

RULE 6(6) UPDATED STATEMENT OF CASE (MAY 2024)

on behalf of AWE plc and the Ministry of Defence

In respect of an Appeal by T A Fisher & Sons Limited against a refusal by the Council of planning permission for:

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

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

LPA Ref: 22/00244/FULEXT

Appeal Ref: APP/W0340/W/22/3312261

Pinsent Masons LLP Ref: 704217.07000

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APPENDICES

- (1) *Crest Nicholson & Ors v West Berkshire District Council* [2021] EWHC 289 (Admin)
- (2) Appeal Decision at Kingfisher Grove Three Mile Cross, Reading (Planning Inspectorate reference: APP/X0360/W/22/3304042)
- (3) Appeal Decision at 1-9 Shyshack Lane, Baughurst (Planning Inspectorate reference: APP/H1705/W/23/3326959)
- (4) AWE's Statement of Facts and Grounds submitted in support of its application for planning statutory review under section 288 of the Town and Country Planning Act 1990
- (5) Consent Order dated 12 January 2024 in respect of section 288 application
- (6) Letter from Office for Nuclear Regulation to West Berkshire District Council dated 29 November 2023
- (7) Letter from West Berkshire District Council to Office for Nuclear Regulation dated 6 February 2024
- (8) Command Paper: Delivering the UK's Nuclear Deterrent as a National Endeavour (March 2024)

1. INTRODUCTION

Parties and planning context

- 1.1 This Statement of Case (**SOC**) is made pursuant to Rule 6(6) of The Town and Country Planning (Inquiries Procedure) (England) Rules 2000 and The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000. It is made by AWE plc (**AWE**) and the Ministry of Defence (**MOD**) as joint Rule 6(6) parties in response to an appeal (**Appeal**) by T A Fisher & Sons Limited (**Appellant**) against a refusal by West Berkshire District Council (**WBDC**) of full planning permission for the erection of 32 dwellings including affordable housing, parking, landscaping and access via Regis Manor Road (**the Proposed Development**) on land to the rear of The Hollies Nursing Home, Reading Road, Burghfield Common (**the Appeal Site**).

The S288 Challenge

- 1.2 A public inquiry was previously held in respect of the Appeal on 6-9 and 13-14 June 2023 (**the First Inquiry**). AWE and MOD submitted a SOC in respect of the Appeal and participated in the inquiry as joint Rule 6(6) parties, making representations and presenting evidence against the grant of planning permission for the Proposed Development.
- 1.3 Planning permission for the Proposed Development was subsequently granted by the Inspector on 8 August 2023 (**the First Decision**).
- 1.4 AWE filed an application for statutory review of the First Decision pursuant to section 288 of the Town and Country Planning Act 1990 on 18 September 2023 (**the S288 Challenge**). A copy of AWE's Statement of Facts and Grounds submitted in support of the S288 Challenge is included at Appendix 4 to this SOC.
- 1.5 The S288 Challenge was submitted in the sole name of AWE but with the support of the MOD who sought to participate in the S288 Challenge as an interested party.¹ The Office for Nuclear Regulation (**ONR**), which had also

¹ MOD was technically listed as a defendant to the S288 Challenge as the High Court takes the view that there is no formal concept of an interested party in respect of a planning statutory review (in contrast to a judicial review).

participated in the public inquiry as a Rule 6(6) party, also supported the S288 Challenge and sought to participate as an interested party.

- 1.6 In summary, the S288 Challenge was brought on four grounds:
 - 1.6.1 Ground 1: The Inspector failed to understand or take into account ONR's specialist technical evidence/advice as an expert statutory consultee or failed to give legally adequate reasons for disagreeing with it.
 - 1.6.2 Ground 2: The Inspector erred in law by misinterpreting policy CS8 and therefore failed to apply the presumption against residential development in the Detailed Emergency Planning Zone (**DEPZ**) around AWE B.
 - 1.6.3 Ground 3: The Inspector erred in law in respect of the assessment of the adequacy of the Off-site Emergency Plan (**OSEP**).
 - 1.6.4 Ground 4: The Inspector took into account irrelevant considerations and/or failed to take into account relevant considerations or failed to provide proper reasons in his assessment of the impact of the Proposed Development on AWE and on the public.
- 1.7 The High Court gave permission for the S288 Challenge to proceed on 2 November 2023.
- 1.8 Subsequent to permission to proceed being granted, the parties to the S288 Challenge agreed a Consent Order to quash the First Decision.² The Consent Order was agreed following the Secretary of State for Levelling Up, Housing and Communities' acceptance that the Inspector's reasons for disagreeing with the ONR as statutory consultee in relation to the OSEP were not legally adequate. The Secretary of State therefore agreed to the First Decision being quashed on Ground 1 alone. The Consent Order was expressly stated as being without prejudice to AWE's position that the approach adopted by the Inspector was also unlawful by reason of the other three grounds.

² See Appendix 5 to this SOC.

- 1.9 The Consent Order was made by the High Court on 12 January 2024, with the effect that the First Decision was quashed and the Appeal was remitted for reconsideration by the Secretary of State.
- 1.10 On 15 March 2024, the Planning Inspectorate wrote to invite AWE and MOD to send further representations covering any material change in circumstances which may have arisen since the First Decision and to comment on the specific issue(s) upon which the First Decision was quashed. This updated SOC has been prepared on behalf of AWE and MOD in order to respond to these points.
- 1.11 For the avoidance of doubt and notwithstanding the Consent Order quashing the First Decision by reason of Ground 1 only, AWE and MOD continue to maintain all the criticisms of the First Decision set out in the Statement of Facts and Grounds submitted by AWE in connection with the S288 Challenge. In the interests of brevity, this SOC does not rehearse in detail all the points set out in that Statement but AWE's and MOD's case is that any further decision in the respect of the Appeal must address the identified deficiencies.
- 1.12 By way of summary, in addition to the challenge outcome, there are three key material changes in circumstances:
- 1.12.1 The ONR has sent a letter to WBDC advising that it is concerned about the impact of increasing populations on the OSEP and that it intends to carry out a series of 'targeted formal regulatory interventions' to ensure necessary improvements are made. Further details are provided at paragraphs 7.25 to 7.30 of this SOC.
- 1.12.2 An appeal has been refused for residential development in the vicinity of the AWE facility at Aldermaston for reasons which are relevant to the determination of the current Appeal. Further details are provided at paragraphs 7.31 to 7.35 of this SOC.
- 1.12.3 The Secretary of State for Defence presented to Parliament in March 2024 a Command Paper entitled "Delivering the UK's Nuclear Deterrent as a National Endeavour".³ This paper specifically refers to

³ Command Paper 1058, March 2024 – see Appendix 8 to this SOC

AWE Aldermaston and Burghfield and the role AWE plays in delivering the nuclear deterrent, a cornerstone of the UK's national security.

AWE's role and national security function

- 1.13 AWE is MOD's Non-Departmental Public Body (**NDPB**) and operator of two licensed nuclear sites at Aldermaston (**AWE A**) and Burghfield (**AWE B**) (**the Sites**). AWE is responsible for the safe and secure running of these sites and for the delivery of the warhead contribution to the nationally and internationally significant UK nuclear deterrent. AWE A and AWE B are owned by the Secretary of State for Defence and are Crown Land. On 1 July 2021, the MOD took back full ownership of AWE, transitioning AWE's status to a NDPB.
- 1.14 Although much of the detail of AWE's activities is highly sensitive (relating both to sensitive nuclear material and national security) and necessarily held at the highest levels of classification, AWE considers that sufficient information can be made available within the SOC and subsequent evidence to allow the Inspector to undertake a public Planning Inquiry and to make an adequately informed decision. This SOC outlines the AWE and MOD objections to the Proposed Development.
- 1.15 The Sites are unique and irreplaceable components of the UK's defence nuclear enterprise, which is collectively responsible for the development, build, maintenance and delivery of the UK's nuclear Continuous at Sea Deterrent (**CASD**). MOD has consistently sought to ensure that constraints on delivering this capability are minimised. The success of the UK's defence nuclear enterprise remains a critical national endeavour, requiring significant and sustained investment and support from Government.
- 1.16 AWE works across the entire life-cycle of nuclear warhead production from concept design to decommissioning, and meet stringent safety requirements in doing so. These are all essential elements of CASD capability. Importantly, AWE A and AWE B are the only locations in the UK that can provide these capabilities.
- 1.17 The need for AWE A and AWE B is not static. The risks that CASD must respond to are dynamic, and the sites must be capable of responding to MOD's evolving

requirements of them. The Government's commitment to investing in AWE has been consistently set out since 2005 and this position has not changed, being reiterated recently in the Integrated Review Refresh 2023⁴. This position was re-emphasised in a March 2024 Command Paper entitled "Delivering the UK's Nuclear Deterrent as a National Endeavour"⁵.

- 1.18 The Secretary of State for Defence also announced on 25 February 2020 confirmation of the programme to replace the UK's nuclear warheads. The investment programme at AWE B includes, but is not limited to, new builds along with refurbishment, consolidation and modernisation of existing key facilities. Examples include the new-build warhead assembly/disassembly facility at AWE B (Project MENSA now nearing completion) and the Multi Materials Facility (**MMF**) which commenced construction in 2022.
- 1.19 The criticality of CASD, and the irreplaceable nature of AWE A and AWE B in delivering it inform the precautionary approach that must be applied in this Appeal.

Regulation of AWE's activities

- 1.20 AWE holds two nuclear site licences and is regulated by the ONR primarily under the Nuclear Installations Act 1965 and the Health and Safety at Work etc. Act 1974. AWE warhead aspects are also regulated by the defence nuclear safety regulator (**DNSR**) by way of an authorisation granted to AWE. Both sites also have explosive licences issued under the Explosives Regulations 2014 and hold various environmental permits under the Environmental Permitting (England and Wales) Regulations 2016. AWE is further regulated for security matters by the defence nuclear security regulator (**DefNucSyR**).
- 1.21 In addition, AWE is required to meet the requirements of the Radiation (Emergency Preparedness and Public Information) Regulations 2019 (**REPIIR 2019**). REPIIR 2019 impose on AWE the duty to identify the hazards arising from working with ionising radiation which have the potential to cause a radiation emergency and to advise WBDC of the same.

⁴ 'Integrated Review Refresh 2023: Responding to a more contested and volatile world' published 13 March 2023

⁵ Command Paper 1058, March 2024 – see Appendix 8 to this SOC

- 1.22 Unlike AWE A, AWE B is not currently a registered site under the Control of Major Accident Hazards Regulations 2015 (**COMAH**). However, AWE B includes the production of components involving high hazard materials and may fall within COMAH in the future. Key hazards associated with AWE's operations include the potential release of radioactive material, a potential explosive event and potential release of chemicals (including gases) or materials with specific impact that necessitates protective measures.
- 1.23 It is noted that COMAH does not apply to substances which create a hazard from ionising radiation if present on a nuclear establishment. This is because these hazards are regulated by the Nuclear Installations Act 1965 and REPIR 2019 and REPIR 2019 plays an equivalent role to COMAH for off-site emergency planning and land use planning purposes for radiation emergencies.

Summary grounds

- 1.24 This SOC sets out why AWE and MOD consider that the Proposed Development should not be permitted. It builds on grounds set out in AWE's objections (sent on behalf of the MOD) to the Proposed Development, at the planning application stage. Whilst many of the grounds are inter-linked, they have been categorised in this SOC as follows:
- 1.24.1 **Ground 1:** refusal was in accordance with the development plan;
- 1.24.2 **Ground 2:** further residential development in the DEPZ poses an increased risk to public safety;
- 1.24.3 **Ground 3:** an increased local population has the potential to adversely affect AWE's operations; and
- 1.24.4 **Ground 4:** the Appellant's proposals do not address these issues.

2. APPEAL SITE AND RELATIONSHIP WITH AWE B

- 2.1 The Appeal Site is located around 2,000 metres to the west of AWE B.
- 2.2 AWE and MOD recognise the Appeal Site forms part of a site allocated for housing (60 dwellings) under adopted Policy HSA16 of WBDC's Site Allocations

Development Plan Document 2017. Part of this allocation has been built out and the Proposed Development is, effectively, for the balance of that allocation.

2.3 However, little weight can now be given to this allocation due to changes in material planning considerations since the Site Allocations Development Plan Document was adopted. This allocation has not been brought forward in WBDC's Regulation 19 draft Local Plan Review (2022-2039) (submitted to examination on 31 March 2023 with hearings scheduled to commence on 8 May 2024) as it is not considered deliverable. One of the key reasons it is not considered deliverable is that changes have been made to the protective zones around AWE B, as implemented by WBDC pursuant to REPPiR 2019 in May 2020. As a consequence of these changes, the Appeal Site is now within the DEPZ and the "inner consultation zone" for ONR consultation/development plan classification purposes.

2.4 For REPPiR 2019 classification purposes, the Appeal Site is within three distinct protective zones around AWE B, as follows:

2.4.1 Urgent Protective Action (**UPA**) radial distance. REPPiR 2019 requires AWE to determine the UPA distance to define the minimum area where the urgent protective action of sheltering is required in case of a radiation emergency with offsite impact from AWE B. The current UPA radial distance for AWE B is 3,160m. Immediate evacuation is not recommended for populations located within the UPA, in line with guidance from the UK Health Security Agency. However, evacuation might occur later on.

2.4.2 The DEPZ. This is the area designated by WBDC in 2020 in accordance with REPPiR 2019. The DEPZ is based on the UPA distance and extended where required by local factors as set out in regulation 8 of REPPiR 2019. The purpose of this zone is to define the area around the site where it is proportionate to pre-define protective actions which can be implemented without delay in the event of a radiation emergency. It is there for the purposes of public safety. The word "planning" in the term DEPZ is used in the sense of emergency planning in order to deal with and mitigate all forms of harm which could impact members of the public arising from a radiation emergency.

Impacts considered under REPIR 2019 are human life, health and safety (cancer induction), quality of life, property and environment. The DEPZ is a material consideration to land use planning decisions.

2.4.3 The Outline Planning Zone (**OPZ**). The OPZ is a larger (12km) zone set by the MOD where protective actions are identified at a regional/national level. While this zone requires a lower level of emergency planning, it covers considerations that enable emergency responders to provide arrangements for extremely unlikely but more severe events.

2.5 The Appeal Site is situated in an area where the adopted Development Plan states that permission for residential development is likely to be refused in circumstances where the ONR objects to it. See further at paragraph 6.12 below.

3. **REPIR 2019 MONITORING AND REVIEW**

3.1 As noted by the Appellant (paragraph 6.23 of their original SOC (November 2022)), the 2020 increase in the DEPZ was due to changes in the evaluation and assessment required under REPIR 2019 compared to the predecessor legislation REPIR 2001, not because of changes to the inventory of materials or operations at AWE B. These changes were introduced by REPIR 2019 to improve public protection standards. REPIR 2019 is part of an international, EU and national response to risk following the meltdown of three reactors at the Fukushima Daiichi nuclear power plant in Japan in March 2011. One of the key changes as between REPIR 2001 and REPIR 2019 is the requirement to risk assess and plan for events which have a low likelihood of occurrence, but a high impact if they occur. Overall REPIR 2019 takes a more precautionary approach to public safety matters. Consistent with the position to date, AWE and MOD expect the regulatory environment to get more, not less, stringent over time.

3.2 REPIR 2019 requires a review by AWE of the hazard evaluation and consequence assessment to take place every 3 years, starting from 2019 or where there is a material change. AWE carried out this review in 2022 and

provided a declaration of no change to WBDC.⁶ WBDC may re-determine the DEPZ, if appropriate, on the receipt of a consequence report from AWE or if there is a change in the local area which necessitates a re-determination. The DEPZ was most recently reviewed by WBDC in January 2023. The outcome of this review was to amend the DEPZ for AWE B to clarify two previously ambiguous areas to the east of the DEPZ (the Six Bells, Shinfield and near Basingstoke Road, Swallowfield). These changes do not relate to the Appeal Site but help illustrate WBDC's ongoing duty to keep the DEPZ and OSEP under review. Contrary to the Appellant's case, this supports a precautionary approach to locating new development in the DEPZ.

4. **AWE OFFSITE EMERGENCY PLAN**

4.1 An adequate OSEP is required to enable AWE to work with ionising radiation (see Regulation 10(4) REPIR 2019).

4.2 The Freedom of Information Act (FOI) version of the AWE OSEP is enclosed as Appendix N to the Appellant's original SOC (November 2022). This has been prepared by WBDC in conjunction with the 'AWE Off-Site Planning Group'. It sets out a multi-agency response in order to meet the following objectives (paragraph 1.2):

"To provide:

(a) Information about the sites and their hazards

(b) The roles and responsibilities of each responding agency

(c) The activation, command & control and coordination procedures

(d) Protective actions to implement

(e) Warning and Informing, including communication procedures

(f) Information about recovery

⁶ Atomic Weapons Establishment - AWE Burghfield - Declaration of No Change – REPIR 2019 (Reference O1AAIG-69573752-866) (Issue 1 November 2022) (available at the date of writing at: https://www.westberks.gov.uk/media/54119/AWE-Burghfield-Site-Declaration/pdf/REPIR_B-Site_Declaration.pdf?m=1675165741037).

(g) Where to find more information.”

4.3 The principles to which OSEPs must have regard are set out in Schedule 7 Part 1 of REPIR 2019. This includes but is not limited to:

“(b) the necessity to optimise protection strategies to ensure that the proposed response, as a whole, is predicted to do more to mitigate the radiation emergency and facilitate transition from that emergency to an existing exposure situation than to increase its duration or consequences, taking into account—

(i) the health risks arising from exposure to ionising radiation as a result of the radiation emergency, in both the long and the short term;

(ii) the economic consequences of the radiation emergency;

(iii) the effects of the disruption, both on the premises and the area immediately surrounding it, and on the public perception of the effects of the radiation emergency;

(c) the necessity of avoiding, so far as possible, the occurrence of serious physical injury to any person”.

4.4 A judicial review⁷ was brought in 2020 challenging WBDC’s determination of the DEPZ. The High Court dismissed the claim and upheld the determination of the DEPZ and refused leave to appeal (the judgment is enclosed at **Appendix 1**).

4.5 The Appellant’s original expert evidence questions whether there is a public safety risk within the DEPZ. Aspects of this evidence are similar to arguments made by the claimants in the judicial review where the Appellant’s expert also appeared for the claimants.

4.6 It is AWE’s case that REPIR 2019 assesses the likelihood and impact of a radiation emergency to the public and the presence of the DEPZ demonstrates that there is a risk to people which requires proactive management by way of an onsite and offsite emergency plan which endures for as long as AWE’s

⁷ *Crest Nicholson & Ors v WBDC* [2021] EWHC 289 (Admin)

operations fall within the scope of the legislation requiring such plans. An individual risk assessment on a development-by-development basis within the DEPZ is neither required by, nor does it form any part of, the safety regime established by REPPIR 2019.

4.7 The requirement for an OSEP under REPPIR 2019 seeks to ensure that arrangements are in place to be able to respond to a radiological emergency event. It does not deal with longer-term recovery once the immediate emergency phase has passed as these are covered by separate emergency planning arrangements under the Civil Contingencies Act 2004.

4.8 AWE will provide further detail of the regulatory regime as it applies to AWE B in its proofs of evidence.

4.9 REPPIR 2019 is first and foremost a piece of public safety legislation. The safety regime is designed to protect the public in the event of a radiation emergency, as can be seen from the principles that must be applied set out above at paragraph 4.3. The emergency plan is one of a number of layers of safety, consistent with the nuclear safety principle of Defence in Depth.⁸ It is AWE's case that in line with REPPIR 2019, new development should where possible be located outside of the DEPZ so that incremental population increases do not increase the existing pressure on the adequacy of the OSEP. This is supported by the precautionary approach in both planning and nuclear safety regimes.

5. REASONS FOR REFUSAL

5.1 WBDC cited three reasons for refusing the Proposed Development in their decision notice. Reason no. 1 relates to a failure to enter into a section 106 obligation to secure affordable housing. Reason no. 3 relates to an unacceptable loss of trees. Reason no. 2, which is central to the AWE and MOD case, relates to (1) the public safety and emergency planning considerations which flow from the location of the Appeal Site within the DEPZ and (2) the need to ensure that operational defence sites are not adversely affected by the impact of other development in the area. This reason is set out in full below:

⁸ See 'Defence in Depth in Nuclear Safety – INSAG-10 – A Report by the International Nuclear Safety Advisory Group' (available at the time of writing at https://www-pub.iaea.org/MTCD/Publications/PDF/Pub1013e_web.pdf)

“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.”

6. RELEVANT PLANNING POLICY

- 6.1 AWE's and MOD's case against the Proposed Development is rooted in national and local planning policy on defence, security and public safety matters, as summarised in WBDC's reason for refusal no. 2. It is also based on wider national security considerations, as a material planning consideration.

Relevant National Planning Policy

National Planning Policy Framework (NPPF)

6.2 The NPPF⁹ contains various policies relevant to AWE's and MOD's case, as summarised below.

6.3 NPPF section 4 sets out policy on decision making. **Paragraph 45** guides decision-making for development around "Major Hazard Sites". It states:

"45. Local planning authorities should consult the appropriate bodies when considering applications for the siting of, or changes to, major hazard sites, installations or pipelines, or for development around them."

6.4 AWE B meets the definition of a "Major Hazard Site" in the NPPF because it is a licensed nuclear site and licensed explosives site (see Annex 2: Glossary). Major Hazard sites are defined as:

"Sites and infrastructure, including licensed explosive sites and nuclear installations, around which Health and Safety Executive (and Office for Nuclear Regulation) consultation distances to mitigate the consequences to public safety of major accidents may apply"

6.5 In respect of AWE's operations at AWE B, the relevant consultative body is the ONR.

6.6 NPPF section 8 sets out policy on promoting healthy and safe communities. **Paragraph 101**¹⁰ focuses on the need to not only promote public safety but also to take into account wider security and defence requirements. It states:

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

⁹ Subsequent to the First Decision being made, an updated NPPF was published in December 2023. None of the changes are considered to be material to the current Appeal, although there have been various amendments to paragraph numbering which have been reflected in this updated SOC.

¹⁰ This was paragraph 97 in the previous version of the NPPF that applied at the time of the First Decision. However, whilst the paragraph numbering has been updated in the latest version of the NPPF, no changes have been made to the text of this paragraph.

(a) anticipating and addressing possible malicious threats and natural hazards, especially in locations where large numbers of people are expected to congregate ⁴⁵. 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.”

6.7 Limb (b) of Paragraph 101 is central to the AWE and MOD case; planning decisions need to ensure that operational defence sites like AWE B are not adversely affected. This is particularly important when there are no alternative sites in the UK which can undertake the activities carried out at AWE A and B.

6.8 NPPF section 15 sets out policy on conserving and enhancing the natural environment, including by preventing existing development being put at unacceptable risk from or being adversely affected by incoming development. In this context, **Paragraph 193**¹¹ states:

“193. Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the

¹¹ This was paragraph 187 in the previous version of the NPPF that applied at the time of the First Decision. However, whilst the paragraph numbering has been updated in the latest version of the NPPF, no changes have been made to the text of this paragraph.

applicant (or ‘agent of change’) should be required to provide suitable mitigation before the development has been completed.”

- 6.9 The requirement to protect existing facilities from unreasonable restrictions as a consequence of incoming development, is known as the “**agent of change principle**”. This principle is central to the AWE and MOD case against the Proposed Development. AWE B should not have unreasonable restrictions placed on it as a consequence of residential and other development in the DEPZ. It is not possible for the Applicant to provide suitable mitigation before the development has been completed.

National Planning Practice Guidance (NPPG)

- 6.10 This SOC also sets out the relevant principles for planning decision-making around hazardous installations. These general principles are relevant and material to the Inspector’s determination in this Appeal¹².

- 6.11 The NPPG provides guidance on hazardous installations. Amongst other things, this guidance provides that:

- 6.11.1 *“**Handling development proposals around hazardous installations**’. When considering development proposals around hazardous installations the local planning authority is expected to seek technical advice on the risks presented by major accident hazards affecting people in the surrounding area and the environment. This advice is sought from the Control of Major Accident Hazards (COMAH) competent authority. This allows those making planning decisions to give due weight to those risks, when balanced against other relevant planning considerations. The competent authority also provides advice on developments around pipelines, licensed explosives sites, licensed ports, developments around nuclear installations and other relevant sites. There are also additional expectations on how local authorities notify people about applications in the vicinity of a hazardous establishment (Paragraph 002 Reference ID: 39-002-20161209).”*

¹² The preface to the Approved Code of Practice accompanying REPPiR 2019 states: “The provisions in REPPiR have been developed with consideration of provisions in the Control of Major Hazards Regulations 2015...to maximise emergency preparedness consistency between Regulations for major hazards sectors.”

This guidance underscores the need to attribute due weight to risks posed by hazardous installations, balanced against other relevant planning considerations.

- 6.11.2 ***“How should businesses that need hazardous substances consent and local authorities work together?”*** *The NPPF expects planning policies and decisions to help create the conditions in which businesses can invest, expand and adapt (Paragraph: 066 Reference ID: 39-066-20190315).”*

This guidance reflects the ‘agent of change’ principle set out in paragraph 193 NPPF (see above).

- 6.11.3 ***“What about development around nuclear installations?”*** *The ONR specifies consultation distances and the type of developments on which it should be consulted (Paragraph: 075 Reference ID: 39-075-20140306).”*

This guidance underscores that ONR’s views as the UK’s nuclear safety regulator with responsibility for ensuring the protection of persons against ionising radiation should be attributed appropriate weight and it is significant that the ONR advised against the Proposed Development. It goes on to say:

“Given their statutory role in public safety, local authority emergency planners will have a key role to play in advising local planning authorities on developments around nuclear installations” (ibid)

This guidance underscores that WBDC Emergency Planning Team’s views should also be attributed appropriate weight and it is significant that they advised against the Proposed Development.

- 6.11.4 ***“How should cumulative development around major accident hazards be dealt with?”***

Local planning authorities should ensure that their land-use or other relevant policies take account of public consultation requirements in preventing major accidents and limiting the consequences of such

accidents for human health and the environment. They also need to take account of the increase in the number of dwellings (or population at risk) in the consultation zones from the time the hazardous substance consent was granted.

Local planning authorities are well placed to judge the extent of development around major hazard establishments and major accident hazard pipelines so, when considering public safety in planning decisions and the formulation of development plan policies, they should take account of the total number of people that are present in the consultation zones around these sites, and the implications of any increase as a result of a planning decision or policy. In the case of encroachment (development getting closer to the major hazard) the risks can increase as well as the number of people.

Cumulative development may not always be obvious particularly in the case of infill (buildings built to occupy space between existing buildings) and densification (replacement of single houses with multiple-occupancy properties). Such cumulative development, by whatever means, leads to a rise in population within the consultation zone and a proportionate increase in the consequence should a major accident occur. This can also add substantial costs for businesses that may be required to provide additional safety measures.

...

Paragraph: 069 Reference ID: 39-069-20161209”.

The principles in the NPPG on how to approach the impact of cumulative development are relevant to this Appeal. As with development around hazardous installations, cumulative increases to the population within the DEPZ increase the impact should a radiation emergency occur and therefore directly impacts the stress on the implementation of the OSEP.

Relevant Local Policy

WBDC Core Strategy (2012)

- 6.12 **Policy CS8** of WBDC's Core Strategy (2012) is cited in WBDC's reason for refusal no. 2. The policy states:

"In the interests of public safety, residential development in the inner land use planning consultation zones 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, 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."

- 6.13 Policy CS8 contains a presumption against new residential development within inner land use planning consultation zones, in certain defined circumstances, namely when the ONR has advised against that development. *"All other development proposals"* (i.e. non-residential development and all forms of development outside the inner consultation zone) are subject to criteria-based assessment – having regard to scale, location, population distribution and impact on public safety, emergency services and the emergency offsite plan. Supporting paragraph 5.42 explains that this assessment is carried out having regard to *"potential cumulative effects of any population increase"*. However, the policy is clear that residential development in the inner consultation zone is *"likely to be refused planning permission When the ONR has advised against that development"*.
- 6.14 It is AWE/MOD's case that the inner land use planning consultation zone (the "Inner Zone") is the area where detailed emergency planning and an adequate OSEP are required. Once introduced, the new DEPZ became the up-to-date Inner Zone. This interpretation of CS8 is consistent with:

- 6.14.1 the purpose of the policy, which is to ensure that planning decisions are taken consistently with the REPPiR regime;
 - 6.14.2 the supporting text (which is a legitimate aid to construction, and which recognises that consultation zones may change over time);
 - 6.14.3 the reasons CS8 was introduced as set out in the Inspector's Report for the Core Strategy; and
 - 6.14.4 WBDC's interpretation of its own policy (see further section 7 below).
- 6.15 Both the ONR and the WBDC Emergency Planning Team advised against the Proposed Development. WBDC was therefore justified in refusing permission for the Proposed Development given the expansion of the DEPZ as a result of a change in REPPiR 2019, despite the Appeal Site being allocated for residential development before this expansion. The expansion of the DEPZ is a material planning consideration and represents a material change in circumstances since the housing allocation.
- 6.16 As is well-established by case law, the development plan needs to be applied as a whole. AWE and MOD's position is that policy CS8 takes precedence over the housing allocation and the decision to refuse consent was therefore in accordance with the Development Plan.

Housing Site Allocations Development Plan Document (DPD) (May 2017)

- 6.17 The Housing Site Allocations DPD implements the framework set by the Core Strategy by allocating non-strategic housing sites across West Berkshire. Adopted in May 2017, some two years before REPPiR 2019, it included the allocation 'Land to the rear of the Hollies, Burghfield Common' under policy HSA16 for approximately 60 dwellings.

Local Plan Review (LPR) 2022-2039 (Submission Draft January 2023)

- 6.18 Pursuant to **Paragraph 48** of the NPPF, the Inspector can attribute weight to the emerging policies in the LPR having regard, to its stage of preparation, the extent of unresolved objections and the degree of consistency of the relevant policies to the policies in the NPPF.

6.19 The LPR was submitted for Examination on 31 March 2023 and hearing sessions have been scheduled to commence on 8 May 2024. Consideration of the two draft policies that are most relevant to the current Appeal (Policy SP4 and DM33) is scheduled for the Spatial Strategy hearing on 9 May 2024.

6.20 **Policy SP4** (Atomic Weapons Establishment (AWE) Aldermaston and Atomic Weapons Establishment (AWE) Burghfield) represents WBDC's replacement Policy for current Policy CS8. This provides that:

"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 located in the Detailed Emergency Planning Zone (DEPZ) 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) and any other consultation zone as detailed on ONR website which meets the consultation criteria described".

