategy Policy to take account of the latest information available to the authority.

5.24 The proposed policy SP4 states:

Policy SP4

Atomic Weapons Establishment (AWE) Aldermaston and Atomic Weapons Establishment (AWE) Burghfield

In the interests of public safety, and to ensure that any proposed developments do not pose an external hazard to the AWE sites, any new development of a type more particularly described in the table below ⁽¹⁰⁾ located in the Detailed Emergency Planning Zone (DEPZ)⁽¹¹⁾ of AWE Aldermaston and AWE Burghfield is likely to be refused planning permission by the Council, especially when the Office for Nuclear Regulation (ONR) and/or Ministry of Defence (MoD) have advised against that development and/or object.

The ONR will be consulted on applications for new development in the DEPZ, Outer Consultation Zone (OCZ) ⁽¹²⁾ and any other consultation zone as detailed on [ONR-website](#) which meets the consultation criteria described in the table below (as may be amended by the ONR from time to time).

For development proposals in the DEPZ and OCZ for each of AWE's sites, consideration will be given as to how the proposed development would impact on the AWE Off-Site Emergency Plan and supporting documents.

Development within the Land Use Planning Consultation Zones: Office for Nuclear Regulation

AWE Aldermaston (AWE A)		AWE Burghfield (AWE B)
Zone	Development Type	
DEPZ	Any new development, re-use or re-classification of an existing development that could lead to an increase in residential or non-residential populations thus impacting on the off-site emergency plan.	
	Any new development, re-use or re-classification of an existing development that could pose an external hazard to the site.	
OCZ	Any new residential development of 200 dwellings or greater.	
	Any re-use or re-classification of an existing development that will lead to a material increase in the size of an existing development (greater than 500 persons).	
	Any new non-residential development that could introduce vulnerable groups to the OCZ.	
	Any new development, re-use or re-classification of an existing development that could pose an external hazard to the site.	
12km zone	A circular zone of 12km radius around all nuclear sites, for certain types of significant development due to the potential for such developments to pose an external hazard to sites.	

5.25 At the Regulation 19 stage, the Council received 21 comments on this policy. All these representations are published on the examination website www.westberks.gov.uk/lprexamination.

5.26 There are no proposals for new residential or employment site allocations inside the DEPZ as part of the Local Plan Review.

Emerging Plans

5.27 Planning law requires that all applications for planning permission are determined in accordance with the approved development plan, unless material considerations indicate otherwise. Paragraph 48 of the NPPF (2021) allows local planning authorities to give weight to relevant policies in emerging plans according to:

- a) Stage of preparation of the plan,
- b) Extent to which there are unresolved objections to relevant policies and,
- c) The degree of consistency of the relevant policies in the emerging plan to the NPPF.

5.28 As stated in paragraph 3.12 the Local Plan Review was submitted to the Secretary of State for examination (Regulation 22) on 31st March 2023.

5.29 As part of the examination process, the Local Plan Review hearing sessions are due to take place between 8 May – 11 June 2024.

5.30 Local Plan Review Policy SP4 updates the existing Core Strategy policy CS8 to take account of:

- a) Changes to the NPPF since 2012 namely the duty in paragraph 101 a) appropriate and proportionate steps to reduce vulnerability, increase resilience and ensure public safety and security; and -paragraph 101 b) to ensure operational defences are not adversely impacted by other development; and
- b) Changes to the Detailed Emergency Planning Zone.

5.31 In addition to the weight that may be given to emerging local plans in paragraph 8, paragraph 49 of the NPPF (2021) suggests that an application may be considered to be premature (in limited circumstances) if two conditions are met, namely;

- a) The development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and
- b) The emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

5.32 Chapter 5 provides greater detail on how the policy relating to AWE Aldermaston and Burghfield has evolved since West Berkshire Core Strategy Policy CS8, to provide a policy which meets the requirements of NPPF paragraphs 101a and 97b. This has resulted in changes to the spatial strategy adopted by the Council between the Regulation 18 and Regulation 19 stages of the Local Plan Review.

5.33 The Council clearly considers that the duty to reduce vulnerability, increase resilience and ensure public safety are such that it has deselected this site and changed the spatial strategy for the District.

5.34 The Council is therefore of the opinion that the conditions set out in paragraph 49 a) and b) are satisfied and cannot be said that the conditions are not capable of being met by the current circumstances.

6. Main Issues

6.1 Taking into account the Council's reasons for refusal and the Appellant's Statement of Case, the main issues of this appeal can be broadly summarised as follows:

- Whether the proposed housing development complies with current Planning Policy and Allocation;
- Whether the proposed housing development provides the required Affordable Housing Provision;
- Whether the public in the proposed housing development, and those in the existing population as a result of this additional housing burden, would be safe, having regard to their health and wellbeing following a radiation emergency at the Atomic Weapons Establishment Burghfield or a beyond reasonably foreseeable radiation emergency at the Atomic Weapons Establishment Aldermaston; and
- Whether the Ancient Woodland and Tree Preservation Order would be unnecessarily harmed by the proposed housing.

7. Local Planning Policy

Current Local Plan Policies

7.1 The Council sets out the context surrounding the Policy considerations of this application site and considerations material to this appeal in this section.

7.2 The Council's development plan policy for housing predates the 2019 REPIR Regulations and the change by the Government to the evaluation of irradiation risk to the public. The local policy also predates the change by the AWE Burghfield of the risk radius for that major hazard establishment. By contrast, the Emerging Plan policy reflects those recently changed circumstances. The Council will seek to explore the emerging plan.

7.3 Before the Regulations were in force and the changes referred to above occurred in fact, the Council's overall spatial strategy in the WBCS was that as set out in policy ADPP1. Policy ADPP1 sets out that:

"most development will be within or adjacent to the settlements in the settlement hierarchy."

7.4 In addition, in the same policy Burghfield Common is identified as being a Rural Service centre which is second in that hierarchy. Secondly policy CS1 relates to delivering new homes and retaining the housing stock. It notes that new homes will be primarily developed on land allocated for residential developments in subsequent DPDs.

7.5 Policy ADPP6 The East Kennet Valley notes that some growth is planned for this area to help meet the needs of the village communities and to assist with the viability of village shops and services. This amounts to approximately 800 homes between 2006 and 2026, an average of 40 new homes a year. The relatively low growth proposed for this area of the district reflects the more limited services and poorer transport connections. In March 2011 there had already been considerable housing commitments and completions in the East Kennet Valley, leaving only about 320 dwellings to be allocated.

- 7.6 Policy ADPP6 emphasises the presence of AWE sites in this spatial area. Noting regard to the presence of AWE Aldermaston and Burghfield, the Council will monitor housing completions and population levels in conjunction with the ONR and neighbouring authorities. Residential development in the inner land use planning consultation zone is likely to be refused planning permission in accordance with Policy CS8.
- 7.7 Policy CS8 provides for Nuclear Installations at AWE, including Burghfield. CS8 provides for three zones and a development plan policy response to each zone. It also provides footnotes in regard to these zones and how they may alter.
- 7.8 CS8 provides that residential development within the inner land use planning consultation zone would be likely to be refused planning permission in the event that the Office for Nuclear Regulation (ONR) advises against that development.
- 7.9 It goes on to note that in other development proposals in the remaining consultation zones will be considered in consultation with the ONR, having regard to the scale of development proposed, its location, population distribution of the area and the impact on public safety, to include how the development would impact on “Blue Light Services” and the AWE Off Site Emergency Plan (OSEP) in the event of an emergency as well as other planning criteria.

Assessment of Appeal Proposal

- 7.10 The site would fall within the middle consultation zone.
- 7.11 Paragraphs 5.41 and 5.43 describe the basis of CS8 in Circular 04/)) “Planning Controls for Hazardous Substances” in which the Government has had a long-standing policy “measure of prudence” regarding local demographics which would limit the radiological consequences to the public in the unlikely event of an accident involving the spread of radioactive materials beyond the nuclear site boundary” and “*over and above the stringent regulatory requirements imposed on nuclear operators to prevent such accidents*”. The ONR’s decision to object to development is based on “complex modelling” and it advises against nearly all residential development in the inner zone (and that also largely comprises countryside). They are also consulted on for other areas. The development would meet the middle zone consultation requirements as it is development of residential accommodation exceeding 50 people

or more than 20 dwellings. As such it is legitimate that the Council's decision must take into account the ONR's advice. It is specifically noted that one of the reasons that the previous appeal decision was quashed was due to the inspector not giving sufficient consideration to the ONR's evidence. It is clear that the policy requires input from the ONR and that their response should be highly regarded.

7.12 The ONR's advice (to advise against development or not) is based on a range of factors including development scale and distance from the AWE location.

7.13 Flowing on from these policies, the Council adopted the HSA DPD, in 2017 and also before the changes referred to above in regard to REPP19 legislation and the DEPZ. The HSA DPD made a range of housing allocations across the District and Burghfield including the application site. This application site comprises the *western* half of the allocated site under policy HSA16. That policy notes the allocation of approximately 60 dwellings.

7.14 Prior to the changes to REPP19 legislation and the DEPZ 28 dwellings were permitted before the changes referred to above had occurred and those dwellings were constructed to the east in the allocation. The appeal proposal seeks to secure planning permission for the remainder of 32 allocated under HSA 16.

7.15 The allocations in the DPD are also subject to Policy GS1 in the HSADPD, the first line of which notes that:

"All sites will be delivered in accordance with the West Berkshire Development Plan".

7.16 Footnote 2 makes clear that the West Berkshire Core Strategy identified as being an integral component of that Plan. Policy CS8, as referred to above, in the Core Strategy identifies three safety zones around the two AWE sites, within which in the middle zone, consultation with the ONR will take place. This consultation and consideration of CS8 will have regard to the scale of development proposed, its location, population distribution of the area and the impact on public safety. This will include how the development would impact on "Blue Light Services" and the AWE Off-Site Emergency Plan in the event of an emergency as well as other planning criteria.

7.17 It is noted that this is not, and appropriately, is not an automatic rejection but a strong indication of the outcome.

- 7.18 When the HSADPD was prepared by the LPA, the proposed level of housing on the allocated sites was consulted upon and the Council emergency planners at that time, (pre-2017) allowed for the 60 units under HSA16.
- 7.19 However, since then in 2019, and following consultation the Government revised the REPPiR Radiation (Emergency Preparedness and Public Information) Regulations 2019; the result of which was that the DEPZ for the AWE Burghfield site was revised.
- 7.20 **The introduction of the Radiation (Emergency Preparedness and Public Information) Regulations 2019 (REPPiR) is considered to be a significant material consideration that must be weighed in the planning balance.**
- 7.21 This has also changed the way in which the Council and its consultees consider and apply CS8 in terms of the consultation zones and proposal maps.
- 7.22 The Council now acknowledges that the concentric circles are superseded by the DEPZ, the Outer Consultation Zone, 12km zone and special cases as set out by the ONR in the table as below:

Zone	Description
On the nuclear site	Within the nuclear site boundary.
Detailed Emergency Planning Zone (DEPZ)	The DEPZ where set by a Local Authority.
Outer Consultation Zone (OCZ)	Extends from the perimeter of the DEPZ out to a distance defined by ONR from the centre point of the site, where this distance is determined by the nature of the site. For sites without a DEPZ, the OCZ extends outward from the site perimeter fence.
12km zone	A circular zone of 12km radius around all nuclear sites, for certain types of significant development due to the potential for such developments to pose an external hazard to sites.
Special case	ONR also requests to be consulted on planning applications, irrespective of distance from nuclear sites, for special cases. These represent developments that either introduce a new hazard or change the existing external hazards posed to nuclear sites.

7.23 This means that whilst the consultations on the concentric circles as referenced in CS8 are relevant, the most up to date information on consultation comes from the ONR. The table below outlines those changes:

<u>CS8</u>	<u>ONR's Consultation Zone</u>
Inner Zone 0-3km	Detailed Emergency Planning Zone (DEPZ) – as set by the Council based on the Consequence Report and requirements of REPPiR 19. This may vary overtime as per REPPiR 19.
Middle Zone 3-5km	Outer Consultation Zone (OCZ) 5km from Grid Reference SU684680 for AWE Burghfield and Grid Reference SU595635 for AWE Aldermaston
Outer 5-8km	12km zone from same Grid References as for OCZ

7.24 Policy CS8 has footnote (60) in reference to the inner land use planning consultation zone. Footnote 60 notes that the consultation zones are as defined by the ONR and shown on the West Berkshire Proposal maps. Policy CS8 therefore permits a level of flexibility to update the consultation zones in line with the Office of Nuclear Regulations requirements. Whilst the paper maps of the core strategy may not be updated there are updates to the Councils Online Mapping. The DEPZ is shown on Local Maps on the Councils Interactive Online Mapping showing an update to the West Berkshire Maps. These updates are a move from the Council to head towards digitisation of planning, which is an aspiration of the current government and planning system.

7.25 This results in the Emergency Planners and those applying CS8 to review the updated DEPZ areas and apply that the inner land use area, referred to by CS8, to now be the DEPZ. The update to REPPiR 19 which put in place the DEPZ, which resulted in its increase has now overlaid this site. Whilst the site was in the middle zone before REPPiR 19 legislation, it has now moved into the DEPZ and the Council considers this

to be the Inner Land zone whereby CS8 would stipulate, where the ONR objects to an application, it is likely to be refused.

- 7.26 Policy GS1 in the HSADPD the first line notes that "All sites will be delivered in accordance with the West Berkshire Development Plan" and the WBCS is identified as being an integral component of that Plan. Policy CS8 in the Core Strategy identifies three safety zones around the two AWE sites, within which in the inner zone, all residential development, upon which the ONR has advised against, on the grounds of public safety, will likely be refused planning permission. It is noted that this is not however an automatic rejection.
- 7.27 Whilst the increase in the DEPZ results in a larger Inner Zone than that agreed in the Core Strategy this reflects the updated risk appetite of the Government following the lessons learnt from Dachi Fukushima and the resultant changes to the REPPiR legislation implemented in REPPiR 19. This change in law, resulting in a larger DEPZ, means that it is logical that the Inner Zone in CS8 must also be read as corresponding to the updated DEPZ rather than remaining unchanged and referencing the smaller zone determined under the now repealed and outdated REPPiR 2001.
- 7.28 The Council is of the opinion that to ignore the changes to the consultation zones as stipulated by the ONR is to ignore CS8's wording and references to footnotes. It also does not take account of the changed risk appetite from new material considerations. Furthermore, the changes to the policies maps of CS8 are reflective of those proposed to be adopted in the emerging local plan.
- 7.29 If the inspector is not minded agreeing with the Council's case that the footnotes allow the consultation zones to be updated and provide flexibility, the Council would suggest that the development still falls with the middle zone and conflicts with the Policy wording of CS8 on this as below.
- 7.30 The material consideration of the updated DEPZ is a strong material consideration which demonstrates how the location, population distribution of the development/area will impact the off-site emergency plan (OSEP). As noted throughout this statement there is concerns from WBC emergency planners, ONR and MOD/AWE on how the proposed development would materially impact the OSEP which is not infinitely scalable.

7.31 The NPPF makes allowances for this in paragraph 2:

“Planning law requires that applications for planning permission be determined in accordance with the development plan², unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.”

7.32 Since no planning permission existed at that time on the application site (albeit it was an allocated site) no allowance was made, or is required, in the AWE OSEP for the future potential 32 units. Accordingly, the Council’s Emergency Planning team, the ONR, and the MOD/AWE are now objecting to the application.

7.33 It is noted that in relation to the proposal:

- i. the Council Emergency Planning Team have formally objected to the application,
 - a. on the basis that, given all of the application site lies within the now changed DEPZ for AWE Burghfield, an increase in the density of population which would arise, and which has not been allowed for within the Council’s AWE Off-Site Emergency Plan for any potential future incidents at the site which might harm public health, will not be acceptable on the grounds of public safety.
- ii. The ONR have agreed with the advice of the Council’s Emergency Planners as noted above. They are the National Government body who advise on such applications as this.
- iii. The Ministry of Defence and AWE plc have formally objected to the development, on the grounds of the advice in para 101 of the NPPF.
 - a. Paragraph 101(b) notes the following—“recognising and supporting development for operational defence and security purposes, and ensuring that operational sites are not adversely affected by the impact of other development in the area.”

- 7.34 Clearly, the introduction of an additional 32 dwellings (with up to 77 additional residents) within the most recent extent of the DEPZ has the real potential to compromise the future defence capacity and capability of the UK. This connection is made on the basis that if the increase in population has the result of meaning the OSEP is inadequate, the operations of AWE could be curtailed thus resulting in the UK critical national nuclear deterrent in support of the defence and security being compromised. There is clearly a long-term future for the Atomic Weapons Establishment given the very significant public expenditure and recent command paper by the Government⁴.
- 7.35 However, the existence of the AWE sites and the risk of a radiation emergency (as evidence the determination of the DEPZ in accordance with REPPiR 2019) and therefore the potential for a 'catastrophic' impact on human health, property and the environment is ever present. Therefore, limiting the number of people and properties which may be affected is key to protecting their health and wellbeing and the wider environment in both the short term but also medium to long term is essential.
- 7.36 The Council expands on its case below in regard to Emergency Planning and will do so within its proofs of evidence.
- 7.37 Whilst the Council accepts the site is an allocated site and that the purpose of the development plan is to give surety in the planning system to an extent. However, the planning system also provides caveats to this to avoid situation such as this one where new information can alter the Local Plans arrangements. There is a clear material consideration change in the introduction of the REPPiR 19 legislation and the changes to the DEPZ which is given significant weight in regard to whether the location of this development is appropriate.
- 7.38 The REPPiR 19 states that the OSEP should be 'adequate' in order 'to mitigate, so far as reasonably practicable, the consequences of a radiation emergency outside the operator's premises' (Reg 11 ((1) – (2))). The OSEP as will be discussed by emergency planners is not infinitely scalable. If the OSEP is compromised there is a very real risk to human life, health, wellbeing through an increased risk of cancers and to the environment. The failure of the plan could put at risk future occupants. In addition, more occupants may compromise the existing community's health, safety and

⁴ [Defence Nuclear Enterprise Command Paper - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

wellbeing. There is the immediate risk but there is also an ongoing risk to the health and wellbeing of occupants and the environment in the medium and longer term.

7.39 It is noted that a similar debate on this matter has been discussed in Appeal Decision APP/H1705/W/23/3326959. Whereby the inspector noted that;

“15. Consequently, the chance of a release of radioactive material is low and if it were to happen the level of exposure would also be low. However, whilst comforting, this does not take into account the key purpose of the REPPIR to reduce exposure during a radiation emergency through the effective deployment of the OSEP. Furthermore, it is noted that ONR identifies that “there must be robust emergency preparedness and response arrangements in place for radiological emergencies, however unlikely they may be”².

16. Also, these points do not account for the effect of an emergency event to the emergency services and the local population. The demands on emergency resources would be substantial creating short term and possibly long-term efforts to effectively manage such an emergency. This would need to take into account social, economic and environmental affects, that could require the local environment and community many years to fully recover. Furthermore, the anticipated low emission and exposure effects of any release would not diminish the statutory requirement for a robust OSEP to be in place, or the need for such a plan to be of sufficient rigor to ensure it can be delivered effectively in the interests of protecting public safety.”

7.40 The key purpose of the REPPIR 19 to reduce exposure during a radiation emergency through the effective deployment of the OSEP.

17. Accordingly, I find that the proposal would adversely impact on the functioning of the OSEP contrary to the interests of public safety. Hence, it would conflict with LP policy SS7 and paragraph 97 of the National Planning Policy Framework (the Framework) which, among other matters, states that planning decisions should promote public safety and take into account wider security and defence requirements.”

7.41 It is precisely the same situation in this appeal as is considered in the Shyshack Lane appeal that public safety for future occupants, and the impact on the existing occupants, would be adversely impacted. It is the Council's view that this material consideration outweighs that of the previous allocation.

7.42 The Council's Evidence will therefore explain its view that future public safety would be compromised if the development were to proceed, and potential harm would occur to the future capability and capacity of AWE Burghfield to operate effectively, in the light of the above. These are clear material planning considerations which, despite the site being allocated for housing in the Local Plan, are factors which a responsible LPA cannot set aside.

8. Emerging Local Plan

Regulation 18 Local Plan Review Emerging Draft

- 8.1 The Council began reviewing the existing Local Plan for the District in 2018. It reviewed all existing policies and identified gaps in policies and the evidence base. In December 2020 the Council published the emerging draft version of the LPR for consultation, which not only included a policy on AWE Aldermaston and Burghfield but also proposed “Sites allocated for residential and mixed use development in Eastern Area” and “Sites allocated for residential development: Eastern Area”.
- 8.2 The publication of the Regulation 18 Local Plan Review 2020 – 2037 Emerging Draft, included the revised 2019 DEPZ boundary required under the REPPiR legislation.
- 8.3 Emerging Draft Policy SP4, Atomic Weapon Establishment (AWE) Aldermaston and Atomic Weapons Establishment (AWE) Burghfield stated;

Policy SP 4

Atomic Weapons Establishment (AWE) Aldermaston and Atomic Weapons Establishment (AWE) Burghfield

In the interests of public safety, residential⁽⁹⁾ development in the Detailed Emergency Planning Zone (DEPZ)⁽¹⁰⁾ of AWE Aldermaston and AWE Burghfield is likely to be refused planning permission by the Council, especially when the Office for Nuclear Regulation (ONR) has advised against that development. All other development proposals in the Outer Consultation Zone (OCZ)⁽¹¹⁾ will be considered in consultation with the ONR having regard to the scale of development proposed, its location, population distribution of the area and the impact on public safety, to include how the development would impact on “Blue Light Services” and the emergency off site plan in the event of an emergency as well as other planning criteria. Consultation arrangements for planning applications will be undertaken with the ONR using the table below.

Development within the Land Use Planning Consultation Zones: Office for Nuclear Regulation		
AWE Aldermaston (AWE A)		AWE Burghfield (AWE B)
Zone	Development Type	Development Type
DEPZ	Any new development, re-use or re-classification of an existing development that could lead to an increase in residential or non-residential populations thus impacting on the off-site emergency plan.	Any new development, re-use or re-classification of an existing development that could lead to an increase in residential or non-residential populations thus impacting on the off-site emergency plan.
	Any new development, re-use or re-classification of an existing development that could pose an external hazard to the site.	Any new development, re-use or re-classification of an existing development that could pose an external hazard to the site.
Outer	Any new residential development of 200 dwellings or greater.	Any new residential development of 200 dwellings or greater.
	Any re-use or re-classification of an existing development that will lead to a material increase in the size of an existing development (greater than 500 persons).	Any re-use or re-classification of an existing development that will lead to a material increase in the size of an existing development (greater than 500 persons).
	Any new non-residential development that could introduce vulnerable groups to the OCZ.	Any new non-residential development that could introduce vulnerable groups to the OCZ.
	Any new development, re-use or re-classification of an existing development that could pose an external hazard to the site.	Any new development, re-use or re-classification of an existing development that could pose an external hazard to the site.

- 8.4 This policy SP4 received 21 comments including representations from both ONR and AWE, reference was also made to the Judicial Review into the validity of the new DEPZ (Crest Nicholson Operations Limited, Hallam Land Management Limited, Wilson Enterprises Limited and West Berkshire District Council and AWE Plc, Secretary of State for Defence, Public Health England (UK Health Security Agency) and Office for Nuclear Regulation Case No CO/214/2020). The Hon. Mrs Justice Thornton DBE 12 February 2021 rejected the claim on all grounds. Therefore, the extent of the changed DEPZ has been held by the High Court to be lawful.
- 8.5 In addition, the Local Plan Review 2020 – 2037 Emerging Draft, initially proposed to retain the allocation of the Land to the Rear of the Hollies Nursing Home for 60 dwellings first made in the Housing Site Allocations Development Plan Document (adopted 2017) with the reference number HSA16 under a new reference number RSA 19. This is referenced in draft Policy SP14 Sites allocated for residential development in Eastern Area and draft Policy RSA 19 Land to the rear of the Hollies Nursing Home, Reading Road and Land opposite 44 Lamden Way, Burghfield

Common (Site Ref HSA19). Draft Proposed Policy SP14 received 41 responses and Draft Proposed Policy RSA 19 received 7 responses.

Regulation 19 Local Plan Review Proposed Submission

- 8.6 Following the Regulation 18 consultation, Policy SP4 and its supporting text was extensively reworded based on the comments received from Emergency Planning. In addition, SP14 Sites allocated for residential development in Eastern Area and its supporting text was also extensively reworded. The supporting text was updated to recognise that if the DEPZ around AWE is reviewed and the emergency planning arrangements reviewed, then future reviews of the Local Plan will consider if a strategic allocation in the Grazeley area would be suitable. Also some of the sites proposed for allocation in the emerging draft LPR have been removed. This is due to development of sites being rolled forward from the current Local Plan, being at an advanced stage of construction, and also because of the AWE Burghfield DEPZ.
- 8.7 The revised Policy SP4, proposes:

Policy SP4

Atomic Weapons Establishment (AWE) Aldermaston and Atomic Weapons Establishment (AWE) Burghfield

In the interests of public safety, and to ensure that any proposed developments do not pose an external hazard to the AWE sites, any new development of a type more particularly described in the table below ⁽¹⁰⁾ located in the Detailed Emergency Planning Zone (DEPZ)⁽¹¹⁾ of AWE Aldermaston and AWE Burghfield is likely to be refused planning permission by the Council, especially when the Office for Nuclear Regulation (ONR) and/or Ministry of Defence (MoD) have advised against that development and/or object.

The ONR will be consulted on applications for new development in the DEPZ, Outer Consultation Zone (OCZ) ⁽¹²⁾ and any other consultation zone as detailed on [ONR-website](#) which meets the consultation criteria described in the table below (as may be amended by the ONR from time to time).

