



Office for
Nuclear Regulation

ONR Report

Proof of Evidence

Land Use Planning

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Appeal Details	
Application Reference No.	22/00244/FULEXT
Appeal Reference No.	APP/W0340/W/22/3312261
Local Planning Authority	West Berkshire Council
Location	Land to the rear of the Hollies, Burghfield
Proposal	The erection of 32 dwellings including affordable housing, parking and landscaping. Access via Regis Manor Road.

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List of Abbreviations

AWE(B)	Atomic Weapons Establishment Burghfield
DEPZ	Detailed Emergency Planning Zone
NPPF	National Planning Policy Framework
ONR	Office for Nuclear Regulation
OSEP	Off-Site Emergency Plan
REPPIR01	Radiation (Emergency Preparedness and Public Information) Regulations 2001
REPPIR19	Radiation (Emergency Preparedness and Public Information) Regulations 2019

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1. Introduction

1.1. Qualifications and Experience

1. I am a member of the Office for Nuclear Regulation's ("**ONR**") Emergency Preparedness and Response team, where I am the workstream lead for Land Use Planning. I have held my current post since April 2021, but I have worked at ONR since 2016 in a variety of roles and topic areas.
2. My relevant qualifications are as follows:
 - a. BSc (Hons) Physics from Imperial College (2010);
 - b. MSc Physics and Technology of Nuclear Reactors from the University of Birmingham (2011); and
 - c. PgCert Nuclear Technology from the University of Manchester (2022).

1.2. Purpose and Scope of Evidence

3. The evidence I provide will cover the following:
 - a. The considerations that underpin ONR's advice;
 - b. Responses to other parties' points; and
 - c. Decisions in other relevant planning appeals.
4. The scope of my evidence relates only to the potential impact of the proposed development on the adequacy of the Off-Site Emergency Plan ("**OSEP**"). This is a relevant consideration for the first main issue identified by the Inspector.

1.3. ONR's Position

5. ONR supports the decision of West Berkshire District Council ("**Council**") to refuse planning permission for planning application 22/00244/FULEXT ("**Application**" or "**Proposed Development**") brought by T A Fisher and Sons Ltd ("**Appellant**") on nuclear safety grounds.

2. Background

2.1. REPPIR19

6. In May 2019, the Radiation (Emergency Preparedness and Public Information) Regulations 2019 (“**REPPIR19**”) came into force. REPPIR19 imposes duties on operators who work with ionising radiation and local authorities to make emergency plans for radiation emergencies.
7. REPPIR19 requires host local authorities to determine a Detailed Emergency Planning Zone (“**DEPZ**”) around relevant nuclear sites. It further requires local authorities to produce an adequate Off-Site Emergency Plan (“**OSEP**”) for the DEPZ, that will mitigate, so far as is reasonably practicable, the consequences of a radiation emergency outside the operator’s premises. As I discuss further below, the starting presumption for the OSEP is that a radiation emergency has happened.
8. REPPIR19 is a key issue at this appeal and to assist the Inspector a definition of key terms is provided at **Annex 1**.

2.2. ONR’s Role

9. ONR was established as a statutory Public Corporation on 1 April 2014 under the Energy Act 2013 (“**2013 Act**”). It is the UK’s independent nuclear regulator for safety, security, and safeguards. ONR’s mission is to protect society by securing safe nuclear operations. Furthermore, ONR is the regulator for REPPIR19 for nuclear sites and provides oversight of both operators and local authorities in the discharge of their legal duties.
10. Land use planning decisions on planning applications located in the DEPZ of a nuclear site may impact on the adequacy of the OSEP. If a land use planning decision results in the OSEP becoming inadequate, the relevant local authority will be in statutory non-compliance, but more importantly, the public in the DEPZ will not receive the protection that they are entitled to under law. Consequently, ONR has made arrangements to provide land use planning advice.
11. It is both important for public safety and a material planning consideration that a local authority complies with REPPIR19 and that development proposed in a DEPZ does not have the potential to compromise the adequacy of the OSEP. Emergency planning and response is a fundamental part of the safety regime for nuclear sites and that safety regime has a direct impact on any person within the DEPZ, including any future occupants of any proposed development.