6.21 It is noteworthy that, in the emerging policy, MOD's objections are afforded a specific planning status.

6.22 Furthermore, in the DEPZ, the presumption against new development now covers a wider range of land uses, as follows:

"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";
and

"Any new development, re-use or re-classification of an existing development that could pose an external hazard to the site."

- 6.23 The text under the consultation table explains that the ONR website provides non-exhaustive examples of the types of developments that could pose an “external hazard” to a nuclear licensed site.
- 6.24 Supporting paragraphs 4.39 and 4.40 refer back to NPPF Paragraphs 45 and 97(b)¹³.
- 6.25 Supporting paragraph 4.57 notes that during the plan period there may be ‘changes in the inputs to the ONR’s process which may result in consequential changes to the consultation zones or criteria’. Paragraph 4.58 further states that ‘there may also be changes to the DEPZ as a result of the requirement under REPIR 2019 legislation...’ which ‘may result in the DEPZ for either AWE site remaining the same, extending or reducing in size and geography over time’. The potential for change in future zoning supports a precautionary approach to planning decisions in the DEPZ.
- 6.26 In summary, the Inspector is asked to note and give weight to the direction of travel in draft Policy SP4; this is consistent with the requirements of REPIR 2019 and national planning policy and also supports the AWE and MOD case against the Proposed Development.
- 6.27 In addition, the Inspector is asked to note new draft **Policy DM33** (Development within AWE). This provides:
- Development within the Aldermaston and Burghfield Atomic Weapons Establishments (AWE) will be supported where it directly sustains the functioning of each of the AWE sites as Government research and defence establishments.*
- 6.28 This new policy highlights the significant local economic function of AWE A and AWE B, their potential to evolve and grow as well as the Sites’ contribution to the national and international UK nuclear deterrent.

¹³ Now paragraph 101(b) under the December 2023 version of the NPPF.

7. THE CASE FOR AWE AND MOD

7.1 This section of the SOC builds upon the grounds set out in the AWE/MOD objection to the planning application for the Proposed Development. It will be supported by expert evidence at the Inquiry.

Ground 1: refusal was in accordance with the development plan

7.2 As set out above, Policy CS8 applies to the proposed development. The ONR has objected to the proposed development and therefore the starting point is that permission should be refused. Full weight should be applied to this policy. Some weight should also be given to emerging policy in the Submission Draft Local Plan SP4, which is in similar terms.

7.3 WBDC's Emergency Planning Team has also objected on the basis of the impact on the AWE OSEP. This is a highly material factor to the Inspector's determination, having regard to the guidance in the PPG.

7.4 Little weight can now be given to the HSA16 site allocation for housing. This site allocation predated REPPiR 2019 and circumstances including the policy approach to risk have changed. The omission of the Appeal Site as a housing allocation from the Submission Draft Local Plan reinforces why reliance can no longer be placed on the allocation.

7.5 The Appellant's case that Policy CS8 is outdated is unfounded. The fact that the DEPZ has been reviewed and expanded does not render the policy out of date. The Core Strategy acknowledges that consultation zones and the ONR's advice on particular proposals may change (paragraph 5.44). The Core Strategy also expressly contemplates the need to monitor committed and future development proposals in partnership with the ONR in light of potential cumulative effects of population increases surrounding AWE A and B (paragraph 5.42).

7.6 This case can be clearly distinguished from others which the Appellant has, and may, draw attention to. It must be determined against the policies relevant to the appeal site in the West Berkshire Local Plan and requires full consideration of the current safety risks (see below). For example, on 31 January 2023 an appeal was allowed for 49 homes (all affordable) on a site at Kingfisher Grove, Three Mile Cross, Reading (Planning Inspectorate reference:

APP/X0360/W/22/3304042) (**Appendix 2**) where proximity to the AWE B Site was also an important consideration. Neither AWE nor MOD presented its own evidence at that inquiry. The Inspector's reasoning in that case can clearly be differentiated from the consideration of these appeal proposals. Amongst other things, that appeal was decided against a different development plan (Wokingham Borough Local Plan), whose policies are more equivocal than the Local Plan policies cited above (see paragraph 9 of the decision) and where there was no five-year housing land supply. That Inspector also stressed that: '*Given its bespoke circumstances, I do not consider that it would result in the creation of a precedent for allowing other development that in any case must be assessed on its own merit.*' (Paragraph 21). It should be noted that the outcome of the Kingfisher Grove appeal was a reason why AWE and MOD decided to appear at the First Inquiry in respect of the current Appeal.

- 7.7 It should be noted that Ground 2 of the S288 Challenge alleged that the First Decision wrongly interpreted Policy CS8. The First Decision approached Policy CS8 on the basis that (a) changes to the inner consultation zone could only be made if this was also shown on the West Berkshire Proposals Map and (b) the inner consultation zone could only be changed so as to become less restrictive. The S288 Challenge alleged a number of legal errors with this interpretation (see paragraph 79 of the Statement of Facts and Grounds in particular). Notwithstanding that the First Decision was quashed on the basis of Ground 1 only, AWE and MOD reiterate their criticisms of the First Decision's approach to Policy CS8 and will argue that the references to the inner consultation zone should be read as references to the extant DEPZ (see section 6 above).

Ground 2: further residential development in the DEPZ poses an increased risk to public safety

- 7.8 There is an increased risk to public safety arising from adding further residential development within the DEPZ (individually and cumulatively) due to (1) the potential (albeit very low likelihood) for a radiation emergency and (2) the consequences of such an emergency for the public.

(1) Risk of a radiation emergency

7.9 A radiation emergency is defined in regulation 2(1) of REPIIR 2019 as a non-routine situation or event arising from work with ionising radiation that necessitates prompt action to mitigate the severe consequences:

“(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”.

7.10 REPIIR 2019 requires AWE to undertake hazard evaluation and consequence assessment, which results in its recommendation to WBDC in its consequences report on the minimum extent of the current DEPZ. AWE's assessment, pursuant to its regulatory obligations, is that the risks of working with ionising radiation are tolerable and as low as reasonably practicable (**ALARP**). Compliance with REPIIR 2019 is part of the demonstration that the ALARP principle has been complied with. If risks were not kept ALARP, AWE would not be able to continue to operate at AWE B. These are relevant material considerations and weigh significantly against locating the proposed development in the DEPZ.

7.11 The Appellant's use of site-specific risk evaluation has no basis in REPIIR 2019. AWE will adduce expert evidence on this point and present its own evidence on the well-established approach to evaluation of risk and consequences under REPIIR 2019 and how that evaluation relates to the separate consideration of the adequacy of the OSEP.

(2) Consequences of the emergency for the public

- 7.12 AWE will refer to evidence on health and quality of life impacts arising from exposure and the aftermath of a radiation emergency (including psychological effects and the effects from disruption to normal living even where individuals have not been exposed). However, a summary of the relevant public safety considerations is set out below.
- 7.13 Granting permission for additional development carries a risk to public safety. The more people in an area, the greater the impact of a radiological emergency if one were to occur. This point is expressly made in the supporting text to policy CS8 and the NPPG in relation to planning around hazardous installations. Adding additional receptors (however few) increases the risk of radiation exposure and the accompanying impact on health to the public. The risk does not solely arise from inhalation exposure during the immediate passage of the radiation plume, but may also arise in the longer-term from other pathways such as surface, ground or crop contamination.
- 7.14 The Appellant relies on the fact that AWE's operations have not changed, it is just the DEPZ that has increased and, on this basis, the Appellant alleges there is no 'increased risk'. This misunderstands the reasons why REPIR 2019 came into force, which reflected a reduced tolerance for risk and updated safety standards in response to real-world events.
- 7.15 The risk is not just a risk to physical health from immediate or longer-term exposure to radiation, which is the Appellant's focus. It is also a risk of psychological impacts and all other forms of impact (i.e. quality of life, property and environment) arising from a radiation emergency. There are longer-term societal impacts such as access restrictions to contaminated land and relocation at a later stage; decontamination and clean-up; disruption from the aftermath and other civil contingency considerations, which will be addressed in proofs of evidence. REPIR 2019 identifies impacts as not just being human life and health and safety, but also quality of life, property and the environment.

Ground 3: an increased local population has the potential to adversely affect AWE's operations

(1) Consequences of a radiological event

- 7.16 The first consequence is the immediate ability of the emergency services to deal with an event. AWE and MOD support WBDC's case on this matter.
- 7.17 The second issue is the likely requirements during the recovery phase and the long-term consequences of an event. The Appellant's evidence fails to grapple adequately with this.
- 7.18 The response phase is followed by a recovery phase¹⁴ which has adverse economic impacts on AWE, MOD and the public purse in terms of funding, remediation and providing compensation in accordance with the Nuclear Installations Act 1965. Increasing population density around AWE B has the potential to increase these economic impacts. AWE will refer to evidence on these points.
- 7.19 These local and national resource implications are, in themselves, a material planning consideration.

(2) Consequences to AWE's operations

- 7.20 The Appellant accepts the need "*not to hamper current and future use*" of AWE B (paragraph 22(c) of Statement of Case by Dr Keith Pearce). However, the Appellant's evidence misunderstands the requirements for continuing AWE B's unique contribution to national security and therefore fails to address how the Proposed Development contributes to the risk that additional development in the DEPZ presents to AWE B's current and future use.
- 7.21 As set out in the Introduction to this SOC, AWE B is the only site in the UK that can provide the capabilities for the assembly, disassembly, handling and storage of nuclear warheads for the nation's nuclear deterrent. As a defence site of strategic national importance, AWE B requires flexibility and to be able to

¹⁴ Recovery is defined as the process of rebuilding, restoring and rehabilitating the community following an emergency. Recovery is a complex and long running process that will involve many more agencies and participants than the response phase.

develop, expand and/or change its activities to respond to requirements of the MOD. Increasing the population within the DEPZ has the potential to limit this flexibility. These points will be expanded on in proofs of evidence, however in summary:

- 7.21.1 If the OSEP is considered to be unsuitable, licensable activities may be curtailed (see paragraph 4.1 above and paragraph 7.42 below). This would directly affect the ability of AWE B to support the CASD.
 - 7.21.2 The process of incrementally increasing the population around the AWE B site increases the potential for future regulatory consents to be refused or additional conditions or restrictions attached to regulatory consents that may impact AWE's current or future operations.
 - 7.21.3 AWE needs to be able to operate and expand and/or develop its operations at AWE A and AWE B in response to MOD requirements and may need to secure further or different consents to do this. Cumulative increases to the population affect the assessments which are required when considering risk to the public.
 - 7.21.4 Population increases also add to the risk of third party challenge to, or complaints about, AWE's operations. Such complaints or challenges could result in AWE altering its operations, or regulators imposing additional restrictions on AWE.
 - 7.21.5 An increase in population brings with it the potential of increased security risks. The security arrangements at the AWE sites are particularly sensitive. The Government has made clear in similar contexts that the proximity of an asset to sensitive sites can engage national security risk.
- 7.22 These are precisely the issues that the NPPF "agent of change" principle recognises and seeks to avoid.
- 7.23 In all cases of risk, it is necessary to balance the risks and the harms at the time the decision is made. Past decisions for development in the DEPZ are therefore of limited relevance and can be distinguished. It is not the case that because permission has been granted for development within the DEPZ in the past,

adding more residential development is in principle acceptable. Decision-makers need to consider the current population and ask whether adding additional receptors, and potentially setting a precedent for further cumulative increases in population, is justified. As population density increases, scrutiny of any proposals for additional households should be more intensive, not less.

7.24 It should be noted that AWE and MOD considered that there were fundamental flaws in the way in which the First Decision approached the issue of an increased local population and the consequences for AWE's operations (in particular the consequences of a failure to have an adequate OSEP in place). These points have in large part already been addressed in the ONR's previous SOC and expert evidence (and are also discussed at length in AWE's Statement of Facts and Grounds prepared in connection with the S288 Challenge (see Appendix 4 of this SOC)) but will be expanded upon in further expert evidence and can be summarised as follows:

7.24.1 The adequacy of the OSEP is a health and safety matter for the ONR. Furthermore, the ONR's stated position is that it is necessary for a developer to demonstrate and show that the OSEP can accommodate additional development, rather than the other way round.

7.24.2 REPPIR 2019 does not solely focus on planning for the health effects of a radiological emergency (i.e. exposure to radiation). Its remit is significantly wider and includes wider health risks such as psychological impacts, consequential injuries, economic consequences and social and environmental factors.

7.24.3 The OSEP (and the ONR's assessment of its adequacy) only takes account of development and consequential residential dwellings that already exist. It does not take account of committed development (i.e. that which has already been consented) but which has not yet been built and occupied.

7.24.4 The ONR's overall advice as the enforcing authority for health and safety and the UK competent authority on nuclear safety was that:

(a) the OSEP was stretched;

- (b) the OSEP should not be subject to continual increase in burden;
- (c) the OSEP was not infinitely scalable; and
- (d) the Appeal should be dismissed in circumstances where there are already serious concerns about the OSEP's ability to deal with the current population, let alone committed and not yet built out development and any further grant of planning permission for new residential development of the kind before the Inspector.

7.24.5 The First Decision placed weight on the fact that no '*substantive tipping point assessment*' had been presented¹⁵ and that this constituted '*a lack of quantification to underpin the suggestion that the proposed addition of 32 homes and around 77 new residents to the existing Rural Service Centre village of Burghfield Common would tip the OSEP into a state of being inadequate to ensure public safety in the DEPZ.*'¹⁶ The First Decision further asserted that the modest scale of development would not result in '*appreciable diminution of emergency services response levels*'.¹⁷ However, there is no requirement in REPPIR 2019 for any kind of quantitative tipping point analysis when considering the adequacy of an OSEP, nor for imposing a burden on the ONR/WBDC in this context. A quantitative tipping point analysis is therefore not relevant to or necessary for the determination of this Appeal.

(3) *The ONR's letter*

7.25 At the time of the previous inquiry and the making of the First Decision, the outcome of the ALDEX-23 test was known and referenced by the parties in their evidence and by the Inspector in his decision letter.

7.26 In its closing submissions, ONR noted that:

"this is the first planning inquiry in which the ONR has taken part. That in itself is significant, and in the ONR's view, the last remaining element

¹⁵ See paragraph 30 of the Decision Letter.

¹⁶ See paragraph 31 of the Decision Letter.

¹⁷ See paragraph 33 of the Decision Letter.

of the "toolkit" or "levers" which it may exercise in order to assure itself that the OSEP is, and remains, adequate. The next stage would be enforcement."

7.27 Following the issue of the First Decision, the ONR wrote to WBDC on 29 November 2023 to set out its formal response to the ALDEX-23 test. This letter is included at Appendix 6 to this SOC.

7.28 The ONR starts by confirming that WBDC has complied with its statutory duties under REPPIR 19 to test the OSEP and identify lessons learned. 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 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.**'

7.29 WBDC responded to the ONR letter on 6 February 2024 (see Appendix 7 to this SOC) to set out a high level summary of the steps that it is taking to address the ONR's concerns.

7.30 The ONR's letter represents a material change in circumstances since the First Decision. It underscores the stresses that existing development has already placed on the OSEP and reiterates that further increases in population will exacerbate existing problems such that improvements are required. Importantly, the ONR confirms that it will now be carrying out formal regulatory interventions in order to ensure that necessary improvements to the OSEP are implemented.

(4) The Shyshack Lane appeal

7.31 Subsequent to the First Decision, a planning appeal hearing was held on 21 November 2023 in respect of a development at 1-9 Shyshack Lane, Baughurst (Appeal Ref: APP/H1705/W/23/3326959). This appeal related to the refusal by Basingstoke and Deane Borough Council (**BDBC**) of permission for the erection of three new residential dwellings c.500 metres from the boundary of AWE A and within the DEPZ for AWE A.

7.32 The Inspector refused the appeal on 8 December 2023.¹⁸ The main issue in the appeal was the impact of the proposals on the OSEP for AWE A. The Inspector noted that:

¹⁸ A copy of the decision is appended to this SOC at Appendix 3.

'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".

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.

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'.

- 7.33 The Inspector further recognised that notwithstanding the small-scale of the proposal, the construction of new dwellings would increase demand on the resources available to implement the OSEP in the event of a radiation emergency. Importantly, the Inspector noted that:

'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.'

- 7.34 The Inspector ultimately concluded that although there were public benefits associated with the scheme:

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.'

- 7.35 Whilst it is acknowledged that every proposal must be assessed on its own merits, the Shyshack Lane appeal decision is considered to be very relevant to the current Appeal:

7.35.1 WBDC was not the local planning authority for the Shyshack Lane appeal but it is the authority with responsibility for the OSEP for the AWE A DEPZ.

- 7.35.2 The appellant's expert witness in the Shyshack Lane appeal, Dr Keith Pearce, also served as expert witness in respect of the current Appeal.
- 7.35.3 Both WBDC (Policy CS 8) and BDBC (Policy SS7) have development plan policies which provide that development is likely to be refused where the ONR has advised against development, having regard to the impact on the OSEP.
- 7.35.4 The ONR advised against the grant of planning permission for the Shyshack Lane proposal.¹⁹
- 7.35.5 AWE and MOD participated in the Shyshack Lane appeal as joint Rule 6(6) parties.
- 7.35.6 The approach of the Inspector to OSEP/DEPZ issues in the Shyshack Lane appeal is consistent with the approach that has been advocated by AWE, the MOD and ONR in respect of the current Appeal.

Ground 4: The Appellant's proposals do not address these issues

(1) An exemption is not the answer

- 7.36 The Appellant's evidence relies on the fact that even where ONR determines that there is a risk of serious personal injury, the Secretary of State for Defence can grant an exemption from the operation of REPPIR 2019.
- 7.37 This exemption is not in place in order to be used in this type of situation.
- 7.38 Even setting aside the exemption process, it is plainly unarguable that the Proposed Development could proceed regardless of the safety concerns simply because there is an exceptional legal mechanism to disapply REPPIR 2019. It is speculative in the extreme for the Appellant to rely on such an exemption as an answer in this case.

¹⁹ As noted in the BDBC officer report on the application: "The site is located within the DEPZ area of AWE Aldermaston positioned approximately 468m from the AWE site boundary and is located at the boundary between sectors K and L as some of the most densely populated sectors. This location determines that the site is more likely to be subject to urgent evacuation in the event of an emergency as well as having an increased requirement for short, medium and potentially long-term accommodation, which could also include meeting the needs of vulnerable people. **The location of the site has triggered consultation with the Office for Nuclear Regulation (ONR) Directorate who have 'advised against' the development.**" (emphasis added)

7.39 The Secretary of State for Defence's Policy Statement on Health, Safety and Environment in Defence²⁰ states that:

"In circumstances where the nature of Defence and Security activities inevitably conflict with safety requirements and thus Defence has Derogations, Exemptions, or Dis-applications from health, safety and environmental legislation, or where other circumstances indicate the need for Defence regulation of activities, we maintain Departmental arrangements that produce outcomes that are, so far as is reasonably practicable, at least as good as those required by UK legislation."

7.40 The requirement to maintain arrangements that *"produce outcomes that are so far as reasonably practicable, at least as good as those required by UK legislation"* is longstanding policy and means an exempted site would still need adequate off-site emergency planning in place.

7.41 In addition, there is no exemption for AWE to the general duties placed on an employer under the Health and Safety at Work etc Act 1974. Section 3 of the Health and Safety at Work etc Act 1974 states that an employer has a legal duty to ensure that, so far as is reasonably practicable, members of the public are not exposed to risks from the employer's work activities.

7.42 Further, having an adequate OSEP is a prerequisite for a nuclear site licence (licence to operate) granted under the Nuclear Installations Act 1965 and separate from REPPIR 2019. AWE will refer to evidence on these points.

(2) A site specific emergency plan is not sufficient to address the risks

7.43 The Proposed Development was previously supported by draft contract clauses which make provision for a bespoke 'Site Specific Emergency Plan' which the Appellant is willing to secure under section 106 of the Town and Country Planning Act 1990 (**TCPA 1990**). However, these clauses were deleted from the unilateral undertaking that was eventually submitted by the Appellant prior to the issue of the First Decision.

²⁰ 2 January 2024 (available at the time of writing at https://assets.publishing.service.gov.uk/media/6595330c01760d00135cf9d4/Sofs_HSE_in_Defence_Policy_Statement.pdf)

7.44 It is assumed that the Appellant will not be seeking to reintroduce the Site Specific Emergency Plan as part of any reopened inquiry and therefore this updated SOC does not address this issue in detail, save to reiterate AWE's and MOD's previous position that a Site Specific Emergency Plan is not capable of addressing the wider concerns for AWE's operation raised in Ground 3. AWE and MOD reserve the right to comment further in the event that the Appellant proposes a Site Specific Emergency Plan.

8. **WITNESSES FOR AWE AND MOD**

8.1 AWE will call evidence on the topics of: Nuclear Safety Assessment and REPPIR 2019, the impact of an inadequate OSEP on AWE's operations; town and country planning issues; and responses to the Appellant's evidence insofar as relevant to AWE and the MOD.

8.2 MOD will call evidence from a senior member of the Defence Nuclear Organisation, Warhead Group.

8.3 Given the nature of the evidence required and the day-to-day roles and responsibilities of the AWE and MOD witnesses, AWE and MOD will be seeking the anonymisation of these witnesses, in the same way as was the case for the previous inquiry.

9. **CONCLUSION**

9.1 For the reasons set out in this SOC, AWE and MOD will seek to present the Inspector with all relevant evidence so they can properly assess the impact of developments such as the Proposed Development in the DEPZ on public safety, the AWE OSEP, on AWE and national security and defence.

APPENDIX 1

***Crest Nicholson & Ors v West Berkshire District Council* [2021] EWHC 289
(Admin)**



Neutral Citation Number: [2021] EWHC 289 (Admin)

Case No: CO/2141/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 February 2021

Before :

THE HON. MRS JUSTICE THORNTON DBE

Between :

- (1) **Crest Nicholson Operations Limited**
(2) **Hallam Land Management Limited**
(3) **Wilson Enterprises Limited**

Claimants

- and -

West Berkshire District Council

Defendant

- and -

- (1) **AWE Plc**
(2) **The Secretary of State for Defence**
(3) **Public Health England**
(4) **Office for Nuclear Regulation**

Interested Parties

Mr Harris QC and Mr Turney (instructed by **DAC Beachcroft LLP**) for the **Claimants**
Mr Travers QC and Ms Thomas (instructed by **West Berkshire District Council**) for the
Defendant
Mr Strachan QC (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) for the
First Interested Party
Mr Blundell QC and Ms Blackmore (instructed by **Government Legal Department**) for the
Second Interested Party
Mr Westmoreland Smith (instructed by **Government Legal Department**) for the **Fourth**
Interested Party

Hearing dates: 15 - 16 December 2020

JUDGMENT
(Approved by the court)

The Hon. Mrs Justice Thornton

Introduction

1. In May 2019, the Radiation (Emergency Preparedness and Public Information) Regulations 2019 (REPPiR 19) came into force. The Regulations impose duties on operators who work with ionising radiation and local authorities to plan for radiation emergencies. The Regulations are part of an international, EU and national response to the meltdown of three reactors at the Fukushima Daiichi nuclear power plant in Japan in March 2011 following an undersea earthquake. The earthquake was the most powerful earthquake recorded in Japan and the fourth most powerful earthquake recorded in the world, since modern record-keeping began in 1900. It triggered a tsunami, which swept the Japanese mainland killing more than 10,000 people and which caused the meltdown of the reactors. Residents within a 12-mile radius of the plant were evacuated.
2. One of the key changes to emergency planning, reflected in the Regulations, is to require risk assessment and planning for events which have a low likelihood of occurrence but high impact in the event they do occur; as with the Fukushima disaster. Another change, specific to the Regulations, concerns a shift in responsibility for deciding on the extent of a geographical zone in which it is proportionate to plan for protective action in the event of a radiation emergency. The zone is referred to in the Regulations as a ‘Detailed Emergency Planning Zone’ (DEPZ). Responsibility used to lie with either the Office for Nuclear Regulation or the Health and Safety Executive but now rests with the relevant local authority, who must designate the zone on the basis of a recommendation from the site operator.
3. On 12 March 2020, West Berkshire District Council designated the DEPZ around the Burghfield Atomic Weapons Establishment with a minimum radius of 3160 m from the centre of the site. The site is of national strategic importance. Nuclear weapons are assembled, maintained and decommissioned there. Under the previous regime, the DEPZ was based on a minimum radius of 1600 metres. The extension covers much of the 700 hectares of land belonging to the Claimants and previously earmarked for the development of 15000 homes.
4. The Claimants contend that the rationale for the new and radically extended DEPZ on a recommendation by the privately run operator, AWE, is simply not known. The only publicly facing document contains, at best, a partial rationale for the designation, which is insufficient, as a matter of law, to meet the requirements of the Regulations. The document was not made available to the public until after the DEPZ was designated which was procedurally improper and in breach of statutory requirements. Regulatory oversight of the designation process has been deficient.
5. West Berkshire District Council (the Defendant); AWE; the Secretary of State for Defence and the Office for Nuclear Regulation (the First, Second and Fourth Interested Parties) contend that AWE’s rationale for the DEPZ and regulatory oversight of the designation process has been entirely adequate. The public was provided with the requisite information, as soon as reasonably practicable, in accordance with REPPiR 19. The Claimants’ case fails to grapple properly, or at all, with the true significance in public safety terms of the designation process. Nor does it show any proper understanding of the national security issues arising from the information which underlies the decision. The claim is motivated entirely by the Claimants’ private proprietary interests in the development of its site.
6. Permission to apply for judicial review was granted by Lieven J on 21st July 2020.
7. I heard oral submissions at a remote hearing using video conferencing over two days from Russell Harris (leading Richard Turney) for the Claimant; David Travers (leading Megan Thomas) for the Defendant; James Strachan (leading Sasha Blackmore) for the First Interested Party; David Blundell for the Second Interested Party and Mark Westmoreland Smith for the Fourth Interested Party.

How the Regulations work

8. The Regulations, referred to as REPPiR 19 were made under powers conferred by the Health and Safety at Work etc Act 1974. They revoke and supersede the Radiation (Emergency

Preparedness and Public Information) Regulations 2001 (SI 2001/2975) (“REPPIR 01”). Duty holders under REPPIR 01 were given a transition period of 12 months until 22 May 2020 to comply with REPPIR 19 (Regulation 28).

How the DEPZ is designated

9. There are two stages to the process of determining a DEPZ.
10. The first stage involves the operator of the premises. Regulation 4 requires the operator to undertake a written evaluation identifying all hazards arising from the operator’s work which have the potential to cause a radiation emergency. The evaluation is referred to as a ‘Hazard Evaluation’ in the Regulations.
11. Where the evaluation reveals the potential for a radiation emergency to occur, Regulation 5 requires the operator to assess a full range of possible consequences of the identified emergencies, both on the premises and outside the premises, including the geographical extent of those consequences and any variable factors which have the potential to affect the severity of those consequences. The assessment is referred to in the Regulations as a Consequence Assessment.
12. The requirements for an assessment are set out in Schedule 3. They include consideration of: the range of potential ‘sources terms’ (defined as the radioactivity which could be released which includes the amount of each radionuclide released; the time distribution of the release; and energy released); the different persons that may be exposed; the effective and equivalent doses they are likely to receive; the pathways for exposure and the distances in which urgent protective reaction may be warranted for the different source terms when assessed against the United Kingdom’s Emergency Reference Levels published by Public Health England.
13. In addition:

“3. The calculations undertaken in support of the assessment must consider a range of weather conditions (if weather conditions are capable of affecting the extent of the impact of the radiation emergency) to account for –

 - (a) the likely consequences arising from such conditions; and*
 - (b) consequences which are less likely, but with greater impact.*

...”
14. Regulation 7(1) & 7(2) requires the operator to produce a report setting out the consequences identified by the assessment, called a Consequences Report, which must be sent to the local authority. Regulation 7(3) provides that a Consequences Report must contain the particulars set out in Schedule 4. Regulation 7(4) requires the operator to offer a meeting to the local authority to discuss the report. Regulation 7(5) provides that the operator must comply with any reasonable request for information made by a local authority, following receipt of the report, to enable it to prepare the off-site emergency plan required by Regulation 11.
15. Schedule 4 sets out the particulars to be included in a Consequences Report. Part 1 deals with factual information. Part 2 of Schedule 4 requires the operator to include the following recommendations:

“(a) the proposed minimum geographical extent from the premises to be covered by the local authority’s off-site emergency plan; and

(b) the minimum distances to which urgent protective action may need to be taken, marking against each distance the timescale for implementation of the relevant action.

3. In relation to a minimum geographical extent recommended under paragraph 2, the operator must also include within the consequences report –

 - (a) the recommended urgent protective actions to be taken within that zone, if any, together with timescales for the implementation of those actions; and*

(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.”

16. Part 3 of Schedule 4 provides that:

“4. The operator must set out the rationale supporting each recommendation made in the consequences report.

5. In particular, the operator must set out –

(a) the rationale for its recommendation on the minimum distances for which urgent protective action may need to be taken; ...”

17. The second stage of the designation process rests with the local authority. Regulation 8(1) provides that:

“The local authority must determine the detailed emergency planning zone on the basis of the operator’s recommendation 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.”

Emergency plans

18. Regulation 10 provides that where an operator has made an evaluation that a radiation emergency might arise, the operator must make an adequate emergency plan to secure, so far as is reasonably practicable, the restriction of exposure to ionising radiation and the health and safety of persons who may be affected by radiation emergencies identified by the Hazard Evaluation.

19. Regulation 11(1) & (2) provides that where premises require a DEPZ the local authority must make an adequate off-site emergency plan covering the zone. The plan must be designed to mitigate, so far as is reasonably practicable, the consequences of a radiation emergency outside the operator’s premises.

The Regulator

20. ‘Regulator’ is defined in Regulation 2(1) as the Office for Nuclear Regulation in the event the premises is a licensed site or authorised defence site.

21. By Regulation 4(7) the operator must provide the Regulator with details of the Hazard Evaluation within 28 days of it being made. By Regulation 7(6) the operator must provide the Regulator with details of the Consequence Assessment and the Consequences Report within 28 days of the date on which the Consequence Report was sent to the local authority. Regulation 8(3) provides that the local authority must inform the operator and regulator of its determination of the DEPZ within two months of having received the Consequences Report.

The provision of information to the public

22. Regulation 21 provides that the local authority with responsibility for an area covered by an off-site emergency plan in a DEPZ must, in cooperation with the operator, ensure that members of the public are made aware of the relevant information, and, where appropriate, are provided with it.