For development proposals in the DEPZ and OCZ for each of AWE's sites, consideration will be given as to how the proposed development would impact on the AWE Off-Site Emergency Plan and supporting documents.

Development within the Land Use Planning Consultation Zones: Office for Nuclear Regulation	
AWE Aldermaston (AWE A)	
AWE Burghfield (AWE B)	
Zone	Development Type
DEPZ	Any new development, re-use or re-classification of an existing development that could lead to an increase in residential or non-residential populations thus impacting on the off-site emergency plan. Any new development, re-use or re-classification of an existing development that could pose an external hazard to the site.
OCZ	Any new residential development of 200 dwellings or greater. Any re-use or re-classification of an existing development that will lead to a material increase in the size of an existing development (greater than 500 persons). Any new non-residential development that could introduce vulnerable groups to the OCZ. Any new development, re-use or re-classification of an existing development that could pose an external hazard to the site.
12km zone	A circular zone of 12km radius around all nuclear sites, for certain types of significant development due to the potential for such developments to pose an external hazard to sites.

8.8 The Regulation 19 Local Plan Review Proposed Submission Consultation took place for six weeks between 20th January and the 3rd March 2023. One of the main issues arising from this consultation was the spatial strategy and the constraints imposed by the Detailed Emergency Planning Zone (DEPZ) around the Atomic Weapons Establishment at (AWE) Aldermaston and Burghfield.

The Council received 21 comments on the policy. All these representations are published on the examination website www.westberks.gov.uk/lprexamination.

8.9 Thus, due to the changes in SP4 there are no longer any new proposals for residential or employment site allocations inside the DEPZ. Thus, the application site is not allocated for residential development under the Emerging Plan.

The Removal of The Hollies from the Local Plan Review

8.10 The application site was included as an allocation within the Housing Site Allocations Development Plan Document (HSA DPD) which was adopted in May 2017. At the time of the preparation of the HSA DPD before May 2017, Council Emergency Planners allowed for the 60 units and, when the new Regulations came into force, since development had yet to commence on the site, by the time of the Regulation 18 of the LPR it was proposed to retain the allocation in the LPR.

- 8.11 However, since then, the Government advised that, following *further technical research*, the inner Detailed Emergency Planning Zone (DEPZ) for the Burghfield Atomic Weapons Establishment (AWE) site under the REPPiR 19 be revised in its extent.
- 8.12 Paragraph 101 (NPPF) requires that planning policies and decisions should promote public safety and take into account wider security and defence requirements. Part a) requires that local planning authorities take appropriate and proportionate steps to reduce vulnerability, increase resilience and ensure public safety.
- 8.13 Subsequently, since the changed extent of the DEPZ was determined, and its changed extent was upheld by the High Court, the application site now lies within the DEPZ of AWE Burghfield. Residential development inside that DEPZ will result to increase the *population density* of that area, and would result to increases the number human receptors who self-evidently would be required to undergo urgent protection action to mitigate exposure in the event of a radiation emergency. The increase in population numbers would inevitably compromise the effectiveness of the mitigations necessary as required by REPPiR 19. To permit residential development, and to consequently permit the increase in candidate human beings inside the DEPZ being exposed to the harmful, effects of radiation, cannot be said to be reducing vulnerability nor ensuring future public safety nor increasing resilience, in the event that a radiation emergency. Therefore, the application site has been *removed* from the submission version of the Local Plan Review and the spatial strategy has been altered so as to redistribute development to other spatial areas in the District. That policy approach, and the underlying evidence, will be tested by an independent inspector acting on behalf of the Secretary of State as part of the examination of the Local Plan Review. The submission Plan reflects the policy approach of the local Council to the shape of residential distribution in its administrative area.

9. 5 Year Land Supply

9.1 Whilst the application has appeared in the Council's annual monitoring report for 2021 to 2022 this was due to the monitoring report running from 1st April to 31st March each year. The decision on this application was still pending consideration at that time and the final decision on the application was made on the 1st June 2022. The decision to remove the site as an allocation from the Local Plan Review was not taken until Council in December 2022. The development has been included in subsequent monitoring reports.

5.30 The Council can display a 5 year housing land supply of 5.7 years as displayed in the table below. It should be noted that 32 dwellings out of the total identified supply of 3,448 represents 0.9% and even after removing the proposed 32 units from the supply side, the Council would still have a healthy land supply. In short, there is *no need* for the proposed development that is the subject of this appeal. The affordable housing envisaged can be situated on an alternative site outside of the DEPZ (Appendices 3).

	Five-year housing land supply against a five-year housing land supply requirement with a 5% buffer
A. Requirement including a 5% buffer (A)	2,704 (515* 5 years*1.05)
B. Total deliverable housing land supply including communal accommodation (B)	3,073 (five-year housing land supply)
C. Total deliverable housing supply in years (B ÷ A x 5)	5.7 years

	2023/24 Year 1	2024/25 Year 2	2025/26 Year 3	2026/27 Year 4	2027/28 Year 5	Total 1 April 2023 to 31 March 2027	Total 1 April 2023 to 31 March 2028
Core Strategy Allocated Sites	51	15	39	105	148	210	366
Housing Site Allocations DPD Sites	94	237	276	166	42	773	815
Non-allocated sites for 10 or more dwellings with planning permissions	413	163	178	121	60	875	935
Non-allocated sites for less than 10 dwellings with planning permissions	153	129	32	0	0	314	314
Sites for 10 or more dwellings with prior approvals	50	141	0	0	0	191	191
Sites for less than 10 dwellings with prior approvals	22	18	0	0	0	40	40
Windfall allowance on small sites	0	0	57	137	137	194	331
Total Deliverable Supply excluding communal accommodation	783	703	582	529	385	2,597	2,982
Communal accommodation (dwelling equivalent)	24	36	28	3	0	91	91
Total Deliverable Supply including communal accommodation	807	739	610	532	385	2,688	3,073

10. Affordable Housing Provision

- 10.1 Policy CS 6 of the Development deals with affordable housing. In order to address the need for affordable housing in West Berkshire a proportion of affordable homes will be sought from residential development. The Council's priority and starting expectation will be for affordable housing to be provided on-site in line with Government policy.
- 10.2 On development sites of 15 dwellings or more (or 0.5 hectares or more) 30% provision will be sought on previously developed land, and 40% on greenfield land.
- 10.3 The housing officer has noted that should the application be approved the 13 on site affordable units (40% affordable housing of which 70% 9 units should be for social rent) must be achieved via the completion of a relevant s106 obligation attached to the planning permission.
- 10.4 The Council has agreed as part of negotiations in the application percentage splits and tenures. The outstanding matter securing this via a legal agreement to secure the affordable housing. The Council will work with the appellants to reach an agreement in regard to secure a policy compliant level of Affordable Housing. Subject to a satisfactory Unilateral Undertaking it is considered this reason or refusal is likely to fall away.
- 10.5 Whilst affordable housing is a benefit of the scheme this is only a policy compliant level of affordable housing. It could also create issues during an emergency for the registered provider if alternative accommodation needs to be sought during any extended recovery period.
- 10.6 The Council can display a 5-year housing land supply and offers plenty of preferable sites at no risk from issues such as those associated with being located in the DEPZ. Affordable housing could be situated on an alternative site outside of the DEPZ area and in line with the Emerging Local Plan approach to shaping development over the administrative area of the Council.

11. Detailed Emergency Planning Zone (DEPZ)

Relevant Planning Policies

11.1 Paragraph 101 the NPPF states the following: (Emphasis added)

“Planning policies and decisions should promote public safety and take into account wider security and defence requirements by:

a) anticipating and addressing possible malicious threats and natural hazards, especially in locations where large numbers of people are expected to congregate⁴³. Policies for relevant areas (such as town centre and regeneration frameworks), and the layout and design of developments, should be informed by the most up-to-date information available from the police and other agencies about the nature of potential threats and their implications. This includes appropriate and proportionate steps that can be taken to reduce vulnerability, increase resilience and ensure public safety and security; and

b) recognising and supporting development required for operational defence and security purposes and ensuring that operational sites are not affected adversely by the impact of other development proposed in the area.”

11.2 Healthy and safe places is also emphasised in the NPPF:

“96. Planning policies and decisions should aim to achieve healthy, inclusive and safe places and beautiful buildings which:

a) promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other – for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages;

b) are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of beautiful, well-designed, clear and legible pedestrian and cycle routes, and high quality public space, which encourage the active and continual use of public areas; and

c) enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling.”

11.3 The NPPF provides scope to consider public safety and wider security and defence issues.

“101. Planning policies and decisions should promote public safety and take into account wider security and defence requirements by:

a) anticipating and addressing possible malicious threats and natural hazards, especially in locations where large numbers of people are expected to congregate⁴⁵. Policies for relevant areas (such as town centre and regeneration frameworks), and the layout and design of developments, should be informed by the most up-to-date information available from the police and other agencies about the nature of potential threats and their implications. This includes appropriate and proportionate steps that can be taken to reduce vulnerability, increase resilience and ensure public safety and security; and

b) recognising and supporting development required for operational defence and security purposes and ensuring that operational sites are not affected adversely by the impact of other development proposed in the area.”

11.4 The NPPF again supports the effective use of and to provide homes that have safe and health living conditions.

“123. Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or ‘brownfield’ land ⁴⁹.”

Paragraphs 189, 191-193 are also relevant.

11.5 Policy CS 8 of the development plan Nuclear Installations - AWE Aldermaston and Burghfield states the following:

“In the interests of public safety, residential (59) development in the inner land use planning consultation zones (60) of AWE Aldermaston and AWE Burghfield is likely to be refused planning permission by the Council when the Office for Nuclear Regulation (ONR) has advised against that development. All other development proposals in the consultation zones will be considered in consultation with the ONR (61), having regard to the scale of development proposed, its location, population distribution of the area and the impact on public safety, to include how the development would impact on “Blue Light Services” and the emergency off site plan in the event of an emergency as well as other planning criteria.”

11.6 It goes on to show a table for consultation arrangements for planning applications.

Background

11.7 The Atomic Weapons Establishment at Aldermaston and Burghfield, both within the geographic area of West Berkshire Council, are nuclear licenced sites. Both sites were previously used in World War II and have been involved in the current work since the 1950s. They are both Ministry of Defence sites which support the UK defence and security work, in particular the nuclear warhead activities.

11.8 The legislative basis relating to protecting the public and the environment from radiation emergencies relates to the Radiation (Emergency Preparedness and Public Information) Regulations 2019⁵ (REPPiR 19). REPPiR 19 came into force in May 2019, replacing REPPiR 2001. The changes in the legislation came about following the lessons from the radiation emergency in Japan following the earthquake and Tsunami which caused the Fukushima Daiichi Nuclear Power Plant disaster (2011), and changes made to the *Basic Safety Standards Directive 2013/59/Euratom*⁶ (BSSD 2013) which the UK government agreed to implement to *protect the public* and a *reduced appetite to the risks* associated with nuclear licensed sites.

11.9 The REPPiR 19 legislation has a number of requirements of Local Authorities which have Nuclear Licenced sites located within their areas including:

⁵ <https://www.hse.gov.uk/radiation/ionising/reppir.htm>

⁶ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0029:EN:HTML>

- a) Requirement to determining an area known as the Detailed Emergency Planning Zone (DEPZ) (Reg. 8),
- b) Prepare an Off-Site Emergency Plan (Reg. 11),
- c) Review and test of emergency plans (Reg. 12)
- d) Provision of information to the community within the DEPZ. These off-site arrangements link with the requirements on the site operators On-site emergency arrangements. (Reg. 21)

11.10 Within REPIR 19, the Approved Code of Practice⁷ and associated guidance documents the processes to be undertaken to achieve those requirements are clearly set out.

11.11 In addition to the REPIR 19 legislation and guidance there is also a wide range of other specific response and recovery guidance available including:

- (a) National Nuclear Emergency Planning and Response Guidance⁸ which although published in 2015, and therefore prior to REPIR 19, the majority of the content is still relevant.
- (b) the Inhabited Areas chapter of the UK Recovery Handbook for Radiation Incidents <https://www.gov.uk/government/publications/uk-recovery-handbooks-for-radiation-incidents-2015> (page 15, para 1.12)
- (c) the statutory guidance on the radioactive contaminated land regime, in particular section 4a on harm at [Radioactive contaminated land: statutory guidance - June 2018 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/711111/radioactive-contaminated-land-statutory-guidance-june-2018.pdf)

11.12 Of significance is that REPIR 19 legislation is one piece of legislation relating to emergency response and recovery. Other legislation includes the Civil Contingencies Act 2004⁹ (CCA) and associated guidance and the Health & Social Care Act 2012.

11.13 The CCA legislation places a number of duties on a number of agencies including local authorities. These duties include to assess risk; put in place emergency plans, putting in place business continuity plans; have in place arrangements to make information available to the public and maintain arrangements to warn and inform the

⁷ <https://www.onr.org.uk/documents/2020/reppir-2019-acop.pdf>

⁸ <https://www.gov.uk/government/publications/national-nuclear-emergency-planning-and-response-guidance>

⁹ <https://www.legislation.gov.uk/ukpga/2004/36/contents>

public, share information with other responders, cooperate with other responders and provide business continuity advice to businesses and volunteer organisations.

11.14 These broad duties cover a wide range of risks including those set out in the Governments National Risk Register¹⁰ such as flooding, cyber, animal diseases, industrial action, malicious attacks, earthquakes and major fires.

11.15 These wide range of risks therefore require a wide range of plans to be in place from Emergency Response Frameworks, Recovery Plans, Animal Disease Outbreak Plans, Vulnerable People and Human Aspects plans etc. Some are 'core' plans which can be adapted for any emergency whilst others are more specific in their function.

11.16 Some of the plans are written and maintained by the local authority however the vast majority are developed and coordinated through multi-agency working at the Thames Valley Local Resilience Forum. There are currently over 35 such multi-agency plans which aim to facilitate effective response and recovery from emergencies to the many hazards and impacts considered.

11.17 Within the National Risk Register 2023 a Civil Nuclear Accident is considered. Whilst the likelihood is very low (<0.2%) a result of required safety procedures there are scenarios where it is considered the release of radiological material extending beyond the boundary of the nuclear site is possible. These scenarios detail off-site casualties having an increased risk of longer-term health impacts, such as cancers and the resulting contamination could affect the environment and food production and disruption to transport. Significantly the response capability requirements are stages as being *'Immediate capabilities could include radiation monitoring and decontamination services, alongside remediation services to restrict the spread of radioactive material. Humanitarian services would also be required to support those displaced, including but not limited to emergency shelter, food and water.'*

11.18 *In addition, in relation to recovery then the National Risk Register states that 'Around affected parts of the UK, there could be significant and prolonged long-term health, environmental and economic impacts requiring sustained recovery.'*

10

https://assets.publishing.service.gov.uk/media/64ca1dfe19f5622669f3c1b1/2023_NATIONAL_RISK_REGISTER_NRR.pdf

11.19 The result of the impact which has been assessed against the impact on human welfare, behavioural impacts, essential services, economic damage, environmental impact, security and international impacts, Civil Nuclear Accidents have been rated the highest as '*catastrophic*'. This has been an increase since the last assessment in 2020. Noting of Course that AWE is not a Civil Nuclear site but many of the criteria for scoring a Civil Nuclear Accident impacts so high are still relevant to the AWE sites.

11.20 Whilst it is hoped that the likelihood of a radiation emergency arising at an AWE site remains very low, due to the layers of safety put in place accidents do and have happened, therefore the Government approach to *nuclear* risk is prudence rather than imprudence. To assert that accidents never happen is not appropriate in relation to risk management especially when it relates to *public* health, welfare and the environment and the potential impact. It also places people into a false state of security. Indeed, the National Risk Register refers to only a small number of accidents which have occurred worldwide since 1956 however despite this low likelihood they have rated the impact as catastrophic. Therefore, accidental radiation emergencies do happen and the effects can be catastrophic in the short and longer term.

11.21 There are risks, consequences and impacts associated with the AWE sites should there be a 'radiation emergency'. REPIR 19 (2 (1)) defines a 'radiation emergency' 'as being a **non-routine** situation or event arising from work with ionising radiation that **necessitates prompt action to mitigate the serious consequences**: (in bold for emphasis)

- a. Of a hazard resulting from that situation or event;
- b. Of a perceived risk arising from such a hazard; or
- c. **To any one or more of:**
 - i. **Human life**
 - ii. **Health and safety**
 - iii. **Quality of life**
 - iv. **Property**
 - v. **The environment'**

11.22 This definition is important in that it encompasses events which could potentially lead to an emergency for which a response is necessary. If there was not real risk for the AWE sites, then REPPIR 19 would not be needed to have been enacted and the requirements under REPPIR 19 would not be necessary.

11.23 The definition is important in relation not only to the hazard actually arising but also the *perceived risk arising* and the impact which may be for a *short or long term* period.

11.24 As stated previously, whilst it is always hoped that the likelihood of a radiation emergency arising at an AWE site is very low the details provided by the appellant are concerning in that they suggest that a radiation emergency would appear almost impossible to occur. This is not appropriate in relation to risk management especially when it relates to public health, welfare and the environment. It too places people into a false state of security. There is a risk and there is a consequence and impact associated with the AWE sites otherwise there would be no need for an Urgent Protection Actions (UPA) area, no need for a DEPZ and no need for an AWE OSEP.

11.25 Whilst reassurance documents are provided to the community within the DEPZ stating it in the 'unlikely' event of a radiation emergency it clearly does not say it will not happen. Accepting that flooding is a different hazard, of course, the principle is the same in that in West Berkshire administrative area has experienced significant flooding several years *in succession* notwithstanding that the *likelihood* of such events were a 1:100-year event. Therefore, too much reliance can be placed on the probability of the risk instead of the actual consequences and impact of the risk were it to occur. The objection by the local planning authority concerns largely the latter *because of the* nature of the risk on people based on not having an adequate OSEP which is the legal requirement.

11.26 Under the Health & Social Care Act 2012, as amended, there is a duty to protect public health. Specifically, under Para 58 (1) where it states that 'The appropriate authority must take such steps as it considers appropriate for the purposes of protecting the public from radiation (whether ionising or not).'

11.27 The Council will provide evidence in regards to its OSEP, the stresses and strains on its OSEP and other associated plans and how the development is considered to not be able to be accommodated into the OSEP given the detailed, comprehensive requirements.

11.28 In so doing the Council will provide evidence in relation to protecting the public health and wellbeing of the community and demonstrating the short-, medium- and long-term recovery impacts.

11.29 The Council will consider the degree of risk associated with AWE.

Detailed Emergency Planning Zone (DEPZ)

11.30 The DEPZ determination is undertaken by the Council where the nuclear sites are located. Therefore, for the AWE sites in this administrative area, the determination is made by West Berkshire Council. Prior to determining the DEPZ, information is provided by the operator of the nuclear site, in this case AWE, in a Consequence Report. AWE provide two reports, one for each nuclear site, and they are publicly available on the West Berkshire Councils website¹¹. Of particular note in relation to this appeal is the "AWE Burghfield Consequence Report"¹² and the associated report relating to the determination process.

11.31 These Consequence Reports provide the information in relation to the minimum distances, known as the area for Urgent Protective Actions (UPA) for setting the DEPZ and the justification behind the recommendation including *response* times. The Council will explore the implications for residential development and response (and return to residence) times within its evidence.

11.32 The DEPZs for both nuclear licenced sites in the West Berkshire Council area, Atomic Weapons Establishment (AWE) Aldermaston and AWE Burghfield, were first determined under this legislation in March 2020. The considerations relating to the size of the DEPZ are set out in the legislation and ACOP which states that the DEPZ should be set taking consideration of:

- local geographic, demographic and practical implementation issues;
- the need to avoid, where practicable, the bisection of local communities and
- the inclusion of vulnerable groups immediately adjacent to the area proposed by the operator'

¹¹ [Atomic Weapons Establishment \(AWE\) - West Berkshire Council](#)

¹² https://www.westberks.gov.uk/media/48825/AWE-Burghfield-Consequences-Report/pdf/REPPiR_B-Site_ConsequencesReport_web_version1.pdf?m=637256670105370000

In addition the DEPZ cannot be smaller than the UPA as detailed in the Consequence Report.

11.33 The procedures undertaken by West Berkshire Council to determine the DEPZ in March 2020 were ratified following a Judicial Review which unsuccessfully challenged the process undertaken by the Council and the case dismissed in January 2021.

11.34 The DEPZs for both AWE nuclear sites have been reviewed and re-determined in January 2023. There have been two minor changes made to the AWE Burghfield DEPZ with the *addition* of two small areas to include properties within communities which had previously been excluded.

11.35 Prior to REPIR 2019 the determination process was undertaken by the regulators, the Office for Nuclear Regulation (ONR). The regulators were involved with the determination undertaken by West Berkshire Council in 2020 and 2023 since they are members of the AWE Off-Site Planning Group (OSPG).

11.36 It is important to note that prior to REPIR 2019, and the changes in the DEPZ geographic extent, the application site was not in the DEPZ. This is significant since, this material change in the situation meant that any planning applications within the DEPZ would need to be carefully assessed against the impact on the AWE Off-Site Emergency Plan where before they need not have been.

11.37 The DEPZ is reviewed and re-determined every 3 years, unless there is a change in operations on the AWE sites and /or the local authority considers there is a change in the local area which necessitates a re-determination.

11.38 There is also an Outline Planning Zone (OPZ) used for emergency planning purposes for extremely unlikely but more severe events. (REPIR 19 Reg 9) The OPZ for both AWE sites are set by the Secretary of State for Defence and are 12km for AWE Burghfield and 15km for AWE Aldermaston. The application site is within the OPZ for AWE Aldermaston.

11.39 The Council will explore the implications of the DEPZ and the significant increase in geographic size, the subsequent significant increase in the population numbers within the DEPZ post 2019, the impact of that increase on the AWE OSEP and responders,

the re-assessment process and its possible effect on the DEPZ in terms of increasing or decreasing its extent.

AWE Off-Site Emergency Plan (AWE OSEP)

11.40 As required under REPPiR 19 legislation the *operator* is required to have an adequate *on site* emergency plan (Reg.10) and the local authority must make an adequate *off-site* emergency plan covering the DEPZ *and* OPZ. (Reg. 11).

11.41 Whilst the two nuclear sites of AWE Aldermaston and Burghfield are within the geographic area of West Berkshire Council (WBC) the development of the plan requires coordination of a wide range of stakeholders who would be involved in a response relating to a radiation emergency at either site. This makes the plan multi-faceted and complex.

11.42 The development of the most recent plan involved:

- a) over 27 agencies ranging from the emergency services in the Thames Valley and Hampshire;
- b) several government departments and agencies including the UK Health Security Agency, Environment Agency and Food Standards Agency as experts in the radiation emergency environment;
- c) four local authorities due to the cross border nature of the DEPZs and OPZs;
- d) health services including Integrated Care Boards and hospitals; and
- e) utility companies and transport companies (Rail and Road).

Therefore, the role of West Berkshire Council in developing the plan, is coordination and ensuring compliance with the legislation, as set out in Chapter 1 of part 2 of Schedule 6, Chapter 2 of part 2 of Schedule 6, Chapter 3 of part 2 of Schedule 6 and the principles and purposes of Schedule 7.

11.43 The first version of the plan was developed by May 2020 following the changes to the DEPZ around AWE Burghfield.

11.44 Whilst the AWE OSEP is detailed it does not, nor is it expected to cover everything and does not provide all the specific answers. Instead, the AWE OSEP provides the overall response and recovery framework and some specific information in relation to the site, countermeasures and mitigation options in order to support responders in the response. The AWE OSEP provides the information to support the response but with so many potential variables it cannot be a 'fixed' plan. Rather each agency owns their own response plans and/or expertise to support the response. In addition, there are the suit of other response and recovery plans owned by West Berkshire Council plus many multi-agency plans owned by the Thames Valley Local Resilience Forum. This allows for the dynamic risk assessments to be undertaken and the best actions to be taken based on the evidence, normally as a result of monitoring, in a coordinated multi-agency environment with all the relevant experts.

11.45 The above statements may appear to give the complete assurance that the AWE OSEP and all the supporting plans and documents mean that there are no issues in the ability to respond to an AWE radiation emergency at either site. Whilst that is the aim of the development, continual revision and improvement of the AWE OSEP, and other supporting plans, the reality can be and will be very difficult and challenging due to the nature of the emergency – i.e. 'radiation emergency', the existing population density, the resource intensity of the response and thereafter the recovery to 'normality'.

11.46 The AWE OSEP is a living document being amended as necessary based on other incidents (including non-radiation emergencies) as a result of regular training and exercising to train and test the adequacy of the AWE OSEP, or elements of it. This is recognised in the ACOP as normal practice.

11.47 Since the development of the AWE OSEP in May 2020 it has been updated several times and is going through a period of complete refresh (as at April 2024). This complete refresh is based on the lessons identified following 6 focused exercises on 5 themes undertaken over 2021/2022 and significantly an exercise undertaken in April 2023. The exercise in April 2023 was focused on AWE Burghfield radiation emergency and was the first full exercise to test the AWE OSEP post COVID 19 and the amendments to the AWE OSEP post the changes to the AWE Burghfield DEPZ.

11.48 Short of a real incident exercising and testing the AWE OSEP is the best opportunity to test its adequacy. The exercise was observed by the ONR as the regulators and a

number of other specialists. Following the exercise, a full debrief process was undertaken. This was followed up by a letter which, although it confirmed that the Council met the legal requirement of undertaking an exercise, clearly states their concerns in relation to the adequacy of the plan in relation to the significant expansion of the DEPZ and therefore the pressures on the AWE OSEP. ONR also stated their concerns for the future that such pressures on the AWE OSEP 'will be exacerbated by further increases in population and improvements are required to address these.' The full letter can be found in Appendix 8 along with the response from the Council in Appendix 9. This will be further explored in the Council's evidence.