2.3. ONR’s Land Use Planning Arrangements

12. ONR land use planning arrangements set out consultation zones and consultation criteria [**CD 5.46**]. The DEPZ is an ONR consultation zone, and any proposed development that could lead to an increase in the residential or non-residential

population on the development site meet the consultation criteria for this consultation zone. The rationale for this is that any additional quantum of population on a development site will have to be afforded protection in the event of a radiation emergency and so accommodated in the OSEP. The obvious consequence of this is that any increase in population within the DEPZ poses an additional burden on the OSEP.

2.4. AWE Burghfield – DEPZ and OSEP

13. The Council hosts the Atomic Weapons Establishment Burghfield (“**AWE(B)**”) site in its jurisdiction. The Council has determined a DEPZ for AWE(B) and has produced an OSEP.

2.5. Application

14. The Proposed Development is located in the DEPZ of AWE(B) and, if constructed, would lead to an increase in the residential population on the development site in particular and the DEPZ in general. It is, therefore, in scope of ONR’s land use planning arrangements.

3. Case

3.1. Introduction

15. Based on the current evidence, ONR does not have confidence that the Proposed Development can be accommodated in the OSEP.
16. ONR has reached this judgement by consideration of the following:
 - a. The need for a precautionary approach;
 - b. The intrinsic challenges of responding to a radiation emergency of the type arising at AWE(B);
 - c. The evidence from statutory testing of the OSEP;
 - d. The evidence provided by the Joint Emergency Planning Unit (“**JEPU**”), who are the owners of, and experts in, the OSEP; and
 - e. Other challenges in the DEPZ.

3.2. Precautionary Approach

17. An event which engaged the OSEP would be a serious, national-level emergency [**CD 12.18**]. Consideration of the effect of new development on the adequacy of the OSEP presupposes that a nuclear emergency has happened and that the public must be afforded protection. ONR considers decisions that impact on the protection of the public from a nuclear emergency to engage the precautionary principle.
18. As set out in paragraphs 42 of ONR’s Detailed Grounds [**CD 25.3**], the precautionary principle involves “taking preventative or restrictive measures in respect of risks whose extent is disputed or cannot be ascertained with certainty, but where the likelihood of real harm to public health exists should the risk materialise, so as to give priority to the objective of protection of health or the environment over the restriction of other interests”.
19. The application of the precautionary principle in this context means that ONR seeks adequate assurance of a claim that a proposed development can be safely accommodated in the OSEP. In the event that such adequate assurance cannot be provided, ONR advises against that development. This is detailed in ONR’s Land Use Planning Policy [**CD 5.46**].
20. This approach is supported by national planning policy (albeit that it applies to applications made under the Planning Act 2008). National Policy Statement EN-6 [**CD 12.16**] describes the government’s policy approach to the control of development around nuclear licensed sites as requiring a “measure of prudence over and above the stringent regulatory requirements imposed on nuclear operators to prevent such accidents”.

21. ONR has not been provided with adequate assurance for the Proposed Development.

3.3. Nature of Radiation Emergency

22. The AWE(B) Consequences Report [CD 12.8] describes the nature of radiation emergency that the OSEP must address. The nature of the radiation emergency identified at AWE(B) poses intrinsic challenges:
 - a. The recommended minimum distance of the DEPZ is the second largest for a GB nuclear site (i.e. the radiation emergency requires a comparatively large geographic response);
 - b. The radiation emergency provides short notice (no more than 10 minutes) for the public to shelter to realise any substantive benefit from the sheltering;
 - c. The need to plan for an initial period of sheltering for up to 48 hours, and the corresponding burden on responding agencies to provide or facilitate medication, specialist healthcare, and food; and
 - d. The principal radionuclide which might be released in the event of a radiation emergency at AWE(B) is of a type that is particularly difficult to monitor (and so requires greater effort and resource from responding organisations).
23. These intrinsic challenges distinguish a radiation emergency arising from AWE(B) from those described in the Consequences Reports for most other nuclear sites.
24. These intrinsic challenges increase the difficulty of accommodating the Proposed Development in the AWE(B) OSEP.