23. Part 1 of Schedule 8 sets out the requisite information:

1. Basic facts about ionising radiation and its effects on the environment;
2. The various types of radiation emergency identified and their consequences for the general public and the environment;

3. Protective action to alert, protect and assist the public in the event of an emergency;
 4. Appropriate information on protective action to be taken by the general public in the event of a radiation emergency;
 5. The authorities responsible for implementing the protective actions;
 6. The extent of the detailed emergency planning zone.
24. Regulation 21(10) provides as follows in relation to the Consequences Report:
- “Where a report is made pursuant to regulation 7, the local authority must make that report available to the public as soon as reasonably practicable after it has been sent to the regulator under that regulation (except that, with the approval of the regulator, the local authority must not make available any part or parts of such report for reasons of industrial, commercial or personal confidentiality, public security or national security).”*
25. The definition of regulator, so far as relevant to this case and the relevant part of Regulation 7 is set out above (under the heading Regulator).

Approved Code of Practice and Guidance

26. The ONR and HSE have published an Approved Code of Practice (ACoP) and guidance on the Regulations. Compliance with the ACoP is said to be *“doing enough to comply with the law in respect of those specific matters on which the Code gives advice”* (page 2).
27. The ACoP stipulates that, when producing the Hazard Evaluation, operators should not discount emergencies with a low likelihood of occurrence:
- “Evaluating a low likelihood for a radiation emergency to occur should not be used as a reason for discounting the hazard from having the potential to cause a radiation emergency. Operators should consider the possibilities for radiation emergencies with extremely low likelihoods but with significant or catastrophic consequences.”* (§ 85)
28. The guidance on the content of a Consequence Assessment explains the principles for selecting the recommended distance for an urgent protective action, using the example of sheltering, which is relevant to the present case. The guidance explains that the Emergency Reference Level value (ERL) published by PHE is a measure of averted dose of radiation and is calculated using two dose calculations. In the first calculation it should be assumed that the exposed individuals are subject to no protective measures and are outside during the entire exposure period (with no protection afforded from being inside a building). The second calculation is for the dose with the relevant protective action in place. The dose averted by this protective action is the difference between the two values (§652). The guidance explains how the protective zone is identified by reference to the ERL:
- “653 PHE’s analysis... of the effect of sheltering on inhalation exposures shows a typical dose reduction factor (DRF) of approximately 0.6 (derived on the basis of a combination of modelling and literature review). This value assumes an inhalation dose to an individual sheltering during the entire passage of the plume, until both the indoor and outdoor air concentrations fall back down to zero (or close to it), with no opening of windows and doors to the external environment. Under such circumstances it may be assumed that the DRF remains constant irrespective of the release duration.... The fraction of the dose that is averted is therefore $1 - DRF = 0.4$ which implies that the distance where the lower ERL for sheltering of 3 mSv is at the distance where the outdoor effective dose is 7.5 mSv (i.e. 3 mSv divided by 0.4.). For premises where inhalation*

is the dominant exposure pathway (other than operating reactors), this outdoor effective dose of 7.5 mSv can be used as a surrogate for identifying the initial candidate minimum distance for the urgent protection action of sheltering...

29. Weather conditions are dealt with in the guidance as follows:

“656 Once the technical assessment described in the paragraphs above is complete, the operator may wish to exercise judgement to adjust the candidate distances for the urgent protective actions calculated by taking into account:

(a) in the case of releases, the range of weather conditions assumed and their likelihood;

...

657 Once these have been considered, the operator should recommend the distances for each of the relevant urgent protective actions, justifying any assumptions and judgments that are made. The minimum distance of the urgent protective action is usually taken as a radial distance in kilometres (km).”

30. The Approved Code of Practice explains at §190-191 how local authorities should go about their task of determining the DEPZ:

“190. The detailed emergency planning zone 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.

191 In defining the boundary of a detailed emergency planning zone, 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 correspondence with other local authority emergency planning arrangements.”

31. The accompanying guidance states at §195 that:

“... The local planning authority should only change that area [recommended by the operator] to extend it because of local geographic, demographic and practical implementation issues, the need to avoid bisecting communities or to include vulnerable groups at the outer limit of the area. The local authority is not required to have the expertise to verify the technical basis for the minimum extent set by the operator.”

32. A practical approach is suggested at §200:

“To determine the boundary of the detailed emergency planning zone, the local authority may adopt an approach as follows:

(a) review the consequences report provided by the operator;

(b) consider the most appropriate means of protection of the local population in relation to the types of radiation emergency identified by the operator;

(c) produce proposed detailed emergency planning zone maps based on the consequences report, current planning arrangements and local geographic, demographic and practical implementation issues identified; and

(d) liaise with relevant organisations to identify any issues or improvements to the detailed emergency planning area boundary/boundaries (for example emergency responders, experts in emergencies and responses, regulators, PHE, operator, adjacent local authorities). Existing local forums and liaison committees already set up to discuss emergency arrangements could be utilised for this purpose.

... ”

Relevance of the EU regime and applicability of REPPiR to defence activities

33. REPPiR 19 implements, in part, provisions of EU Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation. During the hearing I asked the parties to provide the Court with an agreed note on the legal consequences of the UK leaving the EU, so far as relevant to the present case.
34. In written submissions provided after the hearing, the parties agreed that as a result of leaving the European Union, the UK is no longer part of Euratom, although the UK and Euratom signed a Nuclear Cooperation Agreement on 24 December 2020. The 2013 Directive ceased to apply to the UK directly post 31 December 2020, but the UK legislation which implements it (including REPPiR 19) remains in place by virtue of the European Union (Withdrawal) Act 2018 (as amended). REPPiR 19 is “EU-derived domestic legislation” and as such falls within the definition of “Retained EU law”.
35. In addition, Counsel for the Defendant and Interested Parties raised the proposition that the application of the 2013 Directive and consequently REPPiR 19 to defence activities of the kind conducted at AWE Burghfield has always been a matter of unilateral choice under domestic law. The Euratom Treaty, and thereby the 2013 Directive, do not apply to defence nuclear activities as a matter of law. However, the Ministry of Defence (MOD) has taken a policy decision to apply, where practicable, the 2013 Directive to defence activities. As such, REPPiR 19 applies to defence premises in which work with ionising radiation takes place, subject to the modifications in Regulation 25. This remains the case after 31 December 2020. In reply, Mr Harris objected to the point being taken on the basis it was a new and wholly unpleaded submission. In any event, he said, the point being taken was unclear given no such exemption from the Regulations appears to have been applied in this case. In response, the Treasury Solicitor provided the Court with a contemporaneous note of the hearing in which Mr Strachan explained, in the context of an exchange about the relevant impact of the UK leaving the EU, that the 2013 Directive has applied to defence sites as a matter of policy, not law.
36. I have approached the issue as follows. During the hearing, submissions proceeded on the basis that REPPiR 19 applies to the Burghfield site. In the absence of any evidence that AWE Burghfield benefits from an exemption from the Regulations, I propose to determine the claim on the basis that REPPiR 19 applies. I deal with submissions by Mr Harris in relation to the 2013 Directive below, in the context in which they arise.

The Consequences Report

37. The Consequences Report is in three parts.
38. Part 1 sets out factual information required by Schedule 4 of REPPiR.
39. Part 2 recommends the minimum geographical extent to be covered by the local authority’s offsite emergency plan as an area extending to a radial distance of 3160m from the Burghfield

site centre location. This distance is recommended for the urgent protective action of sheltering which:

“...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... 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 shut.”

40. Timescales for people to shelter are addressed as follows:

“Category F weather conditions typically has an associated mean wind speed of 2ms⁻¹. There will be an average of 25 minutes from the initiation of the event until the leading edge of any plume travels to the minimum distance recommended for urgent action. Given the need to notify the Local Authority of an incident in practice this will amount to 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.”

41. Part 2 goes on to explain the pathways by which the public could be exposed to the release of radioactivity:

“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 inhalation.”

42. Part 3 is headed ‘Rationale’. It is set out in full, as follows:

“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:

- i. First-pass inhalation of air from the plume of contamination;*
- ii. Long-term inhalation after resuspension of ground contamination by the initial plume;*
- iii. Ingestion of food crops contaminated by the initial plume;*
- iv. 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 REPPiR 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 REPPIR 2001 ONR determination. The REPPIR 2001 determination was based on a 5mSv dose contour using 55% Cat D weather conditions. Under REPPIR 2019, the minimum distance for urgent protective actions is based on a 7.5mSv dose contour. However, in accordance with the new requirements of REPPIR 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:

- i. Consider age, and other characteristics which would render specific members of the public especially vulnerable;
- ii. Include all relevant pathways;
- iii. Consider a representative range of source terms;
- iv. 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.”

Chronology

43. The chronology of events is as follows:

27 March 2019	REPPIR Regulations are laid in Parliament (also in March, government funding for a study into the suitability of the Claimants’ land for a ‘garden town’ is confirmed)
26 April 2019	ONR writes to all nuclear site license holders, including AWE, informing them of actions required under REPPIR 19 during the 12 month transition period
22 May 2019	REPPIR 19 comes into force
17 July 2019	West Berkshire District Council attends a workshop on REPPIR

	organised by the ONR
31 July 2019	At a meeting between the ONR and AWE, AWE provided details of its Hazard Evaluation and Consequence Assessment, prepared pursuant to Regulations 4 and 5 REPIIR, to ONR Inspectors
10 September 2019	AWE presents its assessments and recommendation in the draft Consequences Report to ONR Inspectors at a second meeting. The selection of weather conditions in the assessment is discussed
26 September 2019	AWE meets with two other UK nuclear site license organisations to discuss AWE's REPIIR methodology
1 October 2019	AWE and ONR have a further discussion about the weather conditions used in the assessment in view of the significance of the selected weather conditions in the proposed expansion of the DEPZ at Burghfield. A number of more senior individuals attend this conference including ONR's Fault Analysis Professional Lead and AWE's Head of Nuclear Safety
23 October 2019	AWE and the Council met to discuss the completion of the Hazard Evaluation, Consequences Assessment and Consequences Report
20 November 2019	Consequences Report is finalised and sent to the Council
21 November 2019	AWE sends the Consequences report to the ONR
23 December 2019	The Council notifies Wokingham Borough Council and Reading Borough Council of the details of the Consequences Report
6 January 2020	A meeting is held between the Council, AWE, Public Health England (PHE) and the ONR. The Consequences Report and proposal for new DEPZ are discussed. The minutes of the meeting emphasise the notable increase in the DEPZ, which is explained and discussed. Concerns about the increase are expressed by local emergency responders present at the meeting. The Claimant's housing project is specifically raised and discussed.
6 January 2020	A specialist ONR Inspector inspects the Hazard Evaluation and Consequence Assessment at AWE's site via the company's on-site secure computer network (this was part of the ONR's sampling exercise which had selected the Burghfield designation for review).
7 January 2020	PHE sends questions on the Consequences Report to AWE. In particular, PHE raised questions about AWE's choice of weather conditions
9 January 2020	AWE answers PHE's questions by email
10 January 2020	PHE issues a statement on its assessment of AWE's work concluding that West Berkshire District Council should consider implementing the minimum distance of 3160 metres radially for the Burghfield site
27 January 2020	ONR sends the Council an email to ensure that the Council had considered and followed the ACOP/Guidance
30 January 2020	AWE answers questions posted by ONR
18 February 2020	A meeting is held between the Council, ONR, Wokingham Borough Council, the MOD and AWE. The minutes record that Wokingham Council were particularly concerned about the impact of the DEPZ on the Claimants' development project. The minutes conclude that: <i>'This meeting underlines the importance of ONR's presence at meetings such as this to provide independent advice and clarification of the legal requirements which will support the duty holder's (West Berkshire District Council) endeavours to achieve compliance within the tight timescales'</i>
February 2020	The ONR completes its assessment of AWE's work, concluding that <i>'the technical extent of the DEPZ given to the local authority for the AWE site is a reasonable basis for detailed radiological emergency planning purposes'</i>

4 March 2020	The Defendant's officers prepare a report on the DEPZ for the Council's Corporate Board
19 March 2020	The report is presented to the Defendant's Operations Board. After the board meeting, the determination of the DEPZ is made by an Officer using delegated powers and implemented the same day
24 March 2020	The Claimants became aware of the proposal for the increased DEPZ
24 March 2020	The Consequences Report is requested by the Claimants
24 April 2020	Pre-action protocol letter is sent
14 May 2020	AWE respond to the pre-action letter
1 June 2020	ONR responds to the pre action letter stating that <i>'under [REPPIR] the Local Authority now sets Detailed Emergency Planning Zones. The ONR played no part in the decision under challenge'</i>
2 June 2020	The Claimants' solicitors write to the ONR asking the ONR to <i>"clarify what the ONR's role is in the process that led to the determination of the DEPZ for the Burghfield AWE, given the role clearly ascribed to the ONR by the other parties to this matter?"</i>
5 June 2020	The ONR responds to a second letter from the Claimants stating: <i>"We refer you to [REPPIR] and in particular Regulation 8 which sets out the requirements in relation to detailed emergency planning zones. This regulation confirms that the Local Authority determines the detailed emergency planning zone and does not require the involvement of ONR."</i>
11 June 2020	Claim issued
1 July 2020	ONR reviews the Council's determination of the DEPZ set by the Council and confirm the Council's analysis and procedure were compliant with Regulation 8 of REPPIR 2019
10 July 2020	ONR Acknowledgment of Service states that: <i>"The Office for Nuclear Regulation ("ONR") is a regulator as set out in regulation 2 of the Radiation (Emergency Preparedness and Public Information) Regulations 2019 ("REPPIR"). ONR indicated at the pre-action stage that they did not play a role in the decision currently being challenged, since they are not part of the determination process. Therefore, with respect, the ONR wish to remain neutral and do not wish to play an active role in court proceedings"</i>
21 July 2020	Permission is granted by Lieven J with the observation that <i>"On ground two, the role of ONR in the decision making process is not clear from the documents that have been submitted to the court. It is arguable that there was not the regulatory oversight required by REPPIR 2019"</i>
17 November 2020	Claimants' make an application for disclosure of the Hazard Evaluation and Consequence Assessment

The ONR and PHE's assessment of AWE's work

44. On 10 January 2020, PHE issued a statement on its assessment of the Consequences Report:

"Based on the information provided by AWE in the Consequences Reports for the Aldermaston and Burghfield sites and the supplementary information provided by email, PHE believes that West Berkshire Council should consider adopting the recommendations of retaining the existing DEPZ distance for the Aldermaston site and implementing the minimum distance of 3160 metres radially for the Burghfield site with sheltering in both cases being the protective action."

45. PHE's statement includes a checklist of the legal requirements in Schedule 4 of the Regulations for the Consequences Report with accompanying ticks to indicate whether AWE has complied

with the requirements. There is a tick against the requirement for a rationale for the minimum distances for which urgent protective action may need to be taken.

46. In February 2020, the ONR completed its assessment of AWE's work. The author of the assessment explains and concludes as follows:

"... I am content that the hazard evaluation report... presents a comprehensive list of hazards... Overall I am content that, the process followed by AWE in evaluating hazards adequately follows that described in the REPPIR ACoP and guidance document.

The minimum recommended extent of the proposed DEPZ is 3.16km where previously a distance of approximately 1.0km was proposed. AWE have stated (at Ref 3) that the expansion of the DEPZ is mainly due to the use of Category F weather conditions in the plume dispersion analysis where previously Cat D conditions were used. AWE assert that low dispersion Cat F weather conditions arise relatively frequently at their inland site (approximately 12% of the time) and so they have chosen to assess sensitivities across weather conditions A-F, AWE consider this to be consistent with the provisions of Schedule 3(3). I am satisfied that this change of conditions forms a reasonable basis for the change in DEPZ

...

The AWE was assessed by ONR in 2018 against REPPIR01 (Ref 9). The bounding fault for determination of the DEPZ has remained the same in the latest assessment, however the proposed zone is expanded because lower dispersion weather conditions are now considered. Given the relatively high assessed frequency of the lower dispersion conditions I am satisfied that consideration of such conditions is consistent with Regulation 9(1) of REPPIR 19.

Overall, subject to confirmation of the technical adequacy of the consequence analysis by the ONR radiological consequence inspector, I judge that the technical extent of the DEPZ given to the WBC local authority for the AWE site in the REPPIR 19 submission is a reasonable basis for detailed radiological emergency planning purposes."

The Claimants' evidence about the Consequence Report

47. The Claimants' evidence on the Consequences Report was given by Dr Keith Pearce, an emergency planning consultant in the nuclear industry with over 30 years' experience in the nuclear sector. Dr Pearce explains that:

"... From the Consequence Report, it cannot be established how the DEPZ in this case was selected at 3160m. There is simply insufficient information or analysis to constitute or to come close to constituting a rationale.

The document does not present the conclusions of the Consequence Assessment performed as part of the new methodology. It only provides the output of that Assessment. The Consequences Report makes no mention of the frequency of the fault upon which it has based its recommended distances via the regulation 5 assessment. This is an important issue which appears in part to be based on a misunderstanding of the approach required by REPPIR 2019 to infrequent faults.

...

AWE might well have selected a source term based on an event that is too infrequent to require detailed planning according to the new methodology. If this is the case then on the new methodology which is meant to bring consistency and transparency, AWE's proposed minimum DEPZ range and protective actions are larger than is appropriate under REPPIR 2019 and the Guidance".

AWE's evidence on preparation of the Hazard Evaluation, Consequence Assessment and Consequences Report

48. AWE's evidence about the preparation of the Hazard Evaluation, the Consequence Assessment and the Consequences Report for Burghfield was given by XY, a safety assessment specialist contracted to AWE and formerly a Royal Navy nuclear submariner. An application for his anonymity was unopposed and is granted.
49. XY explains that the process began with a review of the radiological inventory at the site and existing risk assessments to identify all events with the potential to cause a radiation emergency (considered to be events with the potential for an annual effective radiation dose estimate of 1 millisevert, or greater, to the public over the period of one year following a radiation emergency).
50. The hazards were assessed against the REPPIR Risk Framework set out in the ACOP/Guidance. The output was a series of Risk Frameworks, one for each building on the site that had a radiological inventory that fell within the scope of the Regulations. He explains that:

"A specification was written to support the mathematical modelling of the dispersion associated with some of the events under assessment and the work was undertaken by members of the project team with specialist skills in this type of modelling work."
51. As part of the production of the Consequence Assessment, the worst case scenario of an explosion was identified. The likely duration of a release was considered along with the period within which it was likely to commence and the periods over which the release could take place.
52. After release the dispersion of a contamination plume will be driven by the prevailing weather conditions. He explains that:

"55% Category D Weather is the weighted average weather conditions for the geographical area in which the site is located. To understand the potential dispersion of contamination, a variety of weather conditions were analysed. The output from the mathematical modelling provided details of the weather dispersion properties as a result of the analysis of Category A, Category D and Category F weather.

Category F and Category G weather (when compared to 55% Category D) will have the effect of extending the distance over which any contamination from a radiation emergency could have an effect. Category F and Category G weather conditions combined, are experienced around 12% of the time at the site. Category F weather is experienced around 10% of the time at the site.

Based on the need to consider conditions that 'are less likely but which could result in greater consequences', Category F weather was used to determine the Urgent Protective Action radial distance around the site, because of the greater consequences to the public. This aligned with the guidance from PHE (PHE CRCE 50 – Consequences Assessment Methodology) which required the 95th percentile of weather conditions to be considered.

The nature of the events being analysed made the likely duration of a release short, but this was considered along with the period within which it was likely to commence and the periods over which the release of radioactive contamination could take place. These results, along with an understanding of the distribution in public areas of the contamination and the prevailing weather conditions, allowed the calculation of the averted dose estimate and the total residual effective dose for members of the public.

The most likely travel time for the released contamination to first reach the limits of the minimum boundary of the DEPZ for Category F weather was also predicted.

Using the output from the Consequence Assessment, I instructed geographical maps of the local area to be prepared to illustrate the extent of the distances calculated.”

53. He explained that he wrote the Consequences Report, using a template provided by the Ministry of Defence. In his view the rationale enabled the local authority to understand the basis of the assessment of the recommendation for the radial distance for urgent protective action. He explains that the documents were subject to internal and external review during their production, including by the ONR.

The ONR’s evidence about its regulatory role

54. The ONR’s evidence on its regulatory role in relation to REPIR 19, and more broadly, was given by Mr Graeme Thomas, a Superintending Inspector within the ONR with responsibility for leading the Emergency Preparedness and Response team.

Wider regulatory role

55. Mr Thomas explains that the ONR regulates, amongst other matters, the nuclear safety and conventional health and safety at 36 licensed nuclear sites in Great Britain, including AWE Burghfield and addresses security at civil nuclear sites. It does so through various powers, including licencing and inspection powers. The organisation also sets national regulatory standards and helps to develop international nuclear safety standards.

REPIR regulation

56. As well as publishing the REPIR 19 Approved Code of Practice and guidance, the ONR provided advice and assistance to duty holders during a 12 month transition period after the Regulations came into force until 22 May 2020. He points to a letter to local authorities dated 29 January 2020 explaining the position:

“...whilst ONR no longer has a statutory role in the determination process for detailed emergency planning zones...we remain committed to assisting you in navigating the revised processes required by these regulations and in particular during the statutory implementation period running to 22 May 2020.”

57. Assistance was provided by way of correspondence, meetings and attendance at the Local Authorities Working Group Forum.

Sampling

58. Mr Thomas explains that the ONR is not required to assess all of the documents submitted by operators under REPIR 19:

“However, in accordance with its wider regulatory and enforcement responsibilities... the ONR samples a select number of submissions

from duty holders to determine whether there is ongoing compliance with REPPIR19. The ONR's sampling approach will take into account: the level of confidence the ONR has in the duty holder's process for producing safety submissions; the risks and hazards associated with the activities covered by the safety submission; and recent events or operating experience at the facility, or similar facilities.

If the ONR determines as part of their sampling exercise that there has been non-compliance with REPPIR19 by a duty holder, they have a wide range of enforcement powers available to them."

59. He explained that the use of sampling as a regulatory tool was consistent with the ONR's routine inspection approach, which is to sample the activities of duty holders representatively to determine levels of compliance and to target deployment of resources. Any issue that the ONR may identify with the adequacy of the Consequence Assessment or the Consequences Report would be for the operator to address in accordance with its duties under the Regulations and would not be a matter for the local authority.
60. He explains the ONR sampled the Consequences Reports produced by a mix of operators across a number of nuclear sites and covering a range of technology types. The ONR also sampled the approaches being taken by local authorities in setting the DEPZ. The sample sites were selected to provide the ONR with a good picture of how different types of sites were coping in meeting their REPPIR 19 duties.

Review of AWE's assessments for Burghfield

61. Mr Thomas explains that the Hazard Evaluation, Consequence Assessment and Consequences Report for AWE Burghfield were selected for review as part of the ONR's sampling. In addition to the sampling exercise, as part of the ONR's general regulatory oversight of AWE, the operator's assumptions about the weather were expressly queried by ONR staff at a meeting in September 2019 and followed up in a conference call in early October with more senior staff members:

"The ONR held a follow-up meeting in September 2019 to review AWE's deliverables prior to the expected date for submission of its Consequences Report to WBC. During this meeting AWE informed the ONR that the recommended DEPZ for the Burghfield site would be significantly expanded... The ONR inspectors queried the reasons for this change and AWE indicated that the change was predominantly due to the analysis of infrequent weather conditions in the Hazard Evaluation and Consequence Assessment. It was evident from the "risk matrix" presented to the ONR at the meeting that the accident forming the basis for the proposed DEPZ at Burghfield under REPPIR19 was the same as the accident which formed the basis for the (then) existing DEPZ under REPPIR01 (determined by the ONR in 2017). The ONR inspectors were therefore able to draw on their knowledge of the AWE 2017 REPPIR01 submission to inform their opinions on the adequacy of the technical basis for the proposed expansion. Based on the meeting discussions, the ONR inspectors did not consider there to be any significant concerns with respect to most aspects of the Burghfield Hazard Evaluation and Consequence Assessment. However, the ONR inspectors did query AWE's use of infrequent weather conditions in determining the minimum geographical extent for detailed emergency planning.

A follow-up teleconference was held between the ONR and AWE (1st October 2019) to further discuss the weather assumptions applied in view of their significance to the proposed expansion of the DEPZ at Burghfield. A number of more senior individuals attended this teleconference including the ONR Fault Analysis Professional Lead and the AWE Head of Nuclear Safety. The meeting focused on the interpretation of REPP19, Schedule 3(3) which requires that “operators consider a range of weather conditions to account for the likely consequences of such conditions and consequences which are less likely, but with greater impact”. AWE presented its proposed approach in relation to consideration of Schedule 3(3) noting that the infrequent weather conditions considered occur 12% of the time at the site and that this was judged by AWE to be sufficiently frequent for consideration in determining the minimum geographical extent for detailed emergency planning. The inspectors concluded that the approach AWE had adopted complied with REPP19 and accorded with the guidance for Schedule 3(3).”

The Secretary of State’s evidence about national security

62. On behalf of the Secretary of State, Dr AB gave evidence on the significance of national security risks arising from disclosure of the information sought by the Claimants. He explains that the risks include terrorism, espionage, subversion (action to undermine the morale, loyalty or reliability of key sectors of the state) and organised crime. He explains that control of information regarding the materials, processes and risks of accidents on the Burghfield site is essential to combat all the risks referred to. The release of seemingly limited information can, when collated by motivated and effective actors, contribute to presenting a clear danger to UK interests.
63. An application for Dr AB’s anonymity was unopposed and is granted.

The Claimants’ submissions

64. Mr Harris submits that the deliberate decision of the Council (with the knowledge of the ONR) not to make the key and only publicly facing REPP19 document explaining “the rationale” for the DEPZ available until after the decision was made was procedurally improper and by itself should result in the quashing of this decision. By Regulation 21(10), the Consequences Report must be produced prior to the Council’s decision on the DEPZ. There is no other requirement for public notification that would allow the public to begin to understand what is happening. In this case there was no publicly available indication that the DEPZ was being reset in such a profound way. Regulation 21(10) is consistent with the transparency provisions of the 2013 Directive. It cannot have been the intent of the legislature that the setting of the hugely important DEPZ a decision largely driven by a private company with profound consequences for tens of thousands of people and businesses should take place in circumstances where a positive decision had been taken deliberately to keep the public (including the Claimants and other developers) away from the rationale for the decision or from an understanding that the process was ongoing at all until after the important decision.
65. He submits that the requirement for a rationale for the operator’s recommendations is a precise and particular requirement of the statutory framework and should be understood in light of the other requirements of the new system which is meant to be more transparent and more consistent across sites. The rationale must include the conclusions of the Consequence Assessment whose results it must also reflect. The provision of a partial rationale is insufficient as a matter of law. The content of the rationale is a matter for the Court and not a matter of discretion for the local authority. The adequacy of judgments of a generalised nature in an environmental statement under the Environmental Impact Assessment regime (EIA) or an environmental report (the Strategic Environmental Assessment regime) addressed by the Court

in R(Plan B Earth) v Secretary of State for Transport [2020] EWCA Civ 214 is not apt for the present case. Nonetheless the Divisional Court in Plan B recognised that where an environmental statement is lacking a mandatory component, the Court can conclude that there is non-compliance with the Directive (§ 1640). The better analogy for present purposes is with the law on reasons, which is a matter for the Court. R(CPRE) v Dover District Council [2018] 1 WLR 108 sets out the relevant test laid down in South Buckinghamshire DC v Porter [2004] 1 WLR 1953 at §35 (reasons for a decision must be intelligible and adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the ‘principal important controversial issue’, disclosing how any issue of law or fact was resolved).

66. He submits that the ONR self-evidently failed in its regulatory responsibilities. It was, at least, a tacit party to the withholding of the Consequences Report. The selection process for its sampling regime was not rigorous or transparent leaving many operator driven DEPZ’s effectively unregulated. It also colours the way in which the ONR has operated in the circumstances of this case. The organization did not see itself under any duty to consider the documentation with the result that the assessment consisted of an internal report which was not to be exposed to the rigours of publication. The conclusion that the choice of weather conditions is “*a reasonable basis for the change in the DEPZ*” implies that other less onerous DEPZ were also capable of falling within a reasonable range of conclusions. It mistakes the ONR’s role as restricted to a rationality assessment of the operator’s decision. This is applying a review threshold of reasonableness to the operator’s decision. The ONR relies on prior information which lay in the Inspector’s personal knowledge and understanding of the site from previous dealings with the site and also critical information contained in the Hazard Evaluation and Consequence Assessment, neither of which are contained or even summarised in the rationale.
67. He submits, in passing, that Article 1 First Protocol to the ECHR is engaged by the decision but said it adds little to his arguments and did not address the Court further on the point.

Submissions on behalf of the Defendant and Interested Parties

68. Counsel for the Defendant and the Interested Parties supported and adopted each other’s submissions. To avoid duplication during the hearing Counsel focussed, in part, in their submissions on discrete limbs of the case against the Claimants. Mr Strachan explained the technical underpinnings of AWE’s work. Mr Westmoreland-Smith focussed on regulation by the ONR. Mr Blundell addressed the national security implications of the information in question. Mr Travers explained the Council’s position on publication of the Consequences Report in May 2020. Taken together, their submissions may be summarised as follows.
69. Counsel submit that the rationale for AWE’s minimum distance for the DEPZ is known and set out in the Consequences Report. The Claimants have misunderstood the objective of requiring a rationale, which is to enable the local authority to carry out its statutory function of setting the boundary of the DEPZ. The local authority does not have any statutory responsibility for, or regulatory role in, reviewing AWE’s performance of its duties under REPPiR 19. Where a Consequences Report, as here, contains the necessary legislative requirements, then the question of the adequacy of that information is ultimately a matter of discretion for the local authority as the relevant decision-maker, subject only to challenge on grounds of Wednesbury rationality. They rely, by analogy, on the decision of the Court of Appeal in Plan B in the context of the regimes for Environmental Impact Assessment (Town and Country Planning (Environmental Impact Assessment) Regulations 2017), Strategic Environmental Assessment (Environmental Assessment of Plans and Programmes Regulations 2004) and Habitats Regulation Assessment (the Conservation of Habitats and Species Regulations 2014). Each of these regimes give effect to different European Directives that specify content to be included in an environmental statement, environmental report or habitats assessment respectively. Tested against the Wednesbury standard the Claimants’ case is hopeless.
70. They submit that the ONR has performed its statutory regulatory role entirely satisfactorily. It not only reviewed the Consequences Report, but also AWE’s underlying internal assessments (the Hazard Evaluation and Consequence Assessment). The ONR was satisfied that each of

these documents complied with REPPiR 19 and that AWE has met its statutory duties under REPPiR 19.

71. Counsel submit that the Consequences Report was made public as soon as reasonably practicable. A decision was taken to work up the local authority's emergency plan, which was formally approved on 20 May 2020 and, importantly, the REPPiR Public Information booklet before publishing the Consequences Report. The booklet is sent out to the public. It describes what protective measures to take in the event of an emergency and needed to be carefully worded so as not to cause undue alarm or concern to the public. Producing the booklet also put the local authority in a good position to answer questions from the public. The booklet was published on 18 May 2020. Further, it made no sense to publish the Consequences Report before the extent of the DEPZ was finalised to avoid creating confusion amongst members of the public as to whether they reside within the zone or not.