11.49 The testing of the OSEP with the focus on AWE Burghfield site was the first opportunity to do so since the changes in the DEPZ with testing being the best means of assessing the adequacy of the AWE OSEP. Therefore, the outcome and the feedback from ONR with the clear concerns they highlight represents a material change since the First Decision but clearly emphasises the concerns that were previously highlighted.

11.50 Whilst West Berkshire Council's role is not to protect the AWE operation per se the local authority has a requirement under REPP19 to have an 'adequate Off-site emergency plan covering that zone or zones' (the zones being the DEPZ and Outline Planning Zone (OPZ)) (Reg. 11) 'and have the capability available to ensure this happens without unnecessary delay' (Para 238 of ACOP). As set out in the ACOP, Para 338 the process for making an adequate plan involves:

- a) writing the plan, including the minimum content required by Schedule 6 and meeting the principles and purposes in Schedule 7;
- b) implementing the necessary requirements (or seeking confirmation of this) to ensure the plan is capable of being put into effect without delay when required; and
- c) testing the plan to demonstrate its adequacy and making any necessary improvements to the plan as identified by the test.

11.51 In relation to development management (and the above requirements relate to paragraph (b) above), if the AWE OSEP is not capable of implementing the effect, then the AWE OSEP could be deemed to be inadequate and West Berkshire Council would be held to be non-compliant. The knock-on effect to this is that non-compliance

by the Council places the ongoing operations at the AWE sites *at risk*. The Council will explore these points further in evidence.

11.52 The implications in relation to the impact of the proposed development in relation to the initial response, subsequent response and thereafter the recovery, will be set out further in evidence which will demonstrate the complexities and the risks to the health and wellbeing of the community.

11.53 The Council will provide further evidence in the context of the AWE OSEP.

11.54 The Council will also seek to explain and explore how lessons from the recent AWE exercises, and incidents in this country and across the world can be drawn upon to assist in understanding the issues and challenges in response and/or in the recovery phase to a complex challenging major incident such as an AWE Radiation Emergency. The Council will provide further evidence in the context of the adequacy and challenges of the AWE OSEP and therefore the significant concerns in relation to increasing the population within the DEPZ.

Development Management Assessment Process

11.55 There has been a process in place in relation to development management around the AWE sites since 2010. It has been revised almost annually and, in particular, after 2020 when Wokingham and Reading Borough Councils were affected more by the changed DEPZ and when the regulators, ONR updated their Land Use Process following the revision of the REPPiR legislation. The latest development control process guide for professional partners was being reviewed in late 2022. The intention was to make it a form of public document to assist developers. The final version was paused due to the 3 yearly review and determination of the DEPZ due in January 2023 and is currently being amended in relation to the changes.

11.56 Aside from the current formal status of the process guide document, the principles as to what applications the Emergency Planning, and as necessary the AWE Off-Site Planning Group as a whole or as individual agencies are consulted on, has remained *broadly* the same in that the relevant Emergency Planning Service is consulted with respect to any planning application within the DEPZ, or the other consultation zones

as detailed by the ONR. These other Zones are set out below and on the ONR website¹³:

Zone	Description
On the nuclear site	Within the nuclear site boundary.
Detailed Emergency Planning Zone (DEPZ)	The DEPZ where set by a Local Authority.
Outer Consultation Zone (OCZ)	Extends from the perimeter of the DEPZ out to a distance defined by ONR from the centre point of the site, where this distance is determined by the nature of the site. For sites without a DEPZ, the OCZ extends outward from the site perimeter fence.
12km zone	A circular zone of 12km radius around all nuclear sites, for certain types of significant development due to the potential for such developments to pose an external hazard to sites.
Special case	ONR also requests to be consulted on planning applications, irrespective of distance from nuclear sites, for special cases. These represent developments that either introduce a new hazard or change the existing external hazards posed to nuclear sites.

11.57 Each application is evaluated by *emergency* planning professionals on its own merits but specifically in relation to the impact the development would have on the AWE OSEP and therefore the impact on responders and the community in the short and long term. In so doing, the adequacy of the plan (and its limits) have been reviewed particularly following the changes in the AWE Burghfield DEPZ in 2020.

11.58 The consultation process and considerations in relation to any development proposals within the DEPZ of either AWE site including any mitigation proposals will be demonstrated having regard to this application.

11.59 As has been referred to above, Core Strategy Policy CS8 provides for development considerations in the locality of the AWE locations. Both the ONR and West Berkshire Council's Emergency Planning Service advised against this development having given consideration to the specific impacts of the development on the AWE Off-Site Emergency Plan. As such, the proposal development conflicts with the National Planning Policy Framework (NPPF) and Policy CS8 of West Berkshire Core Strategy 2006-2026. The Council will provide evidence on these matters exploring how it the development conflicts with the aims of CS8 and National planning policy paragraph 95.

The Development of Land at West of Kingfisher Grove (31st January 2023) (Appendices 1)

¹³ <https://www.onr.org.uk/land-use-planning.htm>

11.60 The Secretary of State has recently permitted 49 units to be built within the same DEPZ as is relevant in this application. See the decision of the Secretary of State, reference APP/X0360/W/22/3304042, dated 31st January 2023 (Appendices 1.)

11.61 The Council will distinguish that decision, the facts on which it was decided which include there to have been in that Borough less than a five year housing land supply, and notes the absence of any objection by the ONR or the AWE Burghfield to that development.

12. Impact on Trees

Tree Preservation Orders and Site History

12.1 There are two Tree Preservation Orders recorded on the application site:

a) TPO 835 was signed and sealed in November 2014 following the felling of a number of mature, open-grown trees within one of the existing fields in the September of that year. This was an Area Order, with preparations made for its revision to show individual trees, groups and the woodland. However, the Order was not confirmed within the relevant period and so lapsed;

b) TPO 989 was signed and sealed in 2019 at around the time of the adjacent development at Regis Manor Road. It reflects the intended changes to the earlier TPO 835.

12.2 Government guidance states that the woodland element W1 of TPO 989:

“protect[s] the trees and saplings of whatever size within the identified area, including those planted or growing naturally after the Order was made. This is because the purpose of the Order is to safeguard the woodland as a whole, which depends on regeneration or new planting.”

12.3 In assessing whether a tree or trees are worthy of protection under a Tree Preservation Order, the Council uses the TEMPO scoring matrix. Guidance accompanying the matrix includes the following comment – *“The first thing to note in this section is the prompt, which reminds the surveyor to consider the ‘realistic potential for future visibility with changed land use’. This is designed to address the commonplace circumstance where trees that are currently difficult to see are located on sites for future development, with this likely to result in enhanced visibility. The common situation of backland development is one such example.”* So the contention that the trees on site lack public visibility is countered within this methodology.

Relevant Policies

12.4 Relevant Policies include the following.

- 12.5 Policy ADPP1 Spatial Strategy states that *“The role of the strategy is to achieve an appropriate balance between protection of the District’s environmental assets and improving the quality of life for all, ensuring that necessary change and development is sustainable...”*
- 12.6 Policy CS14 Design Principles states that *“New development must demonstrate high quality and sustainable design that respects and enhances the character and appearance of the area”* and makes a positive contribution to the quality of life in West Berkshire. It goes on to note that new developments will be expected to achieve, among other aspects the efficient use of land whilst respecting the density, character, landscape and biodiversity of the surrounding area. Specifically it will *“provide, conserve and enhance biodiversity and create linkages between green spaces and wildlife corridors.”*
- 12.7 Policy CS18 Green Infrastructure states that *“The District’s green infrastructure will be protected and enhanced... Developments resulting in the loss of green infrastructure or harm to its use or enjoyment by the public will not be permitted. Where exceptionally it is agreed that an area of green infrastructure can be lost a new one of equal or greater size and standard will be required to be provided in an accessible location close by.”*
- 12.8 This policy defines Green Infrastructure as including *“natural and semi-natural green spaces – including woodlands, urban forestry, scrub etc.”*
- 12.9 Policy CS19 Historic Environment and Landscape Character states that *“In order to ensure that the diversity and local distinctiveness of the landscape character of the District is conserved and enhanced, the natural, cultural, and functional components of its character will be considered as a whole.”*
- 12.10 The National Planning Policy Framework paragraph 136 states that: *“Trees make an important contribution to the character and quality of urban environments, and can also help mitigate and adapt to climate change. Planning policies and decisions should ensure that... existing trees are retained wherever possible.”*
- 12.11 Paragraph 180 of the NPPF states that *“Planning policies and decisions should contribute to and enhance the natural and local environment by: (a) protecting and enhancing valued landscapes [and] sites of biodiversity value; (b) recognising the*

intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services... and of trees and woodland.”

12.12 Paragraph 186 of the NPPF covers Ancient Woodland, stating that “*development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused...*”

Assessment of Appeal Proposal

12.13 The application is for 32 new dwellings within small fields bound by mature trees and hedges. The land slopes steeply away to the north, towards Pondhouse Copse Ancient Woodland, which the site abuts. The northern edge of the site falls under the 15m buffer to the Ancient Woodland. If one considers a 50m buffer to the Ancient Woodland, even more of the site is contained within it.

12.14 The site includes two Groups of trees under TPO 989. These are effectively the mature field boundary immediately behind the new dwellings at The Oaks, Reading Road and another perpendicular to that. To the north, part of the red line boundary of the site falls under the Woodland element of the same TPO. This confers protection on all trees, from seedlings upwards. Lastly there is an Ash in the western part of the site under the TPO, which in a poor state of health and with a separate permission to be felled and replaced. Beyond these TPO trees are many others, which are for the most part smaller and younger, with several notable exceptions (some of which are off site).

12.15 The application is accompanied by an Arb Impact Assessment to BS 5837:2012 Trees in relation to design, demolition and construction, recommendations by Keen Consultants. The trees have been graded accordingly, with a 17 U-grade trees recommended for removal. However, it should be remembered that these may well have the greatest Ecological value due to cavities, exposed heartwood, wounds, cracks, splits and other niche environments.

12.16 The removal of U-grade trees in general, is only necessary given the proposed development will introduce new targets that may be affected by some of the hazards associated with trees in poorer health. Exceptions to this general rule would apply to trees presenting hazards to neighbouring properties.

12.17 The proposed layout has evidently tried to accommodate many of the trees on site, but there are significant losses and the design overall is compressed with little room for mitigation planting. Significant among the removals is the proposed felling of five stems (plus understorey) from group G2 of TPO 989 (G80 in the Keen report). This is to accommodate the estate road near plot 14. If it is accepted that this tree line should be breached, it would make more sense to remove the C-grade trees slightly further north (trees 75-78 in the Keen report) rather than half of the B-grade TPO trees here. Such an alteration would require a revised layout, but would not necessarily require a reduction in housing numbers.

12.18 Also significant is the entire removal of overgrown hedge 92. Although this has been graded as C-class it could be brought into management and retained. This would provide instant screening and preserve some Ecological value at the same time. The site could be re-jigged to utilise this natural feature as an asset, rather than an impediment.

12.19 The Council is also concerned about the encroachments into the Woodland element of the TPO in the north of the site. Part of the Attenuation Basin and Open Space are situated here. Such land uses would obliterate any developing seedlings and put considerable anthropological pressure on the glade area which currently exists.

12.20 Infill and mass planting is proposed in three areas – Keen SOC paragraph 4.7 refers. Two of these (the southeastern boundary from Plots 1-5 and Plot 15; and the area northeast of Plots 21-23) have the potential to clash with the crowns of the existing TPO trees in these locations as the new planting develops. The crown spread of the TPO trees at these locations from their stems, is recorded as 8m and 9m average respectively, whilst the crown clearance above ground level of many of the branches, is low (<2m in some places). These physical characteristics combine to leave little room for prospective young trees to grow. So, in effect all but the peripheral parts of these proposed planting areas should be considered likely to succeed without damaging existing TPO trees.

12.21 The remaining mass planting area proposed along the northwestern boundary, north of Plot 24 is largely occupied by existing trees and saplings (some in the W1 woodland area of TPO 989). So new infill planting in this area is likely to be limited. It is unlikely to offset the losses in Green Infrastructure resulting from the removals of C-grade hedge 91 and tree groups 68 & 68A.

- 12.22 The proposed street tree planting conforms with advice in NPPF paragraph 136. Street trees are usually small or medium sized at maturity and often fastigate varieties. So, they should not be considered replacements for the five B-grade Oak stems of group 80 under TPO 989.
- 12.23 Realistically the proposed planting of 12-13 open grown trees around the open space in the north of the site offers the best mitigation for the loss of the 5 B-grade Oak stems from group 80 (and possibly the 3 C-grade trees from elsewhere on site). However given anticipated losses due to natural causes and vandalism whether five of these trees will successfully reach the same stature and age remains to be seen.
- 12.24 Local Authorities often use the CAVAT method to quantify the value of their tree stock. The system is designed to express public amenity benefits in financial terms. It extrapolates from planting and management costs, viewing the tree(s) as assets based on their size and situation. A calculation of the value of one 650mm dbh stem in West Berkshire (with an asymmetrical crown and life expectancy of over 20 years) as per the details in the Keen tree report, yields a value of £49,240 per stem. So using this the five B-grade Oak stems proposed for removal from G80, have a cumulative value of £246,200. This value reflects the value of investing in landscaping planting in order to achieve the necessary level of mitigation the proposal requires.
- 12.25 The Council is therefore concerned that the application is too congested, with little space for mitigation planting or landscaping and requires too many tree / hedge losses which could otherwise be designed out. The removal of good quality B-grade TPO trees and part of the TPO Woodland area is particularly unwelcome and not sufficiently mitigated.
- 12.26 It is noted that the submitted layout has respected the required minimum 15m buffer strip to the Ancient Woodland which will help protect the woodland in accordance with NPPF paragraph 186. However, a significant concern remains about the lack of mitigation to reduce the pressure from new occupants that will affect this irreplaceable habitat, were planning permission to be granted.
- 12.27 The application fails to explore alternative layouts that would either avoid and/ or minimise the impact on TPO trees and also allow sufficient space for commensurate replacement, by potentially considering a less intensive layout.

Policy Tests

- 12.28 Given the removal of the trees overall from site which the application will require, plus the limited opportunity for successful mitigation planting the test in Policy ADPP1 for sustainable development has not been met.
- 12.29 The Policy CS14 test for development which “*respects and enhances the character and appearance of the area*” and “*conserve and enhance biodiversity and create linkages between green spaces and wildlife corridors*” is not met as large B-grade Oak stems are proposed for removal from G80, an entire hedgerow 91 and the trees within it are also shown for removal. These losses will break up and remove old field boundaries which act as wildlife corridors and contribute to the character of the site.
- 12.30 The removal of important Green Infrastructure is counter to the requirement in Policy CS18 that “*Green Infrastructure will be protected and enhanced*”. The existing GI is not protected and enhanced by the proposal, but rather removed and disaggregated in places. Whilst this Policy allows for losses in GI, the mitigation proposed is limited and unlikely to offset those losses.
- 12.31 The landscape character of the site – being small fields bound by trees and hedges is largely removed from the proposed layout, so the test in Policy CS19 that this is “*conserved and enhanced*” is not met.
- 12.32 The NPPF test in paragraph 136 that “*existing trees are retained wherever possible*” is not met in that significant, better quality site trees are not retained (G80 in particular) when an alternative layout could be utilised allowing for their retention. Similarly other site trees and hedge 91 could be retained with a slightly different site layout.
- 12.33 The NPPF test of paragraph 180 that development should “*contribute to and enhance the natural and local environment*” is not met due to the tree and hedge losses already outlined. The mitigation planting will potentially clash with existing TPO trees and is not as generous around the Attenuation Basin and Open Space as characterised, because of the presence of existing trees in those areas.
- 12.34 Whilst the proposal does not directly harm the Ancient Woodland and a 15m buffer is proposed in accordance with NPPF paragraph 186, the concern that insufficient mitigation to offset anthropogenic impacts on the woodland remains.

13.Planning Balance

- 13.1 The development would assist the Council in its delivery of housing and contribute to its 5-year housing land supply. However, there remains no actual need for the proposed housing because the Council records a housing land supply of 5.7 years. The addition of the proposed housing would not impinge on its 5-year land supply nor due to the relatively low number of units.
- 13.2 The development would deliver 13 affordable units to which is a benefit of the development.
- 13.3 The proposed development would make efficient use of a site, albeit a greenfield site, in a sustainable location.
- 13.4 The proposed development by virtue of its size and siting, would result in the direct loss of trees the subject of TPO 201/21/0989. The loss of the trees is unacceptable including because the proposal has not sought to minimise the impact on the existing TPO trees and also does not allow sufficient space on site to replace the trees that would be lost and this would have an adverse impact on the amenity and character of the area in which it is located.
- 13.5 The development would result to compromise local public health and safety in the event of an emergency evacuation in the locality, clearly contrary to national and local policy. This impact would not just be felt by site residents but the potential knock-on basis on residents in West Berkshire whose safety may be compromised to the stretching of the emergency services and the affective implementation of the Local Authorities Emergency Plan. Permitting the development would increase vulnerability and reduce resilience.
- 13.6 It must be recognised that the OSEP is not infinitely scalable and that there is concern that further development could give rise to issues in the event of an emergency. An increase in population would increase the need for, and demand placed upon, emergency responders, reception centres, rest centres and radiation monitoring exacerbating the difficulties of delivery emergency care in a complex multi-agency emergency.

- 13.7 The physical and mental health of future occupants, and those in the area could be put at risk during the course of an emergency due to the OSEP not being infinitely scalable. Furthermore, the longer-term impact of an emergency i.e. the recovery phase could have wide reaching impacts on both physical and mental health.
- 13.8 Whilst the likelihood of an event occurring is small, it is a risk that the Council is not prepared to accept when it can provide an adequate housing supply across its district. It is unwilling to increase the risk of the OSEP failing, as has been warned by the ONR and Emergency Planners consultation response, when the Council can provide adequate housing supply across its district.
- 13.9 The Council clearly considers that the duty to reduce vulnerability, increase resilience and ensure public safety are such that it has deselected this site and changed the spatial strategy for the district.
- 13.10 The suggestion that individual development could be justified on the basis that it is small in scale and would not have an effect on the preparation and delivery of the OSEP is an argument that could be easily repeated.
- 13.11 The development could also potentially compromise the future effective working of Atomic Weapons Establishment Burghfield. The development could compromise the UK's defence capabilities by curtailing the pre-eminent nuclear installation's ability to develop, expand, and address its futures plans. The development clearly engages the 'agent of change' principle of the NPPF and could have an adverse effect on National Security.
- 13.12 The Council recognises that the development does bring benefits and the development does accord with some policies of the current adopted Local Plan. However, it is clear to the Council that the development is contrary to the Local Plan in terms of CS8 and the ability to accommodate the development into its Emergency Plan. The development is also contrary to paragraphs 97 a and b of the NPPF as it would increase vulnerability and reduce resilience, and does not ensure that security and defence operational sites are not affected adversely by the impact of other development proposed in the area.

13.13 The Council displays a 5 year land supply of 5.7 years. There is sufficient delivery of housing elsewhere to which is not at risk in terms of public safety. Furthermore, these other sites do not adversely affect defence operation sites.

13.14 The health and safety of the future residents is given significant weight especially when other alternative sites in the Council's housing supply can deliver housing and affordable housing with no risk to future occupants or defence capabilities (Appendices 3).

13.15 Further weight against the development is found to the harm to the trees of the site and how this does not comply with the development plan.

13.16 The conflict with the development plan policies and with the NPPF outweighs the benefits of the development.

Conclusion

13.0 In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990 (as amended), the application should be determined in accordance with the development plan, unless there are material considerations that indicate otherwise. Planning permission should be refused.

Suggested list of Conditions

13.1 Without prejudice to the Council's case at appeal, a list of suggested conditions is to be provided by the Council in the Statement of Common Ground provided as a separate document.

Appendix 1



Appeal Decision

Inquiry held on 15-18, 22 and 24 November 2022

Site visit made on 17 November 2022

by G Rollings BA(Hons) MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st January 2023

Appeal Ref: APP/X0360/W/22/3304042

Land west of Kingfisher Grove, Three Mile Cross, Reading, Berkshire, RG7 1LZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by JPP Land Ltd against Wokingham Borough Council.
 - The application, Ref: 201002, is dated 23 April 2020.
 - The development proposed is an outline planning application for the proposed erection of 49 affordable dwellings, with new publicly accessible open space and access (access to be considered).
-

Decision

1. The appeal is allowed and planning permission is granted for outline planning application for the proposed erection of 49 affordable dwellings with new publicly accessible open space and access, at land west of Kingfisher Grove, Reading, RG7 1LZ in accordance with the terms of the application, Ref 201002, dated 23 April 2020, subject to the schedule of conditions in Annex A of this decision.

Preliminary Matters

Change of development description

2. Prior to the Council's decision, the appellant requested a change to the description of development, altering the number of proposed affordable homes. The original description of development was: "Outline application for the proposed erection of 49 dwellings, including 22 units of affordable housing, with new publicly accessible open space and access from Grazeley Road." Prior to the Inquiry, the appellant consulted interested parties on the intended description, with three submissions received, which I have taken into account together with all other correspondence. The Council agreed to the change.
3. Having considered this issue at the Case Management Conference held on 6 October 2022, I advised in the note of the proceedings that the change to the description of development does not raise any new issues, that it would not prejudice any party, and that sufficient consultation on the change has been undertaken. As such, it is reflected in the description of development in this decision.

Other matters and appeal background

4. The appeal is submitted in outline form will all matters except access reserved for more detailed consideration at a later time. Parameter plans were submitted which are incorporated in the conditions at Annex A.
5. The development plan for the area includes the Council's *Adopted Core Strategy Development Plan Document (2010)*¹ (the Core Strategy) and the *Adopted Managing Development Delivery Local Plan (2014)*² (MDD), together with the *Shinfield Parish Neighbourhood Plan (2017)*³ (the Neighbourhood Plan). The Council's Local Plan review is at an early stage and is subject to further consultation and revision. I therefore accord it only minimal weight in my decision.
6. In its statement of case, the Council stated that had it decided the application, it would have been refused for several reasons. Several of these inform the main issues set out below. Others are addressed by the completed and signed Planning Agreement (s106 Agreement)⁴, which was submitted during the Inquiry. A highways-based reason for refusal was latterly the subject of discussions between the appellant and the Council, during which the parties achieved common ground, and was not subject to examination at the Inquiry.

Main Issues

7. The main issues are:
 - Whether the proposed development can be safely accommodated with regard to the proximity of the Atomic Weapons Establishment (AWE) site at Burghfield;
 - The effect of the proposal on the landscape character and appearance of the area; and
 - Whether the proposed development would provide appropriate accessibility for future occupiers.

Reasons

AWE Burghfield site

8. The appeal site is around 2.8 kilometres to the east/northeast of the AWE Burghfield site, which is subject to the *Radiation (Emergency Preparedness and Public Information) Regulations 2019* (REPPiR)⁵. An urgent protective area (UPA) with a radius of around 3.16km has been established around the AWE site, and the appeal site is within this. The UPA is wholly within a detailed emergency planning zone (DEPZ), *The AWE Off-site Emergency Plan (2022)*⁶ (the REPPiR plan) has been established for the DEPZ by West Berkshire District Council (WBDC). Should an incident occur, Wokingham Borough Council would have a role in managing and executing any emergency response.

¹ CD 5.1.

² CD 5.3.

³ CD 5.5.

⁴ ID 07.

⁵ CD 11.20.

⁶ CD 11.5.

9. MDD Policy TB04 states that development will only be permitted when the applicant demonstrates that the increase in the number of people living, working, shopping and/or visiting the proposal can be safely accommodated having regard to the needs of "blue light" services and the emergency off-site plan for the AWE site. It was agreed at the Inquiry that blue light services includes emergency services, such as ambulances, that would be required for the operation of the REPPIR plan in the event of an AWE site incident. *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 development.
10. The AWE Burghfield site has a role in maintaining national security that includes manufacture and disposal services. Despite the small risk of any accident occurring, emergency planning must be in place. One of the risks is a serious event in which radioactive material could be released into the atmosphere and which would most likely take the form of a plume that would be carried along the atmosphere according to wind direction, eventually dispersing. The type of activity taking place at AWE Burghfield means that any release of material would not be sustained, and thus any event would likely happen over hours or a small number of days.
11. Were an incident to occur, the most likely composition of a plume would be plutonium particulates. The type of activity carried out at the AWE Burghfield site together with the distance of the appeal site from the former means that although there are additional risks of different material release or various possible types of exposure, the greatest risk would be from inhalation. For example, larger particulates would be likely to drop from the atmosphere after being carried and settle on the ground before the plume were to pass over a 2.8km radius from the site.
12. The Council and the appellant agree that such a risk, or the risk of an incident occurring, is very small. The appellant carried out an exercise that considered potential risk factors of previously calculated event frequencies and the AWE Burghfield on-site fault sequences that could trigger an event, concluding that 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 REPPIR plan recommends sheltering within buildings during an event as the primary method of protection to human health. The barrier of a building (with closed doors and windows) would afford the greatest and most immediate and accessible type of protection in the event of the type described above. The REPPIR plan also sets out measures for potential evacuation either during or after the event, but it is unlikely that this would be required for the appeal site should the shelter-in-place recommendation be followed. The same low risk factors mean that the requirement to shelter would be over a short period of no more than two days.
14. The consideration of risk was relevant to the Secretary of State's agreement to allow 115 dwellings at Boundary Hall⁷ close to the AWE Aldermaston site, which performs similar work to that of AWE Burghfield and is also covered by the

⁷ CD 6.8.