3.4. Statutory Testing

25. The purpose of statutory testing is explained in the REPP19 guidance paragraph 384 [CD 12.6] that states “the purpose of testing emergency plans is to demonstrate their ability to deliver an effective response to a radiation emergency which fulfils the purposes set out in Schedule 7. It should give confidence in the accuracy, completeness, practicability and adequacy of the plans and should identify how plans can be improved”.
26. The Council has conducted two statutory tests of the OSEP since REPP19 came into force:
 - a. The first statutory test, known as ALDEX22, comprised a series of modular exercises which were carried out between 11 May 2021 and 15 February 2022; and
 - b. The second statutory test of the OSEP, known as ALDEX23, took place in April 2023 and consisted of a single live test.

27. These tests were multi-agency and included participants from both local and national agencies that have a role in the OSEP. The tests, therefore, are comprehensive in evaluating the effectiveness of all capabilities, and the interface between them, required to implement the OSEP.
28. The findings from each statutory test are captured in a respective “Report of the Outcome of the Test” produced by the Council in accordance with REPP19 Regulation 12(8) [CD 12.3]. REPP19 guidance paragraph 426 [CD 12.6] states that “important points raised by participants should be included and participants should also have the opportunity to comment on the report and agree to any recommendations and actions prior to the report being finalised”. The “Report of the Outcome of the Test” brings together the views of all the participating agencies in the test, not just those of the Council.
29. The findings from exercises ALDEX 22 and ALDEX23 showing population-based weaknesses for the existing population, are clear evidence of the impact on the adequacy of the OSEP of further population increases from development. The findings of ALDEX23 were significant enough to prompt an escalation of ONR’s regulatory activity on the Council.
30. Statutory testing provides the best available evidence on the strengths and weaknesses of the OSEP and needs to be given significant evidential weight. This approach is supported by Cabinet Office guidance that states that “Planning for emergencies cannot be considered reliable until it is exercised and has proved to be workable, especially since false confidence may be placed in the integrity of a written plan”¹.
31. The Proposed Development would exacerbate existing weaknesses in the OSEP and so has the potential to compromise the adequacy of the OSEP.

3.5. Joint Emergency Planning Unit Evidence

32. ONR gives considerable evidential weight to the JEPU’s assessment as to whether a proposed development can be accommodated in the OSEP. This is because of JEPU’s subject matter expertise in emergency planning and its statutory role.
33. This approach is supported in planning guidance, which recognises that “given their statutory role in public safety, local authority emergency planning will have a key role in advising local planning authorities on developments around nuclear installations” [CD 13.23]. Similarly, the government’s National Policy Statement [CD 12.16] states that ONR “administers the government’s policy on the control of population around nuclear licensed sites” through “consultation with local authorities”.
34. The JEPU recommended refusal of the Application “due to the number of properties within a dense population area of the Detailed Emergency Planning Zone (DEPZ)

¹ [Emergency planning and preparedness: exercises and training - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/362222/emergency_planning_and_preparedness_exercises_and_training.pdf)

and the close proximity to the AWE Burghfield site” [CD 4.6]. These are rational considerations: the risks of encroachment (development getting closer to the major hazard) and cumulative development via infill are recognised in planning guidance [CD 13.22].

35. The JEPUs submitted their pre-application assessment of the Application, which is found at Appendix 5 of the JEPUs’ Proof of Evidence to the First Inquiry [CD 11.8]. The assessment is performed against a set of standard criteria and gives greater detail on their rationale.
36. ONR conducted a series of capability and capacity inspections of the JEPUs and the wider Council [Annex 2] and has directly observed the JEPUs’ use of the AWE Off-Site Planning Group to discuss significant planning applications (demonstrating that it is continually seeking the input and expertise of responding agencies). These, and ONR’s wider routine regulatory engagements, give it confidence in the JEPUs’ arrangements for assessing whether proposed developments can be accommodated in the OSEP.
37. The JEPUs have assessed the Application and judged that it cannot be accommodated in the JEPUs’ OSEP, and that is a strong indication that the Proposed Development should not be permitted.