Discussion

Introduction

72. It is a well-established principle of judicial review that the scrutiny of the Court's review is dependent upon the circumstances of a particular case ("In law, context is everything": Lord Steyn in R v Secretary of State for the Home Department ex parte Daly [2001] 2 AC 532 at §28). Factors upon which the scrutiny of review particularly depend include: i) the nature of the decision under challenge; ii) the nature of any right or interest the decision seeks to protect; iii) the process by which the decision under challenge was reached; and iv) the nature of the ground of challenge (Plan B Earth at §66 citing from the judgment of the Divisional Court at §151).
73. The requirements of procedural fairness depend on the context, including the statutory framework within which the decision sought to be impugned was taken (R v Secretary of State for the Home Department ex parte Doody [1994] 1 AC 531 at 560 E)).
74. In my judgment, the following aspects of the present case are of particular relevance to the Court's scrutiny and provide the context for an assessment of procedural fairness; i) the regulatory context of REPPiR 19; in particular the allocation of roles under the regime and the circumscribed access to relevant information; ii) the particular sensitivity of the information underlying the decision under scrutiny; iii) the technical, scientific and predictive assessment underpinning the geographical extent of the DEPZ; and iv) the specialist expertise of the ONR and PHE.

REPPiR 19

75. The scope of judicial review is acutely sensitive to the regulatory context (R(Mott) v Environment Agency [2016] EWCA Civ 564 (Beatson LJ at §75).
76. The REPPiR Regulations are concerned with emergency planning for radiation emergencies. They are made under the Health and Safety at Work Act 1974. The purpose of the 'Detailed Emergency Planning Zone' (DEPZ) is to set a zone around a site where it is proportionate to pre-define 'protective actions' which can be implemented for public safety in the event of a radiation emergency. The word 'planning' in the term DEPZ is used in the sense of planning to deal with a radiation emergency to mitigate radiological risk to members of the public. The Regulations are not land use planning regulations. Significantly, given the present challenge to the timely provision of information to the public, there is no requirement to consult the public about any land use implications of the designation.
77. The Regulations carefully prescribe the decision making required and, in particular, the roles of the site operator and the local authority. The site operator must produce the Hazard Evaluation, the Consequence Assessment and Consequences Report (Regulations 4,5 and 7). The operator must determine the minimum geographical extent of the emergency planning zone (Regulation 7 and Schedule 2 paragraph 4). The local authority is then responsible for determining the boundary of the emergency planning zone. In doing so it must decide how to translate the operator's recommendation into a workable emergency plan on the ground (Regulation 8). It

may extend the area recommended by the operator, to make the zone workable in practice, but it cannot reduce it (Regulation 8). The local authority has no discretion to exclude property interests from the DEPZ where beneficial urgent protective action should be taken in the event of a radiation emergency. Accordingly, the Claimants' commercial aspirations to develop land within the zone are irrelevant to the statutory scheme.

78. The Consequences Report prepared by the site operator must include a 'rationale' for the geographical extent of the zone. The objective of the rationale is to enable the local authority to set the boundary of the DEPZ. Given the nature of the present challenge it is important to emphasise that the local authority does not have any statutory responsibility for the operator's performance of its duties or a regulatory role in reviewing the operator's work. As explained in the Approved Code of Practice and Guidance for REPPiR 19 "*The local authority is not required to have the expertise to verify the technical basis for the minimum extent set by the operator*" (§195).
79. The Regulations carefully circumscribe the publication of information. In particular, in designating the DEPZ, the local authority does not have access to the Hazard Evaluation or the Consequence Assessment. It is provided only with the Consequences Report.

The sensitivity of the information in question

80. The work undertaken at AWE Burghfield is the assembly, maintenance and decommissioning of nuclear weapons. The Secretary of State for Defence considers some of the information in play in the decision making under scrutiny to be of the utmost sensitivity to the national security of the UK. This includes the materials held at the site, the circumstances under which they are held; the potential risk of accidents involving the materials; the nature of those accidents and their consequences. This sensitivity is recognised and reflected in REPPiR 19 (see above). The sensitivity of the documents mean that the Hazard Evaluation and Consequence Assessment have not been put before the Court. Instead AWE and the Secretary of State have provided witness evidence explaining the technical aspects and the national security context. The Claimants' application for disclosure of the Hazard Evaluation and Consequence Assessment is strongly resisted by the Secretary of State.

The scientific, technical and predictive assessment underpinning the designation of the DEPZ

81. The Court should allow an enhanced margin of appreciation to decisions involving or based upon 'scientific technical and predictive assessments' by those with appropriate expertise. Where a decision is highly dependent upon the assessment of complex technical matters by those who are expert in such matters and/or who are assigned to the task of assessment (ultimately by Parliament) the margin of appreciation will be substantial (R(Mott) v Environment Agency cited by the Court of Appeal in Plan B at §68).
82. The decision at the heart of this challenge is a paradigm example of a highly scientific, technical and predictive assessment. It concerns an assessment of the consequences for public safety of a radiation emergency at the Burghfield site. The assessment has been undertaken by AWE which has contracted in appropriate specialist skill to oversee the project (witness XY) and has employed a project team with specialist skill in mathematical modelling. Through its work the project team identified the worst case scenario to be planned for as an explosion at the site releasing plutonium (an Alpha emitting actinide) in the form of fine particulates of plutonium oxide. The primary safety concern is the public's exposure to "*first-pass inhalation of air in the plume of contamination*". The project team modelled the resulting plume based on weather conditions which are likely to occur for 12% of the time. In doing so, the team identified a radial distance of 3.16 km from the centre of the site as the distance where taking the recommended urgent protective action of sheltering indoors with doors and windows closed would avert the public's exposure to a specified lower 'Emergency Reference Level', of 3 millisieverts (mSv).

The specialist expertise of the ONR and PHE

83. The ONR is a specialist nuclear regulator established under the Energy Act 2013. Its regulatory objective is to ensure that operators of the 36 licensed nuclear sites in the UK conduct their

- operations safely and can account for and control nuclear material. In addition it regulates those sites, which include AWE Burghfield under the REPPiR 19 regime. Along with the HSE, the ONR published an Approved Code of Practice and Guidance on REPPiR 19.
84. Public Health England is an operationally autonomous agency of the Department of Health and Social Care. Its Centre for Radiation Chemical and Environmental Hazards have, under contract to the Department for Business Energy and Industrial Strategy (BEIS), published its own guidance on REPPiR 19. The guidance sets out a PHE recommended methodology for Consequence Assessments. The methodology is said to be commensurate with scientific evidence and international good practice. PHE is a consultee under the Regulations for the making of operator and local authority emergency plans. ONR/HSE REPPiR guidance advises local authorities to liaise with PHE when deciding on the boundary of the DEPZ.
85. The Courts have recognised the need for judicial restraint where the issue under scrutiny falls within the particular specialism or expertise of the defendant public authority. In R(Mott) v Environment Agency Beatson LJ observed that “*a regulatory body such as the [Environment] Agency is clearly entitled to deploy its experience, technical expertise and statutory mandate in support of its decisions, and to expect a court considering a challenge by judicial review to have regard to that expertise*” (§63). In this case the defendant public authority is the local authority which does not itself hold the technical expertise itself to assess AWE’s work. Nonetheless it drew on assistance and advice from the ONR and PHE. I consider this to be akin to the position where the defendant public authority relies on experts, which the Courts have acknowledged entitles the public authority to a margin of appreciation (relevant that the defendant “*had access to internal expert advice and the views of external bodies*” in deciding whether there was material before the defendant on which it could rationally be decided that the approval should be made: R(Christian Concern) v Secretary of State for Health and Social Care [2020] EWHC 1546 (Admin)(Divisional Court) at §30 (Singh LJ)) (see also “*Where a screening decision is based on the opinion of experts, which is relevant and informed, the decision maker is entitled to rely upon their advice*”; Lang J in R (Swire) v Secretary of State for Housing Communities and Local Government [2020] EWHC 1298 (Admin) at §61).

Drawing the threads together

86. Drawing these threads together: first; it is apparent from the regulatory framework that a number of the concerns about the decision making which Mr Harris raised in oral submissions are an undisputed product of the regulatory framework which the Court must respect (pursuant to the principle of legislative supremacy). Concerns of this nature expressed by Mr Harris include the autonomy given to, in his words, the ‘privately run’ site operator, AWE, to determine the minimum geographical extent of the DEPZ; the consequent shift in responsibility away from the, in his words, ‘independent’ ONR; the restriction of information available to the local authority and public as well as the absence of public consultation on a proposed DEPZ.
87. Secondly; the Claimants challenge the local authority’s decision to designate the boundary of the DEPZ based on a radius of 3160m yet their real aim is AWE’s technical assessment of the appropriate distance. In these circumstances, it must be borne in mind that the local authority does not have any statutory responsibility for the operator’s performance of its duties or a regulatory role in reviewing its work. The local authority’s role is limited to deciding how to translate the operator’s recommendation into a workable emergency plan on the ground.
88. Thirdly; the Court must afford a margin of appreciation to the highly technical, scientific predictive assessment by AWE which was reviewed by a specialised statutory regulator (ONR) and statutory consultee (PHE).
89. Separately, the process by which the decision under challenge was reached is one of the factors which influences the degree of judicial scrutiny (Plan B (see above)). This is a case where the Claimants contend that a key document produced during the regulatory process is unlawful and that regulatory oversight of the process has been deficient. The document in question was reviewed as part of the regulatory oversight. Moreover, absent an order for disclosure, which is strongly resisted on grounds of national security, the Court does not have all the material relevant to the decision making before it. In these circumstances I consider it appropriate to

analyse the nature and quality of regulatory oversight before turning to the criticisms of the particular document. This is because my approach to the review of the document may be coloured by my assessment of the regulatory oversight. Accordingly, I start with Ground 2 of the challenge.

Regulatory oversight of the designation process (Ground 2)

90. When the Claimants initiated these proceedings and at the point at which the Court granted permission, the ONR's position was expressed by its terse statement that "*The ONR played no part in the decision under challenge*". It maintained this position in pre-action correspondence and its Acknowledgement of Service despite assertions to the contrary by the other parties. Unsurprisingly, permission for judicial review was granted by Lieven J with the observation that "*the role of ONR in the decision making process is not clear from the documents that have been submitted to the court. It is arguable that here [sic] was not the regulatory oversight required by REPPIR 2019*".
91. Since then, the ONR has provided the Court with detailed evidence of its regulatory oversight. It instructed Mr Westmoreland-Smith for the substantive hearing. There is now a wealth of material before the Court, summarized above in the chronology of regulation and the outline of Mr Thomas' evidence.
92. The material now before the Court demonstrates that ONR provided multi-layered oversight through 2019 and 2020 in its role as a specialized regulator. There were three elements to its oversight:
- a. general advice and assistance to duty holders under REPPIR 19 during the transition period. This extended to correspondence with the Council on the Burghfield designation; participation in meetings organized by the Council and reviewing its determination. Evidence of the significance of the assistance provided is apparent from the Council's minutes of a meeting on 18 February 2020: "*This meeting underlined the importance of ONR's presence at meetings such as this to provide independent advice and clarification of the legal requirements which will support the duty holder's (West Berks Council) endeavours to achieve compliance within the tight timescales.*"
 - b. A detailed review of AWE's recommendation for the DEPZ pursuant to its regulatory tool of 'sampling' by which it selected and reviewed the work of particular operators and local authorities.
 - c. A wider ongoing regulatory relationship with AWE which it drew upon to inform its assessment of AWE's work.
93. AWE's recommendation that the minimum geographical extent of the local authority's off site emergency plan should be a radial distance of 3160m from the site centre location was assessed and approved by both the ONR and Public Health England:

"Overall, subject to confirmation of the technical adequacy of the consequence analysis by the ONR radiological consequence inspector, I judge that the technical extent of the DEPZ given to the WBCC local authority for the AWE site in the REPPIR 19 submission is a reasonable basis for detailed radiological emergency planning purposes." (ONR (February 2020))

"Based on the information provided by AWE in the Consequence Reports for... Burghfield ... and the supplementary information provided by email, PHE believes that West Berkshire Council should consider adopting the recommendations of... implementing the minimum distance of 3160 metres radially for the Burghfield site..." (PHE (January 2020))

94. The choice of weather conditions was understood by the ONR and PHE to explain the significant enlargement of the DEPZ compared with the previous designation of 1600m under REPPiR 01. In particular, the move away from assessing the dispersion of any radiation plume by reference to weather conditions present at the site for 55% of the time to weather conditions at the site 12% of the time. This aspect of AWE's work was carefully scrutinised by the ONR at a meeting in September 2019 and a follow up teleconference with more senior representatives from both organisations. Separately, PHE questioned AWE's choice of weather conditions in its assessment.
95. The ONR also reviewed the Council's determination of the DEPZ and confirmed the Council's analysis and procedure were compliant with Regulation 8 of REPPiR 19.
96. Mr Harris criticized the ONR's use of sampling as a regulatory tool, which he said meant that the merits of a designation were not considered in all cases. However, this is not a relevant criticism in this case where the ONR *did* engage in detailed oversight of the work by AWE and the Council. The ONR's Enforcement Policy Statement (April 2019) makes clear that sampling is a tool used by the ONR in performance of its regulatory duties. Mr Westmoreland-Smith explained that sampling accords with the BEIS Regulator's Code which advises basing regulatory activities on risk.
97. Mr Harris criticised the ONR's assessment that the choice of weather condition "*forms a reasonable basis for the change in DEPZ*" on the grounds that it did not signify a transparent comprehensive regulatory assessment. It was, he said, only an assessment of reasonableness of AWE's decision not an assessment of its merits. I do not accept that the use of the word 'reasonable' should be interpreted as if it appeared in an Administrative Court judgment. The ONR were simply expressing a judgment that the scientific analysis was reasonable. REPPiR 19 guidance makes clear that the operator is entitled to exercise its judgement in taking account of the range of weather conditions provided it can justify assumptions and judgments made (§656/7). In turn, the ONR has exercised its judgement in assessing AWE's position. Where a decision maker has a wide discretion conferred by statute, it is for the decision maker to decide the manner and intensity of inquiry to be undertaken subject only to Wednesbury review (Laws LJ in R(Khatun) v Newham [2005] QB 37). It is not unlawful for a regulator to draw on its wider knowledge and experience of a company it regulates in the course of its regulatory assessment.
98. I do not accept Mr Harris' criticism that the ONR's approval was recorded in an unpublished internal document. There is no requirement for publication under REPPiR 19.
99. Ground 2 fails.

The Consequences Report – rationale and provision to the public (Ground 1)

The rationale

100. Part 3 of Schedule 4 REPPiR requires the operator to set out the rationale for its recommendation on the minimum distances for which urgent protective action may need to be taken. There is no definition or further explanation in the Regulations, the ACoP or the guidance as to what the rationale must cover.
101. There is clearly a rationale of some sort in the Consequences Report. Part 3 is headed 'Rationale' and there follows seven paragraphs of text. Paragraph f) of the text explains that the extension of the DEPZ to a minimum radius of 3160m was due to the consideration of the weather conditions that occur for 12% of the time. I reject the Claimants' initial case that there was 'no rationale'. Mr Harris' concession that the rationale is 'at best a partial rationale' was sensible.
102. The question becomes, therefore, whether the rationale is adequate and whether this is a matter for the Court, as Mr Harris submitted, or the local authority decision maker, as the Defendant and Interested Parties submitted.
103. It is now well-established in the context of environmental impact assessment under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, strategic environmental assessment under the Environmental Assessment of Plans and Programmes Regulations 2004 and habitats regulation assessment under the Conservation of Habitats and

Species Regulations 2017, each of which give effect to different European Directives that specify content to be included in an EIA, SEA or HRA respectively, that questions as to the adequacy of the information provided in such documents is a matter for the relevant decision-maker. The various cases were considered most recently by the Divisional Court in R(Plan B Earth) v Secretary of State for Transport [2019] EWHC 1070 (Admin) at § 419-431 and referenced in the Court of Appeal's judgment upholding the Divisional Court's approach ([2020] EWCA Civ 214) at §126 onwards. Moreover, the standard of review by the Court of conclusions reached by the decision-maker in addressing those processes is one of standard Wednesbury rationality (even for HRA under the Habitats Directive where the 'precautionary approach' applies and the Directive imposes substantive, as opposed to merely procedural, processes).

104. As the Divisional Court in Plan B stated in respect of the SEA Directive at §434:

"434. Where an authority fails to give any consideration at all to a matter which it is explicitly required by the SEA Directive to address, such as whether there are reasonable alternatives to the proposed policy, the court may conclude that there has been non-compliance with the Directive. Otherwise, decisions on the inclusion or non-inclusion in the environmental report of information on a particular subject, or the nature or level of detail of that information, or the nature or extent of the analysis carried out, are matters of judgment for the plan-making authority. Where a legal challenge relates to issues of this kind, there is an analogy with judicial review of compliance with a decision-maker's obligation to take reasonable steps to obtain information relevant to his decision, or of his omission to take into account a consideration which is legally relevant but one which he is not required (e.g. by legislation) to take into account ([Secretary of State for Education and Science v Tameside Metropolitan Borough Council [1977] AC 1014, at p.1065B]; [CREEDNZ Inc. v Governor-General [1981] N.Z.L.R. 172; [In re Findlay [1985] A.C. 318, at p.334]; [R. (on the application of Hurst) v HM Coroner for Northern District London [2007] UKHL 13; [2007] A.C. 189, at paragraph 57]). The established principle is that the decision-maker's judgment in such circumstances can only be challenged on the grounds of irrationality (see also [R. (on the application of Khatun) v Newham London Borough Council [2004] EWCA Civ 55; [2005] QB 37, at paragraph 35]; [R. (on the application of France) v Royal London Borough of Kensington and Chelsea [2017] EWCA Civ 429; [2017] 1 WLR 3206, at paragraph 103]; and [Flintshire County Council v Jeyes [2018] EWCA Civ 1089; [2018] ELR 416, at paragraph 14)]..."

105. Having cited the quotation above, the Court of Appeal in Plan B put matters shortly:

"The question here goes not the principle of an appropriate role for the Court in reviewing compliance with [the SEA Directive]. That principle is of course uncontroversial. We are concerned only with the depth and rigour of the Court enquiry. How intense must it be? The answer, we think, must be apt to the provisions themselves..."

106. Turning then to the REPPIR 19 regime: the purpose of the Consequences Report is to assist the local authority in deciding on the boundary of the DEPZ. Like an EIA, SEA or HRA, Regulation 7 of REPPIR 2019 sets out requirements as to what must be included in a Consequences Report. It must include the particulars set out in schedule 4. They include: specified factual information (Part 1); the recommendations as to the proposed minimum geographical extent of the off-site

emergency plan and zone for urgent protective action (Part 2); and the rationales supporting each recommendation made in the Consequences Report (Part 3).

107. The Regulations do not envisage that the Consequences Report is the only source of information for the authority in its decision making. Regulation 7(4) requires the operator to offer a meeting to the local authority to discuss the report. Regulation 7(5) provides that the operator must comply with any reasonable request for information made by a local authority, following receipt of the consequences report. REPPiR 19 guidance suggests the local authority liaise with relevant organisations to identify any issues or improvements to the DEPZ boundaries, including emergency responders; regulators and PHE (§200). Parallel provisions of the SEA regime were considered in the Supreme Court’s decision in Plan B [2020] UKSC 52 which was handed down during the course of the hearing. The Court stated that:

“66. In Cogent Land LLP v Rochford District Council [2012] EWHC 2542 (Admin); [2013] 1 P & CR 2, Singh J held that a defect in the adequacy of an environmental report prepared for the purposes of the SEA Directive may be cured by the production of supplementary material by the plan-making authority, subject to there being consultation on that material (see paras 111-126). He held that articles

4, 6(2) and 8 of the Directive, along with their transposition in the SEA Regulations, are consistent with that conclusion; and that none of the previous authorities on the SEA Directive (which he reviewed) suggested otherwise. He held that SEA is not a single document, still less is it the same thing as the “environmental report”. Rather, it is a process, during the course of which an environmental report must be produced (see para 112). The Court of Appeal endorsed this analysis in No Adastral New Town Ltd v Suffolk Coastal District Council [2015] EWCA Civ 88; [2015] Env LR 28, in deciding that SEA failures in the early stages of an authority’s preparation of its Core Strategy (a statutory development plan) were capable of being, and were in fact, cured by the steps taken in subsequent stages (see paras 48-54). We agree with this analysis.

67. It follows that strategic environmental assessment may properly involve an iterative process; and that it is permissible for a plan-making authority to introduce alterations to its draft plan subject to complying with the information requirements in article 5 and the consultation requirements in articles 6 and 7.”

108. I accept there are differences between the environmental regimes and REPPiR 19. In particular, the local authority is not required to assess the operator’s work and does not have the technical expertise or information to do so. This difference may well assume more prominence in circumstances where the ONR and PHE have not reviewed the work of the operator but that is not this case. Accordingly, I consider that the differences do not, in the circumstances of this case, justify a divergence in the intensity of the review.

109. Even if I am wrong on the parallels between the regimes, the analysis of the Divisional Court in Plan B was rooted in broader public law principles which are applicable to the present case:

“Although any administrative decision-maker is under a duty to take all reasonable steps to acquaint himself with information relevant to the decision he is making in order to be able to make a properly informed decision (Secretary of State for Education and Science v Tameside Metropolitan Borough Council [1997] AC 1014), the scope and content of that duty is context specific; and it is for the decision-maker (and not the court) to decide upon the manner and intensity of inquiry to be undertaken into any relevant factor (R (Khatun) v

London Borough of Newham [2004] EWCA Civ 55; [2005] QB 37 at [35]). Therefore, a decision ... as to the extent to which it considers it necessary to investigate relevant matters is challengeable only on conventional public law grounds."

(R(Jayes) v Flintshire County Council [2018] EWCA Civ 1089 Lindblom LJ said at [14]; referred to by the Court of Appeal in Plan B at [434 above])

110. I do not accept Mr Harris' reliance on the South Bucks v Porter test as to the adequacy of reasons. The Consequences Report is produced as part of a process which leads to the designation of the DEPZ. It is not akin to the grant of planning permission under scrutiny in R(CPRE) v Dover [2018] 1 WLR 108 or the Planning Inspector's decision letter in South Bucks v Porter [2004] 4 All ER 775.
111. Applying the Wednesbury test to the facts of this case, I am not persuaded that the local authority can be said to have acted irrationally in circumstances where (1) the Consequences Report sets out a rationale for the recommended minimum distance; (2) the rationale has been produced by an operator with specialist skills; (3) the rationale has been independently reviewed by ONR who have confirmed that it meets the requirements of REPPiR 19; (4) it has been further independently reviewed by PHE CRCE who have also confirmed it meets the requirements of REPPiR 19; (5) there is no suggestion from the Council that it was not able to carry out its function on the basis of the rationale provided.
112. Mr Harris submitted that one of the main functions of the Consequences Report was to present the conclusions of the Consequence Assessment. He took the Court to a flow diagram in the ACOP (Appendix 2 Figure 8 (c)) and suggested that the tasks set out in the diagram must be performed (or something close to them) in order to produce a transparent rationale for the recommended distance. He pointed to the guidance explaining that for premises where inhalation is the dominant exposure pathway the outdoor effective dose of 7.5mSv can be used as a surrogate for identifying the initial candidate minimum distance for the urgent protective action of sheltering. The rationale, he submitted, simply did not explain how that surrogate dose of 7.5 mSv was translated by AWE into a distance of 3160m on the ground. Where that is on the ground, he said, will depend upon the detailed radiological consequence assessment and calculations required in the Hazard Evaluation and Consequence Assessment. In turn, this would depend on the nature and types of isotopes released; their quantities; the form of the released materials; the nature of the release in terms of the nature of the explosion and explosive distribution and how the isotopes travelled; their speed; release height and building effects, amongst other factors. Nor was it sufficient to simply state that the change in weather conditions relied on since REPPiR 01 was responsible for the extension. The question, he submitted, was why the specific distance of 3160m is justified on the new analysis.
113. In my view Mr Harris' submissions elide the Consequence Assessment and the Consequences Report which are separate documents with different functions under REPPiR 19. The purpose of the Consequences Report is to assist the local authority in designating the boundary. It is not to enable the local authority to review AWE's work. The detail sought by Mr Harris is not necessary for the task of the local authority.
114. I do not accept Mr Harris' criticism that the rationale was too focused on the change in extent of the zone since 2001. There is an explanation of the change but it does not represent the entirety of the rationale. The analysis extends more broadly.
115. Mr Harris pointed to the minutes of a meeting between ONR and AWE on 10 September 2019 which highlights that AWE was working to an earlier version of the ACoP/guidance. He suggested that it showed that AWE had failed to appreciate that later guidance enabled the company to exercise its judgement about the choice of less likely weather conditions. In my view there is nothing unlawful about this ordinary piece of regulatory dialogue and advice. The Court was told during the hearing that ACoP draft versions being produced on a regular basis and there can no legitimate basis for criticism of this. The regulatory dialogue continued with further meetings before the ONR's regulatory assessment in February 2020.

Was the Consequences Report provided as soon as reasonably practicable?

116. The requirement in Regulation 21(10) that the local authority make the Consequences Report available to the public ‘as soon as reasonably practicable’ must be assessed in the context of the Regulations. This timescale appears in several places in the Regulations. Thus, the operator must prepare a Consequences Report “*as soon as reasonably practicable*” on completion of the consequence assessment which must be sent to the local authority “*before the start of any work with ionizing radiation*” (Regulation 7(2)). In the event of a radiation emergency the local authority must assess the situation “*as soon as reasonably practicable in order to respond effectively to the particular characteristic of the radiation emergency*” (Regulation 17(4) & (5)). It is clear that ‘as soon as reasonably practicable’ in the above two examples could vary materially. In the case of the radiation emergency the timescale may need to be minutes. Elsewhere the Regulations are more prescriptive. Thus, the operator must produce the Hazard Evaluation “*before any work with ionizing radiation is carried out for the first time at those premises*” (Regulation 4(1)) and review it within 3 years (Regulation 6(1)). The Consequence Assessment must be completed within two months of completion of the Hazard Evaluation (Regulation 5(2)). Work with ionizing radiation must not be carried out before the production of the emergency plans by the local authority and operator (see Regulation 10(4)).
117. Regulation 21(1) requires the local authority to ensure that members of the public are made aware of relevant information which is said to include basic facts about ionising radiation and the nature of potential emergencies (Schedule 8). Regulation 21(1) does not specify a timescale for the provision of the information. Significantly however; the information required by Regulation 21(1) and the Consequences Report required by Regulation 21(10) is not provided for the purpose of public consultation on the extent of the DEPZ. There is no such requirement in Regulation 21 or elsewhere in the Regulations. In this context, the Consequences Report may be published before finalization of the DEPZ but it need not be.
118. The Consequences Report was sent to the Council on 20 November 2019 and the ONR on 21 November 2019. It was disclosed to the Claimants six months later on 22 May 2020. Mr Travers explained that this timetable was driven by a decision to finalise the DEPZ, the Emergency Plan and a public information booklet before publishing the Consequences Report. This was so as to avoid causing undue alarm or confusion amongst the public. In my judgement, that is a legitimate and rational exercise of the local authority’s discretion on timings under Regulation 21(10). The minutes of a meeting organized by the Council on 18 February 2020 provide evidence for the prudence of this approach:
- “The meeting was emotionally charged for a number of reasons:*
- *Two of the councils had only very recent knowledge of the Burghfield site and learning how some of their residents could be affected in an emergency was alarming.”*
119. I reject therefore Mr Harris’ submission that the Council’s approach in this respect was ‘improper’.
120. No evidence has been put forward to counter the Council’s case that it was not reasonably practicable to finalise the DEPZ; the emergency plan and the public information booklet before May 2020. Mr Harris submits that the failure to inform the Claimants was particularly egregious because they were in weekly contact with the local authority about its proposed development. It is clear from the documents before the Court that both the local authority and Wokingham Borough Council were alive to and concerned about the implications of the DEPZ on the Claimants’ development project. Nonetheless, the Claimants’ commercial aspirations to develop their land are not relevant to the legislative regime.
121. To support his argument, Mr Harris pointed to Articles 76 and 77 of the 2013 Euratom Directive and, in particular, the stipulation in Article 77 which is titled ‘Transparency’ and provides that:
- “Member States shall ensure that information in relation to the justification of classes or types of practices, the regulation of*

radiation sources and of radiation protection is made available to undertakings, workers, members of the public, as well as patients and other individuals subject to medical exposure. This obligation includes ensuring that the competent authority provides information within its fields of competence. Information shall be made available in accordance with national legislation and international obligations, provided that this does not jeopardise other interests such as, inter alia, security, recognised in national legislation or international obligations.”

122. Even before the UK ceased to be an EU Member State, the starting point for any legal analysis was the domestic implementing legislation. In the vast majority of cases that would provide the answer. Only exceptionally in cases where the law was unclear or failed properly to implement the underlying EU instrument was it necessary to look to the latter. The legal developments consequent upon the UK ceasing to be an EU Member State on 31 January 2020 make it even more important that any legal question involving rights or obligations said to be derived from EU law should now be approached in the first instance through the lens of domestic law (Polakowski & Ors v Westminster Magistrates Court & Ors [2021] EWHC Civ 53 at §17 & 18).
123. Article 77 is a broad obligation aimed at the provision of information for the protection of public safety, which is the function of Regulation 21(10). It does not assist the Court with an analysis of the domestic requirement to publish ‘as soon as reasonably practicable’. The Article cannot be equated with any right for the Claimants to make representations to reduce the emergency safety zone, which may be said to necessitate speedier publication. Nor can it be said that the Article has not been implemented properly. The last sentence of the Article makes clear that the transparency obligation is subject to security interests which are at the forefront of REPIR 19 which enables information to be provided to relevant interested parties, as and when appropriate, and in a manner which respects both the relative expertise and competence of those parties, as well as the highly sensitive nature of the information in question.
124. Ground 1 fails.