REPPIR plan. The minimum distance between Boundary Hall and AWE Aldermaston was agreed to be 740 metres. He concluded in that case that the “extremely remote possibility” of an incident did not outweigh the other factors that led to him allowing the application.

15. The Council’s duties under the REPPIR plan include the protection of the public and the organisation of emergency services. Its concerns are predominantly based on the ability of the plan to be carried out should the appeal development occur. Although only 49 properties and around 117 people, this would add to the number already within the DEPZ and UPA. The surroundings of the AWE site are predominantly rural, but other parts of the area have also been developed, and these include Burghfield Common, a larger residential settlement than Three Mile Cross, and Green Park, a mixed-use business area. These are to the west/southwest and north/northeast, respectively, of the AWE site. Although low in risk, I acknowledge that an incident would have a high impact as set out in the Crest Nicholson judgement⁸.
16. The unidirectional nature of wind means that if a plume was to occur then it would disperse in a singular direction. This would be dependent on specific weather conditions and wind speeds, which are factors that inform the low risk of a plume passing over the appeal site. The REPPIR plan sectorises the DEPZ radially from the AWE site. The plan seeks to prioritise assistance within the sectors over which the plume would pass. Although I heard at the Inquiry that blue light and other relevant services would be working at capacity should an event occur, these are planned to address all areas within the DEPZ. The settlements elsewhere within the area that are larger than those in the appeal site sector (or a sector area comprising the sector and its neighbouring sectors) are in different directions. 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.
17. Other implications for the safety of appeal site residents were presented to the Inquiry, including responses from WBDC and other agencies. In particular, the safety of home care workers entering the DEPZ during an incident was in issue, and it was mentioned that the potential for affordable housing to accommodate those with home care meant that this could occur. The Council would not send staff into the DEPZ in an emergency without being confident that staff would not be at risk.
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”⁹. By comparison, WBDC’s public advice¹⁰ 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 sources of radiation in Cornwall, and 500 mSv as the threshold for nausea and reduction in white blood cells. 20 mSv is listed as the annual legal worker dose limit.

⁸ CD 7.4.

⁹ CD 11.12 (appendix 2).

¹⁰ CD 11.21.

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. Although fear of contamination may prevent workers from entering the DEPZ, this could be disproportionate to the actual risk. Even in the event of plume particles settling on the ground in the appeal site, the risk from a dose following an incident would be lower than those occurring from the alternative sources set out above.
20. Should the REPPIR shelter-in-place advice be followed by those in the DEPZ, road traffic levels are unlikely to be greater than normal and the ability of services to access the zone would not be adversely affected. The possibility of self-evacuation by those within the zone was also raised as a potential safety issue, but this is addressed within the REPPIR plan and discouraged through the dissemination of public information. Other safety barriers such as being elsewhere on the appeal site away from shelter, travelling into the DEPZ, or not having access to a telephone landline (in the event of a safety announcement) are partly covered within the REPPIR plan. Alternatively, they are situations in which sufficient time would be available between the incident occurring and the plume passing over the site for people to become aware of the situation and gain access to shelter or other safety.
21. I have been made aware of other appeal decisions in which siting within the DEPZ have been factors in their dismissal¹¹. 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. 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 merit.
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.

Landscape character and appearance

23. The site is to the west of the existing built-up area of Three Mile Cross, and to the east of the A33. Its sole road access is at its northernmost point, from the junction of Grazeley Road and Kingfisher Grove. The land slopes downward generally from a ridge close to the eastern boundary, and apart from a shed and some vehicles close to the entrance, is vacant, having been used for agriculture. It currently has a grassland appearance dotted with trees, particularly along ditches close to the western edge and on the southern portion of the site.
24. At least the southern part of the site is historically associated with a former stately home and this also adjoins an area of open grassland (known as a suitable alternative natural greenspace, or SANG, area). A footpath (known as

¹¹ CD 6.7, CD 6.20, CD 6.21.

a byway open to all traffic, or BOAT) runs along the length of the site's eastern boundary. Beyond this is the A33. I visited the site in late Autumn, when deciduous trees were not in leaf, and there was intervisibility between the site and the SANG and BOAT areas, although views were limited to glimpses. In both cases there were areas with no or very limited intervisibility due to vegetation, which would be exacerbated in the months when deciduous trees are in leaf. More distant views are gained beyond the A33 to the west, in which the uppermost part of the site is visible.

25. Of relevance to the consideration of landscape character are Core Strategy policies CP1, CP3 and CP11, which together seek sustainable development that maintains or enhances the high quality of the environment, has no detrimental impact on landscape features, and seeks to maintain development limits, amongst other considerations. MDD policies CC01, CC02, CC03 and TB21 are also relevant. These add the requirement to respect adopted development limits, green infrastructure and landscape character, amongst other considerations, with Neighbourhood Plan Policies 1 and 2 reflecting the boroughwide policies.
26. The Council has also referred to its *Wokingham Borough Landscape Character Assessment*¹² (2019) (the LCA), which characterises the borough into landscape zones sharing particular characteristics. The 'J3' categorisation into which the site falls identifies its undulating landscape of large fields, with changes to its character through settlement and urbanising influence of its proximity to Reading. Other relevant characteristics include remnant parkland and an intact hedgerow network. Issues for the area include pressure to develop the ridgelines and the encroachment of residential development changing the landscape character and increasing demand for associated infrastructure.
27. Although outside of the Council's defined development limit, the development would adjoin existing residential development within the limit. The proposed 49 homes would be concentrated in a group form running roughly parallel with the BOAT, with the remainder of the site as managed grassland to be used as open space.
28. The topography of the site as well as its surrounding vegetation limits unhindered views into the site. The site itself is in private ownership with restricted public access, and public views are therefore limited to the BOAT and the area around the Kingfisher Grove access, together with the SANG and areas beyond the A33 in which distant views are possible. Private views are possible from within the site itself and other surrounding land, such as the dwellings on Kingfisher Grove. New development would be visible to varying degrees in most of these views, but although direct views would be largely filtered by vegetation, viewers would be in no doubt that there were buildings on the site. This would be particularly noticeable in dynamic views in the context of a journey along the BOAT, in which (despite the existing heavy understorey of vegetation) they would appear closer and more distinct than existing development, and would periodically appear through vegetation gaps. I also that the verified views in the appellant's *Landscape and Visual Impact Assessment*¹³ (LIVIA) demonstrate that visibility of the proposal would be reduced over time as screening vegetation matures.

¹² CD 12.1A/B.

¹³ CD 1.6.

29. Viewers on MereOak Lane would notice buildings on the lower portion of the existing visible green swath of the site. This viewpoint is identified within the LIVIA as a low-value receptor and views from here are generally experienced in the context of a journey. Although building heights would be limited by the parameter plan and the line of the ridge would not be broken, there would still be visible signs of development. This is a form of urbanising development discouraged by the LCA.
30. Overall, despite the largely screened nature of the site, there would be a shift in some views from a rural to a partly suburban character. This would result in minor harm the landscape character of the area.
31. However, there are measures within the proposal that seek to mitigate this harm. The area to be developed immediately adjoins existing development and enables retention of the green space in more than half of the site, allowing for open zones around its other edges in which structural planting would filter outside views. The development would also enable the green space around the proposed built-up zone to be maintained as a recreational parkland and biodiverse resource, together with the formal management of three identified veteran trees, of which at least one is at risk of failure without intervention.
32. Concern was expressed from various parties that the development would close the existing strategic gap between Three Mile Cross and Spencers Wood. I do not consider that this would be the case. The development would enable the retention of a substantial amount of green space between the settlements, including land both on the appeal site and the existing land outside. I saw that there was a significantly narrower gap between the settlements on Basingstoke Road where the provision of a relatively narrow strip of green space between built-up areas was sufficient separation to ensure retention of both settlements' identities. The lack of direct access between the site and Spencers Wood, together with there being no intervisibility of the proposed buildings to or from Spencers Wood, as well as the existing topography and the existing and proposed vegetation, would not exacerbate any physical or perceived coalescence of the settlements.
33. Despite the minor level of harm, there would nonetheless be harm to the landscape character of the area. This would conflict Core Strategy policies CP1, CP3 and CP11, MDD policies CC01, CC02, CC03 and TB21 and Neighbourhood Plan Policies 1 and 2, for the reasons set out above.

Accessibility

34. The Council's putative reason for refusal on this issue expresses a concern that as a development outside settlement limits, with perceived poor accessibility to local facilities and services, a lack of good public transport links and poor quality of the walking and cycling environment, it would not encourage a shift towards sustainable modes of transport. These themes are reflected in Core Strategy Policies CP1, CP2, CP3, CP6 and CP11, MDD Policies CC01 and CC02 and Policy 4 of the Shinfield Neighbourhood Plan.
35. Both the Council's and appellant's evidence referred to an 800-metre distance being an indicator of whether a neighbourhood is 'walkable', this being a comfortable ten-minute walking time for most people to be able to access a

range of services¹⁴. This is not an upper limit and I heard that there may be factors that influence people to consider a longer walking distance to be acceptable, such as the physical quality of the walking route. The supporting text to Core Strategy Policy CP6 states that the borough has one of the highest car ownership rates of any English local authority, and thus, in accordance with this policy, local conditions should offer choices through the provision of sustainable forms of transport.

36. The closest facilities and services to the site are concentrated on Basingstoke Road in Three Mile Cross. These include convenience stores, leisure facilities, schools and a post office counter within a range of 800m to two kilometres (a 25-minute walk)¹⁵. Other facilities including a wider range of employment are further afield. The *Manual for Streets* (MfS) recognises that walking trips under 2km offer the greatest potential to replace short car trips and whilst the walking time to all these facilities would be longer than the comfortable 10-minute walking time, I acknowledge the possibility that people could be encouraged to walk greater distances if the range of services was appropriately enticing, as set out in a previous appeal decision¹⁶.
37. The main walking route between the site and the concentration of facilities and services on Basingstoke Road is along Grazeley Road. I saw that although the route is legible along its full length, in many places the footpath is narrower than the MfS suggested accessible width of two metres and also is not overlooked for a short length close to Kingfisher Grove. As indicators of route quality, the absence of an appropriate width and passive surveillance from dwellings along sections of the route result in a substandard walking experience. The alternative available walking route using Tabby Drive is longer and as such, Grazeley Road is more likely to be used. Additionally, the Tabby Drive route uses part of Grazeley Road and does not wholly avoid substandard sections. Although improvements to junctions along Grazeley Road are planned, these would not alleviate the substandard sections.
38. Beyond the aforementioned closest services, walking routes to other destinations such as local schools are variable, including areas with no passive surveillance or lighting. Such conditions would discourage users from walking longer distances.
39. Cycling options would be improved with the proposed paving of the section of BOAT north of Grazeley Road. This would offer a route to the employment centres beyond Three Mile Cross. Although there is a good range of facilities and services within a 20-minute cycling distance from the site, are other few dedicated cycling facilities or lanes within the vicinity of Three Mile Cross, thereby affecting the attractiveness of cycling as a realistic travel mode choice.
40. A bus service operates to Reading along Basingstoke Road on a good frequency, with services into the evening. However, the absence of a Sunday service would reduce the attractiveness of the proposed housing for those who would rely on public transport, as would the absence of convenient links to alternative destinations, such as the borough centre at Wokingham. Access to the bus stops would be along the Grazeley Road route which, given my

¹⁴ As set out in *Manual for Streets* section 4.4 (CD 12.3) and the *National Design Guide* (CD 12.21).

¹⁵ Distances are calculated from the approximate centre of the proposed residential component of the appeal site and are as set out in the parties' proofs of evidence.

¹⁶ CD 6.15.

considerations set out above, would affect the attractiveness of public transport as a transport mode choice.

41. In conclusion on this main issue, despite some positive components, accessibility to and from the site when considered as a whole, would be poor. As such, future occupiers of the proposed development would not benefit from appropriate accessibility and there would be conflict with Core Strategy Policies CP1, CP2, CP3, CP6 and CP11, MDD Policies CC01 and CC02 and Policy 4 of the Shinfield Neighbourhood Plan, for the reasons set out above.

Other Matters

Housing supply

42. It is agreed between the appellant and the Council that the latter is not able to demonstrate that it has a deliverable five-year housing land supply. There is disagreement on the scale of the shortfall, with the appellant and Council claiming a supply of 4.66 and 4.83 years, respectively. I heard evidence at the Inquiry as to the varying methods resulting in the different outcomes but consider the difference to be so small as to be of minimal relevance. In any case, the housing land supply shortfall is minor. Although other factors raised in the evidence include local affordability and the previous supply/delivery of homes against the housing need, I have no need to refer to these in detail.
43. The calculation variances result in annual housing need figures, with a 5% buffer applied, of about 806 (Council's figure) or 835 (appellant's figure) dwellings. The development would provide approximately 6% of the Council's annual supply of homes, which I consider to be a sizeable proportion. Although the Housing Delivery Test indicates that the Council has delivered more homes than its targets in recent years, there is nonetheless a shortfall in the future five-year supply.

Affordable housing

44. The development would wholly comprise affordable dwellings, with the tenure split agreed by the Council. The relevant Strategic Housing Market Assessment¹⁷ (SHMA) estimates the borough's per annum affordable housing need as 441 dwellings with the Council's more recent Local Housing Needs Assessment¹⁸ (LHNA) stating a requirement for 407 affordable dwellings per annum.
45. The recent delivery of affordable housing, of around 1,700 homes over the past five years, has been stronger in some years but delivery in most has fallen short of the per annum requirement. The Council considers that the likely delivery of dwellings over the next five years (estimated to be at least 1,249 homes) would meet the housing requirement for those on the local Housing Needs Register with the most acute need and that this would include meeting around 87% of the local need within Shinfield. The fact that the site's proximity to employment sources could result in a high local need but this is tempered by the Council's assertion that the types of jobs to be created would not be those that would appeal to those residing in affordable housing. Nonetheless there are links between the site and the wider employment catchment area incorporating Reading.

¹⁷ CD 10.2.

¹⁸ CD 10.3.

46. No targeted local affordable housing needs surveys have been undertaken in Shinfield, although local housing register demand is strong. I am reticent to the rely on this source as an indication of local affordable housing need, given the potential for 'double counting' in demand for Shinfield and neighbouring borough areas. Nonetheless the SHMA and LHNA indicate strong demand for affordable housing within the borough, and despite the expected forthcoming local delivery of dwellings, unmet demand will remain in Shinfield and the wider borough area.

Rural exception site

47. Core Strategy Policy CP9 refers to the provision of affordable housing on rural exception sites. These are sites outside development limits, and the policy enables the provision of affordable housing adjoining the limits in specific instances, where a need is demonstrated for residents, workers or other people with family connections within the Parish Council's area. A rural exception site is defined in the Framework as a small site used for affordable housing in a site that would not normally be used for housing, which seeks to address the needs of the local community.

48. The Framework does not define what constitutes a small site. At 5.82 hectares with a development area of 1.63ha providing 49 dwellings, there is disagreement between the appellant and the Council that this is a small site. Without a definition, this becomes a matter of planning judgement. In comparison with the Council's Local Housing need for 2020/21 of 789 homes, 49 homes represents about 6% of the Council's annual need, which as I noted above would represent sizeable proportion to the borough's housing supply and therefore not small in this sense. Elsewhere in the Core Strategy (at appendix 3) small sites are defined as those less than 1ha with up to 9 dwellings. Although this is not a direct comparison to the absence of a definition with regard to rural exception sites, the Council's intention in describing small sites in regard to housing delivery is clear. Taking all these matters into consideration, I do not consider the appeal site to be a rural exception site.

Biodiversity

49. Core Strategy Policy CP8 requires development which alone or in combination is likely to have a significant effect on the Thames Basin Heaths Special Protection Area (the SPA) to demonstrate that adequate measures to avoid and mitigate any potential impacts are delivered. Thresholds for mitigation requirements are set out in the accompanying text. As a development of fewer than 50 dwellings and one between five and seven kilometres of the SPA, mitigation is not required.

50. Implementation of the appeal scheme would result in biodiversity net gain of 114% for habitats, 11% for hedgerows and 35% for ditches. Further benefits would be gained from additional planting and habitat management over the longer term. Phase 1 and Phase 2 surveys have been undertaken to protected species, with evidence of dormice in the hedgerow boundaries. The site was also found to be of value to foraging and commuting bats, with trees on the site of potential value to roosting. Paragraph 180 of the Framework encourages avoidance of significant harm to biodiversity. Together with the implementation of the features that would result in biodiversity net gain and the creation of new invertebrate habitats, as well as the suitable management of the site, I am satisfied that the development would avoid significant harm.

Highways

51. Whilst the Council initially presented a putative reason for refusal relating to access to the site and its potential effects on highway safety, discussions between the appellant and Council prior to the Inquiry resolved matters of difference. A theme within the objections from interested parties was the potential effects of traffic congestion on the local road network resulting from the additional vehicle trips generated by the development. The junction of Grazeley Road and Basingstoke Road was identified as a particularly congested spot. Forthcoming improvements to the junction have already been resourced and from the evidence provided it appears that this junction will provide for increased traffic levels resulting from the various developments in and around Three Mile Cross.

S106 Agreement

52. The heads of terms of the s106 Agreement were agreed between the main parties prior to the Inquiry. Given that an obligation may constitute a reason for granting planning permission only if it meets the tests set out in Regulation 122 of the *Community Infrastructure Regulations 2010* and paragraph 57 of the Framework, it falls to me to reach a finding on its acceptability.

53. Provision for affordable housing comprising 70% social rented and 30% shared ownership tenures is incorporated, with a nomination agreement for prospective residents. This is an appropriate method for ensuring fair placement according to local need. The proposal complies with Core Strategy Policy CP5 in that it contributes to mixed and balanced developments within the borough, and I am satisfied that it would meet a need for such accommodation.

54. The development/employment skills contribution would take the form of either a plan or a monetary contribution. I recognise that the Council's preference is for a plan but acknowledge that the agreement offers suitable choice in the event of a housing provider managing the scheme in the future. Based on benchmarked values, the contribution or plan would target the Council's identified shortfall of skills training in the area local to the application site and is therefore necessary.

55. The proposed transport-related contributions of a 'My Journey' travel plan payment and a contribution for upgrading the surface of Woodcock Lane would promote sustainable travel choices and improve local access. I am satisfied that these are required to make the development acceptable.

56. Open space on the site would be made available for use by residents, and although the agreement contains various closure clauses I am content that these would only be used as necessary and for reasonable purposes. Management of the space is necessary, particularly in relation to the veteran trees and to comply with Core Strategy Policy CP2 and MDD Policy TB08 with regard to meeting the needs of residents and providing appropriate spaces for recreation.

57. Monitoring fees are specified within the agreement and I am satisfied that due to the nature of the development, particularly with regard to the level of affordable housing and open space proposed, their inclusion makes the development acceptable in planning terms.

58. The various sums within the obligation are necessary and justified and I am satisfied that the Council could rely on the document to secure the contributions. Moreover, I am content that the obligations meet the requirements of the statutory and acceptability tests.

Planning balance

Policy and Framework considerations

59. Framework paragraph 11 states that plans and decisions should apply a presumption in favour of sustainable development. Paragraph 11d suggests that where the policies which are the most important for determining an application are out-of-date, permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. There is no five-year housing land supply in Wokingham and therefore paragraph 11d is applicable to this appeal, and the policies that are the most important for determining this appeal are deemed to be out of date. I have no discretion within this purpose to consider whether specific policies are out of date. However, I must consider the weight to be given to policies including whether they are out of date in the context of the issues in this appeal.
60. Previous appeal decisions that have been brought to my attention¹⁹ have noted that in specific cases, although some of the Council's policies were considered to be out of date, the overall 'basket' of policies considered most important for determining the appeal was not out of date. In these cases, the Council was able to demonstrate that it had a suitable housing land supply at that time. This is not the case in this instance, where both the Council and the appellant agree that the 'tilted balance' is engaged. A further example²⁰ found the basket to be out of date in that specific instance, when the Council could not demonstrate a five-year housing land supply.
61. Core Strategy Policies CP1, CP2 and CP3 set the overall approach to sustainable and inclusive development in the borough and are broadly consistent with the Framework. Similarly, Policy CP6 which promotes sustainable travel choices and does not conflict with the Framework, These policies do conflict with the appeal proposal in terms of landscape and accessibility. My weighting on these issues is set out in the next section.
62. Policy CP5 sets the requirements for affordable housing provision by development scale and location but is not consistent with the Framework in that it seeks affordable housing on developments from five or more dwellings in urban areas, whereas paragraph 64 of the Framework states that provision should be sought only on such development of ten or more dwellings. However, there is no conflict with the appeal proposal and I have afforded only minimal weight to this consideration.
63. Core Strategy Policy CP7 requires conservation of biodiversity, veteran trees or features of the landscape that are important for flora and fauna, and MDD Policy TB21 requires proposals to address the requirements of the Council's Landscape Character Assessment, amongst other considerations. There are no conflicts with the Framework or the appeal scheme and thus no weight is allocated.

¹⁹ Including CDs 6.7 and 6.15.

²⁰ CD 6.1.

64. Core Strategy Policy CP17 provides housing figures based on the South East Plan which is no longer in force. Accordingly, Core Strategy policies CP9 and CP11, MDD Policy CC02, and Neighbourhood Plan Policy 1, which apply development limits throughout the borough, are out of date because these are based on out-of-date housing numbers, to which I give significant weight. A further out-of-date policy is MDD Policy TB04 which deals with development around the AWE Burghfield Site, due to the use of superseded measurements for the DEPZ radius, but as the general principles still apply only minimal weight is apportioned to this conflict.
65. MDD Policy CC01 which sets a presumption in favour of sustainable development is broadly comparable with the similar Framework presumption and does not conflict. Likewise, MDD Policies CC03 sets the Council's approach to developing and managing green areas and assets and does not conflict with the Framework, and MDD Policy TB08 which sets out the Council's approach to recreational facility provision is also generally in line with the Framework, despite the superseded reference to a previous version. The former policies conflict with the appeal scheme in the areas of landscape and accessibility, with weighting set out below.
66. Summarising the above, the Framework's tilted balance is applied as the Council cannot demonstrate a five-year housing land supply. The issues in which there are conflicts between out of date policies are AWE Burghfield, with the conflict attracting minimal weight, affordable housing provision in which the conflict attracts minimal weight, and conflict with the policies for the supply of housing more generally attracting significant weight.

Applying the balance

67. With regard to the main issues, the proposal demonstrates poor accessibility and this weighs heavily against the proposal, attracting significant weight. Landscape harm would be minor, but still conflicts with policy, and therefore this attracts moderate weight. I have found that there would be no harm with regard to the proximity of the AWE Burghfield site, which is a neutral factor in the balance.
68. Housing and affordable housing provision aside, other benefits of the scheme would include provision of new open space, net biodiversity gain, ongoing management of at-risk veteran trees, and local transport improvements. These would benefit those outside the site, and I give these considerations moderate weight. Other section 106 provisions are needed to make the development acceptable only and attract minimal weight, although there would be a wider benefit in regard to the improvement of Woodcock Lane and employment skills provisions, which attracts moderate weight.
69. The provision of new homes comprising 6% of the borough's annual supply attracts moderate weight. The provision of affordable housing that would assist the Council in meeting its shortfall in provision is significant, as is the presumption in favour of sustainable development triggered by the application of Framework paragraph 11.
70. The development plan policies that are the most important for the supply of housing are out of date, but those with which I have found conflict in this decision are not out of date and are generally consistent with the Framework.

The development would result in landscape harm and have poor accessibility. I find that the proposal conflicts with the development plan as a whole.

71. However, the weighting of the above factors is in favour of the scheme proceeding. I find that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The development proposal benefits from the Framework's presumption in favour of sustainable development.
72. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Notwithstanding the conflict with the development plan, I have found that the development would deliver significant and demonstrative benefits. These are material considerations that lead me to the decision that planning permission should be granted, and the appeal should succeed.

Conditions

73. I have assessed the list of conditions proposed by the parties against the tests set out in the Planning Practice Guidance (PPG)²¹. These were discussed at the Inquiry and subsequently refined, and are included at Annex A. I have made minor changes for clarity. In accordance with section 100ZA(5) of the Act, the Appellant has agreed to those conditions which would be pre-commencement conditions.
74. Conditions 1 through 5 are applied for the absence of doubt, with conditions 3 and 5 also applied to ensure that the development proceeds in accordance with the outline plans. Conditions 6, 7, 8 and 18 are applied in the interests of satisfactory access and highway safety. Conditions 9, 10 and 17 are to preserve the living conditions of surrounding occupiers and minimise the effects of construction. Condition 11 is to ensure sustainable drainage is incorporated within the development, and 12 is applied to investigate and if necessary preserve the archaeological heritage of the appeal site. Conditions 13 and 14 are included to ensure the protection, conservation and management of landscape features. Conditions 15 and 16 are to preserve and improve the biodiversity of the appeal site, and conditions 19 and 20 are included to ensure the landscape character and appearance of the site is preserved.

Conclusion

75. For the reasons given above I conclude that the appeal should be allowed.

G Rollings

INSPECTOR

²¹ PPG reference ID: 21a-003-20190723; revision date: 23 07 2019.