3.6. Other Challenges in the DEPZ

38. REPP19 replaced the Radiation (Emergency Preparedness and Public Information) Regulations 2001 (“REPP01”). REPP19 Regulation 28 established a statutory 12-month transitional period for existing REPP01 duty holders, which meant that the Council was regulated in accordance with REPP01 until 21 May 2020.
39. During the transition period the following occurred:
 - a. The AWE(B) Consequences Report, issued by AWE in November 2019, recommended an increase in the minimum radius of the DEPZ from 1600m to 3160m, due to changes to assessment methodology;
 - b. The Council determined a new, larger, DEPZ on the 12 March 2020 (under REPP19 the responsibility for determining the DEPZ transferred to the local authority from ONR); and
 - c. Once the new DEPZ was determined by the Council, ONR’s land use planning policies applied to the new areas captured by the expanded DEPZ.
40. The increase in the minimum radius of the DEPZ led to the inclusion of significant population centres within it, as well as the M4 motorway and a stadium. Consequently, the OSEP had to accommodate these features, causing a step-change in its complexity and the associated level of challenge in its implementation. The new OSEP was tested for the first time in 2022. As I have already set out, the weaknesses first identified in 2022 are, as yet, unresolved.

41. ONR responded to the increase in the DEPZ by enhancing its oversight of land use planning issues in the AWE(B) DEPZ in September 2021. The reasons for this were given in the August 2021 letter to the Chief Executives of the three local authorities affected by the DEPZ of AWE(B) **[CD 12.14]**.
42. The expansion of the DEPZ had another effect, of which ONR was not aware prior to its appearance at the First Inquiry: a significant number of housing and commercial units have already been consented but are not yet built and are now within the DEPZ. Developments that do not yet exist are not included in the OSEP and not assessed as part of statutory testing. However, upon being built they will have to be accommodated in the OSEP. The impact of these developments, which may come forward at any time, on the adequacy of an already stretched OSEP is unknown, but given the picture of an already stretched OSEP arising in the statutory testing, ONR has significant concerns regarding consented but not built development within the DEPZ and the potential impact on the OSEP.
43. The Application's impact will be cumulative with all the other developments that have been consented but not yet built and whose impact on the adequacy of the OSEP has not yet been established. This will occur in the context of the Council still addressing improvements required following the substantial change to the size of the DEPZ and complexity of the OSEP.

4. Further Comments

4.1. Nuclear Safety and Precaution

44. The real issue is that nuclear safety requires a precautionary approach. It is not acceptable to say something “might” or “may” be an issue and therefore can be ignored or put into the category of unlikelihood when dealing with nuclear emergencies. The starting point in any analysis is that the nuclear emergency has happened, and ONR and the local authority must be assured that in that circumstance the OSEP will be adequate to meet the complex and real needs of the population in the DEPZ.
45. It follows that there is no single instance where an OSEP will be adequate or inadequate. Rather, it is a cumulative degradation of capacity and emergency response within the OSEP caused by pressures within the DEPZ: the most pressing of which is any increase in population whether by expansion of the DEPZ or development within it. As those pressures build up, they will reach a stage where ONR’s testing will reveal the OSEP to be inadequate. Given the seriousness of that finding, the necessity of adopting a precautionary approach, the results of recent test exercises, and the response of the JEPU, ONR considers that any decision made which would introduce further pressure into the DEPZ cannot be supported. It follows that there is no such thing as a precise number of houses or population which can be identified as the point at which the OSEP would become inadequate

4.2. Local Policy CS8

46. Policy CS8 of the Council’s Adopted Local Plan establishes that development proposals in relevant consultation zones are considered in consultation with ONR and with regard to their impact on “the emergency off site plan” [CD 5.64]. The Local Plan was adopted in 2012 and so CS8 describes ONR land use planning consultation zones as they were in 2012.
47. CS8 was intended to provide a means for ONR to advise on proposed developments with respect to their impact on the OSEP. The OSEP is now geographically linked by REPP19 to the DEPZ. The efficacy of the OSEP is inextricably linked to population, and the consultation criteria in CS8 for the inner zone (“all residential or non residential” development) are congruent with development criteria for the DEPZ land use planning consultation zone as it is today (“Any new development, re-use or re-classification of an existing development that could lead to an increase in residential or non-residential populations”). These criteria are connected to population growth and so to challenges to the efficacy of the OSEP.
48. Planning Practice Guidance acknowledges the following:
- a. ONR specifies the consultation distances and the type of developments on which it should be consulted [CD 13.23]; and

b. ONR consultation zones may change over time [**Paragraph: 078 Reference ID: 39-078-20161209**].