The Claimants’ Application for Disclosure

125. The Claimants initially sought disclosure of the Hazard Evaluation and Consequence Assessment as a final, rather than an interim, remedy. In his Summary Grounds of Defence, the Secretary of State made clear his resistance to the disclosure of those documents. In their Reply, the Claimants acknowledged, that *“the Hazard Evaluation and Consequence Assessment would ordinarily not need to be disclosed”*, but the disclosure application was maintained, it was said, because the Consequences Report did not contain the required information. The Claimants sought a hearing of the disclosure application ‘promptly’. When granting permission in July 2020 Lieven J left over the question of the Claimants’ disclosure application until after the service of Detailed Grounds of Defence and evidence and made clear that any such application should be made promptly at that stage. The Secretary of State maintained his resistance to disclosure in his Detailed Grounds and Evidence (filed 15 September 2020). The Court has been told that despite repeated requests from the Secretary of State and AWE to make their position clear, the Claimants refused until the disclosure application was renewed by way of application dated 17 November 2020 in which it was proposed that the application be dealt with at the substantive hearing.
126. In oral submissions, Mr Harris explained the Claimants’ position as follows. The primary claim is that the decision should be quashed and the decision remade. In these circumstances disclosure will not be required. If the decision is not quashed then, the information within the Hazard Evaluation and Consequence Assessment dealing with the rationale *“will be hugely important to the Claimants’ proper understanding of the impact on the DEPZ on its land going forward and particularly its deliverability in whole or in part”*.
127. Mr Blundell contends that the Claimants are not entitled to disclosure in principle of either document.

The test for disclosure

128. It is well-established that the position in respect of disclosure in judicial review proceedings is that “disclosure of documents has usually been regarded as unnecessary and that remains the position”: Tweed v. Parades Commission for Northern Ireland [2006] UKHL 53, [2007] 1 AC 650, per Lord Bingham at [2]. The test for disclosure is whether “*disclosure appears to be necessary in order to resolve the matter fairly and justly*”, per Lord Bingham at [3].
129. I am entirely satisfied that disclosure is not necessary to resolve the matter fairly and justly. Mr Harris conceded the point in submissions when stating that disclosure was sought in the event the Court did not quash the decision, on the basis it “*was hugely important to the Claimants’ understanding of the impact of the DEPZ on its land going forward*”. Acceding to an application for disclosure made on this basis would subvert the statutory regime in the Regulations which contain a carefully formulated regime of information disclosure which Parliament has endorsed.
130. In these circumstances the application for disclosure is refused.

Conclusion

131. For the reasons set out above the claim fails and the application for disclosure is refused.

APPENDIX 2

**Appeal Decision at Kingfisher Grove Three Mile Cross, Reading
(Planning Inspectorate reference: APP/X0360/W/22/3304042)**



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 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	<i>Appellant's Landscape and Visual Impact Assessment</i> , April 2020.
CD 5.1	<i>Adopted Core Strategy Development Plan Document</i> (2010).
CD 5.3	<i>Adopted 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</i> , Kings Lynn & West Norfolk BC, 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 3

**Appeal Decision at 1-9 Shyshack Lane, Baughurst
(Planning Inspectorate reference: APP/H1705/W/23/3326959)**



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 4

**AWE's Statement of Facts and Grounds submitted in support of its application
for planning statutory review under section 288 of the Town and Country
Planning Act 1990**

IN THE HIGH COURT OF JUSTICE

CLAIM NO:

KING'S BENCH DIVISION

PLANNING COURT

**APPLICATION FOR PLANNING STATUTORY REVIEW UNDER SECTION 288 OF
THE TOWN AND COUNTRY PLANNING ACT 1990**

B E T W E E N

AWE PLC

Claimant

-and-

SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES

Defendant

-and-

(1) T A FISHER & SONS LIMITED

(2) WEST BERKSHIRE DISTRICT COUNCIL

(3) OFFICE FOR NUCLEAR REGULATION

(4) SECRETARY OF STATE FOR DEFENCE

Interested Parties

STATEMENT OF FACTS AND GROUNDS

Due to the size of the Claim Bundle exceeding 20MB, the Claim Bundle has been split into a Core Claim Bundle and a Supplementary Claim Bundle in accordance with Annex 7 of the Administrative Court Judicial Review Guide 2023.

References in the form [CCB/XX/YY] are to the Core Claim Bundle, with XX denoting the document/tab and YY denoting the page number within the bundle. References in the form [SCB/XX/YY] are to the Supplementary Claim Bundle, again with XX denoting the document/tab and YY denoting the page number within the bundle.

References to DL/X are to paragraphs in the Inspector's Decision Letter

Recommended Essential Reading: [CCB/3/45-46]

Introduction

1. This is an application for planning statutory review brought under section 288 of the Town and Country Planning Act 1990 ("TCPA 1990") by AWE Plc against the decision dated 8 August 2023 of the Defendant ("the SoS") allowing an appeal under section 78 TCPA 1990

by the First Interested Party (“**T A Fisher**”) against the refusal of the Second Interested Party (“**WBDC**”) to grant planning permission for the erection of 32 dwellings including affordable housing, parking and landscaping (“**the Scheme**”) on land to the rear of The Hollies, Reading Road, Burghfield Common, Reading RG7 3BH (“**the Appeal Site**”). The SoS granted planning permission for the Scheme, subject to conditions (“**the Decision**”)¹.

2. The Claimant (“**AWE**”) is an arm’s length Non-Departmental Public Body wholly owned by the Ministry of Defence (“**MOD**”) (the Fourth Interested Party). The MOD is responsible for, amongst other matters, delivering the continuous-at-sea nuclear deterrent which is critical to the defence of our nation. AWE plc is responsible for delivering the whole life-cycle of nuclear warheads and plays a critical part in this role. Further information about AWE and MOD is set out below.
3. AWE and MOD were interested parties to the planning appeal that is the subject of this proposed claim pursuant to Rule 6(6) of the Town and Country Planning (Inquiries Procedure) Rules 2000. Further, the planning inspector acting on behalf of the SoS, (“**the Inspector**”) concluded that granting consent for the Scheme would have an effect on AWE (see **DL/38**)². AWE is therefore a person aggrieved under s.288(1) Town and Country Planning Act 1990.

Grounds of Challenge

4. In summary, the challenge is brought on four grounds (set out in more detail below):
 - a. Ground 1: The Inspector failed to understand or take into account ONR’s specialist technical evidence/advice as an expert statutory consultee or failed to give legally adequate reasons, for disagreeing with it.
 - b. Ground 2: The Inspector erred in law by misinterpreting policy CS8 and therefore failed to apply the presumption against residential development in the Detailed Emergency Planning Zone around AWE B.
 - c. Ground 3: The Inspector erred in law in respect of the assessment of the adequacy of the Offsite Emergency Plan.

¹ [CCB/4/47-66]

² [CCB/4/54]

- d. Ground 4: The Inspector took into account irrelevant considerations and/or failed to take into account relevant considerations or failed to provide proper reasons in his assessment of the impact of the Scheme on AWE and on the public.

Background to the Claim

AWE and MOD

5. AWE is the operator of two licensed nuclear sites at Aldermaston (“**AWE A**”) and Burghfield (“**AWE B**”) and is responsible for the delivery of the whole life-cycle of nuclear warheads from concept design to disassembly. MOD is the landowner of AWE A and AWE B and also the owner of AWE and is responsible for delivering the nation’s continuous-at-sea-deterrent. AWE A and B are the only locations in the UK that can provide these capabilities. A continuous-at-sea deterrent is essential as the ultimate guarantee of the nation’s security.³
6. In addition to current operations, AWE is undergoing a programme of investment and change, including new-build facilities and refurbishment which seeks to consolidate, rationalise and modernise existing facilities. Now and in the future, AWE requires flexibility to be able to meet the needs of the MOD.⁴
7. The Secretary of State for Defence has overall responsibility for MOD, including defence nuclear operations. Within MOD, the Defence Nuclear Organisation (“**DNO**”) is responsible for delivering nuclear capability to deter the threat and protect the nation. The DNO sponsors the “defence nuclear enterprise”, which includes the delivery of the UK’s nuclear warheads, submarine capability, nuclear skills, defence nuclear infrastructure and day-to-day defence nuclear policy. The DNO is the MOD customer for the strategic capabilities provided by AWE.
8. AWE is regulated by, among others, the Office for Nuclear Regulation (“**ONR**”) (the Third Interested Party) through two nuclear site licences (one for each site) issued under the Nuclear Installations Act 1965. ONR is also the health and safety regulator under the Health and Safety at Work etc. Act 1974.

³ MOD, Person MD at para 3.2. [SCB/13/551]

⁴ MOD, Person MD at para 5.1 [SCB/13/552-553]

The Radiation (Emergency Preparedness and Public Information) Regulations 2019

9. AWE is required to meet the operator requirements of the Radiation (Emergency Preparedness and Public Information) Regulations 2019 (“**REPPIR 2019**”).⁵ REPPIR 2019 and its predecessor regulations REPPIR 2001 set out requirements for emergency planning around premises where work with ionising radiation takes place (subject to some exceptions which are not relevant to this claim).⁶ REPPIR 2019 requires operators to carry out a hazard evaluation in order to identify hazards which have the potential to cause a “radiation emergency”⁷ and, where such hazards are identified, the local authority is required to designate a detailed emergency planning zone (“**DEPZ**”) and have in place an off-site emergency plan (“**OSEP**”).
10. AWE is an operator under REPPIR 2019. It therefore has a duty to identify the hazards arising from working with ionising radiation which have the potential to cause a radiation emergency and to advise WBDC of the same. That assessment is known as the Hazard Evaluation and Consequence Assessment (“**HECA**”). Pursuant to the requirements of REPPIR 2019 it includes identifying hazards which are less likely, but have greater consequences.⁸ The output of the HECA is communicated to WBDC via the Consequences Report⁹. This provides a recommendation of the minimum distance from AWE’s sites for urgent protective action (“**UPA**”).
11. REPPIR 2019 requires the local authority, WBDC, to designate a DEPZ around AWE B¹⁰. This cannot be smaller than the minimum UPA distance in the Consequences Report. WBDC must have in place an OSEP to mitigate the off-site effects of an emergency¹¹,

⁵ [SCB/35/939-1063]

⁶ See Regulation 3 REPPIR 2019 [SCB/35/946].

⁷ Defined in REPPIR 2019 as: “a non-routine situation or event arising from work with ionising radiation that necessitates prompt action to mitigate the serious consequences—

- (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;”

⁸ See Regulation 5 [SCB/35/949] and Schedule 3 REPPIR 2019 [SCB/35/1008-1017].

⁹ See Regulation 7 [SCB/35/951].

¹⁰ See Regulation 8 [SCB/35/952]

¹¹ See Regulation 11 [SCB/35/956-957].

having regard to the need, so far as possible, to avoid the occurrence of serious physical injury.¹²

12. An OSEP is fundamental. If no OSEP plan is in place where one is required, or if the OSEP is inadequate, regulation 10(4) of REPPIR 2019 prohibits the operator (in this case AWE) from working with ionising radiation.
13. The effect of regulation 10(4) is that if the OSEP were to be found inadequate, AWE would need to limit or cease its operations, which would prevent it from fulfilling its essential role in the delivery of continuous at sea nuclear deterrent.
14. REPPIR 2019 introduced a number of changes from REPPIR 2001. This was in order to reflect a more precautionary approach to assessing the likelihood and consequences of a radiological emergency. The changes to the regulations arose from lessons learnt after the meltdown of three reactors at the Fukushima Daiichi nuclear power plant in Japan in March 2011 and other changes to international nuclear regulation. Those changes include: (1) a requirement to assess faults that are less foreseeable but with more significant consequences and to include a range of weather conditions in the assessment; and (2) a change in responsibility for deciding the extent of the geographical zone in which it is proportionate to plan for protective action from the ONR or Health and Safety Executive to the local authority.
15. The combined effect of these changes was to significantly expand the DEPZ around AWE B (from a radius of 1600m to 3160m), with a consequent population increase within the DEPZ in terms of existing homes already built from 89 residential properties under REPPIR 2001 to 7,738 residential properties under REPPIR 2019¹³. The expanded DEPZ has therefore in and of itself set a far more challenging environment for the creation of an adequate OSEP.
16. The DEPZ was set by WBDC on 12 March 2020. The process for designating the DEPZ around AWE B was found to be lawful by the High Court in *Crest Nicholson Operations Ltd v West Berkshire DC* [2021] EWHC 289 (Admin).¹⁴

¹² See Regulation 1 [SCB/35/940].

¹³ WBDC, Richardson at paras 6.16-6.6.17 [SCB/6/96-98]

¹⁴ [SCB/43/1084-1112]

17. The Appeal Site is located approximately 2km from AWE B and it is well within the DEPZ designated under REPPiR 2019. Under REPPiR 2001 it previously lay outside of the area where detailed emergency planning was required; but as of March 2020 it is situated well within the applicable DEPZ for which an adequate OSEP must exist.

The ONR

18. The ONR is the UK's independent nuclear regulator for safety, security and safeguards. Its mission is to protect society by securing safe nuclear operations. As the regulator of nuclear sites, ONR is required to enforce the provisions of REPPiR 2019.

19. The adequacy of the OSEP for a DEPZ is therefore a health and safety matter for ONR. ONR is the statutory regulator who determines if the OSEP is adequate or not.

The OSEP for this area

20. WBDC has in place an OSEP for the DEPZ around AWE B. This plan was produced following the changes brought about by REPPiR 2019¹⁵.

21. The OSEP is a critical component of the "defence in depth"¹⁶ approach to nuclear safety. It is one of a number of safety measures around AWE B: (1) to ensure that the risk of a radiation emergency is tolerable and as low as reasonably practicable; and (2) to minimise and mitigate any harm to the public in the event that a radiation emergency should occur. Failures or weaknesses in the OSEP cannot be compensated for through other areas of protection.¹⁷

22. The OSEP is a set of arrangements that must reflect local conditions and changing circumstances. Notwithstanding the focus of the Inspector's DL and the developer's approach, REPPiR 2019 does not solely focus on planning for the health effects of a radiological emergency (exposure to radiation). Its remit is significantly wider and it

¹⁵ [SCB/6/158-398]

¹⁶ Defence in Depth involves five layers of protection: (1) prevention of abnormal operation and failures, (2) control of abnormal operation and detection of failures, (3) control of accidents within the design basis, (4) control of severe plant conditions including prevention of accident progression and mitigation of the consequences of severe accidents and (5) mitigation of radiological consequences of significant releases of radioactive materials. See AWE, Person AW at para 10.7 [SCB/14/577]

¹⁷ ONR, Rogers at para 21 [SCB/8/434]

includes wider health risks including psychological impact, consequential injuries, economic consequences and social and environmental factors.¹⁸

23. For AWE B, the relevant exposure pathways for radiation within the DEPZ include inhalation of suspended plutonium particles, short term external irradiation during the passage of the plume, long term inhalation after resuspension and long term external irradiation from ground contamination by the initial plume and ingestion of contaminated foods.¹⁹
24. The OSEP provides for an initial response to a radiation emergency at AWE B which involves alerting the public via an automatic telephone alerting system and advising everyone within the DEPZ to go inside and shelter for a period of up to two days. The initial alert would be for the whole DEPZ because the exact area affected would not be known until monitoring had been undertaken. Under certain weather conditions there is approximately 15 minutes from the time of the incident taking place for the Site Response Group to activate and the public to be informed. There is then only 10 minutes for the public to find and access suitable shelter for there to be a benefit from sheltering.
25. The OSEP also provides for immediate evacuation for those premises close to AWE B. and for subsequent evacuation as necessary to, among other things, facilitate the recovery process. The OSEP governs the response in the first days of the radiation emergency, after which point national structures take over, regulated by the Civil Contingencies Act 2004 and other legislation.
26. The emergency planning process required by REPIR 2019 includes preparation, testing and review of the OSEP with statutory tests taking place at least every three years.²⁰
27. It is important to note that the OSEP and ONR's assessment of its adequacy only takes account of development and consequently residential dwellings that already exist. It does not take account of committed development (ie that which has already been consented) but which has not yet been built. That committed development can, of course, be constructed at any time so increasing the burdens on the OSEP. Despite this point (and its significance for the testing that had taken place showing an already stretched OSEP) being made clear

¹⁸ ONR, Ingham at para 13 [SCB/9/444-445], ONR Statement of Case at para 61 [SCB/5/69]

¹⁹ Consequences Report [SCB/6/132-139]

²⁰ ONR, Ingham at para 16 [SCB/9/445]; WBDC, Richardson at paras 6.20-6.21 [SCB/6/99]

in the evidence, it appears not to have been understood or properly taken into account in the Inspector's DL and his understanding of the limits of the OSEP.

28. Between 11 May 2021 and 15 February 2022 WBDC conducted a series of modular exercises which collectively formed the first statutory test of the new OSEP for existing development. These tests identified several areas requiring improvement including: (1) arrangements for people monitoring and associated decontamination; (2) arrangements relating to evacuation holding areas for displaced persons awaiting monitoring; (3) arrangements for managing the numbers and scale of displaced people, both those outside the DEPZ unable to return home and inside the DEPZ who require evacuation; and (4) arrangements for managing those who self-evacuate, including ensuring they undergo appropriate monitoring and decontamination.²¹
29. It will be readily apparent that these areas are particularly sensitive to population increases that may occur within the DEPZ.²²
30. A further test was carried out in April 2023 (ALDEX-23) which identified similar issues that were evident during the 2022 exercises.²³

WBDC's Planning Decision

31. T A Fisher submitted its application for planning permission for the Scheme on 31 January 2022. AWE and the MOD objected to the Scheme and made representations to WBDC in light of the DEPZ and the effect of adding further residential development into the area with the consequences for the OSEP.
32. The Emergency Planning Department of WBDC recommended refusal on the basis that public safety would be compromised as a result of the increase in population within the DEPZ.
33. The ONR also advised against granting permission on the basis that WBDC had not confirmed that the OSEP could accommodate the additional development. That remains the case to date.

²¹ ONR, Statement of Case at para 38 [SCB/5/64]

²² ONR, Statement of Case at para 39 [SCB/5/64]

²³ ONR, Ingham at para 25 [SCB/9/446-447]

34. WBDC refused planning permission on 1 June 2022²⁴. WBDC gave three reasons for refusal. The first reason (failure to meet affordable housing requirements) was resolved during the course of the Inquiry. The third reason for refusal related to the loss of trees subject to a TPO with which the Claimant is not directly concerned. The second reason for refusal occupied the majority of the evidence and submissions at the Appeal and is a matter of fundamental concern to the Claimant:

“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 HSADPD. Policy CS8 in the WBCS of 2006-2026 notes that [inter alia] within the inner zone, in order to be consistent with ONR advice, nearly all new as the additional residential 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 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”.

The Appeal

35. The Appeal proceeded by way of a planning inquiry (“**the Inquiry**”) which took place between 6 June 2023 and 14 June 2023, with the first four days taking place at WBDC’s offices and the final two days taking place virtually.

36. AWE and MOD applied for Rule 6 party status in the Appeal. This was granted on 3 April 2023. The ONR also applied for and was granted Rule 6 party status. AWE, MOD and the ONR all submitted evidence to the Inquiry and were represented by counsel. The Appeal was the first planning Inquiry relating to residential development within a DEPZ where the

²⁴ [CCB/5/67-70]

ONR has taken part (see ONR closing submissions²⁵). It is also the first time AWE and MOD have attended a planning inquiry to object to proposals near AWE and submit their own evidence.²⁶

Some of the Evidence at the Appeal

Effect of the Scheme Adequacy of the OSEP

37. The evidence to the Inquiry from the ONR was that the question of adequacy of the OSEP is binary: either it is adequate or it is not.²⁷ The ONR also advised that the OSEP is not infinitely scalable and there are “*real world constraints which limit the capability and capacity of the agencies that make up the emergency response.*”²⁸
38. WBDC and ONR’s evidence was that the expansion of the DEPZ in 2020 had caused a step change in the complexity of the OSEP and increased challenges in its implementation.²⁹ In light of the significant population increases, emergency responders would be under “*exceptional pressure*”.³⁰
39. Although the ONR’s position was that the OSEP is currently adequate, this was based on existing development in the DEPZ only (not committed development or the addition of further development such as that being proposed) and its position that the OSEP should not be subject to continual increase in burden. The ONR’s conclusion was that the OSEP was already stretched. Moreover, it already required improvement in areas that would inevitably be likely to be sensitive to population increases.³¹ The ONR was clear at the Inquiry that its consideration of the existing adequacy of the OSEP did not take into account development that had been consented but not yet built out. It was in this context that the ONR identified that incremental increases in population density were a matter of concern and the OSEP already faced a real challenge in remaining adequate simply in light of the

²⁵ [SCB/30/863-866]

²⁶ AWE and MOD’s witnesses were granted anonymity by the Inspector in light of national security concerns (Person AW and Person MD respectively). This was also the approach adopted by the Court in respect of AWE’s evidence in *Crest Nicholson*. The AWE and MOD witnesses attended the Inquiry in person and gave evidence in open session.

²⁷ ONR, Closing submissions at para 8 [SCB/30/864]

²⁸ ONR, Closing Submissions at para 9 [SCB/30/864]

²⁹ ONR, Statement of Case at para 36 [SCB/5/64]

³⁰ WBDC, Richardson at para 7.15 [SCB/6/103]

³¹ ONR, Ingham at para 27 [SCB/9/447]

already increasing burden of developments with consent. The ONR noted that WBDC had also identified the serious challenge to the adequacy of the OSEP from committed developments and the ONR agreed with that assessment. All of that was without the increased pressures from additional development then being proposed by the appeal scheme.

40. Both the ONR and WBDC's evidence was that the OSEP was sensitive to population increases and the finite resources of emergency responders. In particular, WBDC's witness described the difficulty with setting up and resourcing rest centres.³² WBDC's evidence was that the increase of 77 individuals from the Appeal Site would add to the response and recovery requirements on top of those catering for the existing community.³³

41. Thus the ONR's position in closing submissions was:

“The OSEP is stretched. It is presently subject to recommendations from the ONR arising out the statutory test in 2022 some of which relate to population density in DEPZ. The ONR's preliminary observations following ALDEX 23 in April were that there are further areas of improvement which the Council will be required to address in due course. As has been identified, there are a number of committed planning permissions which remain to be built out, and other significant sites within the DEPZ which require particular consideration in the OSEP. Incremental increases in population density are a matter of concern to ONR: the OSEP faces a real challenge in respect of remaining adequate in light of the already increasing burden of developments with consent. The Council explained its concern that the committed developments are already a serious challenge to adequacy. The ONR agrees with that assessment.”

The Evidence on Radiological Health Effects at the Appeal Site

42. T A Fisher presented to the Inquiry an analysis of the risk of individuals at the Appeal Site suffering radiological health effects in the event of a radiological emergency originating from AWE B.³⁴ That analysis sought to demonstrate that based on the low likelihood of a radiological event occurring it was unlikely that residents at the Appeal Site would be exposed to a material dose of ionising radiation (through inhalation of plutonium particles) and that they would be able to break shelter within an hour or two of the alarm being raised and would not have to shelter in place for the two day period envisaged by the OSEP.

³² WBDC, Richardson at para 9.10 [SCB/6/116]

³³ WBDC, Richardson at paras 9.27-9.28 [SCB/6/120-121]

³⁴ T A Fisher Pearce [SCB/11/466-517]

43. AWE and MOD challenged the relevance of T A Fisher’s evidence on radiological health effects on the basis that the “low risk” argument was irrelevant to the requirements of REPPIR 2019 or the operation of the OSEP. By the end of the Inquiry it was agreed that the risk to individuals at the Appeal Site was not relevant to the adequacy of the OSEP or to the way in which it would be operated in the event of a radiation emergency.

The Evidence on other impacts arising from a radiation emergency

44. AWE’s evidence to the Inquiry was that the OSEP only deals with the first two days after the emergency. After that, there is a much longer period of recovery. Increasing the population within the DEPZ adds further individuals who may suffer the psychological effects of a radiation emergency (which are documented and were not in dispute in the Inquiry), more buildings to decontaminate and extended disruption to normal living and burdens on public authorities.³⁵

The Evidence on the impact on AWE’s Operations

45. AWE presented evidence to the Inquiry that increasing the population within the DEPZ has the potential to affect the continuous-at-sea-deterrent because, if there is increased pressure on the adequacy of the OSEP as a result of increased population, AWE’s regulators may impose additional requirements or restrictions on AWE’s operations. If WBDC cannot demonstrate to the ONR that it has an adequate OSEP, AWE would be unable to work with ionising radiation.³⁶ However, even before this point, AWE’s evidence was that as a responsible operator it may self-limit operations, affecting its ability to support the continuous-at-sea-deterrent.³⁷

46. Person AW’S evidence to the Inquiry was:

“AWE B is the only site in the UK that can provide the capabilities for the assembly, disassembly, handling and storage of nuclear warheads for the nation’s nuclear deterrent. AWE B needs flexibility to be able to develop, expand and/or change its activities in response to MOD requirements for supporting [continuous-at-sea-deterrent] CASD. Increasing the population within the DEPZ can affect this support to CASD in 3 ways:

³⁵ AWE, Person AW at paras 10.13-10.20 [SCB/14/578-581]

³⁶ REPPIR regulation 10(4)(b) [SCB/35/954]

³⁷ AWE, Person AW Rebuttal at para 4.2 [SCB/23/778]

11.2.1 Increasing the risk of adversely affecting current licensable activities. A population increase carries a significant risk that regulatory permissions would be subject to future restrictions which may limit AWE's operations. In particular, if further residential development meant that WDBC could not demonstrate to ONR that it had an adequate off-site emergency plan, then under Regulation 10(4) of REPPIR 2019 [CD 13.7] AWE would be unable to continue to carry out work with ionising radiation, preventing AWE's ability to meet MOD's requirements in support of CASD."

11.2.2 AWE being refused planning permission and/or other operating consents resulting in a limitation to its future operations. In order for AWE to meet MOD's future requirements it is likely there will be a need to amend, expand and develop operations at AWE B. There is a risk that future operational changes could be deemed to be unacceptable given a larger population in the vicinity of AWE B and required permissions, licence amendments and other consents refused. Given AWE B is the only site in the UK permitted to assemble, disassemble, handle and store nuclear warheads, preventing AWE's ability to obtain future operational permissions and consents would threaten the delivery of CASD.

11.2.3 An increase to the risk of public challenge or complaints against AWE's operations."

47. T A Fisher sought to counter this evidence by referring to the provision in REPPIR 2019 which gives a power to the Secretary of State to grant an exemption from REPPIR 2019. However, in a rebuttal proof of evidence, Person MD explained that exemptions are governed by specific Health and Safety policies within the MOD which seek to ensure that: (1) the MOD complies with all Health and Safety and Environmental Protection legislation; and (2) where the MOD has derogations, exemptions or disapplications from Health and Safety legislation, there are policies and procedures in place which ensure that the outcomes are, as far as reasonably practicable, at least as good as those required by UK legislation.³⁸ Person MD explained that, in the context of REPPIR 2019 this meant that:

"Put simply, if the Secretary of State for Defence was indeed minded to exempt AWE Burghfield from the legal requirements of REPPIR and a corresponding DEPZ, then MOD would be required to replace these regulations with an 'at least as good' Defence arrangement. Thus, should the population within the DEPZ continue to grow, then a Defence exemption would not mitigate the potential risks to AWE Burghfield's operations, as Dr Pearce proposes."³⁹

³⁸ MOD, Person MD Rebuttal at para 3.3 [SCB/24/820]

³⁹ MOD, Person MD Rebuttal at para 3.6 [SCB/24/820-821]

48. Again this evidence and basic point is not addressed by the Inspector in his DL (as set out below) when purporting to rely upon this power in his reasoning.

The Inspector's Decision

49. By way of a DL dated 8 August 2023⁴⁰, the Inspector allowed the Appeal and granted planning permission for the Scheme. In summary, he found that the Scheme did not comply with the adopted Development Plan but that nonetheless the benefits in terms of delivering affordable housing outweighed the conflict with the Development Plan and other harms. The Inspector further relied on the fact that the Appeal Site had the benefit of an allocation for residential development as a reason to grant permission, notwithstanding the fact that he had found an overall conflict with the Development Plan. Relevant passages of the Inspector's DL are set out under each ground below.

Pre-Action Correspondence

50. On 4th September 2023 AWE and MOD sent a pre-action letter to the Defendant setting out the proposed grounds of challenge⁴¹. The Defendant's legal advisers have responded to confirm that they will not be responding to the pre-action letter but will respond to the Statement of Facts and Grounds if a claim is made⁴².

Legal Framework

Challenges to Inspector's Decisions

51. The principles applicable to challenges under s.288 TCPA 1990 are well-established (see *St Modwen v SSCLG* [2017] EWCA Civ 1643 at 6):

"6. In my judgment at first instance in Bloor Homes East Midlands Ltd. v Secretary of State for Communities and Local Government [2014] EWHC 754 (Admin) (at paragraph 19) I set out the "seven familiar principles" that will guide the court in handling a challenge under section 288. This case, like many others now coming before the Planning Court and this court too, calls for those principles to be stated again – and reinforced. They are:

"(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on

⁴⁰ [CCB/4/47-66]

⁴¹ [CCB/7/78-96]

⁴² [CCB/8/97-99]

those issues. An inspector does not need to "rehearse every argument relating to each matter in every paragraph" (see the judgment of Forbes J. in *Seddon Properties v Secretary of State for the Environment* (1981) 42 P. & C.R. 26, at p.28).

(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the "principal important controversial issues". An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council and another v Porter* (No. 2) [2004] 1 W.L.R. 1953, at p.1964B-G).

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, "provided that it does not lapse into *Wednesbury* irrationality" to give material considerations "whatever weight [it] thinks fit or no weight at all" (see the speech of Lord Hoffmann in *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 W.L.R. 759, at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision (see the judgment of Sullivan J., as he then was, in *Newsmith v Secretary of State for Environment, Transport and the Regions* [2001] EWHC Admin 74, at paragraph 6).

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in *Tesco Stores v Dundee City Council* [2012] P.T.S.R. 983, at paragraphs 17 to 22).

(5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question (see the judgment of Hoffmann L.J., as he then was, *South Somerset District Council v The Secretary of State for the Environment* (1993) 66 P. & C.R. 80, at p.83E-H).

(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J. in *Sea Land Power & Energy*

Limited v Secretary of State for Communities and Local Government [2012] EWHC 1419 (QB), at paragraph 58).

(7) *Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises (see, for example, the judgment of Pill L.J. in Fox Strategic Land and Property Ltd. v Secretary of State for Communities and Local Government* [2013] 1 P. & C.R. 6, at paragraphs 12 to 14, citing the judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment* [1992] 65 P. & C.R. 137, at p.145)."