ANNEX A: SCHEDULE OF CONDITIONS

- 1) Approval of the details of the siting, design and external appearance of the buildings, and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the local planning authority in writing before any development is commenced.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The number of dwellings hereby permitted shall not exceed 49.
- 4) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan in A2 (D2871_430 Rev A); Parameter Plan (D2871_423_Rev B); Site Access Arrangement (ITB15490-GA-002 Rev E).
- 6) No building shall be occupied until the accesses (pedestrian and vehicle) have been constructed in accordance with details to plan no. ITB15490-GA-002 Rev E.
- 7) Prior to the commencement of development, full details of the construction of the access, including levels, widths, construction materials, depths of construction, surface water drainage, boundary treatment, landscaping and lighting shall be submitted to and approved in writing by the local planning authority. Each dwelling shall not be occupied until the vehicle access to serve that dwelling has been constructed in accordance with the approved details to road base level and the final wearing course will be provided within 3 months of occupation, unless otherwise agreed in writing by the local planning authority.
- 8) No occupation of the development shall take place until:
 - (a) the approval by the local planning authority of a scheme that provides for the visibility splays shown on plan no. ITB15490-GA-002 Rev E (to include also the removal of any obstruction above a height of 0.6 metres) and the maintenance of the same over the lifetime of the development; and,
 - (b) the full implementation of the aforementioned approved scheme.
- 9) No development shall take place, until a Construction Method Statement, including a CEMP (Construction Ecological Management Plan), has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - (a) construction of suitable works access;
 - (b) the parking of vehicles of site operatives and visitors;
 - (c) loading and unloading of plant and materials;
 - (d) storage of plant and materials used in constructing the development;
 - (e) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - (f) wheel washing facilities;
 - (g) measures to control the emission of dust and dirt during construction;

- (h) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - (i) hours of construction;
 - (j) hours of delivery; and
 - (k) mitigation and avoidance measures for ecology and biodiversity.
- 10) No work relating to the development hereby approved, including works of demolition or preparation prior to building operations, shall take place other than between the hours of 08:00 and 18:00 Monday to Friday and 08:00 to 13:00 Saturdays and at no time on Sundays or Bank or National Holidays.
- 11) Prior to the commencement of development details for disposing of surface water by means of a sustainable drainage system (SuDS) shall be submitted to and approved in writing by the Local Planning Authority. No dwelling hereby permitted shall be occupied until the aforementioned approved details (in so far as they apply to that dwelling) have been implemented.
- 12) No development shall take place until the applicant or their agents or successors in title have secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, which has been submitted by the applicant and approved by the planning authority. The development shall only take place in accordance with the detailed scheme approved pursuant to this condition.
- 13) No development shall take place until an Arboricultural Method Statement has been submitted to and approved in writing by the local planning authority, this shall include details of existing trees and hedges to be retained in the submitted Arboricultural Impact Assessment, in line with BS5837:2012, and shall include details of;
- (a) any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the sub-phase;
 - (b) any proposed alterations to ground levels within the Root Protection Area or Crown Spread (whichever is the greater) of any retained tree, including trees on land adjacent to the site;
 - (c) the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development.
 - (d) the erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made without the written consent of the local planning authority.
 - (e) Prior to occupation of the first dwelling, a Veteran Tree Management Plan shall be agreed in writing with the local planning authority. This Plan shall include:

- Specialist Survey Method assessment of the trees;
- Individual tree management programme geared towards maximising longevity;
- Provision and maintenance of knee-rail style fencing beyond crown driplines, enclosing access-deterrent planting; and
- Regular review by a competent person of veteran trees' condition, with follow-up management works being implemented as recommended.

The first three elements of the Plan shall be implemented also prior to first occupancy.

- 14) No trees, shrubs or hedges within the site which are shown as being retained on the plans approved under condition 13 shall be felled, uprooted wilfully damaged or destroyed, cut back in any way or removed without previous written consent of the local planning authority; any trees, shrubs or hedges removed without consent or dying or being severely damaged or becoming seriously diseased within 5 years from the completion of the development hereby permitted shall be replaced with trees, shrubs or hedge plants of similar size and species unless the local planning authority gives written consent to any variation.
- 15) Prior to the commencement of development, details of how the development will achieve a biodiversity net gain of 10 % for habitats shall be submitted to and approved in writing by the Local Planning Authority. The details thereby agreed shall be fully implemented in accordance with an agreed timetable.
- 16) Prior to the commencement of the development a Landscape Environmental Management Plan (LEMP), in accordance with the Update Biodiversity Report by Aspect Ecology dated October 2022, including long term design objectives, management responsibilities, timescales, and maintenance schedules for all landscape areas, other than privately owned domestic gardens, which delivers and demonstrates a habitat and hedgerow biodiversity net gain shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved LEMP.
- 17) The development hereby approved shall not be occupied until the noise mitigation measures as set out in the Noise assessment report, project number 13390 dated 08/04/2020 submitted with the application, are implemented. The noise mitigation measures shall be retained and maintained thereafter.
- 18) The development hereby approved shall not be occupied until the pedestrian crossing improvements shown in principle on Drawing ITB15490-GA-017 have been completed to the written satisfaction of the Local Planning Authority.
- 19) No dwelling shall be more than 2 storeys in height, and no dwelling shall be higher than 61.5mAOD.
- 20) Prior to first occupation of the development hereby approved, details of any gate, fence or other means of enclosure within or around the public open space as shown on the Parameter Plan (D2871_423_Rev B), shall be submitted to and approved in writing by the Local Planning Authority.

End of schedule.

ANNEX 2: CORE DOCUMENTS REFERENCED IN THIS DECISION

CD 1.6	Appellant's <i>Landscape and Visual Impact Assessment</i> , April 2020.
CD 5.1	Adopted <i>Core Strategy Development Plan Document</i> (2010).
CD 5.3	Adopted <i>Managing Development Delivery Local Plan</i> (2014).
CD 5.5	Made <i>Shinfield Parish Neighbourhood Plan</i> (2017).
CD 6.1	Appeal decision, ref: APP/X0360/W/19/3275086, 18 February 2022.
CD 6.7	Appeal decision, ref: APP/X0360/W/19/3240232, 1 February 2021.
CD 6.8	SoS decision, ref: APP/H1705/V/10/2124548, 16 June 2011.
CD 6.15	Appeal decision, ref: APP/X0360/W/19/3235572, 25 August 2020.
CD 6.20	Appeal decision, ref: APP/X0360/W/21/3271917, 3 September 2021.
CD 6.21	Appeal decision, ref: APP/X0360/W/21/3269974, 31 August 2021.
CD 7.4	High Court judgment, <i>Crest Nicholson v West Berkshire Council</i> [2021] EWHC 289 (Admin).
CD 10.2	<i>Berkshire (including South Bucks) Strategic Housing Market Assessment</i> (February 2016).
CD 10.3	<i>Wokingham Borough Local Housing Needs Assessment 2019</i> (January 2020).
CD 11.5	<i>AWE Off-site Emergency Plan</i> , Joint Emergency Planning Unit, August 2022.
CD 11.12	<i>The Radiation (Emergency Preparedness and Public Information) Regulations 2019</i> , HSE/ONR.
CD 11.20	<i>The Radiation (Emergency Preparedness and Public Information) Regulations 2019</i> , SI 2019 No. 703.
CD 11.21	<i>REPPIR – What you should do if there is a radiation emergency at the AWE Aldermaston or Burghfield sites</i> , West Berkshire Council, 2020.
CD 12.1A/B	<i>Wokingham Borough Landscape Character Assessment</i> , LUC 2019.
CD 12.3	<i>Manual for Streets</i> , DoT/DCLG, 2007.
CD 12.21	<i>National Design Guide</i> , MHCLG, 2021.

ANNEX 3: DOCUMENTS SUBMITTED AT THE INQUIRY

ID 01	Appellant's opening submissions.
ID 02	Council's opening submissions.
ID 03	Shinfield Parish Council written statement.
ID 04	Site visit route map.
ID 05	Wokingham Draft Local Plan.
ID 06	Wokingham Employment Skills Plan Guidance for Developers.
ID 07	Section 106 Agreement Certified Copy.
ID 08	Agreed (final) schedule of conditions.
ID 09	<i>Hopkins Homes Ltd, Richborough Estates Partnership LLP v Cheshire East BC</i> , SSCLG [2017] UKSC 37.
ID 10	<i>Hallam Land Management Ltd c v Eastleigh BC</i> , SSCLG [2017] EWHC 2865 (Admin).
ID 11	<i>Old Hunstanton Parish Council v Hastoe Housing Association Ltd, Kings Lynn & West Norfolk BC</i> , SSCLG [2015] EWHC 1958 (Admin).
ID 12	Council's closing submissions.
ID 13	Appellant's closing submissions.

ANNEX 4: APPEARANCES

FOR THE APPELLANT

Andrew Tabachnik
of King's Counsel
and Katherine Barnes
of Counsel

Instructed by the appellant

They called

Michael C Thorne
BSc PhD FInstP FSRP CRadP
Tim Wall *BA MSc MCIHT CMILT*
Andrew Smith
BSc(Hons) MSc CMLI
Julian Forbes-Laird
BA(Hons) Dip.GR.Stud MICFor
MRICS MEWI Dip.Arb.(RFS)
Douglas Bond *BA(Hons) MRTPI*

Mike Thorne and Associates Ltd

Partner, i-Transport LLP
Joint Managing Director, fabrik

Senior Director, Forbes-Laird
Arboricultural Consultancy Ltd

Partner, Woolf Bond Planning LLP

FOR THE LOCAL PLANNING AUTHORITY (WBC)

Matt Lewin
of Counsel

Instructed by Lyndsay Jennings
of WBC

He called

Harry Williamson
BSc(Hons) Cert(CBCI)
Gordon Adam
BA DipEcon MA CGIHT MILT
Chris Hannington
BSc MPhil CMLI MRTPI
Catherine Brimble
BA(Hons) DipLA CMLI
Ian Church
BA(Hons) MTRP MRTPI
Mark Croucher *BA(Hons) MSc*

Emergency Planning Manager, WBC

Principal Development Control Engineer,
WBC

Team Manager, WBC

Senior Landscape Officer, WBC

Team Manager (Senior Specialist), WBC

Principal Planning Officer Team Leader,
WBC

INTERESTED PERSONS

Darrell Lias

Vice Chair (operations),
Shinfield Parish Council

Appendix 2

1 W.L.R.

A

[SUPREME COURT TAXING OFFICE]

* PRACTICE DIRECTION
(TAXATION: DECIMAL CURRENCY)

B *Costs—Taxation—Decimalisation—Decimal currency figures to be used—Decimal Currency Act, 1969 (c. 19), Sch. 1.*

C 1. In order to assist solicitors in the change over to decimal currency on February 15, 1971, bills of costs lodged in the Supreme Court Taxing Office between January 11, 1971, and May 14, 1971, inclusive, may be prepared in either £ s. d. or decimal currency. However, when £ s. d. is used, the total(s) in the summary of the bill must show the decimal equivalent(s). After May 14, 1971, only bills prepared in decimal currency will be accepted.

D 2. In converting items of costs from £ s. d. to decimal currency, the Whole Penny Table, as laid down in Schedule I to the Decimal Currency Act, 1969, should be used.

D 3. As from October 1, 1970, all allocaturs and certificates of taxation will show decimal equivalents in brackets until February 15, 1971, when all figures will be shown in decimal currency only.

D 4. The Whole Penny Table and examples of bill summaries will be displayed in all chambers as from October 1, 1970.

PAUL ADAMS,
Chief Master,
Supreme Court Taxing Office.

E July 31, 1970.

[QUEEN'S BENCH DIVISION]

F * STRINGER v. MINISTER OF HOUSING AND LOCAL GOVERNMENT AND ANOTHER

1970 April 8, 9, 10, 13, 14;
July 3

Cooke J.

G *Town Planning—Appeal to Minister—Minister's discretion—Radio telescope—Jodrell Bank area—Planning authority's agreement to discourage development within area—Agreement invalid—Refusal of planning application—Whether refusal void—Minister's policy to discourage development—Minister's powers on appeal—Whether Minister exercised his discretion—Town and Country Planning Act, 1962 (10 & 11 Eliz. 2, c. 38), ss. 17 (1), 23 (4).¹*

H *Town Planning—Planning permission—"Material considerations" Jodrell Bank area—Refusal of application on ground of interference with telescope—Whether "material considerations"—*

¹ Town and Country Planning Act, 1962, s. 17: "(1) . . . where an application is made to a local planning authority for planning permission, that authority, in dealing with the application, shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.

S. 23: "(4) Where an appeal is brought under this section from a decision of a local planning authority, the Minister, . . . may allow or dismiss the appeal, . . . and may deal with the application as if it had been made to him in the first instance."

Appendix 3

TRUSTHOUSE FORTE HOTELS LTD. v. SECRETARY OF STATE FOR THE ENVIRONMENT AND ANOTHER

QUEEN'S BENCH DIVISION (Simon Brown J.): June 13, 1986

Town and country planning—Application for planning permission for a Post House Hotel refused—Applicants contended that no other site suitable—Four alternative sites investigated and rejected—Inspector recommended that need for hotel accommodation could be met on other sites—Whether inspector entitled as a matter of law to reach that conclusion when no alternative site specified—Whether inspector could reasonably come to that conclusion on the evidence before him

The applicants, Trusthouse Forte Hotels Ltd., applied for planning permission to build a Post House Hotel at a site at Hambrook, five miles north east of Bristol city centre. The applicants had been searching for an appropriate site since 1972 and had investigated four alternative sites suggested by the planning authorities, Northavon District Council. The applicants contended that if the appeal site was not available no other site within the area would be suitable for successful development. The appeal site was in the green belt and included high grade agricultural land. The inspector, whose conclusions the Secretary of State for the Environment adopted on appeal against the refusal by the planning authorities of planning permission, identified the central issue as being whether the need for a hotel on this site outweighed the presumption against building in the green belt and the loss of high quality agricultural land. He concluded that if there were a severe shortage of hotel accommodation of this sort, the normal market forces of supply and demand would operate and that the need would be met at an alternative site. The applicants applied to the court under section 246 of the Town and Country Planning Act 1971 to have the decision of the Secretary of State set aside on the grounds that as a matter of law the inspector was not entitled to conclude that the need would be met at some unspecified alternative site and that alternatively there was no evidence on which the inspector could properly have come to that conclusion.

Held, dismissing the application,

(1) As a matter of law, it was open to the planning authority in the present case to conclude that an accepted need could be met elsewhere than upon the application or appeal site without reference to any specific or alternative site. Where the planning objections were sought to be overcome by reference to need, the greater those objections, the more material would be the possibility of meeting that need elsewhere. While it was generally desirable that a planning authority should identify that possibility by reference to specifically identifiable alternative sites, it would not always be essential or appropriate to do so. Where the planning objections related essentially to the development of the application site itself rather than to some intrinsically offensive aspect of the development wherever it might be sited, or where the requirements to be satisfied in order to meet the accepted need were less specific and exacting, the more likely it was that a planning authority could reasonably conclude that the need could be met elsewhere without reference to some identifiable preferable alternative site.

(2) To the extent that the Secretary of State's conclusion, that there were to be a severe shortage of hotel accommodation, normal market forces would operate and the demand for accommodation would be met, was based on the existence of certain facts such as that there were other hoteliers interested in meeting the need and that the planning authority did desire to encourage additional hotel facilities, there was evidence before him which supported that conclusion. To the extent that the conclusion expressed an opinion or judgment

on the likely future course of events, it was well within the scope of the Secretary of State's powers to form such a conclusion. In considering the Secretary of State's decision, it was important to bear in mind that he accepted that the applicants would not build a hotel if the appeal site were not available but considered that the need might be met by some development quite different in location and nature to that proposed by the applicants and that therefore the need could be met otherwise than by allowing the applicants to overcome the planning objections to this particular type of development on this particular site. Consequently, the application to have the decision of the Secretary of State upholding the refusal of planning permission set aside would be dismissed.

Cases cited:

- (1) *Banks Horticultural Products v. Secretary of State for the Environment* [1980] J.P.L. 33; (1979) 252 E.G. 811.
- (2) *Brown v. Secretary of State for the Environment* (1978) 40 P. & C.R. 285.
- (3) *Greater London Council v. Secretary of State for the Environment* (1986) 52 P. & C.R. 158, C.A.
- (4) *R. v. Carlisle City Council and the Secretary of State for the Environment, ex p. Cumbrian Co-operative Society Ltd.* [1986] J.P.L. 206.
- (5) *Rhodes v. Minister of Housing and Local Government* [1963] 1 W.L.R. 208; [1963] 1 All E.R. 300; 14 P. & C.R. 122.
- (6) *Vale of Glamorgan Borough Council v. Secretary of State for Wales* (1986) 52 P. & C.R. 418.
- (7) *Westminster Renslade v. Secretary of State for the Environment* (1984) 48 P. & C.R. 255.
- (8) *Wholesale Mail Order Supplies v. Secretary of State for the Environment* [1976] J.P.L. 163; (1975) 237 E.G. 185, D.C.
- (9) *Williams (Sir Brandon Rhys) v. Secretary of State for Wales and the Welsh Water Authority and Taff Ely Borough Council* [1985] J.P.L. 29, C.A.
- (10) *Ynystawe, Ynysforgan and Glais Gypsy Site Action Group v. Secretary of State for Wales and West Glamorgan County Council* [1981] J.P.L. 874.

Application by the plaintiffs, Trusthouse Forte Hotels Ltd., under section 246 of the Town and Country Planning Act 1971 to set aside the decision of the first respondent, the Secretary of State for the Environment upholding the decision of the second respondent, Northavon District Council, to refuse planning permission for the development of a hotel at a site at Hambrook five miles north-east of Bristol city centre. The decision was based on the fact that the accepted need for hotel accommodation would be met elsewhere. The applicants sought to have the decision set aside on two grounds (1) as a matter of law the Secretary of State could not base his decision on the availability of an alternative but unspecified site and (2) there was no evidence on which he could properly conclude that there was available an alternative site to the appeal site. The facts are set out in the judgment.

M. Horton for the applicants.

D. Holgate for the first respondent.

SIMON BROWN J. By this application pursuant to section 246 of the Town and Country Planning Act 1971 the applicants seek to quash the decision of the Secretary of State dated October 23, 1984 whereby he dismissed their appeal from the Northavon District Council's refusal of planning permission for the erection of a hotel on green belt land at Hambrook, some five miles north-east of Bristol city centre. The

applicants seek to build what is known as a Post House hotel, a single storey construction of four star category, 90 per cent. of whose customers would be expected to arrive by car.

In arriving at his decision the Secretary of State contented himself with an unvarnished endorsement of his inspector's conclusions and recommendation and thus it has been convenient to treat the inspector's report as if it were itself the decision letter and he the deciding tribunal. I shall continue to treat the matter in this way for the purposes of this judgment.

The decision has been challenged on a number of different grounds which make it necessary to relate several of the inspector's findings of fact and conclusions. This is in any event a convenient way of setting the application in its factual context. Amongst the inspector's findings of fact were these:

v. The Trust House Forte group is the largest hotel chain in the world enjoying an international reputation for good service. . . . vii. The hotel is expected to perform an active role in encouraging businessmen and tourists to the city. viii. The company consider that certain criteria are essential before a successful hotel can be established. These consist of:—the lower cost of land acquisition, the right location, suitable environment, good accessibility and adequate car parking. The most important requirement, in the appellants' view, is the correct location.

ix. The appellant company have been searching for a suitable site in the Bristol area since 1972. They had previously identified the appeal site as the prime location and a separate survey more recently has confirmed this opinion. x. The Trust House Forte chain are the only hotel group in the country at the moment with a large building programme. They are not prepared to build town centre hotels because of the high costs of land acquisition, the higher costs of building other than single-storey accommodation and the problems of providing adequate and satisfactory car-parking. They are satisfied that the appeal site is the prime location. The appeal site to them represents the only viable site for their Post House development. xi. The site is well located to take advantage of the excellent communications serving the Bristol area and a hotel on the north side of Bristol would be best placed to serve the existing industries and the proposed large scale developments on the north side of the city. . . . xv. The appellant company had extended their search for a suitable site in the Bristol area to a 15-mile radius from the city centre. They have investigated all the other sites suggested by the district council and the Bristol City Council but have rejected them as being unsuitable and not viable propositions. The company maintain that none are so conveniently located to attract trade from the M4 and none have easy access to and from the city centre along the M32.

xvii. In order to be viable the appellants maintain that they have to attract the tourist trade in addition to the businessman. Bristol is conveniently located in relation to many tourist attractions. . . . xxi. Motels have been accepted in the green belt in appeals where a need has been demonstrated. . . . xxvii. The appellants and the

MAFF have carried out independent surveys and auger borings and have agreed that the land is of a high agricultural quality almost entirely Grade 1 and Grade 2 and predominantly Grade 1. . . . xxxii. Policy C1 of the structure plan, following the advice in government circulars indicates that developments wherever possible, should not encroach upon land with the higher agricultural potential. . . . xxxiv. Specific provision has been made at the Aztec West development for a hotel site and also at Cribbs Causeway.

Bearing in mind those facts the inspector set out his conclusions which so far as relevant to this application were as follows:

99. . . . It seems to me that the main issue to be decided is whether or not the need for a hotel on this site is sufficient to outweigh the presumption against building in the green belt and the loss of high quality agricultural land. 100. Although the Bristol Hotels Association do not see any justification for a further hotel in the Bristol area, the overwhelming evidence points to such a need and the council themselves acknowledge the desirability of providing additional good class hotel accommodation. Certainly when the large scale developments planned in the north fringe take place I believe that there is likely to be a severe shortage of suitable accommodation and I note that at least two of the existing major hotels are planning to expand to meet this need. The proposed hotel would be admirably sited to serve the new development and at the same time would provide quick and easy access for visitors who wished to visit the city centre and be conveniently located for most travellers on the motorways approaching from the west, north and east. Apart from the highway aspect to which I have referred I consider that it is a splendid location for a hotel. After years of research the appellants are convinced that it is the prime site in the Bristol area and I do not quarrel with that judgment. However, they have gone further in suggesting that it is the only site likely to be developed for a modern hotel in the Bristol area. I must accept that the Trust House Forte Group have made a commercial assessment and concluded that unless they are able to benefit from all the advantages offered by the appeal site they would not be prepared to build and Bristol would be deprived of a modern Post House development. In my opinion, having regard to the undoubtedly high standard of service associated with the group that would be most regrettable albeit there is the existing Post House development at Alveston.

suitable hotel site has extended to a radius of 15 miles around Bristol city centre, which was also included in their search and their arguments would suggest that if the appeal site was not available there was no other site within the area which could be successfully developed for a hotel. Whilst respecting the company's own decision on this point I believe that if there is such a shortage of 3/4 star hotel accommodation, which can only become more acute as the large scale developments progress, then the normal market forces of supply and demand will operate and the demand will be met—given that it is the wish of the responsible authorities to encourage additional and improved hotel facilities in the Bristol area.

102. The appellants in setting out the criteria for the siting of a new hotel placed great stress on the choice of location particularly in relation to principal highway routes and the council accepted that for the Post House type of operation catering predominantly for the motorist good communications were necessary. I acknowledge that the position of the appeal site adjoining the M32 and close to the east/west M4 motorway would provide probably the best opportunity for bringing the hotel to the attention of a large number of motorists visiting the Bristol area. However, the continued success of the company's own Alveston Post House Hotel, some 11 miles from the Bristol centre and not on one of the principal traffic routes would seem to indicate that, whilst clearly desirable from a commercial point of view it is not essential that the hotel should be in the prime position adjoining the motorway. In reaching this conclusion I have had regard to the point made by the appellants that the Alveston hotel has had 20 years in which to build up goodwill but I believe that its success will be derived to a large extent from the excellent reputation enjoyed by the group generally and the fact that many visitors to the Bristol area are apparently prepared to accept the longer drive into the city centre.

103. I appreciate that the company have made a carefully considered commercial judgment in deciding that a Post House type of operation on any other site would not be viable and in reaching this decision they have naturally to take into account the costs involved including the lower costs of single-storey construction and of land purchase outside the central area which would enable a hotel on the appeal site to compete with the city centre hotels by charging a lower tariff. However, I have no doubt that there are many other concerns which would claim to offer a less expensive product to the public if they were allowed to build outside the built-up areas and whilst the commercial implications and economic viability of any proposal should not be ignored in the consideration of a planning application I do not believe that the question of costs can be an overriding factor in this instance and this is accepted by the appellants.

104. In these circumstances I can find no justification for setting aside what, in my opinion, are two of the most basic and stringent planning constraints against development—the green belt and the loss of high quality agricultural land. . . . 105. The appellants further submitted that in any case the proposed development would not be detrimental to the green belt objectives but I consider that at this part the green belt performs a vital function in preventing any extension of the urban outskirts of Bristol, with the A4174 forming a firm and readily identifiable boundary. This is a very vulnerable part of the green belt and should the A4174 line be breached by the granting of consent in this case it would be difficult to resist other proposals in this locality. In my opinion too, any development on the appeal site would be an intrusive feature which would detract from the rural setting which helps to retain the separate identity of Hambrook Village.

106. With regard to the loss of the high quality agricultural land . . . the Government's policy of safeguarding the long-term potential

of high quality agricultural land has remained unchanged. To overcome this the appellants have relied on their submissions regarding the need for a hotel in the Bristol area but I can find no special circumstances in this case to justify permission being granted.

The inspector then recommended that the appeal be dismissed, a recommendation which, as I have already related, the Secretary of State accepted.

The applicants do not criticise the inspector's identification of the crucial issue arising on the appeal as set out in paragraph 99; indeed they commend it. But they complain that he never properly resolved it. More particularly they contend that he was not entitled to reach the conclusion set out in paragraph 101 to the general effect that in so far as there is and will arise any acute demand for additional first class hotel accommodation in the Bristol area, then it will be met by the normal market forces of supply and demand. This complaint really lies at the heart of the applicant's challenge before this court. I propose first to deal with it in all its various forms and then to turn very much more briefly to consider the other residual and largely subsidiary grounds of challenge raised upon this application.