49. In this case, the extent of the DEPZ increased as a consequence of legislative change: the replacement of the REPPiR01 by REPPiR19. The legislative changes reflected important lessons learned from the Fukushima Daiichi Incident, as well as relevant standards agreed at the International Atomic Energy Agency and International Commission on Radiological Protection.
50. The increase in the size of the DEPZ necessarily increased the size of the inner consultation zone as referred to in CS8; if it did not, then the inner consultation zone would become divorced from the regulatory rationale on which it was based. It follows that the Application should be considered to be in the inner consultation zone and so subject to the Policy intent that it is “likely to be refused planning permission by the Council when the Office for Nuclear Regulation (ONR) has advised against it”.
51. However, even if it were judged that the Proposed Development was in the middle zone, then, as expressed in CS8 Policy guidance paragraph 5.41 [**CD 13.14**], it should still be assessed against the need for “prudence over and above stringent regulatory requirements”.

4.3. Risk vs Adequacy

52. The Appellant’s Statement of Case, Appendix Q, Paragraph 136 [**CD 5.23**] states that “the AWE(B) site does not represent a great risk to health or life for those living in or near the proposed development site”.
53. The provisions of REPPiR19 only apply to premises where there are potential of radiation emergencies of sufficient probability and sufficient severity to warrant off-site emergency planning. As AWE(B) has a DEPZ, it follows that AWE(B)’s radiation emergencies are of sufficient probability and sufficient severity to be in-scope of REPPiR19, and for the Council to have a legal obligation to make an adequate OSEP.
54. The REPPiR19 risk framework [**Appendix 2, CD 12.6**] categorises radiation emergencies as follows:
- a. not requiring emergency planning;
 - b. requiring outline planning;
 - c. requiring detailed emergency planning (this is the case for AWE(B)); and
 - d. requiring regulatory action to prohibit or curtail activity
55. It follows from this that all operating nuclear sites have risks that require either detailed emergency planning or below (otherwise the activity would have been prohibited/curtailed). Consequently, the government’s policy on the control of

development in the vicinity of nuclear sites necessarily applies to development sites at this level of risk. The policy is expressed in the National Policy Statement [CD 12.16] and states that there should be “constraints on the surrounding population by control of future development”.

56. Points relating to the low likelihood or low health consequences of a radiation emergency at AWE(B) are a distraction from the key public safety issue: whether the public are protected by an adequate OSEP in the event of a radiation emergency. This level of protection is specifically required by the regulations. Planning policy similarly recognises that development around nuclear sites, including AWE(B), should be controlled despite the low risks, and tasks ONR with administering this policy.

4.4. The Emergency Response

57. In the event of a nuclear emergency, an emergency response infrastructure will be established as set out in the Nuclear Emergency Response Guidance [CD 12.20]. This will consist of various multi-agency groups but include a Strategic Coordination Group (“SCG”) and a Science and Technical Advisory Group (“STAC”). The purpose of these groups is to take actions and decisions to deal with the emergency, although the initial response measures to protect the public should be informed by the detailed planning in the OSEP.
58. In addition to being the regulator, ONR has a separate role as a responding agency and in this capacity it attends SCG and STAC.
59. ONR anticipates that the Appellant may seek to suggest when sheltering might be broken; how radiation monitoring might be done; and what level of evacuation might be required. The Appellant may seek to minimise the risk or the impact or seek to explain why particular events might not happen as planned. This approach is incorrect and misunderstands the purpose and function of the OSEP.
60. Decisions on whether to terminate shelter, on the scale of evacuation, and the monitoring requirements will be made by the emergency response decision-makers. It would be a distraction to debate or predict what decisions will be made by multi-agency groups in the event of a nuclear emergency, noting that the decisions will be contextual.
61. The key issue is that emergency responders must be provided with an adequate OSEP: they must be able to implement any claimed capability or requirement in the OSEP that they decide to enact. For example, the capability to maintain sheltering for up to two days must be available to the decision-makers: one cannot accommodate a proposed development in the OSEP on the basis that decision-makers will terminate sheltering earlier.