Interpretation of planning policy

52. The proper interpretation of planning policy is a question of law for the court: *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13. The principles were recently re-stated by the Court of Appeal in *Corbett v Cornwall Council* [2022] EWCA Civ 1069 at 19:

"(1) Ascertaining the meaning of a development plan policy is, ultimately, a matter of law for the court, whereas its application is for the decision-maker, subject to review on public law grounds (see the judgment of Lord Carnwath in Hopkins Homes Ltd. v Secretary of State for Communities and Local Government [2017] UKSC 37; [2017] 1 WLR 1865, at paragraphs 22 to 26). *The interpretation of planning policy should not, however, be approached with the same linguistic rigour as the interpretation of a statute or contract. Local planning authorities "cannot make the development plan mean whatever they would like it to mean" (see the judgment of Lord Reed in Tesco Stores Ltd. v Dundee City Council* [2012] UKSC 13; [2012] PTSR 983, at paragraphs 17 to 19). *But as was said in this court in R. (on the application of Corbett) v Cornwall Council* [2020] EWCA Civ 508 (at paragraph 66), "the professional officers of a local planning authority, and members who sit regularly on a planning committee, will not often be shown to have misinterpreted the policies of its development plan".

(2) In seeking to establish the meaning of a development plan policy, the court must not allow itself to be drawn into the exercise of construing and parsing the policy exhaustively. Unduly complex or strict interpretations should be avoided. One must remember that development plan policy is not an end in itself but a means to the end of coherent and reasonably predictable decision-making in the public interest, and the product of the local planning authority's own work as author of the plan. Policies are often not rigid, but flexible enough to allow for, and require, the exercise of planning judgment in the various circumstances to which the policy in question applies. The court should have in mind the underlying aims of the policy. Context, as ever, is important (see Gladman Developments Ltd. v Canterbury City Council [2019] EWCA Civ 699, at paragraph 22, and *Braintree District Council v Secretary of State for Communities and Local Government* [2018] EWCA Civ 610, at paragraphs 16, 17 and 39).

(3) The words of a policy should be understood as they are stated, rather than through gloss or substitution. The court must consider the language of the policy itself, and avoid the seduction of paraphrase. Often it will be entitled to say that the policy means what it says and needs little exposition. As Lord Justice Laws said in Persimmon Homes (Thames Valley) Ltd. v Stevenage Borough Council [2005] EWCA Civ 1365 (at paragraph 24), albeit in the context of statutory interpretation, attempts to elicit the exact meaning of a term can "founder on what may be called the rock of substitution – that is, one would simply be offering an alternative form of words which in its turn would call for further elucidation".

Determination of Planning Applications

53. Section 38(6) Planning and Compulsory Purchase Act 2004 in conjunction with section 70(2) of the TCPA 1990 provides that if regard is to be had to the Development Plan, the decision-maker must decide the application in accordance with the Development Plan unless material considerations indicate otherwise.
54. The Development Plan has a statutory authority which must be recognised by the decision-maker (*City of Edinburgh Council v Secretary of Scotland* [1997] 1 WLR 1447 at 1458). This is not a simple weighting of the requirements of the plan against material considerations – the starting point is the plan which receives priority (*South Northamptonshire Council v SSCLG* [2013] EWHC 11 at 20).
55. The decision-maker is required to reach a conclusion as to whether or not the proposal accords with the development plan as a whole. There is no prescribed method for doing so but he must decide at some stage whether the proposal does or does not accord with the plan (see *R (oao Wyatt) v Fareham BC* [2022] EWCA Civ 983 at 79-80).

Advice from expert bodies / Statutory Consultees

56. The views of expert bodies and statutory consultees play an important role in planning decisions. The general position is that their views should be given “great” or “considerable” weight in planning decisions and any departure from their views should be explained by cogent and compelling reasons (see *R (Akester) v Department for Environment, Food and Rural Affairs* [2010] Env. L.R. 33 at 112, *Wyatt* at 141 and *R (ota Mynnyd Y Gwynt Ltd) v*

Secretary of State for Business Energy and Industrial Strategy [2018] EWCA Civ 231 at 8).

57. In *R (on the application of Together against Sizewell C) v Secretary of State for Energy Security and Net Zero* [2023] EWHC 1526, Mr Justice Holgate referred to and endorsed the above principles. He further held that: (1) even when disagreeing with the views of an expert body, the relevant standard to apply in assessing the adequacy of reasons given is that set out in *Save Britain's Heritage v Number 1 Poultry Limited* [1991] 1 WLR 153 and *South Bucks District Council v Porter (No.2)* [2004] 1 WLR 257; (2) the level of reasoning required when a decision maker disagrees with an expert body depends whether that view is “*an unreasoned statement or assertion, or a conclusion which is supported by an explanation and/or evidence.*” (at 106-108).

Grounds of Challenge

Ground 1: The Inspector failed to understand or properly take into account ONR's evidence/advice or failed to give legally adequate reasons, for disagreeing with it.

58. WBDC was required to consult the ONR about the application pursuant to paragraph 45 National Planning Policy Framework (“NPPF”)⁴³:

“Local planning authorities should consult the appropriate bodies when considering applications for the siting of, or changes to, major hazard sites, installations or pipelines, or for development around them”

59. “Major hazard sites” are defined in the NPPF glossary as:

“Sites and infrastructure, including licensed explosive sites and nuclear installations, around which Health and Safety Executive (HSE) (and Office for Nuclear Regulation) consultation distances to mitigate the consequences to public safety of major accidents may apply”

60. Policy CS8⁴⁴ of the WBDC Core Strategy also required consultation with the ONR. Further, the ONR is a statutory consultee for development such as the Scheme pursuant to paragraph

⁴³ [SCB/38/1069]

⁴⁴ [SCB/36/1064-1066]

18 and Schedule 4 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

61. The National Planning Practice Guidance (“NPPG”) on Hazardous Installations further provides that local planning authorities should consult the ONR where they have been informed of consultation zones.⁴⁵
62. The ONR is the expert statutory regulator of AWE and WBDC under REPPIR 2019. It is in the same position as other expert regulators, for example Natural England giving advice in respect of the Habitats Regulations. Its advice and opinions should be given considerable weight unless there is good reason not to (see *Wyatt* at 139 and 141) and cogent reasons are provided (*R (ota Mynnyd Y Gwynt Ltd) v Secretary of State for Business Energy and Industrial Strategy* [2018] EWCA Civ 231 at 8).
63. On 13 August 2021, the ONR wrote to the Chief Executive Officer of WBDC’s Planning Team and Emergency Planning Teams to advise of a change in approach to applications for development within the DEPZ.⁴⁶ The letter stated:

“ONR considers that a change is needed in its approach to proposed developments in the DEPZs and OCZs of the AWE nuclear sites. The reasons for this are outlined below:

- *The size of the AWE Burghfield DEPZ has substantially increased because of a redetermination prompted by REPPIR19 coming into force, significantly increasing the population that must be accommodated in the AWE Burghfield detailed off-site emergency plan.*
- *The significant demographic challenge around AWE nuclear sites has been intensified by the cumulative effects of developments granted planning permission in the DEPZs and OCZs over many years.*
- *The off-site emergency plans, produced following REPPIR19 coming into force, are due to be tested for the first time in 2021 and therefore the safety claims within the plans have yet to be adequately demonstrated; and*
- *The volume of planning applications being made in DEPZs and OCZs remains high.*

...

⁴⁵ <https://www.gov.uk/guidance/hazardous-substances#Handling-development-proposals-around-hazardous-installations> This section of the NPPG also provides that, for COMAH sites, advice from the COMAH competent authority that planning permission should be refused should not be overridden without the most careful consideration. AWE B is not presently a COMAH site. [SCB/42/1077-1083]

⁴⁶ [SCB/1/6-8]

...ONR is, in accordance with its Land Use Planning arrangements, likely to advise against any proposed development in [the DEPZ and OCZ] where the proposed development meets our consultation criteria and ONR has not received adequate assurance from the emergency planners that the development can be accommodated in the off-site emergency plan.”

64. The ONR’s land use planning policy⁴⁷ provides that:

*“ONR will state that it **does not advise against** the proposed development on planning grounds if, in its opinion, the following statements apply:*

- the local authority emergency planners, if consulted, have provided adequate assurance that the proposed development can be accommodated within their existing off-site emergency planning arrangements (or an amended version); and*
- the development does not represent an external hazard to a nuclear site or the planning function for the site that may be affected by the development has demonstrated that it would not constitute a significant hazard with regard to safety on their site.*

...

*In all other cases, where the above statements do not apply, the ONR Inspector will determine that ONR **advises against** the proposed development.”*

65. The ONR objected to the Scheme. Its objection submitted to WBDC stated⁴⁸:

“I have consulted with the emergency planners within West Berkshire Council which is responsible for the preparation of the off-site emergency plan required by the Radiation (Emergency Preparedness and Public Information Regulations) (REPPPIR) 2019. They have not been able to provide me with adequate assurance that the proposed development can be accommodated within their off-site emergency planning arrangements. Therefore, ONR advises against this development, in accordance with our Land Use Planning Policy”

66. The ONR’s position at the Inquiry, as set out in its closing submissions⁴⁹ was:

- a. Although the OSEP is currently adequate, it was already stretched and this was based only on development within the DEPZ that had been built out. The assessment of adequacy did not take into account development that has been consented but not built out and there were serious concerns about the OSEP’s adequacy for any such additional development.

⁴⁷ <https://www.onr.org.uk/land-use-planning.htm>

⁴⁸ [SCB/3/23-25]

⁴⁹ ONR, Closing Submissions [SCB/30/863-866]

- b. As the OSEP is stretched, any incremental increases were a matter of concern to the ONR. The ONR agreed with WBDC's assessment that committed developments were already a "*serious challenge to adequacy*".
- c. WBDC was unable to make a positive case that the Scheme could be accommodated within the OSEP. The ONR had satisfied itself that WBDC's decision-making arrangements for recommendations were suitable and therefore it advised that planning permission should be refused and that the appeal should be dismissed.

67. The Inspector purported to deal with the ONR's concerns about the adequacy of the OSEP at paragraph 30 of the DL where he stated⁵⁰:

"I accept the ONR's expert view that there are lessons to be learnt from the recent ALDEX-23 exercise to test the OSEP, and improvements to be made to ensure the latter's robustness including in relation to alternative accommodation, and monitoring. That said, it is undisputed that the existing OSEP is adequate to ensure public safety in the DEPZ in the event of an AWE B radiation emergency. Notwithstanding this, the Council, AWE, the MOD and ONR have expressed concern about potential for new housing in the DEPZ to undermine the adequacy of the OSEP."

68. In summarising the ONR's position in this way, the Inspector did not refer to the ONR's advice arising from the earlier statutory test in 2022 or the ONR's letter dated August 2021 to the Chief Executive of WBDC (see above) and failed to understand or address ONR's position as to the stretched nature of the OSEP even without committed development.

69. Instead, the Inspector took an approach of concluding that no quantitative "tipping point" analysis had been submitted to demonstrate that the Scheme would "*tip the OSEP into a state of being inadequate*" (DL/31) and he expressed a view that the emergency services would be able to accommodate the increase in 77 residents from the Scheme and that the Scheme would not tip the OSEP into inadequacy.

70. Pursuant to the legal principles set out above, the Inspector either failed to understand the ONR position, or was at the very least required to give considerable weight to the advice of the ONR that the application should be refused and, where departing from that advice, to give cogent reasons for disagreeing with its advice. The Inspector's conclusion did not comply with these requirements and is materially flawed. In particular:

⁵⁰ [CCB/4/53]

- a. The adequacy of the OSEP is a health and safety matter (see ONR closing submissions⁵¹) for the ONR, as is the ONR's position that it is necessary for a developer to demonstrate and show that the OSEP can accommodate additional development (rather than the other way around). The Inspector failed to give any, let alone considerable, weight, to the ONR's overall advice as the relevant expert health and safety regulator that (i) the OSEP was stretched, (ii) should not be subject to continual increase in burden, (iii) is not infinitely scalable, and (iv) the Appeal should be dismissed in circumstances where there were already serious concerns about the OSEP's ability to deal with committed development, let alone any further grant of planning permission for new residential development of the kind before the Inspector.
- b. The Inspector referred to only one aspect of the ONR's evidence (lessons learned from ALDEX-23) but failed to refer to ONR's evidence about the stretched nature of the OSEP based on existing development, and the serious concerns about the adequacy of the OSEP for committed development, and its concerns expressed in 2022 relating to population density and the ONR's endorsement of WBDC's assessment of the inability to demonstrate that the OSEP could accommodate further residential development.
- c. The Inspector failed to give any cogent reasons as to why he disagreed with the ONR's overall advice in any event. The only reason he gave for finding that the OSEP could accommodate the Scheme was that no tipping point analysis had been submitted (DL/31) and an assertion that the modest scale of development would not result in "appreciable diminution of emergency services response levels". There is no requirement in REPPIR 2019 for any kind of quantitative analysis of adequacy of a tipping point, nor for imposing a burden on the ONR/WBDC in this context. The Inspector did not request any tipping point analysis, or give the parties any opportunity to make representations as to the appropriateness of any such analysis and such an onus on the ONR/WBDC is inherently unrealistic beyond that which the ONR had already identified in terms of the OSEP being stretched even without the effects of committed development and accordingly recommending refusal in the

⁵¹ [SCB/30/863-866]

absence of a demonstration as to how the OSEP could cope with additional pressures.

- d. The Inspector failed to refer to and engage with the reasons given by the ONR as to why the OSEP was already under pressure, with specific reference to the availability of facilities for monitoring, decontamination and evacuation and its evidence that its expert assessment was based on ongoing regulatory activity including attendance at the AWE off-site planning group (which includes the Council and blue light organisations).
- e. The Inspector's assertion that the emergency services would not "*appreciably diminish*" (DL/31) was not based on any evidence and is purely speculative and without a proper evidential basis. In circumstances where there was no evidential basis for concluding positively that the OSEP could accommodate the development and where the expert regulator had advised against permission on the basis of concerns arising from two statutory exercises and regular engagement with the Local Authority it was incumbent on the Inspector to explain why it was that he rejected the ONR's advice. He did not do so.
- f. Further or alternatively, the Inspector failed to take into account the ONR's advice, or to give proper reasons for departing from it, that a precautionary approach should be adopted in this context and the reasons why it gave that advice and that its concerns were long-standing:

"ONR's view is that the need for a precautionary approach needs to be understood in the context of the nature of the radiation emergency at this site (see sub-section 2.1.2):

- 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; and*
- c. The principal radionuclide is of a type that is particularly difficult to monitor (and so requires greater effort and resource from responding organisations).*

We highlight, for the inspectors information, that our concerns are well-established and pre date the Application: in August 2021, ONR wrote to the Chief Executive Officer at the Council (and three neighbouring local authorities) expressing concern that further development in the DEPZ would

have the potential to impact upon the adequate implementation of the off-site emergency plan.”⁵²

and

“ONR judges that there is substantial uncertainty as to whether OSEP can accommodate further development and that such uncertainty requires a corresponding substantial margin of safety, and so advises against the proposed development.”⁵³

and

“It is difficult to imagine in those circumstances what might balance out nuclear safety in favour of the proposed development in circumstances where the nuclear safety regulator has indicated that its expert advice is that the proposed development should be refused. The ONR’s objection should attract very significant weight in the planning balance.”⁵⁴

71. Further or alternatively there is no reasoning on the weight to be given to ONR’s objection in the DL.

72. Nuclear safety is an area of highly technical expertise and close regulation from the body entrusted by statute to protect the public. The consequences of a radiation emergency are highly significant and inevitably complex. In contrast to *Sizewell*, where Natural England’s advice was found to be assertions without supporting evidence⁵⁵ (see *Sizewell* at 111), ONR attended the Inquiry and gave detailed advice supported by written and oral evidence on this highly specialist topic. The test in *Akester* therefore applies to this Decision. The Inspector’s failure to understand the ONR’s advice, or to give considerable weight to it, or to provide a cogent explanation for disagreeing with the ONR (which must be implied from his decision to grant planning permission), was unlawful.

Ground 2: The Inspector erred in law by misinterpreting policy CS8

73. Policy CS8⁵⁶ of the WBDC Core Strategy provides:

“Nuclear Installations AWE Aldermaston and Burghfield

In the interests of public safety, residential development in the inner land use planning consultation zones of AWE Aldermaston and AWE Burghfield is likely to be refused planning permission by the Council when the Office for Nuclear Regulation (ONR) has

⁵² ONR, Statement of Case at 42 [SCB/5/65]

⁵³ ONR, Statement of Case at para 74 [SCB/5/71]

⁵⁴ ONR closing submissions at para 19 [SCB/30/868]

⁵⁵ And where NE had failed to attend the Examination when specifically invited (see *Sizewell* at 112).

⁵⁶ [SCB/36/1064-1066]

advised against that development. All other development proposals in the 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 emergency offsite 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...”

The Table in CS8 provides that the ONR should be consulted for all residential development within the “Inner Zone” (0-1.5km from AWE B) and for all residential development for 20 or more dwellings in the “Middle Zone” (1.5-3km from AWE B).

74. The Core Strategy was adopted in 2012. At that time the relevant REPPIR regulations were REPPIR 2001 and ONR had designated three consultation zones: the Inner Zone, the Middle Zone and the Outer Zone. The Inner Zone was the area where detailed emergency planning and an adequate OSEP was required. As set out above, when REPPIR 2019 came into force, the DEPZ superseded the Inner Zone and expanded the area covered by it substantially.
75. WBDC’s interpretation of its own policy, as well as that of AWE/MOD, was that the first sentence of policy CS8 applied to the Scheme as it fell within the inner consultation zone that was now represented by the DEPZ (where Policy CS8 contemplated the size of zones to change), and therefore policy identified that it was likely that permission should be refused because the ONR had advised against the Scheme. By contrast, T A Fisher’s position sought to interpret policy CS8 differently and as being fixed by the previous consultation zone, such that only the second sentence of CS8 applied.
76. The Inspector addressed the interpretation of CS8 at paragraphs 9-12 of the DL:

“9. Policy CS8 states the distances from AWE B for the land use planning consultation zones in this Policy. These are 0 to 1.5km for the ICZ, 1.5 to 3km for the middle land use planning consultation zone (MCZ), and 3 to 5km for the outer land use planning consultation zone (OCZ). Also, Policy CS8’s footnote 60 qualifies that consultation zones in the Policy are ‘as defined by the ONR and shown on the West Berkshire Proposals Map’. Paragraph 5.44 of the explanatory text supporting Policy CS8 envisages the possibility of change to consultation zones ‘as a result’ of ‘a less restrictive approach being taken by the ONR’ and application of a ‘less constraining population density’.

10. As such, Policy CS8’s footnote 60 does not provide for land use planning consultation zone distances stated in the Policy to be changed by re-definition unless such change is shown on the West Berkshire Proposals Map. Which in this case it is

not. Furthermore, Policy CS8 states the dimensions of its land use planning consultation zones, the possibility of change to which is only envisaged in supporting text as being less restrictive, with less constraint on population density. By contrast, the DEPZ covers an area around more than five times larger than the ICZ stated in CS8. Also, judging by the ONR's stated concern about 'any' new development in the DEPZ, there is a strong possibility of their objection to such development proposals. Consequently, to substitute the DEPZ for the ICZ in Policy CS8, as suggested by the Council would mean a substantially more restrictive approach to housing development in the East Kennet Valley area of the district.

11. As such, the suggested substitution of the DEPZ for the ICZ in Policy CS8 would alter the wording of this development plan policy, and be contrary to its qualifying footnote and explanatory text such that it would fundamentally change this adopted Policy's meaning and intent. Therefore, I cannot agree that Policy CS8 can accommodate substitution of the DEPZ for the ICZ. Thus, I take the stated consultation zones in Policy CS8, including the ICZ and MCZ to stand in application of this development plan policy.

12. With the appeal site located approximately 2km to the south-west of AWE B, the proposal is for a residential scheme that sits in the MCZ, outside the ICZ. Thus, the appeal proposal falls to be considered under the second sentence of Policy CS8. This means that the development proposal is to be considered in consultation with the ONR, having regard to a range of factors. These are the scale and location of the proposed development, the area's population distribution, the impact on public safety including how the development would impact on 'Blue Light Services' and the OSEP in the event of an emergency at AWE B, and as well as other planning criteria."

77. The Inspector took the view that the Scheme did not comply with the second sentence of CS8 and did not comply with the Development Plan as a whole (see DL/61).

78. It is well-established that the interpretation of planning policy is ultimately a matter of law for the court (see *Corbett* above at 19). In particular, policies are not rigid but flexible enough to allow for, and require, the exercise of planning judgement. The exercise of interpretation should take into account the context and underlying aims of the policy.

79. The Inspector's interpretation of CS8 was wrong. The correct interpretation of CS8 is that once the DEPZ was introduced, it became the up-to-date "inner consultation zone" for the purposes of planning decisions. This is for any or all of the following reasons:

(1) The DEPZ has the same basic purpose as the "inner consultation zone". The inner consultation zone and the DEPZ are the areas where detailed emergency planning and an adequate OSEP is required under the applicable REPPIR regime. Interpreted in light of well-established principles, the DEPZ superseded the previous smaller area of the inner consultation zone, interpreted consistently with the policy's object and purpose.

- (2) Policy CS8 is designed to protect public safety and to ensure that development is tightly controlled in the area where an emergency offsite plan is required. Policy CS8 is intended to ensure that planning decisions are taken consistently with the REPPIR regime. It would be nonsensical for a change in REPPIR brought about by an increase in safety standards and a more precautionary approach to result in a more liberal approach to development within the area of the OSEP.
- (3) The background to the policy is also relevant. CS8 was included in the Core Strategy so as to ensure that a clear policy reflected the high degree of constraint in the area where detailed emergency planning is required (at the time, the inner consultation zone) and so as to avoid the case-by-case approach taken by the Secretary of State in an appeal at Boundary Hall.⁵⁷ This context and purpose of policy CS8 is important and was not taken into account by the Inspector.
- (4) The supporting text to CS8 (which is an aid to its interpretation) expressly envisages that consultation zones may change (see paragraph 5.44). It also contemplates the need to monitor committed and future development proposals in partnership with the ONR in light of potential cumulative effects of population increases surrounding AWE's sites (paragraph 5.42). The concept that consultation distances can change is also expressly contemplated by the NPPG for hazardous substances:

“Could the zones for consultation change over time?”

Changes may sometimes be required to consultation zones around sites that already have a consent for the presence of hazardous substances. The Health and Safety Executive/Office for Nuclear Regulation will keep the consultation zones under review and will inform the local planning authority if changes are appropriate. Similarly, the local planning authority should liaise with Health and Safety Executive/Office for Nuclear Regulation if it becomes aware of changed circumstances that might affect the consultation zone.”⁵⁸

- (5) The Inspector referred to the fact that change was contemplated in policy CS8, but wrongly treated the supporting text as if it was a statute and concluded that it only contemplated change to make the zones less restrictive. On a proper understanding of the policy, there is no such limitation. It would defeat the purpose of ensuring public safety and consistency with REPPIR. Again, it is nonsensical that a policy directed at

⁵⁷ See AWE, Bashforth at paras 4.7-4.9 [SCB/15/598-599]

⁵⁸ <https://www.gov.uk/guidance/hazardous-substances#Handling-development-proposals-around-hazardous-installations> [SCB/42/1077-1083]

protecting the public from radiation emergencies could change to be less restrictive to reflect changes in circumstances but not to become more restrictive. As the policy expressly envisages change, it is sufficiently flexible to be applied to the Scheme in light of the changes brought about by REPPIR 2019.

(6) The Inspector relied on footnote 60 to policy CS8 which states that the consultation zones are as identified on the Proposals Map. He concluded that change to the consultation zones was not permitted unless it was shown on the Proposals Map. That ignores the first part of footnote 60 which describes the consultation zones “as defined by the ONR”. The consultation zones defined by the ONR in its land use planning policy are now the DEPZ and the outer consultation zone OCZ. Further and in any event, footnote 60 does not state that zones can only change by updating the Proposals Map and the Inspector was wrong to conclude that it had that effect. The Proposals Map is not a development plan document and therefore cannot lawfully be used to limit the clear words of adopted planning policy.

80. Accordingly, the Inspector’s interpretation of policy CS8 was wrong and amounts to an error of law. Had the Inspector applied the correct interpretation of CS8 and considered the Scheme against the first sentence of the policy, properly construed, his decision on the overall planning balance could well have been different so as to refuse permission.

81. Accordingly, the decision was unlawful and should be quashed.

Ground 3: Errors in respect of the approach to assessment of the adequacy of the OSEP

82. As set out above under Ground 1, the Inspector failed to refer to the detailed evidence given by ONR on the reasons underlying their concerns about the adequacy of the OSEP, particularly those relating to weaknesses in the OSEP arising from population growth (see ONR Statement of Case at 38-40⁵⁹ and 72-74⁶⁰). These were obvious material considerations that the Inspector was obliged to take into account pursuant to the principles in *Samuel Smith Old Brewery (Tadcaster) and others v North Yorkshire County Council* [2020] UKSC 3.

⁵⁹ [SCB/5/64-65]

⁶⁰ [SCB/5/71]

83. The DL does not refer to the fact that the existing assessment of adequacy of the stretched OSEP was based on built development. Instead, the Inspector appears to have carried out his own analysis of population density (without giving the parties an opportunity to comment on it), taking into account development that has been consented but not yet built out (see DL/7⁶¹) and sought to suggest that there was unlikely to be a strain on emergency services arising from the Scheme together with other consented development. This was a materially flawed approach to the question of adequacy and did not reflect the evidence at the Inquiry.
84. Further, the Inspector failed to refer to or consider WBDC's evidence that its emergency response under the OSEP relies on finite resources, such as the availability of rest centres, radiation monitoring equipment and decontamination facilities. It is unclear from the DL whether the Inspector accepted or rejected this evidence and the reasons why he considered that the emergency services would be able to accommodate the Scheme, other than through his basic analysis of comparing existing population numbers to 77 additional residents from the Scheme. The absence of evidence to demonstrate how the stretched OSEP could satisfactorily accommodate the additional 77 residents in light of its finite resources to respond to an emergency was a principal controversial issue in the Appeal and the Inspector was obliged to consider it and give reasons for his conclusions. He failed to do so.
85. Accordingly, the decision was unlawful and should be quashed.

Ground 4: The Inspector took into account irrelevant considerations and/or failed to take into account relevant considerations in his assessment of the impact of the Scheme on AWE's operations, national security and on the public or failed to give proper reasons for his conclusions.

86. The Inquiry involved detailed evidence and submissions about a number of matters which are not mentioned at all in the Inspector's DL. These matters were central to the case advanced by AWE and ONR in support of their objections to the Scheme and were therefore mandatory material considerations on the basis that they were so obvious that they were required by law to be taken into account, alternatively they were principal controversial

⁶¹ [CCB/4/48]

issues and the Inspector was required to state his conclusions on them with intelligible reasons, namely:

- a. The significance of any impact on AWE's operations for national security;
- b. The impact on public safety during the recovery period;
- c. The "agent of change" principle in paragraph 187 NPPF;
- d. The precautionary principle.

National Security

87. At paragraph 37 of the DL the Inspector accepted AWE's evidence that if the OSEP was found to be inadequate, regulation 10(4) of REPPiR 2019 would prevent it from working with ionising radiation and this would prevent AWE from meeting MOD's requirements in respect of the continuous-at-sea deterrent. He also accepted the evidence that increases in population around AWE B might constrain AWE's operational flexibility and future expansion plans might be constrained. The Inspector then concluded that this impact was "moderated" by a limited residual risk to the safety and wellbeing of individuals at the Appeal Site (DL/39); there was no evidence that ONR had written to AWE to raise a REPPiR 2019 concern (DL/39) and recently granted permission for a development with 49 dwellings in Wokingham borough has not "*tipped the OSEP into inadequacy*" (DL/39⁶²).

88. The Inspector's overall conclusion on this matter is flawed in a number of material respects because it takes into account irrelevant considerations and/or fails to take into account relevant considerations and/or is irrational:

- (1) The Inspector sought to balance the impact of individuals at the Appeal Site in the event of a radiation emergency against the impact on AWE should the OSEP be found to be inadequate. It was common ground at the Inquiry that the individual risk to residents at the Appeal Site was irrelevant to the question of adequacy of the OSEP or REPPiR 2019. This was therefore an irrelevant consideration and/or it was irrational to seek to balance the impact on individuals against the impact on AWE arising from an inadequate OSEP as these are two unrelated considerations.

⁶² [CCB/4/54]

(2) The Inspector relied on the absence of any formal regulatory action by ONR. However, this conclusion ignores: (1) the ONR’s evidence that it had identified weaknesses in the OSEP that needed to be addressed; (2) the letter to WBDC Chief Executives in 2021 from the ONR stating that it had changed its advice on residential development in the DEPZ and (3) the ONR’s evidence that its concerns were based on close regulatory contact with AWE and WBDC. Further, in its closing submissions, the ONR made it clear that enforcement was in contemplation:

“In that context, this is the first planning inquiry in which the ONR has taken part. That in itself is significant, and in the ONR’s view, the last remaining element of the “toolkit” or “levers” which it may exercise in order to assure itself that the OSEP is, and remains, adequate. The next stage would be enforcement.”⁶³

(3) The Inspector further relied on the fact that the grant of another development within the DEPZ had not affected the adequacy of the OSEP (DL/39). However, the evidence at the Inquiry was that the adequacy of the OSEP is assessed against built development, not consented development that has not yet been built and occupied. It was therefore wrong in principle or irrational to reduce the significance of the impact on AWE by reference to this factor.

(4) The Inspector concluded that if the OSEP was inadequate, the Secretary of State for Defence could grant an exemption under REPPIR 2019 (DL/40). However, the Inspector failed to refer to the MOD’s evidence which explained that its policy was to ensure equivalence in matters of health and safety when exemptions are granted. Further and in any event, in circumstances where the Inspector concluded that he could not predict that the exemption would be invoked (see DL/40), it was irrational to rely on it to “moderate” the impact on AWE’s operations.

(5) The Inspector did not take into account the evidence on the impact on AWE of adding further residential development within the DEPZ on the recovery phase of a radiological emergency, including potential liability for compensation and decontamination⁶⁴ and the effect on the public purse of these liabilities (see AWE

⁶³ ONR Closing Submissions [SCB/30/865]

⁶⁴ AWE Closing Submissions at para 26(2)(iii) [SCB/31/878] and AWE, Person AW at para 10.17 [SCB/14/580-581]

Closing Submissions at 26⁶⁵). The Inspector did not refer to this evidence in the DL or weigh this material consideration in the planning balance at all.

(6) The Inspector did not address AWE and MOD's evidence that any impact on AWE's current or future operations would have significant consequences for the continuous-at-sea-deterrent.⁶⁶

89. Alternatively, the reasons given for the Inspector's finding that there was "very limited harm" to AWE (see DL/61) were unintelligible and therefore unlawful.

Impact on residents and the public during the initial emergency and recovery period

90. It was not in dispute at the Inquiry that a radiation emergency is a complex event and after the initial emergency period when the OSEP is in operation there will be a long recovery period.