The central complaint is advanced in a variety of different ways. First it is contended that there was no evidence to support the inspector's conclusion that the normal forces of supply and demand would operate to meet on another site the demand for additional hotel facilities. Next it is said that proper account was not taken of a number of matters which had been canvassed strongly by the applicants upon the appeal; this ground of challenge is in large part complementary to the first ground in that it seeks to stress all the evidence before the inspector that went the other way and to assert that had he taken it properly into account he could not have arrived at the conclusion impugned. Thirdly it is said that in considering the main issue which he had identified the inspector failed to ask himself the right question, namely:

Whether, on the assumption that the appeal site was the only suitable site likely to be developed in the foreseeable future for development of the kind proposed, . . . the planning objections to built development on the site were so great as to warrant keeping it undeveloped despite the need for the development.

Finally, Mr. Horton submits on behalf of the applicants that the inspector misconstrued and misapplied green belt and agricultural land policies in regard to hotel development, criticism which upon analysis also depends for its validity upon the proposition that there was no basis for the inspector to conclude that the need could be met elsewhere, a conclusion implicitly underlying the further conclusions set out in paragraphs 104 and 106 to which I have referred.

What all these differently formulated grounds really amount to is in my judgment a *cri de coeur* to the general effect that the inspector was not entitled to conclude that the accepted need for further hotel accommodation could be met elsewhere than upon the appeal site but rather was bound to determine the appeal upon the assumption that it would be met only if the applicants' appeal were to be allowed. Mr. Horton accepts that the inspector could have said:

I recognise that the need may well not be met if this appeal is dismissed, but I nevertheless recommend its dismissal because the planning objections are such as to outweigh the need.

But, as Mr. Horton rightly points out, this was not the basis of decision. Rather it was that the need would be met elsewhere.

The applicants advance two wholly distinct arguments as to why the inspector was not entitled to arrive at this crucial conclusion. First they say that as a matter of law the inspector was debarred from deciding that the accepted need could be satisfied on some unspecified alternative site. Secondly, even if that first contention be wrong, they contend that there was no evidence in the instant case upon which the inspector could properly have arrived at this conclusion.

So far as the first of those contentions goes, Mr. Horton submits that once the inspector rejected the four specific sites canvassed by the district council as ones upon which the accepted need could be met he was bound to ignore the possibility of the need being met elsewhere. Instead, says Mr. Horton, he was bound to assume that there was no alternative site upon which it could be met.

There has been a growing body of case law upon the question when it is necessary or at least permissible to have regard to the possibility of meeting a recognised need elsewhere than upon the appeal site. The line of authority begins with *Rhodes v. Minister of Housing and Local Government and Another* and ends with a spate of cases reported in *Journal of Planning and Environment Law* in 1986. These authorities in my judgment establish the following principles:

- (1) Land (irrespective of whether it is owned by the applicant for planning permission) may be developed in any way which is acceptable for planning purposes. The fact that other land exists (whether or not in the applicant's ownership) upon which the development would be yet more acceptable for planning purposes would not justify the refusal of planning permission upon the application site.
- (2) Where, however, there are clear planning objections to development upon a particular site then it may well be relevant and indeed necessary to consider whether there is a more appropriate alternative site elsewhere. This is particularly so when the development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it.
- (3) Instances of this type of case are developments, whether of national or regional importance, such as airports (see the *Rhodes* case), coalmining, petro-chemical plants, nuclear power stations and gypsy encampments (see *Ynstawe, Ynysforgan and Glais Gypsy Site Action Group v. Secretary of State for Wales and West Glamorgan County Council.*) Oliver L.J.'s judgment in *Greater London Council v. Secretary of State for the Environment and London Docklands Development Corporation and Cablecross Projects Ltd.* suggests a helpful although expressly

not exhaustive approach to the problem of determining whether consideration of the alternative sites is material¹:

... comparability is appropriate generally to cases having the following characteristics: First of all, the presence of a clear public convenience, or advantage, in the proposal under consideration; secondly, the existence of inevitable adverse effects or disadvantages to the public or to some section of the public in the proposal; thirdly, the existence of an alternative site for the same project which would not have those effects, or would not have them to the same extent; and fourthly, a situation in which there can only be one permission granted for such development, or at least only a very limited number of permissions.

- (4) In contrast to the situations envisaged above are cases where development permission is being sought for dwelling houses, offices (see the *GLC* case itself) and superstores (at least in the circumstances of *R. v. Carlisle City Council and the Secretary of State for the Environment, ex parte Cumbrian Co-operative Society Ltd.*).
- (5) There may be cases where, even although they contain the characteristics referred to above, nevertheless it could properly be regarded as unnecessary to go into questions of comparability. This would be so particularly if the environmental impact was relatively slight and the planning objections were not especially strong: See *Sir Brandon Meredith Rhys Williams v. Secretary of State for Wales and others* and *Vale of Glamorgan Borough Council v. Secretary of State for Wales and Sir Brandon Rhys-Williams*, both of which concerned the siting of the same sewage treatment works.
- (6) Compulsory purchase cases are *a fortiori* to planning cases: in considering whether to make or confirm a C.P.O. it is plainly material to consider the availability of other sites upon which the need could be satisfied, particularly where an available alternative site is owned by the acquiring authority itself—see *Brown and another v. Secretary of State for the Environment and Another*.

The applicants accept that the question whether or not specific alternative sites need to be identified before any question of meeting the perceived need elsewhere can arise has not yet expressly fallen for decision. They contend, however, that it is implicit in the authorities that where it was held to be right to consider alternative sites these were specific alternatives. Mr. Horton suggests that it is necessary to operate on a site specific basis since (a) the rationale of the comparability exercise is to consider whether the alternative has fewer disadvantages than the appeal site and this cannot satisfactorily be achieved unless the comparison is between specific sites and (b) it is unfair to place upon the developer the burden of establishing not merely that certain specified alternative sites cannot meet the need but also that no other sites elsewhere can. The decided cases clearly establish that a planning authority is not obliged to “rout round” to see if there may not be an

¹ (1986) 52 P. & C.R. 158 at p.172.

alternative site (*Rhodes'* case); Mr. Horton, however, goes further and says that a planning authority is not even entitled to take that course.

Mr. Holgate for the Secretary of State likewise accepts that the earlier cases do not decide the point now at issue. He contends, however, that there can be no objection in principle to a planning authority concluding in certain cases at least that a particular need can be satisfied elsewhere than upon the appeal site even though no other specific sites are identified and established as preferable alternatives. I prefer Mr. Holgate's contention. In my judgment the better view is as follows:

- (1) In a case where planning objections are sought to be overcome by reference to need, the greater those objections, the more material will be the possibility of meeting that need elsewhere.
- (2) Although generally speaking it is desirable and preferable that a planning authority (including, of course, the Secretary of State on appeal) should identify and consider that possibility by reference to specifically identifiable alternative sites, it will not always be essential or indeed necessarily appropriate to do so.
- (3) The clearer it is that the planning objections relate essentially to the development of the application site itself rather than to some intrinsically offensive aspect of the proposed development wherever it might be sited, the less likely it is to be essential to identify specific alternative sites.
- (4) Equally, the less specific and exacting are the requirements to be satisfied in order to meet the accepted need, the more likely is it that a planning authority could reasonably conclude that such need can be met elsewhere without reference to some identifiable preferable alternative site.
- (5) Clearly, it is more difficult to make a sensible comparison in the absence of an identified alternative site and it is likely that a planning authority would be more hesitant in concluding that an accepted need could be met elsewhere if no specific alternative sites have been identified, *a fortiori* if they have been carefully searched for, identified and rejected.
- (6) The extent to which it will be for the developer to establish the need for his proposed development on the application or appeal site rather than for an objector to establish that such need can and should be met elsewhere will vary. However, in cases such as this, when the green belt planning policy expressly provides that "the need for a motel on the site proposed, not merely in the area generally, has to be established in each case"² the burden lies squarely upon the developer. Thus in this type of case it will be the more likely that the planning authority could reasonably conclude that the need can be met elsewhere without reference to some identified more appropriate alternative site.
- (7) As a matter of law it is accordingly open to a planning authority to conclude on the facts that an accepted need can and should be met elsewhere than upon the application or appeal site without reference to any specific alternative site or sites.

² Paragraph 16 of Development Control Policy Note 12.

I turn to the applicants' alternative contention that there was no evidence here upon which the inspector could found a factual conclusion that the accepted need would be met elsewhere. What Mr. Horton says is that in paragraph 101 the inspector was either adumbrating what he conceived to be an economic truth (or imperative or axiom of natural law: all these terms were at various times used in argument) but which in fact was manifest nonsense, or alternatively was expressing a belief which not merely had no factual support but indeed flew in the face of all the evidence put before him. He cites the case of *Banks Horticultural Products Ltd. v. Secretary of State for the Environment* which he contends provides a close analogy with the present case. The planning issues there, he suggests, had been whether there existed other reasonable sources of supply of peat; the issue here was whether a site for hotel development to meet the demand would be produced by the market forces of supply and demand.

Mr. Holgate for the Secretary of State submitted that when a conclusion is founded to a substantial degree upon questions of judgment and opinion it is more difficult to challenge it upon the ground that there is no evidence to support it than where, as in *Banks Horticultural*, the conclusion is as to an existing state of affairs. He nevertheless accepts that in principle it is as a matter of law amenable to such challenge. But he cites *Wholesale Mail Order Supplies Ltd. v. Secretary of State for the Environment and Another* and *Westminster Renslade Limited v. Secretary of State for the Environment and the London Borough of Hounslow* as indicating the considerable extent to which an inspector properly can and indeed must exercise his own planning judgment even in the absence of personal expertise in pertinent fields.

I have concluded that the decision is not to be faulted on the basis Mr. Horton propounds. As it seems to me paragraph 101 is a perfectly proper expression of view. To the extent that it predicates the existence of certain facts; such as that there are hoteliers other than these applicants who would have an interest in meeting the need and that the responsible planning authority do indeed desire to encourage the construction of additional hotel facilities; there was evidence before him to such effect; in so far as it expresses an opinion or judgment on the likely future course of events, it was well within the proper scope of the inspector's powers to form such a conclusion. Mr. Horton contended that the need could only be met if in future there occurred a remarkable coincidence of factors which had not thus far coincided despite the existence of a present need and a desire on all sides to meet it. These factors were, he said, the need itself, an available site, the satisfaction of the four criteria contained in finding of fact xiii, a willingness on the part of the planning authorities to grant planning permission, and a hotelier with funds to undertake the development. So be it (subject to a qualification as to the four criteria to which I shall come shortly). It is ultimately a matter of judgment as to whether such a situation would indeed arise.

It is I think helpful to the determination of this legal challenge to set out my understanding of the inspector's decision overall. It is to this essential effect:

- (1) He accepts that there is a clear need for additional good class hotel accommodation in the Bristol area.
- (2) He accepts that the appeal site is the prime site for such development.
- (3) He accepts that these applicants will not build a hotel in the Bristol area otherwise than upon the appeal site.
- (4) He does not, however, accept that no other hotelier will build; rather he believes that sooner or later (and, inferentially, the more acute the need the sooner) in one way or another the need will be met.
- (5) He recognises that the need may be met by some development quite different in location and nature to that proposed by the applicants, whether upon a site already contemplated for hotel development or not.
- (6) In the result he concludes that the present need is capable of being met otherwise and elsewhere than by the proposed development upon the appeal site and is not to be regarded as so acute as to overcome the strong planning objections constituted by the appeal site being in the green belt and of high agricultural quality.

The qualification to be made to Mr. Horton's point that all four of his client's criteria will need to be satisfied is this. Those criteria are only essential to a hotel of the Post House type. That is not in fact the only type of development which could satisfy the identified need. Quite apart from that, moreover, it must be recognised that there is in any event some measure of elasticity within each of the criteria. Certainly they were not accepted by the inspector as absolute. Indeed, the inspector's reference to the success of the applicants' own Alveston Post House hotel plainly indicates his refusal to accept that the criteria were sacrosanct even in regard to that type of development. Mr. Holgate pointed to several passages in the main body of the inspector's report which contained at least some partial recognition even by the applicants that other forms of hotel development might occur to satisfy the need. I instance just two: Paragraph 17 records the applicants' contention that other hotels "probably would not be suitable to meet the identified needs" (the recognition of a contrary possibility is implicit); paragraph 18 identifies two other known hotel developments in the offing.

In my judgment it is important to bear in mind that the identified and accepted need is of a wholly unspecific character. It is of good hotel accommodation in the Bristol area generally. True, it would seem likely to arise most acutely in north Bristol, but it could clearly be satisfied within a very substantial general area. Equally important, there are no planning objections to a hotel development as such, rather, as I have related, the planning authorities would clearly encourage such development if on the right site. All the planning objections here relate rather to the application site itself. Thus this seems to me to be just such a case as could properly attract the refusal of planning permission on the footing that the need can and should be met elsewhere than upon the appeal site, albeit no other specific more appropriate alternative is at present identified.

I turn to deal very much more shortly with the applicants' other grounds of challenge. In my judgment none are made out. In considering them it must be recognised that this was a long and careful decision letter. It is not to be construed like a statute or a contract nor to be too readily criticised for venial imperfections. Approached on this basis I am at the end of the day wholly unpersuaded by the reasons challenge which was advanced with regard to certain identified findings of fact and more generally in respect of the inspector's conclusions upon the central matters to which I have already fully referred. In regard to the specific findings of fact complained of, Mr. Horton contends that the inspector did not make sufficiently plain whether he was accepting, or was merely recording, certain aspects of the applicants' case. Although at first blush there seemed to me some substance in this criticism, I have finally reached the conclusion that almost invariably it is plain which of these two things the inspector was doing and, even when rarely it is not, it really does not greatly matter. For instance, finding of fact xvii appears to me to be saying that the inspector accepts that the applicants would need to attract the tourist trade in order that their proposed type of development would be viable. However, in rejecting their case that the need should be satisfied in this way the inspector seems to me to have considered that it might well be necessary for another type of development to attract the tourist trade in order to be viable. It is not I think necessary to deal individually with all the other passages complained of by Mr. Horton.

A separate ground of complaint related to paragraph 103. It was said that the inspector here failed to distinguish between

the effect of an out-of-town site on product cost on the one hand and on the provision of the product itself upon the other hand.

I am bound to say I did at one stage regard that paragraph as troublingly enigmatic but I have finally reached the view that really the inspector was saying here no more than that the question of costs, even if they determined the viability of the applicant's own proposal, could not override other planning objections. His comment that that was accepted by the appellants was a reference back to paragraph 31 of the report.

In so far as Mr. Horton additionally complained that the inspector had failed to take proper account of the importance to the economy of the area of providing additional hotel accommodation and had failed to compare that economic need with the competing need to safeguard good agricultural land and had failed also to recognise the availability of a great deal of good agricultural land compared to the few available suitable hotel development sites, I need say no more than that there is in my judgment nothing in the inspector's report to indicate that he omitted to take account of these considerations. Rather, the very fact that he recorded the arguments so very fully and accurately (and it is noteworthy that there is no complaint about the first 22 pages of his report in which he sets out the evidence and the respective cases) indicates that he had all these considerations well in mind. It was certainly not incumbent upon him to deal specifically with all the points in his final conclusions.

I am conscious myself of having neglected to deal with quite all of Mr. Horton's many arguments, but I have endeavoured to deal with all the

main points as I have understood them and certainly with those grounds which in my view would, if made good, have required the quashing of the Secretary of State's decision. For the reasons I have given, however, these grounds do not succeed and the application therefore must be dismissed.

Application dismissed.

Solicitors—Paisner & Co.; the Treasury Solicitor, London.

Appendix 4



ATOMIC WEAPONS ESTABLISHMENT

AWE BURGHFIELD

Declaration of No Change REPPIR 2019

© British Crown Owned Copyright 2022/AWE

Published with permission of the Controller of Her Britannic Majesty's Stationery Office.

This document is of United Kingdom origin and contains proprietary information which is the property of the Secretary of State for Defence. It is furnished in confidence and may not be copied, used or disclosed in whole or in part without prior written consent of Defence Intellectual Property Rights DIPR-PL - Ministry of Defence, Abbey Wood, Bristol, BS34 8JH, England.

Introduction

This document contains a “declaration of no change” for AWE Burghfield, in accordance with Regulation 6(2)(b) of The Radiation (Emergency Preparedness and Public Information) Regulations 2019 (REPPiR 2019).

Review of AWE Burghfield’s last hazard evaluation and consequence assessment

Regulation 6(2) of REPPiR 2019 provides that:

“For such time as the work with ionising radiation in respect of which an evaluation made pursuant to Regulation 4(1) continues, the operator must, within 3 years of the date of the completion of the last evaluation (whether made in accordance with Regulation 4(1) or this paragraph), or longer, if agreed by the regulator, either-

- (a) make a further evaluation; or*
- (b) if there is no change of circumstances which would affect the last Consequences Report required by Regulation 7, make a declaration to that effect.”*

A review of the last AWE Burghfield hazard evaluation and consequence assessment carried out in 2019, as required under Regulation 6(2) of REPPiR 2019, has been completed.

This review process has been undertaken in accordance with the requirements of Regulation 6 of REPPiR 2019 and the current Approved Code of Practice and guidance (second edition 2020).

The evidence gathered by the review process has concluded there has been no change in circumstances or material change which would affect the conclusions of the previous hazard evaluation or consequence assessment required by Regulations 4(1) and 5(1).

Declaration of No Change

This document is a “declaration of no change”, in accordance with Regulation 6(2)(b).

The 2022 review of the 2019 hazard evaluation and consequence assessment has concluded the Consequences Report (Issue 1) dated November 2019 continues to provide the necessary information for the local authority (in this case West Berkshire District Council) to prepare an off-site emergency plan.

Appendix 5



ATOMIC WEAPONS ESTABLISHMENT

AWE BURGHFIELD

CONSEQUENCES REPORT

© British Crown Owned Copyright 2019/AWE

Published with permission of the Controller of Her Britannic Majesty's Stationary Office.

This document is of United Kingdom origin and contains proprietary information which is the property of the Secretary of State for Defence. It is furnished in confidence and may not be copied, used or disclosed in whole or in part without prior written consent of Defence Intellectual Property Rights DIPR-PL - Ministry of Defence, Abbey Wood, Bristol, BS34 8JH, England.

Introduction

This document is the consequences report for the Burghfield Site, as required under Regulation 7(1) of The Radiation (Emergency Preparedness and Public Information) Regulations 2019 (REPPPIR 2019).

The following information has been titled to relate specifically to the REPPPIR 2019 Schedule 4 items required to be included within this report.

Part 1 – Factual Information

1. Regulation 7(3) Schedule 4, paragraph 1(a) - Name and address of the operator:

AWE plc, Aldermaston, Reading, Berkshire, RG7 4PR.

2. Regulation 7(3) Schedule 4, paragraph 1(b) - Postal address of the premises where the radioactive substance will be processed, manufactured, used or stored, or where the facilities for processing, manufacture, use of storage exist:

AWE plc, Burghfield, Reading, Berkshire, RG7 2PQ.

3. Regulation 7(3) Schedule 4, paragraph 1(c) - The date on which it is anticipated that the work with ionising radiation will commence or, if it has already commenced, a statement to that effect:

The Burghfield Site has been occupied in support of the UK nuclear deterrent since 1950 and work with ionising radiation has been conducted on the site since that date.

Part 2 – Recommendations

1. Regulation 7(3) Schedule 4, paragraph 2(a) - The proposed minimum geographical extent from the premises to be covered by the local authority's off-site emergency plan:

- a. The proposed minimum geographical extent to be covered by the Local Authorities Off-Site Emergency plan is an area extending to a radial distance of 3160m from the Burghfield Site centre location.
This is illustrated on Map A in Appendix A.
- b. In addition to the minimum geographical extent recommended above, an Outline Planning Zone, extending to a radial distance of 12km around the Burghfield Site centre location, has been determined by the Secretary of State for Defence, in accordance with Regulation 9(1)(c).
This is illustrated on Map B in Appendix B.

2. Regulation 7(3) Schedule 4, paragraph 2(b) – The minimum distances to which urgent protective actions may need to be taken, marking against each distance the timescale for implementation of the relevant action; and paragraph 3(a) – The recommended urgent protective actions to be taken within that zone, if any, together with timescales for the implementation of those actions.

- a. The following distance is recommended for the urgent protective action of sheltering. This is the largest distance determined by detailed consequence assessment of a range of source terms and includes consideration of a range of weather conditions and vulnerable groups within the population.
- b. The minimum distance to which urgent protective actions should be taken corresponds to an area with radial distance of 3160m.
- c. It is recommended that people are instructed, as soon as is practical, to immediately take-cover in a suitable building and to stay inside with the windows and doors all properly shut. This 'sheltering' action may be necessary for a period of up to two days, or at least until the initial contaminated plume has passed and monitoring of the ground contamination has been undertaken to determine the level of groundshine; and subsequent potential for further dose uptake, (e.g. from contaminated locally produced foodstuffs).
- d. It is recommended that the declaration of a Radiation Emergency, by the operator, to the Local Authority is the trigger for implementing the off-site emergency plan and initiating all the above recommended urgent protective actions.
- e. Category F weather conditions typically has an associated mean wind speed of 2ms^{-1} . From the event site, there will be an average of approximately 1500 seconds (25 minutes) from the initiation of the event until the leading edge of any plume travels to the minimum distance recommended for urgent action. Assuming no early warning of the onset of any incident, and that the Site Response Group could take up to an estimated 15 minutes to set-up and formally notify the Local Authority, there remains approximately 10 minutes to inform the public, and for the public to find suitable shelter, in order to realise any substantive benefit from the sheltering action.

3. *Regulation 7(3) Schedule 4, paragraph 3(b) – Details of the environmental pathways at risk in order to support the determination of food and water restrictions in the event of a radiation emergency:*

- a. The release of radioactivity from the Burghfield Site as a result of a fault condition has the potential to result in doses to the public through a range of exposure pathways, including:
 - i. First-pass inhalation of air in the plume of contamination;
 - ii. Short-term external irradiation during passage of the plume – Cloudshine;
 - iii. Long-term inhalation after resuspension, from ground contaminated by the initial plume;
 - iv. Long-term external irradiation from ground contamination by the initial plume – Groundshine;
 - v. Ingestion of food crops contaminated by the initial plume.
- b. The relative importance of the different exposure pathways is dependent on the type of accident and the potential radioactive isotopes which may be released.

- c. The most likely predicted accidents would spread material by explosive distribution, these are non-fission incidents, where the material that would dominate in this type of release will be plutonium (which is an Alpha emitting actinide) in an inhalable particulate form.
- d. For potentially more energetic events, a range of fission products would be produced meaning that both internal (inhalation) as well as external exposure (irradiation) would dominate.
- e. For the majority of fault sequences, the material released would be in the form of fine particulates of plutonium oxide and the predominant exposure pathway to individuals outside the Burghfield Site during the passage of the plume would be by inhalation. As the plume travels downwind, deposition mechanisms would deplete the plume and leave radioactive material on the ground. Most forms of plutonium are removed from biological pathways by being fixed in the soil and only small amounts are concentrated by biological processes into the food chain, primarily through grazing animals. However, the material can be resuspended by the action of the weather, or by farming practices, or any other disturbance processes, resulting in a potential for longer term inhalation doses.
- f. Doses to the public resulting from this consequence may include contributions from cloudshine, first-pass inhalation, long-term inhalation following resuspension, and groundshine.
- g. Overall, the primary concern for early response decision-making to radiation emergencies involving possible accidents at the Burghfield Site only merits consideration of the first-pass inhalation dose and therefore sheltering is the recommended urgent protective action.

Part 3 - Rationale

1. ***Regulation 7(3) Schedule 4, paragraph 4 – The rationale supporting each recommendation made:***
 - a. The release of radioactive particles small enough to be respirable have the potential to result in radiological doses to the public from a range of exposure routes, most notably:
 - First-pass inhalation of air from the plume of contamination;
 - Long-term inhalation after resuspension of ground contamination by the initial plume;
 - Ingestion of food crops contaminated by the initial plume;
 - Long-term external irradiation from ground contamination by the initial plume.
 - b. It has been assessed that the first-pass inhalation dose is the most significant by far, for initial emergency response purposes, which has resulted in the recommendation to shelter as the most appropriate urgent protective action. This should be coupled with a restriction on the consumption of all locally produced food, until the direction of the plume and the extent of the contamination has been

fully investigated, examined and understood. Appropriate local instructions should then be made available to the public based on the prevailing conditions.

- c. The recommendation for the minimum emergency action distance at the Burghfield Site originates from the Consequence Assessment carried out under REPIR 2019. The guidance set out in the Approved Code of Practice is to use the largest candidate distances recommended for the urgent protective actions identified against the lower Emergency Reference Level. This 3160m distance is selected as the minimum geographical extent of the Detailed Emergency Planning Zone (see appendix C for definition) about the Burghfield Site Centre Location.
- d. This distance has increased from the REPIR 2001 ONR determination. The REPIR 2001 determination was based on a 5mSv dose contour using 55% Cat D weather conditions. Under REPIR 2019, the minimum distance for urgent protective actions is based on a 7.5mSv dose contour. However, in accordance with the new requirements of REPIR 2019, the 'reasonable foreseeability' argument is no longer allowed, and several different requirements have had to be taken into consideration, these being that the assessment must:
 - Consider age, and other characteristics which would render specific members of the public especially vulnerable;
 - Include all relevant pathways;
 - Consider a representative range of source terms;
 - Consider a range of weather conditions to account for consequences that are less likely, but which have greater consequences.
- e. A further consideration is the geographical area around the site and the potentially significant period that these adverse weather conditions could be experienced.
- f. AWE has analysed the dose from a range of weather conditions and has decided to base its proposal on a weather category that is less likely, but which could provide significantly greater doses. Consideration of less likely weather categories, which occur around 12% of the time in the local geographical area, increases the 7.5mSv dose contour to 3160m around the site centre location.