4.5. Judicial Review

62. An application for judicial review was brought to challenge the adequacy of the rationale for the AWE(B) DEPZ and regulatory oversight of the designation process for the AWE(B) DEPZ [CD 12.9]. This was dismissed on all grounds. It follows that the radiation emergencies that inform the DEPZ, the Consequences Report, and the minimum distance of the DEPZ itself are settled matters.

5. Other Planning Appeals

5.1. Shyshack Lane

63. The Shyshack Lane appeal [**CD 25.6**] concerned a proposal for the erection of 3 detached dwellings in the DEPZ of AWE Aldermaston. The Planning Inspector dismissed the appeal
64. The Shyshack Lane proposed development had certain key similarities with the Proposed Development in this Appeal, in as much as AWE Aldermaston and AWE(B) have a joint OSEP. ONR advised against the grant of planning permission in the Shyshack Lane appeal.
65. Aspects of the Planning Inspector's reasoning in Shyshack Lane are relevant to this appeal. In particular:
 - a. It was not the purpose of the appeal to interrogate the size or shape of the DEPZ [paragraph 18];
 - b. The appeal decision at Kingfisher Grove cannot be readily applied elsewhere [paragraph 19];
 - c. The additional burden on the OSEP from a development site close to the centre of the DEPZ and in a densely populated area would exacerbate an emergency plan already under tension and would pose a substantial threat to its delivery [paragraph 25];
 - d. Probability and severity considerations do not take into account the key purpose of REPP19 to reduce exposure during a radiation emergency through effective deployment of the OSEP [paragraph 15]; and
 - e. Incremental development would over time significantly erode the effective management of the land use planning consultation zones surrounding AWE to the disbenefit of the public [paragraph 12].

5.2. Kingfisher Grove

66. The Kingfisher Grove [**CD 8.3**] appeal concerned a proposal for erection of 49 affordable dwellings in the DEPZ of AWE(B). The Planning Inspector allowed the appeal.
67. Although ONR advised against the planning permission, it did not participate in the Kingfisher Grove inquiry and so the Planning Inspector did not benefit from ONR seeking to explain the position.
68. The Kingfisher Grove grant means that an additional 49 houses have to be accommodated in the OSEP, even though neither ONR nor the JEPU have confidence that such an accommodation can be made. This is an additional burden.

The exact impact of the development on the adequacy of the OSEP can only be established after the development is built.

69. Before the First Inquiry in relation to this Application, ONR had never participated in an appeal inquiry since its creation as a statutory corporation on 1 April 2014. The further consequence of the Kingfisher Grove appeal is that ONR has determined to participate in this, and other, planning appeals. ONR has serious concerns about development in the DEPZ and the adequacy of the OSEP on which basis it is considered important that the decision-maker has the benefit of ONR's views.

6. Conclusions

6.1. Conclusions

70. ONR has considered the following:
- a. The need for a precautionary approach;
 - b. The intrinsic challenges of responding to a radiation emergency of the type arising at AWE(B);
 - c. The evidence from statutory testing of the OSEP, which represents the best available evidence as to the strengths and weaknesses of the OSEP;
 - d. The evidence provided by the JEPUs, who are the owners of, and experts in, the OSEP; and
 - e. Other challenges in the DEPZ, including the scale of consented but as yet unbuilt development.
71. Based on the current evidence, ONR does not have confidence that the Application can be accommodated in the OSEP.
72. ONR's advice is in conjunction with the following:
- a. Local Policy CS8 establishes that the test for new development is its impact on the off-site emergency plan;
 - b. That the relevant public safety issue is whether the public in the DEPZ are afforded the protection of an adequate OSEP;
 - c. That government policy is to implement control of development around nuclear licensed sites; and
 - d. Previous appeals have recognised that incremental development would over time significantly erode the effective management of the land use planning consultation zones surrounding AWE to the disbenefit of the public
73. Consequently, ONR continues to advise that the appeal should be dismissed and planning permission refused.