91. The Inspector considered the impact of the Scheme on the safety and wellbeing of the residents of the Scheme in the event of a radiological emergency by looking at the evidence of radiological health impacts arising from a radiation emergency (see DL/16-24⁶⁷). It was not in dispute at the Inquiry that the evidence adduced by T A Fisher as to the effects of a radiation emergency on the occupants of the Scheme was limited to an analysis of the likelihood of radiological health effects and that this analysis was not relevant to actions taken under the OSEP or the adequacy of the OSEP itself.

92. The Inspector accepted T A Fisher's evidence on the radiation health effects of a radiation emergency on the residents of the Appeal Site (see DL/19). However, the Inspector failed to consider the evidence from AWE/MOD, WBDC and ONR about the complexity and other impacts of a radiation emergency both in the first days after a release of radiation and in the longer term. In particular:

a. The ONR's advice was that adding further residential development within the DEPZ affects the whole population of the DEPZ in the event of a radiation emergency.⁶⁸

⁶⁵ [SCB/31/876-878]

⁶⁶ Person MD at 5.6 [SCB/13/554] and at 8.1.4 [SCB/13/556]

⁶⁷ [CCB/4/50-52]

⁶⁸ ONR, Statement of Case at para 44 [SCB/5/65]

- b. It was common ground at the Inquiry that a radiation emergency can give rise to psychological impacts.
- c. The Inspector failed to refer at all to the impacts on individuals at the Appeal Site during the recovery phase. AWE adduced evidence of the impacts on individuals during the recovery phase including prolonged exposure to radiation (which the Inspector accepted would occur but failed to consider the consequences of such exposure see DL/16 and DL/19) damage to property and relocation to carry out decontamination. The recovery phase is not referred to at all in the DL.

93. The issue of the impacts from recovery was a principal controversial issue in the Inquiry. AWE and WBDC's witnesses were cross-examined about their evidence on the impacts of the recovery phase and the issue of recovery was dealt with in opening and closing submissions. The DL does not refer to the above impacts at all or explain whether the Inspector accepted or rejected that evidence or whether he weighed them in the overall planning balance. AWE and MOD are left in substantial doubt as to what the Inspector concluded and why.

Paragraph 187 NPPF

94. Paragraph 187 NPPF provides⁶⁹:

“Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or ‘agent of change’) should be required to provide suitable mitigation before the development has been completed.”

95. AWE/MOD relied on paragraph 187 NPPF as part of their case that the Appeal should be refused. The Inspector accepted that AWE/MOD had a programme of future investment at AWE B and accepted the evidence that obtaining future consents may be more difficult if the population around AWE was permitted to grow. However, even though the Inspector found that there would be an adverse impact on AWE arising from the Scheme (DL/36-

⁶⁹ [SCB/39/170]

41⁷⁰), the Inspector failed to grapple with the policy approach in paragraph 187 NPPF in the DL, or to weigh this conflict with the NPPF in the planning balance.

96. National policy is a material consideration in planning decisions and carries weight. Had the Inspector correctly directed himself to all of the relevant national policies, it is arguable that the Decision may have been different.

The Precautionary Principle

97. The Inspector failed to apply the precautionary principle to any of his analysis of the risks posed by increasing population density in the DEPZ. The precautionary principle is well-established in planning law (*Kenyon v Secretary of State for Housing, Communities and Local Government* [2020] EWCA Civ 302) and it was a key part of AWE/MOD's case at the Inquiry that a precautionary approach should be adopted in circumstances where there was any uncertainty about the impact of the Scheme on the adequacy of the OSEP and where the evidence was that the OSEP was already under pressure from existing built development. The Inspector failed to deal with this argument or to apply the precautionary principle at all to his assessment of the planning balance.

98. These errors individually and cumulatively render the Decision unlawful and liable to be quashed.

Conclusion and Relief Sought

99. On all or any of the above grounds, it is at least arguable that the Inspector's decision was in error and liable to be quashed. Accordingly, the Claimant seeks permission to proceed with this statutory review and in due course will be seeking a quashing order and an award of its costs of the statutory review.

JAMES STRACHAN KC

ROSE GROGAN

18 September 2023

⁷⁰ [CCB/4/53-54]

39 Essex Chambers
81 Chancery Lane
London WC2A 1DD

APPENDIX 5

Consent Order dated 12 January 2024 in respect of section 288 application

Approved on 12 January 2024 by: *Mrs Justice Lang*



CLAIM NUMBER: AC-2023-LON-002758

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

AC-2023-LON-002758

APPLICATION FOR PLANNING STATUTORY REVIEW UNDER SECTION
288 OF THE TOWN AND COUNTRY PLANNING ACT 1990

BETWEEN:

AWE PLC

Claimant

and

**THE SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND
COMMUNITIES**

1st Defendant

WEST BERKSHIRE DISTRICT COUNCIL

2nd Defendant

T A FISHER & SONS LIMITED

3rd Defendant

OFFICE FOR NUCLEAR REGULATION

4th Defendant

SECRETARY OF STATE FOR DEFENCE

5th Defendant

CONSENT ORDER

UPON the Claimant's application for statutory review ("the Claim") of a decision of a Planning Inspector appointed by the First Defendant dated 08 August 2023 to grant planning permission under appeal reference APP/V0340/V/22/331226 ("the **Decision**");

AND UPON the Claimant being granted permission to appeal against the Decision by the Order of 2 November by the Honourable Mrs Justice Lang DBE ("the **Order**");

AND UPON the Order joining West Berkshire District Council, T A Fisher and Sons Limited, the Office for Nuclear Regulation and the Secretary of State for Defence as Defendants instead of Interested Parties;

AND UPON the Court being satisfied that it is appropriate to quash the Decision for the reasons set out in the Statement of Reasons;

AND UPON the parties agreeing terms;

IT IS HEREBY ORDERED BY CONSENT THAT

- 1. The Claim is allowed and the Decision is quashed;
- 2. The Third Defendant’s planning application, which was the subject of the Decision, is remitted for reconsideration by the First Defendant.
- 3. The First Defendant shall pay the Claimant’s costs of the claim to date on the standard basis to be subject to detailed assessment by the court if not agreed.
- 4. The hearing of the substantive matter listed on 23-25 January 2024 be vacated.

We consent to the Order in the above terms:

Signed
Pinsent Masons LLP
Solicitors on behalf of the Claimant

for the Government Legal Department

Signed
Government Legal Department
Solicitors on behalf of the First Defendant

Signed
Solicitors on behalf of the Second Defendant

Signed
Lester Aldridge LLP
Solicitors on behalf of the Third Defendant

For the Government Legal Dept.

Signed
Government Legal Department
Solicitors on behalf of the Fourth Defendant

Signed
Pinsent Masons LLP
Solicitors on behalf of the Fifth Defendant

CLAIM NUMBER: AC-2023-LON-002758

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT**

**APPLICATION FOR PLANNING STATUTORY REVIEW UNDER SECTION
288 OF THE TOWN AND COUNTRY PLANNING ACT 1990**

BETWEEN:

AWE PLC

Claimant

and

**THE SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND
COMMUNITIES**

1st Defendant

WEST BERKSHIRE DISTRICT COUNCIL

2nd Defendant

T A FISHER & SONS LIMITED

3rd Defendant

OFFICE FOR NUCLEAR REGULATION

4th Defendant

SECRETARY OF STATE FOR DEFENCE

5th Defendant

STATEMENT OF REASONS

1. These proceedings concern an application brought under section 288 of the Town and Country Planning Act 1990 ("TCPA 1990") by the Claimant for statutory review of the decision of the First Defendant dated 8 August 2023 to allow the Third Defendant's appeal under s.78 TCPA 1990 against the decision of the Second Defendant to refuse planning permission for the erection of 32 dwellings including affordable housing, parking and landscaping on land to the rear of the Hollies, Reading Road, Burghfield Common, Reading RG7 3BH.
2. The claim was brought on the following grounds:

- a. Ground 1: The Planning Inspector failed to understand or take into account the Fourth Defendant's technical evidence/advice as an expert statutory consultee or failed to give legally adequate reasons, for disagreeing with it.
 - b. Ground 2: The Planning Inspector erred in law by misinterpreting policy CS8 and therefore failed to apply the presumption against residential development in the Detailed Emergency Planning Zone around AWE B.
 - c. Ground 3: The Inspector erred in law in respect of the assessment of the adequacy of the Offsite Emergency Plan.
 - d. Ground 4: The Planning Inspector took into account irrelevant considerations and/or failed to take into account relevant considerations or failed to provide proper reasons in his assessment of the impact of the Scheme on AWE and on the public.
3. The First Defendant accepts that the Planning Inspector's reasons for disagreeing with the position of the Fourth Defendant (as statutory consultee) in relation to the off-site emergency plan were not legally adequate.
4. The First Defendant has agreed to his Decision being quashed on Ground 1 as set out in the Claimant's Statement of Facts and Grounds only. As this will necessarily result in the quashing of the Inspector's decision that also deals with the matters that are the subject of the Claimant's other grounds, and the Defendant accepts that a fresh Inspector should be appointed, the Claimant and the First Defendant consider that the differences between them on the other Grounds have effectively become academic. For the avoidance of doubt, the Claimant and the First Defendant agree that the appeal generally, and the approach to the other issues, will need to be considered afresh by the new Inspector and the agreement to this consent order is without prejudice to the Claimant's position that the approach adopted by the Inspector was also unlawful by reason of those other grounds.

5. In the circumstances appeal reference APP/W0340/W/22/331226 shall be remitted to the Planning Inspectorate for complete redetermination by a fresh inspector or the First Defendant.

BY THE COURT

APPENDIX 6

**Letter from Office for Nuclear Regulation to West Berkshire District Council
dated 29 November 2023**

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 7

**Letter from West Berkshire District Council to Office for Nuclear Regulation
dated 6 February 2024**

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
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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

APPENDIX 8

Command Paper: Delivering the UK's Nuclear Deterrent as a National Endeavour (March 2024)



Defence
Nuclear Enterprise

Delivering the UK's Nuclear Deterrent as a National Endeavour



Delivering the UK's Nuclear Deterrent as a National Endeavour

Presented to Parliament
by the Secretary of State for Defence
by Command of His Majesty

March 2024

CORRECTION SLIP

Title: Delivering the UK's Nuclear Deterrent as a National Endeavour

Session: 2024-2025

Number: CP 1058

ISBN: 978-1-5286-4782-3

Date of laying: 25 March 2024

Correction:

Clarification on Page 27 regarding the storage of the Trident II D-5 ballistic at Coulport

Text currently reads:

The Royal Naval Armaments Depot at Coulport is responsible for the storage, processing and maintenance of the Trident II D-5 ballistic missile and the UK nuclear warhead.

Text should read:

The Royal Naval Armaments Depot at Coulport is responsible for the storage of the Trident II D-5 ballistic missile and the storage, processing and maintenance of the UK nuclear warhead.

Date of correction: 17 April 2024



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Foreword from the Prime Minister

The first duty of the state is to protect its people, territory, economy and interests from internal and external threats. Our nuclear deterrent has been

the cornerstone of our national security, safeguarding our values and way of life, for more than 70 years. It has protected the UK and our NATO allies from the most extreme acts of aggression and nuclear blackmail from our adversaries.

Our deterrent is more relevant now than ever before. We face new and diverse challenges from nuclear-armed states that make deterrence as critical today as it was in the last century.

As Prime Minister, I am acutely aware of the responsibilities that come with being a nuclear weapons state. The UK remains a champion of the Treaty on the Non-Proliferation of Nuclear Weapons and is committed to fulfilling our obligations. We continue to work to build trust and create an environment for further progress on disarmament.

In 2023, a year into Russia's illegal invasion of Ukraine, the UK's refresh of its Integrated Review (IR2023) described an increasingly contested and volatile world. It anticipated a deteriorating security environment, driven primarily by a growing convergence of authoritarian states intent on challenging the basic conditions for an open, stable and peaceful international order. This assessment has only been validated by the events of the past year.

Against this uncertain global security outlook, the foundational component of an integrated approach to deterrence and defence remains a credible, independent UK nuclear deterrent, declared to the defence of NATO. It ensures that potential adversaries can never use their capabilities to threaten the UK or our NATO

allies or to deter us from acting in support of regional and global security and stability. We would consider using our nuclear weapons only in extreme circumstances of self-defence, including the defence of our NATO allies, but the knowledge that we can and would use them is the core tenet of deterrence.

Against this backdrop, the purpose of this command paper is to set out how we will deliver the programmes necessary to strengthen our nuclear deterrent.

This includes an invigorated approach to delivering our submarine and warhead programmes but also to the people and communities that support our deterrent.

This is the platform from which this government is launching a national endeavour to recapitalise the Defence Nuclear Enterprise, the partnership of organisations that operate, maintain, renew and sustain the UK's nuclear deterrent. It is a call to action across government, industry and society. We should be confident in articulating the importance of our nuclear deterrent, not only to our national security, but also in the many other benefits it brings, including economic ones.

We must inspire our current workforce, their families and our prospective workforces for the generations to come: the submariners; apprentices; graduates; project managers; engineers; and the communities that support our nuclear deterrent across the country.

This document sets out the full scale of that activity. It outlines our investments in the Defence Nuclear Enterprise and our partnerships with the communities, businesses and international allies that underpin the deterrent and protect our way of life.

We have already announced an additional £3 billion across the Defence Nuclear Enterprise at the 2023 Integrated Review

Refresh. This will support new facilities with advanced manufacturing capabilities in Barrow-in-Furness and Derby. As the home of nuclear submarine building in the UK we are also investing in Barrow-in-Furness, to make it an attractive place to live and work in order to sustain our submarine programmes with the skilled workforces required for the decades to come.

The investments we are making in the enterprise, and the people and communities we rely upon, will also support the delivery of AUKUS; the trilateral security partnership between Australia, the UK and the US agreed in 2021. We have awarded contracts worth £4 billion for the development of the new conventionally armed, nuclear-powered SSN-AUKUS submarine. The UK based design will be built in Barrow-in-Furness in the 2030s and will also be built and operated by Australia as part of our AUKUS partnership.

These commitments to defence nuclear sit alongside major investments in civil nuclear as set out in the recently published Civil Nuclear Roadmap, our most ambitious civil nuclear strategy in decades. To support our ambitions to generate the numbers of skilled people we need to work in our civil and defence nuclear sectors, a Nuclear Skills Taskforce has been created. It has developed an action plan to double the number of graduates and apprentices while quadrupling the intake of nuclear fission, nuclear fusion and specialised scientific related PhD students over the next four years.

Renewing the UK's deterrent is a huge undertaking that safeguards our security and enhances our prosperity. One that requires a truly national endeavour.





Foreword from the Secretary of State for Defence

Thirty years ago, the very first of our Vanguard nuclear submarines set sail. The crew of that vessel were entering a very different world to the one their forebears had been familiar with at the dawn of the age of Continuous-At-Sea deterrence. The Cold War had ended. The Berlin Wall had come down.

In the days of the iron curtain, the logic and importance of nuclear deterrence was well understood. Yet, as the direct danger from the Soviet Union receded into the past, so did the recognition of the role our nuclear deterrent played in guaranteeing our collective security.

Fast forward to today and we have come full circle. Nuclear risks are rising. Having illegally invaded Ukraine and broken its former commitments, Russia is trying to use reckless nuclear rhetoric to stop others from sending help. China is rapidly increasing its warhead numbers and expanding its range of delivery systems. And now those established nuclear powers are joined by new actors. North Korea is regularly rattling its nuclear sabre. Iran is producing highly enriched uranium without providing proper access to the International Atomic Energy Agency.

We should not shy away from our status as a proud and responsible nuclear power. We must now be more vocal about our nuclear deterrent and those who support it as well as the benefits the nuclear enterprise brings to our society.

First and foremost it provides security. Our Continuous-At-Sea deterrent is the ultimate protection from the gravest of threats to the UK. It also forms a key part of NATO's nuclear umbrella and a vital pillar in the security of our Alliance partners.

Second, our nuclear enterprise is truly a national endeavour providing highly skilled jobs

across the United Kingdom. Our submarines are constructed by BAE Systems in Barrow-in-Furness. Their nuclear reactors are built by Rolls-Royce Submarines Ltd in Derby. Our warheads are designed and manufactured by the AWE in Aldermaston and Burghfield. Together this vast undertaking supports an estimated 42,000 jobs and a supply chain of 3,000 businesses from Devonport to Dounreay. And our world class reputation in nuclear development is helping us bolster our trilateral bonds. Which is why today we are joining forces with the United States and Australia as part of AUKUS to help construct Australia's first nuclear powered, conventionally armed, submarine.

Finally, our nuclear enterprise is about unparalleled opportunity. What other programme can combine the ingenuity of the Apollo missions with the science of the Manhattan project? What other programme can unite disparate specialisms from nuclear physics to project management, from software engineering to welding? We need to do more to strengthen that pipeline of talent, which is why alongside this Command Paper we also launch a new Nuclear Skills Plan to attract the brightest British brains from the civilian and military spheres. The people who join us will not just play a pivotal role in our national security and energy resilience but sustain our skills base, energise our local economies and pave the way for the next generation of nuclear giants.

Thirty years on from their first mission, our Royal Navy submariners are today patrolling the waters of a far more dangerous world. Yet the silent service is silent no longer. With new Dreadnought submarines under construction, a replacement warhead in the works and major programme of modernisation underway, this Command Paper underlines how our nuclear deterrent will continue to guarantee the safety of the UK and its Allies for as long as is necessary.

The UK's nuclear deterrence policy

The purpose of nuclear deterrence is to preserve peace, prevent coercion and deter aggression. A credible, independent nuclear deterrent remains essential to guarantee our security.

The view of successive UK governments is that an independent, minimum, credible nuclear deterrent, declared to the defence of NATO, is essential to our security and that of our NATO Allies. It is a critical part of our insurance against the risk and uncertainties of the future.

The UK maintains a Continuous-At-Sea Deterrent (CASD), delivered by the Royal Navy, since April 1969 under Operation RELENTLESS. It consists of at least one nuclear-powered submarine on patrol at all times, armed with the Trident missile system and UK sovereign nuclear warheads.

Our Vanguard Class SSBNs (Ship Submersible Ballistic Nuclear), which carry our nuclear weapons, are supported by a range of Royal Navy capabilities including our Astute Class SSNs (Ship Submersible Nuclear). These are conventionally armed, nuclear powered attack submarines that protect CASD as well as being capable of undertaking multiple defence and intelligence tasks.

We are deliberately ambiguous about precisely when, how and at what scale we would use our weapons. Alongside our decision to no longer publicise figures for our operational stockpile or deployed warheads, this posture enhances our deterrent effect by complicating the calculations of potential aggressors, thereby reducing the risk of deliberate nuclear use by those seeking a first-strike advantage.

The credibility of our deterrent is enhanced by ensuring it remains operationally independent. Only the Prime Minister can authorise the use of our nuclear weapons, even if deployed as part of a NATO response.

Potential aggressors know that the costs of attacking the UK, or our NATO allies, would far outweigh any benefit they could hope to achieve. This deters states from using their nuclear weapons against us or carrying out the most extreme threats to our national security.

The deterrent protects us every hour of every day. By providing a credible and effective response to extreme aggression, our nuclear deterrent reduces the likelihood of such an attack taking place.

This deters the most extreme threats to our national security and way of life, helping to guarantee our security and that of our NATO allies. It ensures that potential adversaries are dissuaded from using their capabilities to threaten or coerce the UK or our NATO allies, or to deter us from taking the action required to maintain regional and global security and stability.

We are now in a period of heightened risk and volatility that is likely to last beyond the 2030s. We are therefore reaffirming our commitment to a credible nuclear deterrent and investing to sustain and renew our capabilities for as long as required, as this document sets out. We will keep our nuclear posture under review in light of the international security environment and the actions of potential adversaries.

At the same time, we remain committed to the ultimate goal of a world without nuclear weapons and support full implementation of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). There is no credible alternative route to disarmament. The UK continues to support the entry into force of the Comprehensive Nuclear-Test-Ban Treaty (CTBT) and will continue to press for key steps towards multilateral disarmament through the NPT.

It is the firm view of this government that a world where the UK's potential adversaries have nuclear weapons and the UK (and NATO) does not, is not a safer world.

Our security is enhanced by our partnerships with our allies. We have a strong relationship and engagement with the US. Our standing as a responsible nuclear power remains an important part of our long history of defence cooperation, enhancing Euro-Atlantic security.

The UK works closely with the US on all nuclear matters, including nuclear policy, operations and technology. Our close relationship with France, our European nuclear ally, plays a critical role, including through our collaboration under the Lancaster House Treaties. This includes co-operation under the 2010 TEUTATES Treaty, through which we share research facilities and co-operate on technology. The UK and France are increasing co-operation on nuclear deterrence issues.

The UK is also committed to building understanding and expertise on nuclear issues in NATO. This includes ensuring coherence between the Alliance's nuclear and conventional policies and developing the capabilities needed for the future.



Introduction: A National Endeavour

Delivering the UK Nuclear Deterrent: A National Endeavour

Day in, day out, right across the country and beyond, thousands of people in the public sector, military and industry are working together to achieve our shared mission: to deliver capabilities, deter the threat and protect the nation.

To sustain the deterrent for as long as it is needed, we are making the following commitments:

- we are investing £31 billion (with a £10 billion contingency) in the new **Dreadnought Class SSBNs** with the first boat due on patrol in the early 2030s;
- we are developing a **replacement UK sovereign warhead**, while maintaining our existing stockpile;
- we are recapitalising critical elements of our **infrastructure** to modernise our naval bases and manufacturing processes, supporting growth as we anticipate future fleet needs and weapons requirements;
- we are nearing completion of the UK's fleet of conventionally armed, nuclear powered **Astute Class SSNs** and have begun designing the **next generation of attack submarine, SSN-AUKUS**;
- we are enabling industry to plan for the future by working with the Department for Energy Security and Net Zero (DESNZ) to coordinate our defence activity with investment in the **civil nuclear sector**, itself critical to our energy security;
- we are enhancing nuclear power generation over the long term by investing in **nuclear technology**, with many parallels to the investments needed to support the UK's Energy Security Plan;
- we are working with industry partners to **safeguard our supply chains for the future**; and

- we are investing in **Barrow-in-Furness** as the home of nuclear submarine building in the UK, in recognition of its criticality to the nation's security.

These are some of the largest and most complex programmes ever seen. They require unique cutting-edge technology and world-leading expertise in science, engineering and manufacturing.

In order to deliver all of this:

- we continue to have a **close partnership with our most important ally, the US**, facilitated by the longstanding 1963 Polaris Sales Agreement and the 1958 Mutual Defense Agreement for broader cooperation and exchange;
- we continue our important **relationship with France**, our European nuclear ally, cooperating on technology and nuclear deterrence challenges. This includes our collaboration under the 2010 TEUTATES Treaty, through which we share research facilities;
- we are **strengthening our partnerships with industry**, particularly our prime suppliers Babcock International, BAE Systems and Rolls-Royce Submarines Ltd, with a focus on delivery to schedule;

- we have brought **AWE**, which designs, manufactures and ensures the safety and efficacy of our warheads, back into the Ministry of Defence as a wholly owned arm's length body and have acquired **Sheffield Forgemasters**, who provide specialised steel, into public ownership, enabling closer alignment with our requirements;
- together with DESNZ, we launched the **Nuclear Skills Taskforce (NSTF)** to work with industry, academia and the education sector to increase the numbers of apprentices, graduates, and PhDs across the sector – this will ensure we can access the right skills for nuclear, providing new economic opportunities for thousands of people across the country;
- we will maintain the **scientific and engineering expertise** that ensures UK defence nuclear programmes fully comply with our international obligations and develop our ability to counter nuclear proliferation, prevent nuclear terrorism, identify and deter nuclear test explosions and verify future arms control regimes; and
- we will enable industry to plan for the future by working with DESNZ to coordinate our defence activity with investment in the **civil nuclear sector**, critical to our energy security.

Alongside investment in civil nuclear for our energy security needs, this breadth of activity amounts to a new era for the nuclear sector in the UK.

All these measures represent a significant undertaking and investment by the UK government and industry, with an enduring commitment for the decades ahead. This will generate economic opportunity across our UK supply chain, including submarine construction at BAE Systems in Barrow-in-Furness, submarine maintenance at the Babcock International site in Devonport, nuclear reactor development at Rolls-Royce Submarines Ltd in Derby and warhead design and manufacture at AWE in Berkshire.

This Command Paper sets out, for the first time, what it takes to deliver the nuclear deterrent.

It reaffirms our commitment to maintaining global stability, working with our allies including NATO, and reminds potential adversaries that we are ready to prevent coercion and deter aggression.

It represents a commitment to enhance our industrial base, working in closer partnership with academia and business, and a promise that we will maximise economic opportunity and invest in our communities.

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.

**This is the work of the Defence Nuclear Enterprise.
This is our national endeavour.**

The Defence Nuclear Enterprise (DNE) is the partnership of organisations that operate, maintain, renew and sustain the UK's nuclear deterrent.

The nuclear deterrent is the Ministry of Defence's number one priority.

In order to deliver our mission in the years ahead, the DNE is making several changes:

- we are strengthening its leadership, now headed by the newly appointed civilian Chief of Defence Nuclear and the First Sea Lord of the Royal Navy, enhancing coherence, senior focus and accountability;
- we are bringing together its core elements to work more closely than ever before: the Defence Nuclear Organisation (DNO), the Royal Navy, the Submarine Delivery Agency and AWE;
- we are operating a new ring-fenced budget and greater delegated spending authority, as well as more streamlined, robust governance;
- we are working with our industry and training partners to develop the skilled workforce that we will depend on in the coming years.

The scale of our endeavour

Delivering our mission is a complex and geographically widespread undertaking, covering all aspects of maintenance, development and delivery.

The UK government is investing in infrastructure and construction projects to develop new, or update existing, facilities that support our nuclear programmes.

The footprint of the DNE and our three prime contractors spans all regions of England, Scotland and Wales and supports a supply chain of over 3,000 small, medium and large businesses.

The DNE provides considerable economic benefit at a local and national level. The enterprise has a current workforce demand of around 42,000 jobs.

To match the scale of our endeavour, our skilled workforce will also grow.

This growth, alongside our multi-decade pipeline of programmes, re-emphasises the UK's standing as a global leader in advanced submarine manufacture.

Enterprise site locations



AUKUS: The trilateral security and defence partnership between Australia, the UK and the US

The AUKUS partnership is one of the most strategically important capability collaborations in decades. For all three countries, it will help meet our shared commitment to supporting stability and security through a free and open Indo-Pacific by progressing towards more unified defence and industrial collaboration, better information and technology sharing, and greater resilience, helping develop joint capabilities.

Pillar One of the partnership will see the UK and US assist Australia by developing a conventionally armed, nuclear powered submarine capability. The culmination of this will be a new SSN-AUKUS Class, based on the world-leading UK design currently under development.

Pillar Two of AUKUS is accelerating the development and delivery of advanced conventional (non-nuclear) capabilities. It includes regulatory and legislative measures to ease the export and transfer of technology and expands ways of sharing sensitive information. This will enable better integration of security and defence related science and technology, allowing AUKUS states to develop cutting-edge capabilities at the pace and scale of relevance, bolstering our respective industrial bases and supply chains.



Artist impression of SSN-AUKUS

Through the development of SSN-AUKUS and our trilateral advanced capabilities portfolio, AUKUS is supporting a free and open Indo-Pacific, as well as driving technological progress and improving interoperability with two of our closest partners.

The partnership will enhance the UK's ability to operate in the Indo-Pacific. Future exercises will improve each nation's ability to work together and test the joint operation of advanced capabilities, radically improving a shared ability to tackle emerging threats. This sits alongside the UK and US establishing a rotational presence of SSNs in Australia to develop at-sea experience for Australian crews.

The government has allocated an initial £4 billion to BAE Systems, Rolls-Royce Submarines Ltd and Babcock International for the design phase and procurement of long-lead items for the UK's fleet. Australia has also committed to make a significant investment into the UK's submarine industrial base. BAE Systems, working with Australia's ASC Pty Ltd, will build Australia's SSN-AUKUS fleet. At its peak, over 21,000 people in the UK will be working on the SSN-AUKUS programme.

The AUKUS partnership allows Australia to draw on over 60 years of British expertise in the design, build, and operation of nuclear submarines as they develop their own capabilities.

All three AUKUS partners are committed to meeting their respective nuclear non-proliferation obligations.

Part One: Our people

Our advantage over our potential adversaries depends upon the ingenuity and dedication of our people. They are our most important asset.

The UK will significantly expand its nuclear workforce to meet the growing demand of the DNE and our future civil energy requirements. This will deliver economic opportunities and growth at nuclear locations across the country.

Driven by its involvement in cutting-edge scientific advancements, the UK has a growing demand for nuclear skills in both defence and civilian sectors. We need deep nuclear subject matter expertise, such as in science and engineering, with specialists in fuels, materials, warhead design and reactor physics.

The DNE is also highly dependent on many trades, such as welders, electricians, mechanical fitters, warhead component manufacturers and assemblers, who complement the thousands of employees in specialist functions such as project management, legal and commercial.



Our submariners

Submariners are some of the Royal Navy's most exceptional personnel; responsible for highly classified, stealthy and elite operational and deterrent patrols that play a critical role in protecting and defending the UK globally.

Roles within the Submarine Service are varied and diverse. Each is essential to sustaining our competitive edge as a world-class naval force. Roles range from engineers, who maintain and operate the naval reactor plant and weapons systems, to those that command and operate the boat, to those focused on logistics, medical and catering. These roles are complemented by the security capability provided by the Royal Marines.

All submariners complete either a level two or level three apprenticeship, undertaking specialist training in both submarine and nuclear-specific technologies alongside general engineering academia. The Royal Navy ranked third in the UK's top 100 apprentice employers in 2023, demonstrating the quality of the academic provision and opportunities for its people.

Further in-service qualifications are also on offer up to Master's level, alongside professional accreditation in a wide range of fields. These career opportunities will only continue to grow with the accelerating progress of the DNE and the AUKUS partnership.

Submariners continue to develop their technical, leadership and command skills while deployed globally, operating leading-edge submarine technology. Their responsibilities include everything from keeping mechanical systems in operating condition under the Arctic ice, conducting deployed maintenance periods in a Mediterranean port or deploying globally as part of a Carrier Strike Group, delivering defence engagement on behalf of the UK government and being prepared to deliver support through humanitarian aid.

Within eight years of joining the Royal Navy, submariners could be leading their own onboard engineering section, running a watch in the operations room, working alongside industry partners to support development and introduction to service of new technologies, or training the next generation of submariners.

Many submariners work with industry, government and academic partners in non-operational roles, providing experience and subject matter expertise in roles ranging from nuclear engineering to programme management, reflecting the breadth of the expertise that can be developed in the Royal Navy.