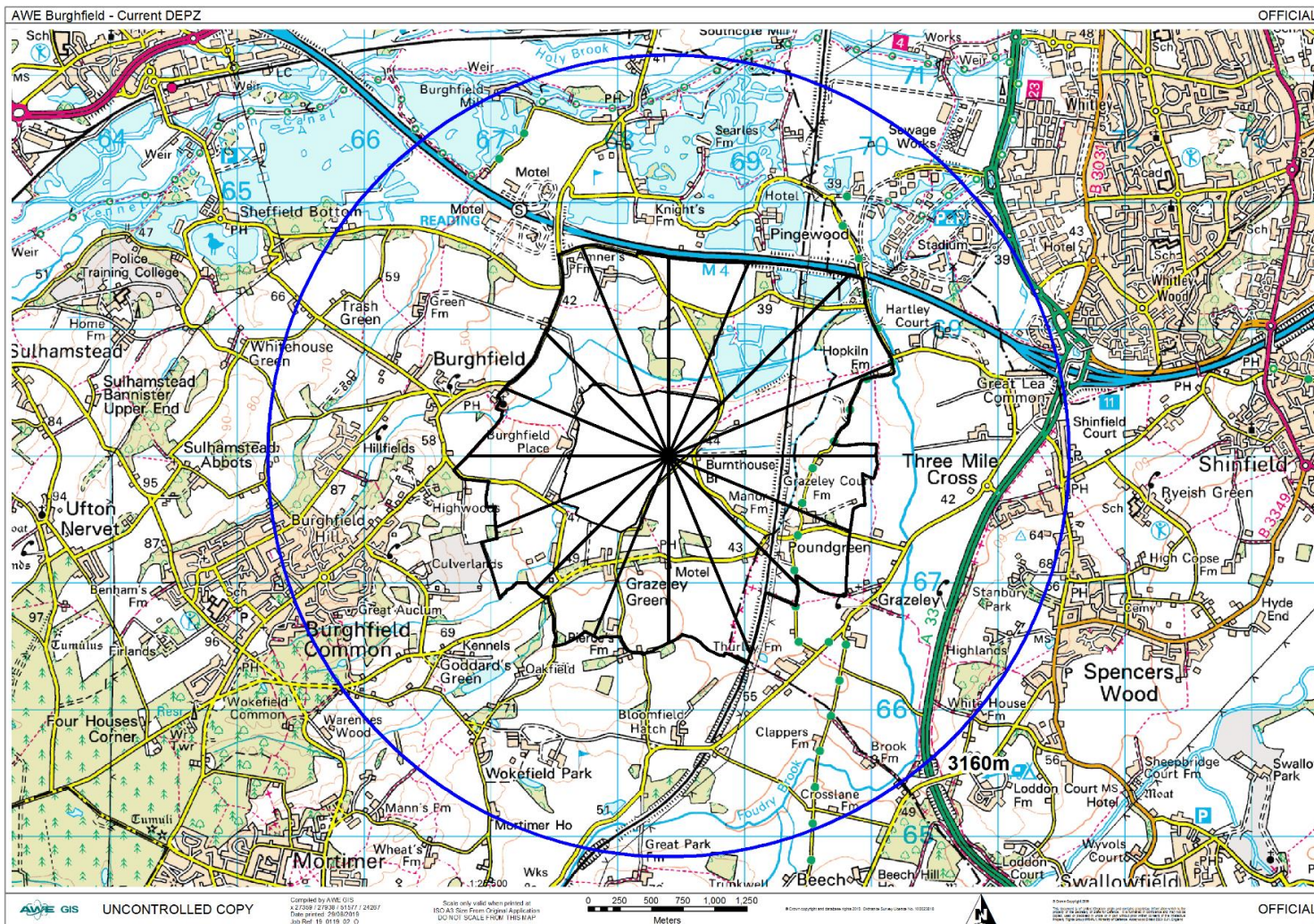
2. *Regulation 7(3) Schedule 4, paragraph 5(a) – The rationale for its recommendation on the minimum distances for which urgent protective action may need to be taken:*

- a. The minimum distance is established from the guidance provided in support of the Regulations, for the appropriate source terms, and is based on the requirement to identify a distance that has the potential to deliver a 3mSv dose saving, when adopting the recommended urgent protective action; which in this case is sheltering.

3. *Regulation 7(3) Schedule 4, paragraph 5(b) – The rationale for agreement that no off-site planning is required.*

- a. Given the content of this Consequences Report, this requirement does not apply to the Burghfield Site.

Appendix A: Map A – The ragged bold black sector is the current boundary of the Detailed Emergency Planning Zone. The Proposed Urgent Action Distance (blue circle) is set at 3160m for the Burghfield Site.



Appendix B: Map B – The Outline Planning Zone Boundary, set at 12Km for the Burghfield Site.



Appendix C: Definitions

Detailed Emergency Planning Zone (DEPZ)	A zone determined in accordance with Regulation 8 of the REPPIR 2019 Regulations. This is now covered by the Local Authority's off-site emergency plan
Outline Planning Zone (OPZ)	A zone determined in accordance with Regulation 9 of the REPPIR 2019 Regulations and covered by the Local Authority's off-site emergency plan.

Appendix 6

AWE Detailed Emergency Planning Zone

Decision Paper:	Service Director Development & Regulation
Date of Decision:	19 th January 2023
Report Authors:	Jonah Maddocks & Carolyn Richardson

1 Purpose of the Report

- 1.1 To provide information and the decisions made in relation to the determination of the Detailed Emergency Planning Zones (DEPZ) around both Atomic Weapons Establishment (AWE) sites review process as required under Radiation (Emergency Preparedness and Public Information) Regulations 2019 (REPP19).
- 1.2 To confirm the next steps to ensure compliance with REPP19.

2 Executive Summary

- 2.1 This report explains the need to determine the Detailed Emergency Planning Zones (DEPZ) around both Atomic Weapons Establishment (AWE) sites as required under the Radiation (Emergency Preparedness and Public Information) Regulations 2019 (REPP19).
- 2.2 The DEPZ is the defined zone around the nuclear site where it is necessary to pre-define protective actions which would be implemented without delay to mitigate the likely consequences of a radiation emergency.
- 2.3 There are requirements in REPP19, the associated Approved Code of Practice (ACoP) and guidance detailing why, how and when to determine or review any DEPZ.
- 2.4 Under REPP19 the operator needs to undertake a review of hazard evaluation and consequence assessment within 3 years of the date of the completion of the last evaluation (or longer if agreed with the regulator or earlier should there be material changes in operations on the nuclear site).
- 2.5 The last determination for both AWE sites was in March 2020 with the last Consequence Report received in November 2019.
- 2.6 In undertaking this statutory review the Council has followed the legislation, ACOP and guidance.
- 2.7 The Council had two months to comply from the date of receipt of the information from AWE. This was received on the 18th November 2022 and therefore the date for completion of the process is 18 January 2023. In view of the timeframe over the festive period and the internal governance structure a request was made to the Regulators,

AWE Detailed Emergency Planning Zone

Office for Nuclear Regulation, with a request for an additional day to complete the determination process.

2.8 The options considered are detailed in this report.

2.9 The decision was to:

(a) Amend the DEPZ for AWE Burghfield as detailed in Appendix A.

(b) Make no changes to the DEPZ for AWE Aldermaston.

3 Supporting Information

3.1 There is a legal process in place in order to allow the DEPZ to be determined by the Council which is clearly set out in the legislation, ACoP and guidance. This is summarised in this section with respect to the process for the AWE sites.

3.2 The role of the Council is to:

(a) To determine the boundary of the Detailed Emergency Planning Zone (DEPZ) for each site, based on a minimum area identified by the operator (AWE), taking into account those matters detailed within the legislation and guidance such as local communities, geographical features, etc. As noted above, the DEPZ is the geographic area that the AWE Off-Site Emergency Plan must cover in detail and the Council, along with the other agencies involved in the AWE Off-Site Emergency Plan, must be able to support.

(b) To provide information to the public within the DEPZ areas.

(c) To review and revise the AWE Off-Site Emergency Plan in compliance with REPP19 (taking into account any changes in the DEPZ).

3.3 The Council was required to comply with REPP19 by updating the DEPZ by the 18th January 2023. Officers therefore prepared the key actions and timeline in relation to this deadline. As a result of internal governance and the festive period a request was made to ONR for an additional day to finalise the process.

3.4 The primary focus for the Council in respect of REPP19 is public safety. All actions should be focussed around ensuring the Council protects its residents and businesses, mitigates risk where possible and works closely with AWE and other partners to deliver, in the event of an incident, a comprehensive off-site response by virtue of a good quality Off-Site Emergency Plan.

3.5 In order to undertake the requirements there are a number of steps required of the operator in advance as set out below.

3.6 Hazard Evaluation and Consequence Assessment (HECA) (Regulations 4, 5 & 6)

3.7 The first part of the process requires AWE as the site operator to provide a Consequence Report to this Council and the Regulators. In order to do so, AWEs

technical experts undertook a Hazard Evaluation and Consequences Assessment (HECA).

- 3.8 AWE Aldermaston and AWE Burghfield have different inventories of radioactive and explosive materials and therefore different fault scenarios are applicable to each site under the legislation.
- 3.9 The process is undertaken within 3 years of the date of the completion of the last evaluation of where the operator proposes a material change, or where a material change occurs, in the work with ionising radiation to which an operator was required to make an evaluation pursuant to regulation 4(1).

3.10 Consequence Report (Regulation 7)

- 3.11 Based on the results of the assessment, AWE, as the operator, must propose the minimum area for any Urgent Protective Actions (UPA) required in the unlikely event of a radiation emergency with an off-site impact.
- 3.12 The UPA forms the basis of the information provided to the Council and the regulators, ONR, in a document called the Consequence Report (CR). These reports, one for each AWE site, set out the minimum areas to be included in the DEPZ, what the urgent protective action(s) should be and how quickly it would need to be put in place in order to protect the public.
- 3.13 The latest Consequence Reports for each site were received by the Council on the 18th November 2022.
- 3.14 There has been **no change** to the UPA areas for either AWE site under the REPP19 HECA. It should also be noted that for both sites there has been no change in activity or risk.

3.15 AWE Aldermaston Consequence Report Summary:

- (a) Urgent Protection Actions (UPA) area for the site is a 1540m radius. However based on analysis of vulnerable groups exposure to tritium it was further recommended to extend the minimum area out to 2000m.
- (b) Outline Planning Zone (OPZ) area for the site is a radius 15km.
- (c) The recommended Urgent Protective Action (UPA) is shelter.
- (d) Timescales for undertaking the UPA (Shelter) is as soon as possible.

3.16 AWE Burghfield Consequence Report Summary:

- (a) Urgent Protective Actions (UPA) area for the site is a radius of 3160m.
- (b) Outline Planning Zone (OPZ) area for the site is a radius of 12km.
- (c) The recommended Urgent Protective Action (UPA) is shelter.

- (d) Timescales for undertaking the UPA (Shelter) is as soon as possible and no later than 25 minutes from the start of the incident.

3.17 Developing the DEPZ (Regulation 8)

3.18 The distances identified in the Consequence Reports determine the **minimum** boundaries for the area to be included in the DEPZ and subsequent OPZ.

3.19 In addition to the minimum geographic extent, the UPA, then taking into account the details set out in the regulations, ACoP and guidance, there are additional requirements to consider when developing the DEPZ.

3.20 Reg 8 (1) requires that the local authority must determine the DEPZ on the basis of the operator's recommendation made under (paragraph 2) of Schedule 4 and may extend that area in consideration of:

- (a) local geographic, demographic and practical implementation issues;
- (b) the need to avoid, where practicable, the bisection of local communities; and
- (c) the inclusion of vulnerable groups immediately adjacent to the area proposed by the operator.

3.21 Those properties within the DEPZ are therefore afforded a means of warning and informing process to alert them to take shelter as soon as possible and minimise the risk to their health.

3.22 The ACOP provides further details to be considered:

3.23 The DEPZ must be based on the minimum geographical extent proposed by the operator in the consequences report and should:

- a. be of sufficient extent to enable an adequate response to a range of emergencies; and
- b. reflect the benefits and detriments of protective action by considering an appropriate balance between;
 - i. dose averted; and
 - ii. the impact of implementing protective actions in a radiation emergency across too wide an area.

3.24 In defining the boundary of a DEPZ, geographic features should be used for ease of implementing the local authority's off-site emergency plan. Physical features such as roads, rivers, railways or footpaths should be considered as well as political or postcode boundaries, particularly where these features and concepts correspond with other local authority emergency planning arrangements.

3.25 Actions undertaken to determine the DEPZ

3.26 The process for assessing and developing the DEPZs for both sites followed the legislative requirements and included:

- (a) A desk top exercise was initially undertaken to review maps and consider the options.
- (b) Site visits were subsequently conducted in the areas concerned to confirm what was shown on the map was the same in reality, having regard to any new developments, changes in features etc. This was jointly undertaken, where appropriate, with the Emergency Planning Officers from Wokingham, Reading and Hampshire Councils. These were undertaken in advance of receipt of the Consequence Report (CR) due to the timings involved in the process. If the CR had been significantly different then further site visits would have been undertaken.
- (c) A review of all the planning applications which have been approved but not developed which were still valid was undertaken in order to check they were not going to result in a bisection of the DEPZ should they be built in the next 3 years. At this time there are no developments with planning permission which will impact the DEPZ boundary as determined within this report.

3.27 The output of this process was a draft DEPZ with justifications as to why some suggested amendments to the DEPZ were offered, all of which were based on the legal requirements. These are shown in Appendix A.

3.28 Liaising with relevant organisations

3.29 Although no formal consultation is required under the legislation and the ACoP, the guidance suggests that the Council may liaise with other organisations to consider the draft DEPZ.

3.30 In view of the cross border implications of the revised DEPZ area, liaising with the AWE Off-Site Planning Group (OSPG) was considered the best approach, since it was already a formed group of agencies with knowledge of the AWE sites and emergency planning in detail. As a result the AWE OSPG was consulted.

3.31 On the 24th November 2022 there was a meeting of the AWE OSPG where a presentation was provided giving background information and the proposed details of the DEPZs for each site, as well as access to map with the potential changes.

3.32 At the time of the meeting there was general agreement with the proposed changes.

3.33 The AWE OSPG was given a further two weeks to consider the proposals and provide any suggested changes by 9 December 2022.

3.34 The results of the consultation with the AWE OSPG confirmed that the group agreed with the proposals for the AWE Burghfield Site DEPZ changes.

3.35 There was some feedback in relation to the AWE Aldermaston proposed changes however as noted in Appendix A the implications are more in relation to formalising a situation which already happens by way of notifications etc. and not splitting a

community. The disadvantage to this however is there are properties to the south of the potential expansion, leading to the possibility of more properties being added into the DEPZ which is some distance away from the area where Urgent Protective Actions are necessary.

3.36 Proposed options with Rational

3.37 Following the receipt of the Consequence Reports and using the legislation, ACoP and guidance in undertaking the actions detailed in 5.25 to 5.35 the proposed options are:

- (a) Confirm the minor changes for AWE Aldermaston site as detailed in Appendix A to the AWE Aldermaston DEPZ.
- (b) Confirm one or both changes for the AWE Burghfield site as detailed in Appendix A to the AWE Burghfield DEPZ
- (c) Make no changes to one or both AWE site DEPZ.

3.38 There are no changes for the OPZs for either site.

4 Implications of Proposed DEPZs

4.1 Should options 3.37 (a) or (b) have been approved then the minor increases to both DEPZs will result in eight additional properties being included in the DEPZ. Therefore they would need to be formally written to in order to ensure they are aware of the changes regardless of the fact they have received the booklet and AWE Connect Newsletter previously.

4.2 There would also be some questions in relation to the above changes since there is no change in the UPA, no change in the risks etc. It could also be seen that it was not concluded effectively in 2020. It is however considered that that the options for changing either DEPZ is instead fine tuning the DEPZ following the first determination by this Council in 2020 which is what formal reviews should do.

4.3 There would be no changes to land use planning policies.

5 Feedback from Governance Consultation

5.1 In addition to the AWE Off-Site Planning Group the process and proposed outcomes were considered in advance of a final decision by the Councils Corporate Board, Ops Board and Opposition leaders were briefed.

6 Decision by Service Director – Development and Regulation

6.1 The Service Director- Development & Regulation reviewed the reports prepared and discussed with officers in relation to the proposals in advance of confirming the determination of the DEPZ as per his delegated authority under the Scheme of Delegation as:

- (a) Amend the DEPZ for AWE Burghfield as detailed in Appendix A.

- (b) Make no changes to the DEPZ for AWE Aldermaston. This decision was taken having regard to the details in Appendix A and in particular the potential further extension to the south of Baughurst as a result of more properties south of that area. Therefore the proportionate decision was to make no changes to the DEPZ for AWE Aldermaston.

7 Next Steps

7.1 As a result of the DEPZ determination the following steps will be undertaken:

- (a) Revising the AWE Off-Site Emergency Plan in order to mitigate the impact for those people/properties now included in the DEPZ.
- (b) Informing the new properties within the DEPZ that they are in the DEPZ and what they should do in the event of an incident at either of the sites. A multi-agency Communications Plan lead by WBDC has already been developed to contact these properties, as well as the wider communities of the changes.
- (c) The DEPZ leaflet and website will also be updated and sent to all residents within the DEPZ before the 31st March 2023.

8 Conclusion

8.1 The proposed changes to the DEPZs for both AWE sites as required have received careful consideration, with due consideration to the legislation, ACOP and guidance.

9 Appendices

9.1 Appendix A – DEPZ options

Officer details:

Name: Jonah Maddocks
Job Title: Senior Emergency Planning Officer
Tel No: 01635 503535
E-mail: jonah.maddocks@westberks.gov.uk

Document Control

Document Ref:		Date Created:	
Version:		Date Modified:	
Author:			
Owning Service			

Change History

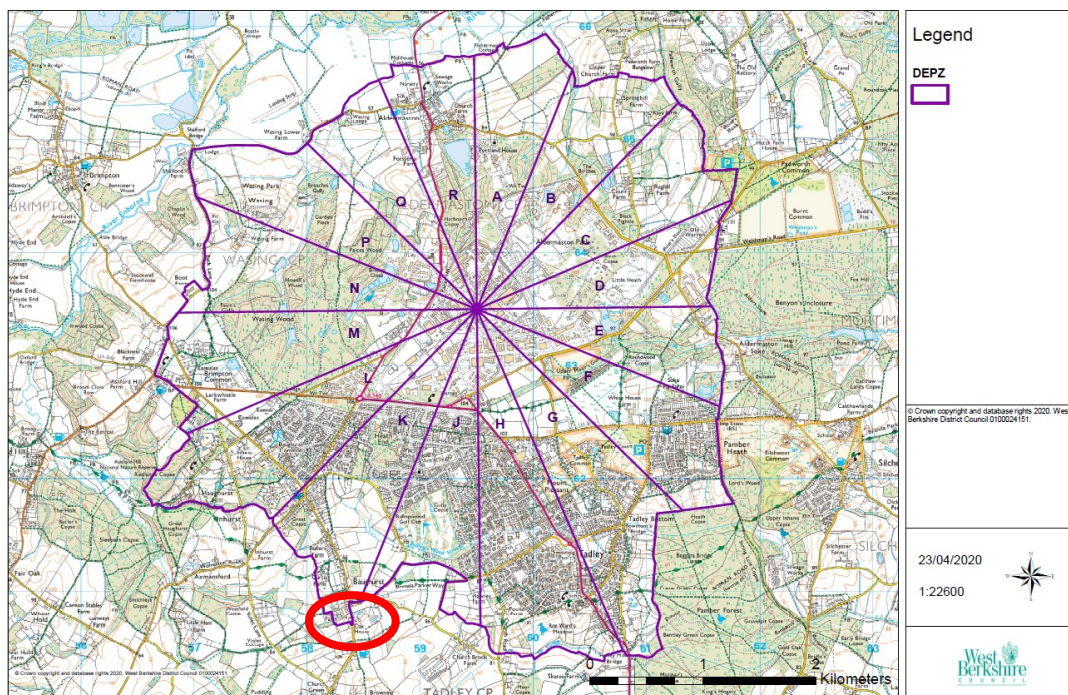
AWE Detailed Emergency Planning Zone

Version	Date	Description	Change ID
1			
2			

Appendix A DEPZ Amendment Options (Regulation 8 (2))

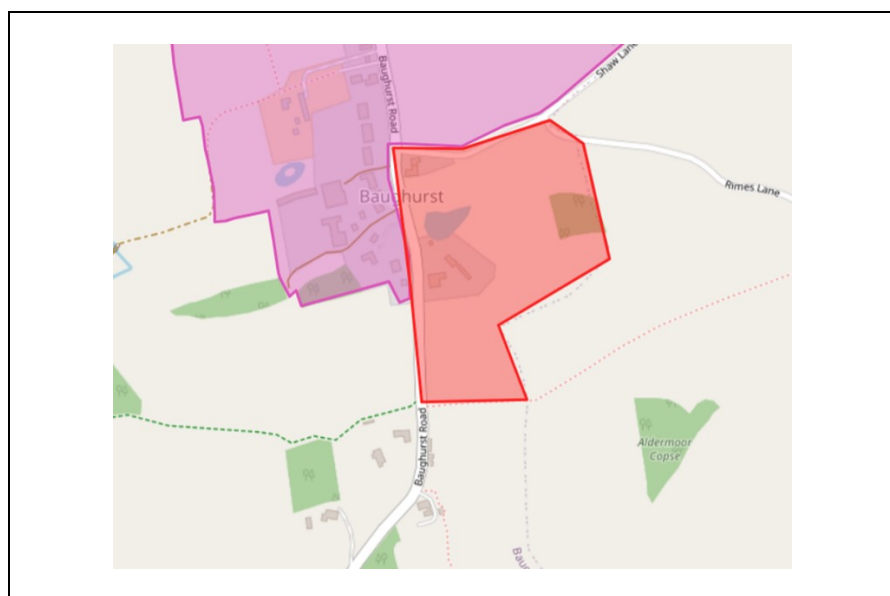
Set out in this appendix are the existing and proposed changes to the AWE Aldermaston and Burghfield DEPZs with relevant justifications. These are based on the requirements of the legislation, ACoP and guidance, site visits and consultation.

Existing AWE Aldermaston site DEPZ (Mar 2020 – Jan 2023):



Potential Changes to AWE Aldermaston site

On reviewing one area of the existing AWE Aldermaston DEPZ there was the potential for changes at the southern end as shown on the map below and as shown by the circle on the map above in the area of: Baughurst Rd, Tadley RG26 5LP



Justification Comments:

The map shows the bisection of the Baughurst community on the eastern side of the road.

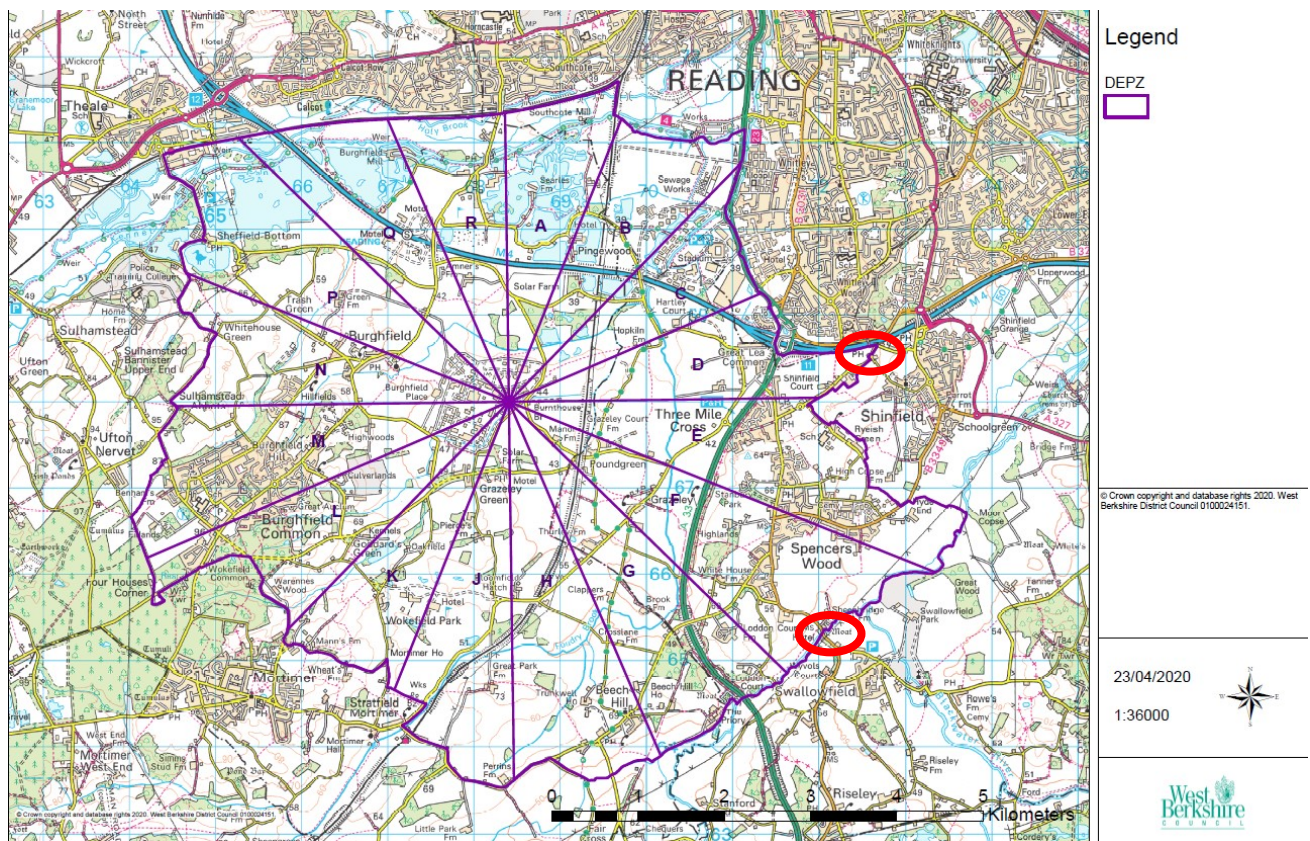
The potential option is to extend the DEPZ by following a public footpath which would act as a clearly visible defining feature.

Factors to consider are that:

- (a) The road, as per the DEPZ, acts as a clear boundary for the DEPZ.
- (b) The number of additional properties would be five.
- (c) Any additional developments proposed in the area would impact on the DEPZ for the future, should all other considerations remain the same, therefore the potential for additional significant development in the area would likely be advised against. Consideration to any such application would however be considered on a case by case basis.
- (d) It does not cut off any additional access routes to surrounding areas, though it would remove an alternative route of access to the area outside the DEPZ. The road may need to have a closure on it and therefore access in and out will be limited.
- (e) The 3 yearly booklet and the quarterly AWE Connect Newsletter is already distributed to the addresses so they could currently be considered to be part of the DEPZ.
- (f) The telephone alerting will also already include the properties within this area since it is based on postcodes.
- (g) There are however additional properties to the south of the potential extension of the DEPZ which could result in a further expansion to include these properties. This would mean expanding the DEPZ at some distance from the Urgent Protective Action area.

Decision: On balance it was considered appropriate **not to include the above option with the DEPZ for AWE Aldermaston remaining the same.**

Existing DEPZ for AWE Burghfield site (Mar 2020 – Jan 2023)

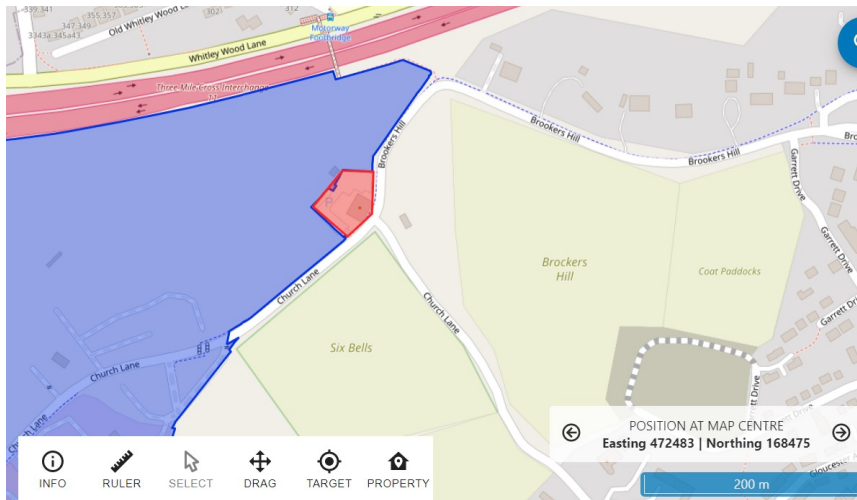


Potential Changes to AWE Burghfield site

On reviewing the area around the existing AWE Burghfield DEPZ there were 2 areas which were considered to be amended to correct minor areas of ambiguity as shown in the map above and sections of the maps below

AWE Detailed Emergency Planning Zone

1. The Six Bells Shinfield, Church Lane, Shinfield, Reading, RG2 9DA - Easting 472593 | Northing 168524



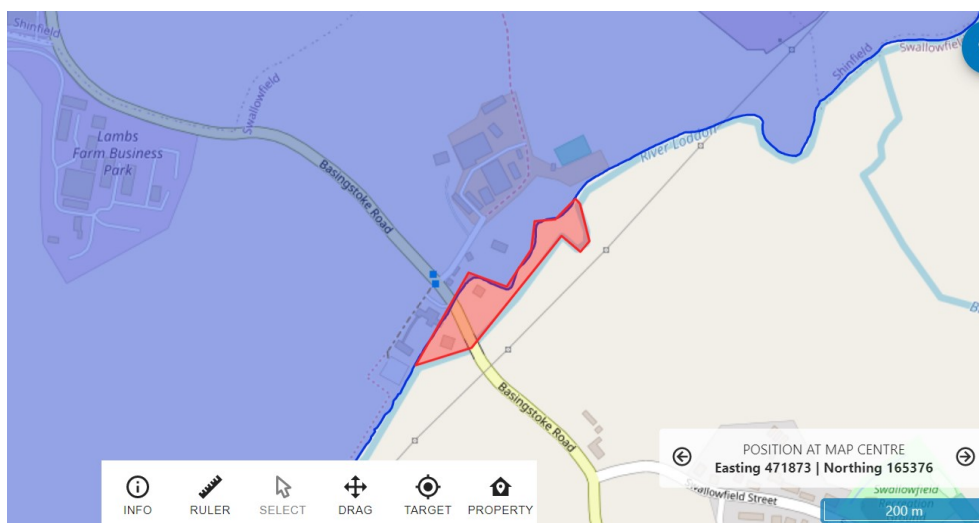
Justification Comments

- a. Previously the site had been excluded since the building identifies with the Shinfield 'Community' and not Spencers Wood which is the rest of the area included in the DEPZ.
- b. This change would therefore use the full length of the road as the boundary rather than go around one property.
- c. The road, as per the DEPZ, acts as a clear boundary for the DEPZ.
- d. Any additional houses proposed in the area would impact on the DEPZ for the future, should all other considerations remain the same, therefore the potential for additional significant development in the area would likely be advised against. Consideration to any such application would however be considered on a case by case basis.
- e. The road may need to have a closure on it and therefore access in and out of the property will be limited.
- f. The 3 yearly booklet and the quarterly AWE Connect Newsletter is already distributed to the addresses so they could currently be considered to be part of the DEPZ.
- g. The telephone alerting will also already include the properties within this area since it is based on postcodes.

Decision: On balance it was considered appropriate to include the above change to the DEPZ for AWE Burghfield.

AWE Detailed Emergency Planning Zone

2. Near Basingstoke Road, Swallowfield, Reading RG7 1PT - Easting 472105 | Northing 165364



Justification Comments

- a. This change would redefine the DEPZ fully along the River Loddon and correct a mapping error as a result of a split in the flow of the river.
- b. The river acts as a clear boundary for the DEPZ.
- c. The change would result in the addition of two properties.
- d. Expanding the DEPZ to bring in the 2 properties would better identify them with the properties adjacent to them in their community, and improve the warning and informing in the event of an incident at AWE.
- e. Expanding the DEPZ will prevent the properties receiving different advice over sheltering in the event of an incident, which are in close proximity to each other, that differing advice could undermine their confidence and therefore safety in the warning messages.
- f. The 3 yearly booklet and the quarterly AWE Connect Newsletter is already distributed to the addresses so they could currently be considered to be part of the DEPZ.
- g. The telephone alerting will also already include the properties within this area since it is based on postcodes.
- h. Any additional houses proposed in the area would impact on the DEPZ for the future, should all other considerations remain the same, therefore the potential for additional significant development in the area would likely be advised against. Consideration to any such application would however be considered on a case by case basis.

Decision: On balance it was considered appropriate to include the above change to the DEPZ for AWE Burghfield.

Appendix 7



Appeal Decision

Hearing held on 21 November 2023

Site visit made on 20/21 November 2023

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 December 2023

Appeal Ref: APP/H1705/W/23/3326959

Land at 1-9 Shyshack Lane, Baughurst, Tadley, RG26 5NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Riseley Heritage Holdings Ltd against the decision of Basingstoke and Deane Borough Council.
 - The application Ref 22/02905/FUL, dated 21 October 2022, was refused by notice dated 7 June 2023.
 - The development proposed is the erection of 3no. detached dwellings and associated access and parking.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on public safety, with particular regard to the Aldermaston Atomic Weapons Establishment (AWE) off-site emergency planning arrangements.

Reasons

3. The site comprises a large field to the rear of existing housing, with some parts extending towards Shyshack Lane. The proposal is to erect three dwellings to the rear of housing, creating a backland development within a residential area.
4. Policy SS7 of the Basingstoke and Deane Local Plan 2011-2029 [adopted 2016](LP) requires development in the land use planning consultation zones surrounding the AWE to be managed in the interests of public safety. The policy only permits development where the Off Site Nuclear Emergency Plan (OSEP) can accommodate the needs of the population in the event of an emergency. The policy states that consultation replies from the Office for Nuclear Regulation's (ONR) Directorate will be considered having regard to the following: (a) the proposed use, (b) the scale of development proposed, (c) the location of the development, and (d) the impact of the development on the functioning of the emergency plan through appropriate consultation with the multi agencies who have duties under the Radiation Emergency Preparedness and Public Information Regulations (REPPIR).
5. The REPPIR states that the OSEP should be designed to secure, so far as is reasonably practical, the restriction of exposure to ionising radiation and the health and safety of persons who might be affected by such reasonably foreseeable emergencies as identified in that assessment. The REPPIR plan recommends sheltering within buildings during an event as the primary method

- of protection to human health. A building (with closed doors and windows) acting as a barrier would afford the greatest and most immediate and accessible type of protection in the event of the type described above. Measures for potential evacuation, are also advised either during or after the event, although this may not be necessary if the public is advised to shelter-in-place.
6. The proposal would introduce three additional dwellings around 468 metres from the AWE site boundary. The site is between Sectors K and L, which are densely populated sectors within the DEPZ, and are adjacent to other comparatively densely populated areas.
 7. West Berkshire Council (WBC) is required to produce an OSEP for a zone around the site that the regulations define as a Detailed Emergency Planning Zone (DEPZ), and for it to be able to implement this plan effectively. I am cognizant that the ONR has 'advised against' the development on the basis that there is uncertainty that the OSEP can accommodate further housing as it stands.
 8. ONR has advised that further development may have the potential to impact upon the adequate implementation of the OSEP. It has arrived at this view following assessment of evidence collected through its regulatory oversight under REPPiR, modular exercises, a live test and wider engagements with WBC. The live test confirmed shortfalls that were identified through the previous exercises and suggests uncertainty that a population increase can be accommodated by the OSEP as it stands. I understand that the ONR's position predates the current appeal scheme as in August 2021 it contacted the affected local councils expressing this concern.
 9. The objection of the ONR is consistent with the position expressed by WBC. WBC's Emergency Planning Officer has been unable to give assurance that the additional households proposed could be accommodated within the existing OSEP. It has explained that the AWE area presents a complex situation in the event of an emergency event and the OSEP is at a "cliff edge" when considering its ability to accommodate additional households.
 10. WBC identifies that the proposed scheme would result in an increase of total dwellings within the DEPZ to 7321 dwellings, and a population increase of around 7 residents. Although such an increase would be comparatively small, it is recognised that the plan is not infinitely scaleable. An increase in population would increase the need for, and demand placed upon, emergency responders, reception centres, rest centres and radiation monitoring exacerbating the difficulties of delivery emergency care in a complex multi-agency emergency. Given the specific area of expertise of the WBC's Emergency Planning function, its concern with respect to the deliverability of the OSEP carries considerable weight.
 11. Although relatively small-scale, the proposal would increase demand on the resources available to implement the OSEP in the event of a radiation emergency. This demand would be above the needs of existing people requiring assistance in the event of an evacuation and would put increased pressure on rest centres. Furthermore, increased demand would increase the requirement for any long-term accommodation required for evacuated members of the public. Therefore, placing people in an area where there is a known risk would contribute to the complicated response required from

- emergency services. Increased demand on services, at such a time, could jeopardise the effectiveness of the plan as a whole in contradiction of the objective of policy SS7.
12. The suggestion that individual development could be justified on the basis that it alone would be small in scale and have a negligible, if any, effect on the preparation and delivery of the OSEP is an argument that could be easily repeated. This approach would result in incremental development that would over time significantly erode the effective management of the land use planning consultation zones surrounding the AWE to the disbenefit of public safety. The proposed development would place a greater burden on the OSEP, which is already under pressure based on the comments of the ONR.
 13. The National Risk Register [2023] identifies that the risk of a radiation emergency at a Civil Nuclear Site is less than 0.2%, but if an emergency were occur, the impact would be 'catastrophic'. Although the Aldermaston AWE is not a Civil Nuclear Site, the evidence suggests that the identified likelihood and impact would be similar. As stated by WBC's Emergency Planners, the likelihood of an incident remains credible and would have an adversely high impact on the public. I concur with this view and, even if unlikely to occur, such an emergency would require extensive resources and create significant effects in the local area.
 14. Dr Pearce explained that radiation causes an ionisation of chemicals in the body, causing injury and cancer, with millisieverts (mSv) being a measure of the harm to an organism. His evidence states that daily background levels are around 1.3 mSv, increasing to 7.8 mSv in Cornwall¹ due to the predominance of granite which releases radon. The REPPIR explains, at appendix 2, that doses in the range of 1-10 mSv as "minor" with minimal health and safety effects. If an incident were to occur at the AWE, a person at the appeal site might be exposed to a radiation dose of 7.5 mSv, in shelter this would be reduced by around 3 mSv. Accordingly, Dr Pearce was content that even if a major incident were to occur the effects would be within the range commonly experienced by members of the public in everyday life.
 15. Consequently, the chance of a release of radioactive material is low and if it were to happen the level of exposure would also be low. However, whilst comforting, this does not take into account the key purpose of the REPPIR to reduce exposure during a radiation emergency through the effective deployment of the OSEP. Furthermore, it is noted that ONR identifies that "there must be robust emergency preparedness and response arrangements in place for radiological emergencies, however unlikely they may be"².
 16. Also, these points do not account for the effect of an emergency event to the emergency services and the local population. The demands on emergency resources would be substantial creating short term and possibly long-term efforts to effectively manage such an emergency. This would need to take into account social, economic and environmental affects, that could require the local environment and community many years to fully recover. Furthermore, the anticipated low emission and exposure effects of any release would not diminish the statutory requirement for a robust OSEP to be in place, or the

¹ Appeal Statement by Dr Pearce, para 70

² Office for Nuclear Regulation, Statement, para 64

need for such a plan to be of sufficient rigor to ensure it can be delivered effectively in the interests of protecting public safety.

17. Accordingly, I find that the proposal would adversely impact on the functioning of the OSEP contrary to the interests of public safety. Hence, it would conflict with LP policy SS7 and paragraph 97 of the National Planning Policy Framework (the Framework) which, among other matters, states that planning decisions should promote public safety and take into account wider security and defence requirements.

Other Matters

18. The Appellant asserts that the size and shape of the DEPZ is arbitrary, and the OSEP could be more effectively delivered if a smaller population was affected by its measures. The Council has informed that boundary lines were decided taking into consideration community boundaries to assist in evacuation and sheltering strategies. The size of the DEPZ is dictated by legislation and it is for the responsible authority to adjust this if required by taking into account local geographic, demographic and practical implementation issues. Moreover, the definition of the area of the DEPZ is not straight forward and its conception includes an extensive consultation process, involving a range of specialist stakeholders. It is reviewed every three years, and this review process presents an appropriate forum to make any required adjustments. Therefore, it is not the place of this appeal to interrogate the size or shape of the DEPZ.
19. An appeal was allowed, in November 2022, for 49 houses within the DEPZ of Burghfield AWE at Kingfisher Grove. I have limited details of this scheme, but I have noted from the Decision Letter that the scheme was for affordable dwellings and was within the jurisdiction of Wokingham Borough Council. Also, the site was a substantially greater distance from the AWE, at around 2.8 kilometres. As such, this was subject to different policies and had different characteristics to the scheme proposed in this appeal. For these reasons, whilst each case must be considered on its own merits, the appeal decision at Kingfisher Grove describes a scheme with bespoke circumstances that cannot be readily applied elsewhere.
20. The Council has also submitted a range of planning appeals that have been dismissed for open market dwellings where siting within the DEPZ have been factors in their dismissal. As such, these are of greater relevance to the proposal before me and attract more weight. My approach is broadly consistent with those decisions.
21. The Council cannot demonstrate it has a 5-year Housing Land Supply, as identified in the Council's Authority Monitoring Report [2023] demonstrating it has a supply of 4.7 years. This figure has been subsequently reduced by the Council following an appeal decision, where the Inspector found a supply of 4.1 years. This was further reviewed by the Council to 4.2 years given the release of more recent affordability data.
22. Based on the evidence submitted I see no reason to disagree with this position. Where a local planning authority is unable to demonstrate a 5-year supply of deliverable housing sites, footnote 8 of paragraph 11 of the Framework, indicates that relevant policies for the supply of housing should not be considered up-to-date. Paragraph 11 of the Framework explains that where relevant policies are out-of-date permission should be granted, unless any

adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Planning Balance and Conclusion

23. The Framework seeks to boost the supply of housing and highlights the important contribution small sites can make. The proposal would deliver three family houses, making a modest contribution to the housing needs of the district. These could be delivered relatively quickly, making a rapid positive contribution to the local supply of housing in the settlement. The appeal site is within the defined settlement of Baughurst and has good access to goods and services. There would be some economic benefits during the construction phase when the development would provide jobs and opportunities for local companies and once occupied when future residents support services in Baughurst and the surrounding area. The proposal would introduce new planting that would provide enhanced biodiversity benefits. These benefits are of modest weight in favour of the proposal.
24. Weighed against these benefits is the issue that the appeal scheme would not comply with the Council's policy with respect to development close to nuclear installations. The weight to be given to this conflict should be reduced by the Council's inability to demonstrate it has a 5-year supply of deliverable housing sites, although three new houses would only make a limited contribution to the district's housing supply.
25. Nonetheless, the proposal has failed to demonstrate that the OSEP can accommodate the proposal without compromising the needs of the existing and extended population within the DEPZ. The additional burden would place pressure on the delivery of the Emergency Plan within a site which is close to the centre of the DEPZ and in an area that is densely populated. The additional demand for emergency services, at the time of an incident, would exacerbate an Emergency Plan already under tension resulting in substantial threat to its delivery affecting the safety of the public. This conflict accords with the objectives of the Framework for planning decisions to promote public safety and take into account wider security and defence requirements by, among other matters, proportionate steps to increase resilience and ensure public safety and security.
26. Therefore, the adverse impact of the development on the delivery of an effective OSEP would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole and therefore the presumption in favour of sustainable development does not apply.
27. For the reasons given above, the proposal would conflict with the development plan as a whole and there are no material considerations, including the Framework, that would outweigh that conflict. Therefore, the appeal is dismissed.

Ben Plenty

INSPECTOR

APPEARANCES

For the Appellant:

Mr Neil Davis - Planning Consultant
Dr Keith Pearce - Principal Consultant, Katmal Limited

For the Council:

Miss Bethan Wallington - Senior Planning Officer, Basingstoke and Dean Council
Mr Stuart Fox - Head of Emergency Planning, Hampshire County Council
Mrs Carolyn Richardson - Emergency Planning, West Berkshire Council
Mr Eamonn Guilfoyle - Office for Nuclear Regulation
Mr Sean Bashforth - Planning Consultant, Quod, acting for the MOD and Aldermaston AWE

Interested parties:

Ms Jacky Berry - Resident
Mr Ian Jackson - Resident

Additional documents

Doc A: Council's suggested additional condition

Appendix 8

Nigel Lynn
Chief Executive Officer,
West Berkshire Council
Council Offices
Market Street
Newbury
West Berkshire
RG14 5LD
United Kingdom
(by email)

Robert Dakin
Principal Inspector, Nuclear Safety
Redgrave Court
Merton Road
Bootle
Merseyside L20 7HS

Telephone: 0203 028 0344
Email: rob.dakin@onr.gov.uk

Our Reference: 2023/61771
Unique Number:
ONR-TD-EPR-23-034

Date: 29th November 2023

Dear Mr Lynn

Off-Site Emergency Plan for the AWE Nuclear Licensed Sites

I am writing as an Inspector appointed by the Office for Nuclear Regulation (ONR), the statutory regulator for the Radiation (Emergency Preparedness and Public Information) Regulations 2019 (REPPiR'19). These regulations require that West Berkshire Council prepares an adequate off-site emergency plan (OSEP) for the AWE nuclear licensed sites at Aldermaston and Burghfield and that the plan is capable of being put into effect without delay when required.

As part of the ALDEX-23 exercise programme, the Council has recently completed its statutory duties in accordance with REPPiR' 19 to test the plan. The purpose of the test has been to demonstrate that the plan can be practicably implemented and will be effective in the response to a radiation emergency to secure, so far as reasonably practicable, the restriction of exposures to ionising radiation and the health and safety of workers and members of the public.

I consider that the Council has met the legal requirement to test the plan and report the outcomes. ALDEX-23 fulfilled its purpose of testing the OSEP and identifying lessons learned. I recognise that as a result the Council has identified actions across a number of areas of the plan. These supplement outstanding actions from previous tests and exercises, including from the modular tests which concluded in 2022 as part of ALDEX-19.

The significant expansion of the Burghfield detailed emergency planning zone in 2019 (to accommodate changes introduced in REPPiR'19), together with proposals for development of land surrounding the AWE sites, has substantially increased the number of people requiring protection in the event of a radiation emergency. This is resulting in pressures that impact on the practical implementation of the OSEP. ONR is concerned that apparent issues with the delivery of the plan will be exacerbated by further increases in population and improvements are required to address these.

In ONR's opinion, the ALDEX exercises have highlighted that key areas for improvement relate to the management of people displaced by the response to the radiation emergency, either by urgent evacuation or subsequent relocation after the period of sheltering (the protective action during the early phase of an emergency). This relates to the movement of people and the provision of monitoring and personal decontamination, in addition to welfare support.

Noting the pressures indicated, I request that the Council provides a formal response to this letter setting out the proposed actions that it will undertake to implement improvements to the OSEP to address any capacity or capability-related concerns. It should clearly identify any improvements needed for the current level of population and also identify those improvements that may be needed for any future population increases that are already committed. I would ask that a response is provided by 31st January 2024.

To provide the relevant level of regulatory oversight moving forward, we intend to carry out a series of targeted formal regulatory interventions involving the Joint Emergency Planning Unit. The purpose of these will be to gain confidence that the necessary OSEP improvements have been correctly identified and scoped, are being managed and progressed, and that these will deliver the reasonably practicable improvements to the OSEP required to satisfactorily address and mitigate current concerns.

Please contact me if you have any questions about this request.

Yours faithfully



R Dakin
Principal Inspector, Nuclear Safety

Distribution

Carolyn Richardson, Service Manager - Joint Emergency Planning Unit
Michael Redmond, ONR Delivery Lead, Emergency Preparedness & Response
ONR file 5.1.3.10822. & 4.10.2.248.

Appendix 9

6 February 2024

Robert Dakin
Principal Inspector, Nuclear Safety
Office for Nuclear Regulation
Redgrave Court
Merton Road
Bootle
Merseyside
L20 7HS

Chief Executive
West Berkshire District Council
Council Offices
Market Street
Newbury
RG14 5LD

Our Ref: nl/rae
Your Ref:

Tel: 01635 519101
e-mail: nigel.lynn1@westberks.gov.uk

By email: rob.dakin@onr.gov.uk

Dear Mr Dakin

Offsite Emergency Plan for the AWE Nuclear Licensed Sites

Thank you for your feedback in relation to Aldex 23 and I am pleased that the authority met the legal requirements as set out in REPP19. The officers from this authority and indeed from the AWE Off-Site Planning Group undertook a great deal of work to put the exercise in place and deliver not only on the day but ensuring the debrief and recommendations for improvement were identified.

Your points in relation to the pressure on the AWE Off-Site Emergency Plan are well made and is something that we too fully recognise. We do have a detailed work plan which officers from the Joint Emergency Planning Unit (JEPU) and other responders are working to. It is extensive but I would summarise it as follows:

1. Overhaul of the AWE Off-Site Emergency Plan to include a public version to assist the public to understand what the responders will be doing therefore closing an information gap.
2. Development of 'handbooks' in order to make it easier for responders to navigate their way around the specific sections. These are being progressed as subgroups and include:
 - Communication
 - Transport
 - Displaced People & Evacuation and Shelter
 - Early Scientific Advice
 - Monitoring (Environmental & People)
 - Recovery
 - Educational Establishments

3. Revision and development of specific advice to vulnerable sites such as schools, care homes and event organisers.
4. Revision of the development control process which when including information in relation to evacuation and shelter, and the current numbers will ensure the responses to applications within the Detailed Emergency Planning Zone will be more robust therefore protecting further the health and wellbeing of the current residents and businesses in the area but also ensuring as far as possible that no new development will go ahead where the plan cannot accommodate it therefore protecting any proposed new residents or businesses.

We do not underestimate the amount of work in relation to the above with at least 1.5 FTE from JEPU, along with the many other responding agencies, working on this project. The intention to have the final draft versions of documents will be in place by 30th May 2024 when there is an AWE Plan and Handbook workshop in place to ratify the documents in advance of any final changes and formal sign off which should be in June 2024.

We acknowledge this is a few months away, but the intention is to move the plan on to a more robust status and along with the other workstreams identified above place us, and other agencies in a better place to respond, recovery in order to protect the existing population and indeed defend more robustly decisions in relation to any proposed future developments within the DEPZ.

We also note the intention to undertake regular targeted formal regulatory interventions and welcome them not only to satisfy yourselves we are progressing the activities as set out below but we trust as an opportunity for us to raise areas of concern that we may not be able to address if it is outside the scope of the Council to resolve.

I trust the above is satisfactory, but if you have any queries please let me know.

Yours sincerely



Nigel Lynn
Chief Executive