The Royal Navy is a central member of the NSTF. In addition to increasing the graduate and apprenticeship intake across the service, the Royal Navy will improve retention by increasing access to sector-wide interchange opportunities, allowing personnel to expand and develop their skills by moving across, and within, the nuclear community.

By establishing a framework for staff interchange across the nuclear sector, submariners will have the opportunity for zig-zag careers, underpinned by agreement with industry partners.

We have invested significantly to support developing our submarine force, alongside initiatives in industry, providing state-of-the-art facilities and the most up-to-date and realistic simulators, modern workspaces and world-leading training courses, to allow all future submariners to work and train in the same location and benefit from the same facilities.

These opportunities for in-work learning and development offer our people the chance to upskill, opening up possibilities to further their careers in nuclear.



The Nuclear Skills Taskforce (NSTF)

In August 2023, the Ministry of Defence and the Department for Energy Security and Net Zero established the NSTF. This brought together government, employers and academia from across civil and defence nuclear to develop the national nuclear strategic plan for skills. This sets out the activity that will help supply the sector with talent for an estimated 40,000 additional jobs by 2030.

The Ministry of Defence and DESNZ are working with industry to implement a range of initiatives and measures to support national security and the demand for energy resilience.

To attract and retain nuclear skills:

- we have launched the first ever national nuclear communications campaign, 'Destination Nuclear', to attract and retain the skilled personnel needed for the sector. The campaign promotes opportunities across both civil and defence. The first phase of the campaign is focused on attracting mid-career and lateral entrants, with strong transferable skills, to fill current vacancies; and
- we have developed a single sector portal for recruitment to make it easier for people to see the varied opportunities that we have, and to apply for jobs, marking the first time organisations across the nuclear sector have worked together to make roles visible in one place.

To grow the pipeline:

- we are investing to increase our intake of nuclear sector graduates to around 2,000 in the next four years and targeting the creation of more than 5,000 apprentices over the same period. This incorporates actions already underway at BAE Systems and Rolls-Royce Submarines Ltd, who are already doubling their apprentices; and

- we will create opportunities in the North West with the Nuclear Decommissioning Authority alongside BAE Systems, and in the South West where Babcock and EDF will be doubling their apprentice numbers and bringing even more new starters.

To deepen expertise:

- to ensure the UK remains a world leader in nuclear, we will quadruple nuclear physics PhDs to over 130 a year and are aiming to introduce over 400 additional specialised scientific and nuclear related PhD students over four years and establish up to three new Centres for Doctoral Training (CDTs).



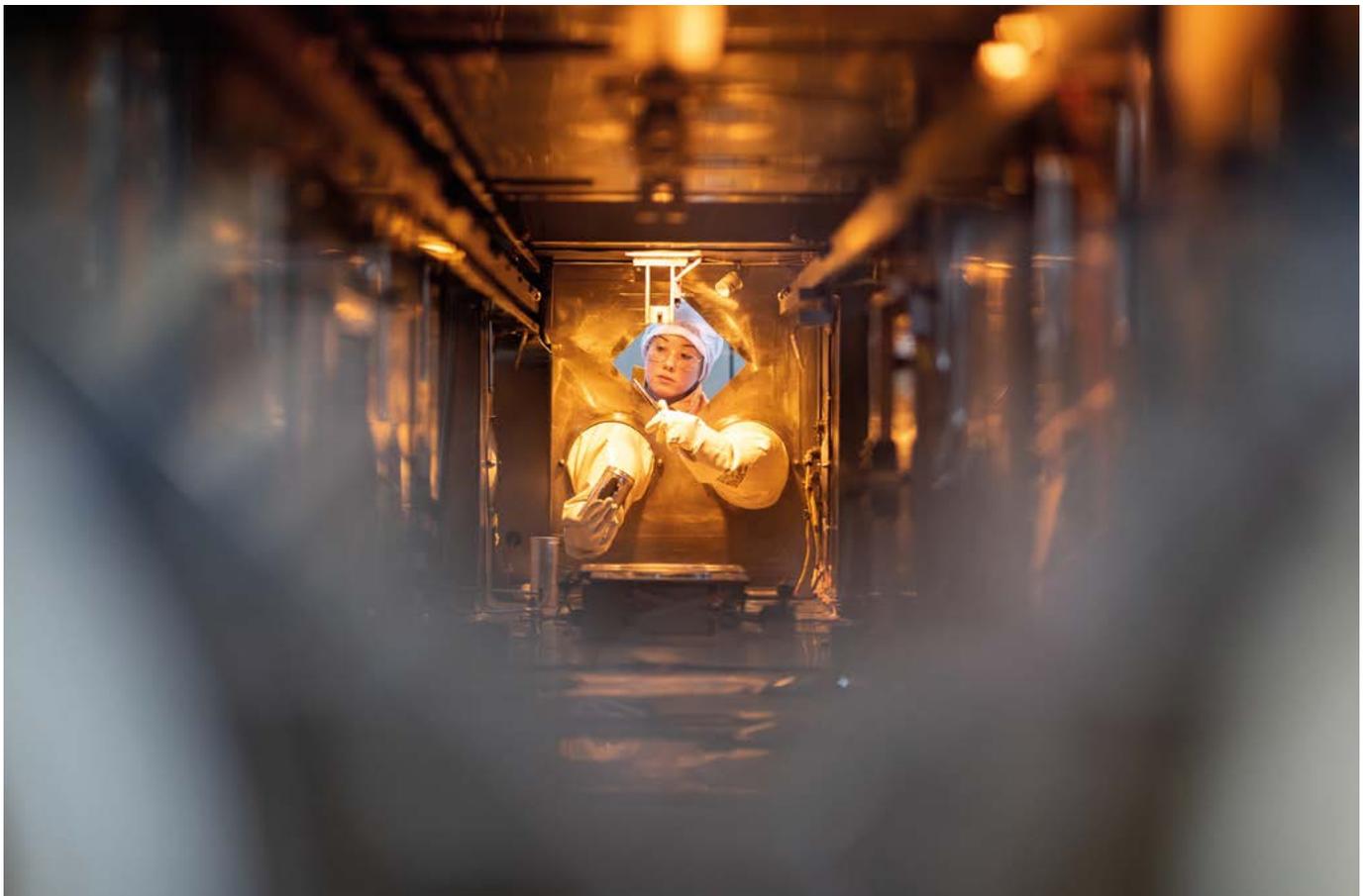
To support flexible, long-term careers in nuclear:

- we will standardise curriculums and qualifications across the sector, enabling people to transfer between organisations. We will also establish cross sector development and leadership programmes and create a sector experts programme that will retain workers in teaching and training roles; and
- we will establish regional hubs to strengthen collaboration in critical hot spots, working together to address the specific needs of the area in which they operate. We have two pilots underway in the North West and the South West.

To strengthen co-operation and co-ordination:

- the UK Nuclear Skills Charter, endorsed by government, industry organisations and academic institutions, will set out the commitments and behaviours that underpin this plan.

The plan for skills will enable the DNE and civil nuclear sector to grow a workforce that is motivated, recognised and inspired – doubling our current recruitment performance and delivering the UK's priorities for national security and energy resilience.



Barrow-in-Furness

With its long history of shipbuilding dating back to the 1800s, Barrow-in-Furness remains a location of critical national importance to this day. BAE Systems' Barrow shipyard is the only facility in the UK with the infrastructure, site licence, and resources to design and build the UK's nuclear submarines.

In recognition of the vital importance Barrow plays within the DNE, the UK government has established a trilateral partnership between central government, Westmorland and Furness Council and BAE Systems. This partnership, which will enable the significant expansion required to continue supporting the Defence Nuclear Enterprise, has already begun to deliver for Barrow-in-Furness:

- It is supporting work on Barrow's local plan to guide further development, as well as **providing up to £24 million through the Brownfield, Infrastructure and Land Fund to unlock over 800 new homes at Barrow Waterfront.**
- It is working to improve the local skills ecosystem through the **creation of a Barrow-specific Education, Employment and Skills Taskforce**; convening a Transport Group; and increasing Job Centre Plus activities to improve join-up between employment and health and to expand youth unemployment support.
- We are providing **a new Barrow Transformation Fund; a ten-year funding settlement of at least £20 million per year** that will be delivered in collaboration with our local partners. The endowment-style fund will give long term certainty to deliver projects over multiple years and the flexibility to invest in interventions based on evolving local needs and priorities.
- The Barrow Transformation Fund will support local priorities such as improving health and wellbeing; increasing productivity; restoring Barrow's heritage and unlocking its visitor economy; and building more homes and improving transport links. It will provide the stable and sustained investment needed to level up the town and deliver its unique role in the protection of our national security.
- **A new Barrow Delivery Board, backed by an additional £5 million government funding**, will play a role in administering the Transformation Fund, ensuring decisions on Barrow's needs are taken locally and by the right group of dedicated experts. The Delivery Board will also conduct strategic masterplanning, supporting development of thousands of new high-quality homes and regenerating the town centre.

Collectively, these interventions will make it possible for Barrow to grow sustainably – strengthening the local economy by encouraging more people to come to live and work in the area.

Academia

To ensure the DNE remains at the forefront of emerging technology, we supplement in-house expertise by working in partnership with the wider science community.

We support world-leading research, and training of future subject matter experts, by funding postgraduate students in research areas including alpha-emitting materials and novel advanced manufacturing technologies. Working alongside UK Research and Innovation CDTs we will develop further PhD-level research programmes across civil and defence to enable students to network and link with civil (fission and fusion) CDTs.

AWE has a wide programme of engagement with 37 UK universities, and five strategic alliances with the universities of Bristol, Cambridge, Cranfield, Heriot-Watt and Imperial. In addition, 93 'year in industry' posts are provided to UK universities by AWE. It is also a member of the UK's High Value Manufacturing Catapult Centres in Coventry and Sheffield. This provides insight into advanced manufacturing technologies and access to critical skills traditionally found in the regions.

The DNE is diversifying its footprint and creating satellite locations in cities housing key academic institutions, building on the Catapult Centres. Alongside this, we are also investing in deepening expertise on strategic stability and deterrence issues.

Our industry partners also work extensively with academia. Rolls-Royce Submarines Ltd collaborates with a wide range of academic partners alongside a network of Advanced Manufacturing Research Centres across the UK to deliver advanced technologies and nuclear research.



AWE's extensive graduate intake features 127 graduates across two cohorts under the **Evolve Graduate Programme**. Graduates work across three pathways covering the breadth of AWE's capabilities (engineering, science, and corporate and operations) and are set to commence a fourth pathway on environment, safety, health and quality from October 2024.

Graduates across all pathways are rotated through a series of placements that deliver tangible benefits for AWE. Graduates have the opportunity to shape their placements to develop skills and expertise, often tied to their academic backgrounds.

The first of the Evolve cohorts are due to complete their programme in autumn 2024, and previous AWE cohort graduates have gone on to a wide variety of roles across AWE including as systems engineers, physicists, materials scientists and project managers.

Part Two: Submarines

At least one nuclear-armed, nuclear-powered submarine has been covertly patrolling the world's oceans for over 50 years, carrying the UK's sovereign warheads. This is the Royal Navy's Operation RELENTLESS, the longest sustained military operation ever undertaken by the UK.

They are supported by maritime patrol aircraft which provide a seamless and world-leading anti-submarine warfare capability, while the Fleet Ready Escort is held at readiness to monitor, track and intercept adversary vessels approaching and transiting UK waters, deterring any attempts to intercept and disrupt our submarine operations. They are also supported by the wider UK defence and intelligence community.

All the UK's current submarines are manufactured by BAE Systems in Barrow and maintained by Babcock International in Devonport and Faslane. The propulsion systems, and their in-service support, are provided by Rolls-Royce Submarines Ltd from their facility in Raynesway, Derby.

SSBNs: Nuclear armed, nuclear powered

Invulnerable and undetected, our SSBNs guarantee our nuclear deterrent by patrolling the seas at all times, ready to respond to the most extreme threats to the UK.

Vanguard

Our four nuclear-powered Vanguard Class submarines are equipped with the Trident II D5 missile system and carry the UK's sovereign nuclear warheads. The Royal Navy has been operating CASD patrols in the Vanguard Class since 1993. Babcock International maintains our Vanguard Class fleet, including elements of the nuclear propulsion system, and Rolls-Royce Submarines Ltd supports the nuclear propulsion system while in service. This extends the fleet's operational availability to deliver CASD operations and will continue until the fleet is replaced by the Dreadnought Class.



Dreadnought

The four Dreadnought Class submarines will begin to replace the Vanguard Class in the early 2030s. They will be the largest, most technically advanced SSBNs ever operated by the Royal Navy, equipped with a new generation of nuclear reactors to provide power and propulsion, designed and manufactured by Rolls-Royce Submarines Ltd. The design will incorporate a range of scientifically advanced electronic systems, sensors and tactical weapons, as well as housing the Trident II D5 missile system.

They are designed and built in Barrow and represent a substantial investment into British industry. At its peak, industry estimate the Dreadnought programme will support around 30,000 jobs and it is reliant upon a supply chain of hundreds of companies based in the UK.

Dreadnought Alliance

The Dreadnought Alliance brings together the MOD, BAE Systems and Rolls-Royce Submarines Ltd under a joint management team to achieve greater integration as the Dreadnought Class submarine build programme continues. It is focused on collective delivery performance, coordinating scheduling and reporting and reducing risk.

Alongside coordinating delivery stages of the Dreadnought build, the Alliance works to cohere and strengthen industry networks.

HMS Dreadnought



Artist impression of Dreadnought

130

crew members, including three chefs and one doctor

153.6

metres in length, the same as three Olympic swimming pools

17,200

tonnes of water displaced when submerged

WEAPONS

12 Trident missile tubes across three compartments, housing the **UK's sovereign nuclear warheads**

Four torpedo tubes, housing **Spearfish heavyweight medium-range torpedoes**

POWER

The new **Pressurised Water Reactor (PWR3)** nuclear propulsion system will sustain Dreadnought for its whole life

RANGE

Within the lifetime of its nuclear reactor, the Dreadnought submarine's range is **unlimited**

SSNs: Conventionally armed, nuclear powered

Protecting the UK's deterrent from hostile activity and detection, whilst supporting global operations.

Astute

The Astute Class was first introduced in 2014. They are nuclear powered but conventionally armed. They contribute to protecting the nuclear deterrent and maritime task groups, providing global strategic intelligence. They are fitted with advanced sonar, carry Spearfish torpedoes and can deliver a Tomahawk Land Attack Missile strike capability. They are the most powerful SSNs the Royal Navy has operated to date.

Astute is at the forefront of underwater warfare, combining the qualities of stealth, endurance, reach, speed, autonomy, flexibility and strike capability. These characteristics give the Astute Class unparalleled freedom of worldwide operations, including deep under ice, to support UK, NATO and coalition operations. Astute reflects the UK's investments in conventional forces that underpin the effective operation of the deterrent, support to carrier task group operations, anti-surface warfare, strategic intelligence collection and long-range precision strike. The UK's anti-submarine warfare and secure communications capabilities contribute to NATO's overall deterrence and defence posture.

The UK has four Astute Class submarines in service. The fifth, HMS Anson, is currently undertaking sea trials with the Royal Navy before joining operations. Completing the fleet, an additional two Astute Class submarines are under construction at the BAE Systems facility in Barrow-in-Furness.

SSN-AUKUS

SSN-AUKUS is a new class of nuclear-powered, conventionally armed attack submarine being developed in partnership with the US and Australia for the Royal Navy and Royal Australian Navy.

The design and manufacturing process will be a complex, multi-decade undertaking, creating thousands of jobs across the UK. Construction of the UK's submarines will take place principally at BAE Systems' Barrow shipyard, with the manufacture of the next generation of nuclear reactors, including reactors for Australia's SSN-AUKUS submarines, taking place at Rolls-Royce Submarines Ltd in Raynesway.

The UK will supply key components to Australia's programme while they develop their domestic industrial capacity. BAE Systems will partner with ASC Pty Ltd to build Australia's nuclear powered submarines.

We are investing a share of the ring-fenced £3 billion funding announced in the 2023 Integrated Review Refresh into new facilities with advanced manufacturing capabilities in Barrow and Raynesway. SSN-AUKUS will enable deeper information and technology sharing and closer integration of security and defence-related science and technology, including propulsion plant systems, common vertical launch systems and conventional weapons from the US. They will be operational from the late 2030s, replacing the current Astute Class.



Nuclear propulsion

Cutting-edge technology means our submarines can be powered for as long as the mission demands.

All UK submarines are powered by nuclear reactors, which can run for over 20 years without refuelling. This capability means that the UK's fleet can remain dived for extended periods, ensuring their operations remain undetectable to potential adversaries. The reactors are designed and built by Rolls-Royce Submarines Ltd in Raynesway.

The advanced technology in our reactors enables the Royal Navy to undertake high-speed and long-range patrols and retain its fighting edge. This British scientific, engineering and manufacturing expertise is the foundation of our strategic advantage.

The SSN-AUKUS programme will deliver further development in our naval reactors, further investment in Raynesway and the creation of more than 1,000 highly skilled jobs.

The development of a future generation of nuclear propulsion systems available to power UK submarines beyond SSN-AUKUS has commenced. 'Nuclear Propulsion Plant – X' will span several decades, providing further opportunity across industry and academia. Its primary aim is to produce a step change in reactor plant design, specifically in terms of performance.



Our Partnership with Rolls-Royce

For over 60 years Rolls-Royce Submarines Ltd has provided the power for the UK's underwater defences. It currently employs more than 4,500 people to design, manufacture and support the pressurised water reactors that power the Royal Navy's submarine fleet.

The science, technology, engineering and manufacturing expertise deployed in their Derby facility is world leading. The site is set to almost double in size to meet the needs of the DNE, including the AUKUS commitments.

The expansion creates hundreds of new highly-skilled jobs in Derby, including through its new Nuclear Skills Academy, which will graduate 200 students a year for at least the next decade.

Dismantling and disposal

The UK's approach to dismantling submarines ensures the safe and secure disposal of radioactive waste.

Recognising the legacy of current decommissioned submarines, the DNE is committed to progressing the safe and secure disposal of our submarines and nuclear liabilities, arising from our nuclear propulsion and weapons capabilities.

After our submarines have left service with the Royal Navy and have been defueled, around 90% of the materials, mainly steel and other metals, can either be re-purposed or recycled. This approach will minimise our liabilities for future generations.

Our priority is to develop a leading and sustainable approach to deliver long-term, safe and full disposal capability. Low-Level Waste (LLW) has now been safely removed from a total of four submarines, each one with more waste being managed to final disposal, faster and at lower cost per tonne than the last. HMS SWIFTSURE is currently being dismantled in Rosyth and on track for final disposal to take place in 2026. This will be a world-first for the complete dismantling of a nuclear submarine, acting as a demonstrator in developing our future approach.

This has been used to prove that the dismantling processes and procedures being developed under the programme are safe, secure, sustainable and environmentally responsible.

We are also investing in our infrastructure in Devonport to establish a modern, safe defueling capability. Once complete, this investment in infrastructure around our maintenance and disposal facilities will free up valuable dockyard space by reducing the number of submarines we hold in storage, decreasing the costs associated with storage and maintenance and allowing us to accelerate the programme.

We have also engaged the market to explore routes to establish a future long-term national capability able to meet the needs of all future classes of submarines as they leave service, demonstrating our commitment to enhance our credibility as a safe and competent nuclear submarine operating nation. These will support the changing requirements for maintenance and decommissioning as the specifications of our submarine capability evolve and ensure that we have delivered a full life-cycle capability.



Royal Navy bases

The heart of our Submarine Service, our bases support our fleet and protect our capabilities.

HMNB Clyde, west of Glasgow, is comprised of two sites: Faslane and Coulport. It is home to the UK's Submarine Service. The largest military establishment in Scotland, employing over 6,000 people, it is where routine submarine maintenance and dockings take place.

The Royal Naval Armaments Depot at Coulport is responsible for the storage of the Trident II D-5 ballistic missile and the storage, processing and maintenance of the UK nuclear warhead.

Ongoing infrastructure programmes will enhance HMNB Clyde's capability over the coming decades, providing additional docks, berths, state-of-the-art submarine training facilities and crew accommodation. This investment in Clyde will ensure that the naval base is ready to support the arrival of the Dreadnought Class and SSN-AUKUS, while maintaining current operations.

HMNB Devonport, is the largest naval support site in Western Europe, employing close to 12,000 people, and is where our in-service submarines are maintained, modernised and refitted. Devonport is undergoing a series of major upgrades to infrastructure over the next decade, which will transform the naval base into the submarine deep maintenance centre of excellence to support Defence's highest priority.

The planned infrastructure work will modernise the docks, equipment and supporting infrastructure. This includes construction of a new non-tidal maintenance berth, delivery of refurbished dry docks for Astute Class deep maintenance and future-proofing the naval base for the arrival of Dreadnought and SSN-AUKUS.



Part Three:

Missiles and warheads

One of the DNE's core responsibilities is to ensure the UK maintains a safe, secure and reliable warhead stockpile.

Alongside this, our close partnership with the US provides the UK with access to the Trident II D5 missile stockpile. The missiles are fitted with a sovereign UK nuclear warhead. The UK and the US work together on nuclear matters through the Mutual Defense Agreement and the Polaris Sales Agreement.

Our capability is maintained by AWE's 7,000 strong workforce, with a cohort of 3,500 scientists and engineers working with industrial, government and academic partners.

In 2023, the UK completed an update of its warhead, transitioning from the Mk4 to the Mk4A by replacing non-nuclear components. The Mk4 warheads are being disassembled and their component elements reused, recycled or safely disposed of.

AWE has commenced work on a sovereign replacement warhead, as part of an evolutionary cycle that ensures we have an in-service warhead that can be safely assured from design to disposal. The design needs to be developed to meet future threats, taking advantage of new technology and manufacturing processes.

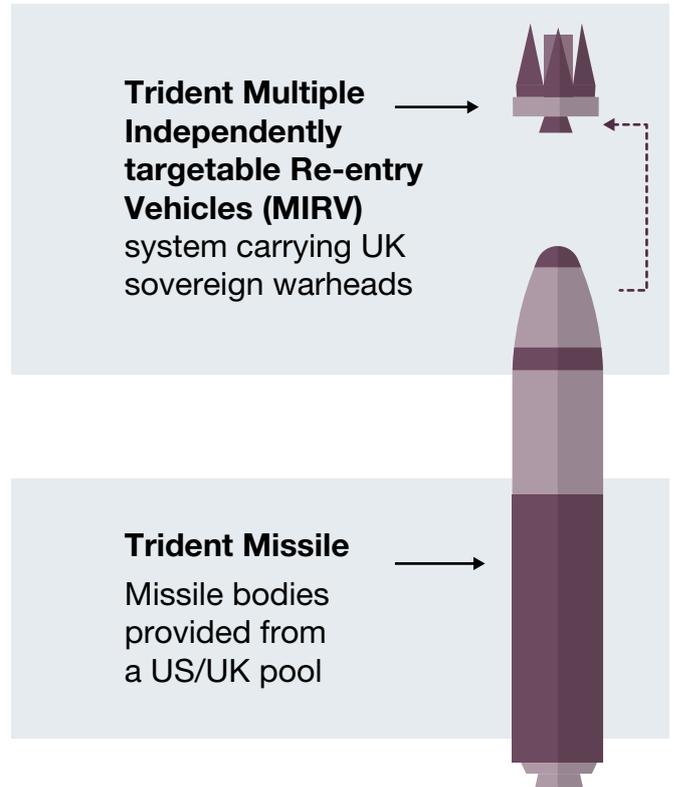
Trident missile system

Fitted with the UK's sovereign warhead, the Trident missile has a range of thousands of miles, ensuring the credibility and effectiveness of our deterrent.

The Trident II D5 Strategic Weapon System is manufactured in the US. It comprises the missiles and supporting systems fitted on the submarine as well as training and shore support equipment.

Under the 1963 Polaris Sales Agreement, the UK accesses a shared missile pool. Missiles are loaded into our submarines in Kings Bay, Georgia, US. The UK-manufactured warheads are mated to the missiles at HMNB Clyde.

The Trident system is operated by both the Royal Navy and US Navy. This enables mutual assurance of performance and safety. It remains one of the most enduring and effective examples of a strategic partnership between the two nations.



Mutual Defense Agreement

The Mutual Defense Agreement is a bilateral treaty between the UK and US and has been in place since 1958. It enables cooperation between the two countries in the uses of atomic energy for mutual defence purposes, including the exchange of nuclear materials, technology and information. The Mutual Defense Agreement has underpinned the UK–US nuclear relationship for more than 65 years.

Polaris Sales Agreement

The 1963 Polaris Sales Agreement is an intergovernmental agreement between the UK and the US that allows the US to provide ballistic missiles (without warheads), equipment and supporting services to the UK. It has been fundamental to UK nuclear deterrence since its signature in 1963.

AWE

AWE is responsible for the manufacture, maintenance and development of UK sovereign warheads.

It is the only organisation in the UK that performs precision manufacture of components made from fissile materials, safely managing some of the most sensitive nuclear materials. It produces hundreds of components to micron level tolerances, fulfilling some of the most challenging design requirements that are scientifically achievable. To do so requires working at the extremities of science and engineering to understand the performance of nuclear warheads and assure the safety, security, and effectiveness of our stockpile.

Essential to this is the technology, engineering and manufacturing integrated across the lifecycle of the warhead from initial concept and design to final decommissioning and disposal.

AWE use unique and advanced technologies from purpose-built lasers and x-rays to some of the most powerful supercomputers in the UK. It also deploys unique skills and expertise to support nuclear threat reduction through the forensic seismology and infrasound analysis to detect potential detonations and tests by other countries, using techniques that distinguish seismic signals generated by underground nuclear explosions from those generated by earthquakes, shaping the global approach to nuclear test monitoring.

Through the use of nuclear science and technology, AWE supports the delivery of a credible nuclear deterrent.

The history of AWE

The UK's post-war atomic weapons programme was established at Aldermaston in 1950. The Atomic Weapons Research Establishment (AWRE) designed and developed warheads for RAF Bomber Command and later the Royal Navy's Resolution-Class submarines carrying the Polaris ballistic missile system.

After Trident was announced in 1980, work began on significant new manufacturing facilities and development of a new warhead (Mk4). In 1987, AWRE merged with the neighbouring Royal Ordnance Factory (ROF) Burghfield and ROF Cardiff and was renamed AWE.

In July 2021, AWE transitioned to become an arm's length non-departmental body under the Ministry of Defence.





Transforming AWE

Modernising our infrastructure is fundamental to providing the UK with a safe and secure warhead capability.

AWE manages some of the most sensitive materials and advanced technologies in nuclear. It has already undertaken some of the biggest projects in defence to upgrade its unique facilities. These include the High Explosive Fabrication Facility for explosives manufacture, the Leo small components manufacturing facility and the Phoenix conventional manufacturing facility for the production of advanced material components, driving innovation in both construction and science fields.

These new facilities provide modern, safe and secure manufacturing capability to support our warhead stockpile. They form part of the critical transformation of AWE's infrastructure that will deliver the current and next generation warheads, supporting the UK to become a world-leader in new nuclear technologies.

There will be significant investment in AWE's infrastructure in Aldermaston, including the **Future Materials Campus (FMC)**. This programme will renew existing facilities for the manufacture and storage of nuclear materials, improve science and analysis capabilities, and invest in renewed capability for material recovery.

The multi-billion-pound programme of investment requires significant engagement of the wider industrial base to address specific manufacturing, delivery and assurance capability needs. The FMC will contribute to the UK's skills development, creating jobs in the local area and across the UK supply chain. This will drive innovation in both construction and science.

Replacement warhead

Replacing the UK's warhead will ensure the UK's deterrent remains cutting-edge, safe and effective.

The UK committed to replacing our sovereign warhead in parliament in February 2021. Using modern and innovative developments in science, engineering, manufacturing and production at AWE, we will ensure the UK maintains an effective deterrent for as long as required.

The Replacement Warhead Programme has been designated the A21/Mk7 (also known as Astraea). It is being delivered in parallel with the US W93/Mk7 warhead and each nation is developing a sovereign design.

This will be the first UK warhead developed in an era where we no longer test our weapons underground, upholding our voluntary moratorium on nuclear weapon test explosions. This is possible because of the long history of technical expertise and extensive investment in UK modelling and simulation, supercomputing, materials science, shock and laser physics at AWE.

Replacing the UK warhead is a long-term programme, driving modernisation and construction at AWE, HMNB Clyde and the hydrodynamics facility at EPURE, in France.





Testing

In line with our commitment not to conduct nuclear weapon test explosions, the UK has developed capabilities in modelling and non-nuclear testing to ensure safety and efficacy are maintained.

We have developed unique and world-leading technology to validate the UK's warhead stockpile. The Orion laser helps our physicists and scientists research the physics of those extreme temperatures and pressures found in a nuclear explosion to better understand the safety, reliability and performance of nuclear warheads. Orion is used collaboratively with UK academia and US teams in their National Laboratories.

Supercomputing is also a crucial capability, enabling simulations that allow us to develop a safe, assured warhead without detonation. AWE has recently commissioned a supercomputer named Valiant, one of the most powerful computers in the UK, to validate the design, performance and reliability of our nuclear warhead.

These facilities will be used to bring our next warhead into service, upholding our voluntary moratorium on nuclear weapons test explosions.

EPURE is a technologically-advanced hydrodynamic facility at Valduc, in France, near Dijon. Hydrodynamic testing uses radiography to measure the performance of materials at extreme temperature and pressure.

While the UK and France maintain operational independence, the facility will be jointly managed, with both nations performing sophisticated experiments to inform their modelling of the performance and safety of the nuclear weapons without undertaking nuclear explosive tests.

This makes an important contribution to assuring the performance of our next generation of nuclear weapons without nuclear weapon test explosions.

Part Four: Safety and security

The DNE's responsibilities span beyond the design, construction, and maintenance of our capabilities and cover the entirety of the nuclear lifecycle, encompassing our liabilities and the safe management and disposal of our assets.

We work with industry, our arm's length bodies, and regulators to uphold the highest levels of safety and security for our people, capabilities, technology (including nuclear materials), facilities and information.

Our extensive threat reduction programmes protect the environment and maintain our international commitments to the safe management of our nuclear materials.

Our engagement with our international partners underpins our ability to guarantee nuclear security. Our responsibilities extend to joint programmes with the US, France and Australia, and our nuclear deterrence commitments with NATO sit alongside our international commitments on nuclear security and non-proliferation.

These agreements and obligations are essential to ensuring our national security while guaranteeing the security and cooperation of our allies.

Regulation

The UK works in accordance with international standards published by the International Atomic Energy Agency (IAEA) and national legislation to ensure a safe, secure, and sustainable nuclear enterprise.

The DNE operates within an extensively regulated and assured environment. It secures our assets, safeguards the health of our workforce and guarantees the defence of our nation in accordance with international standards published by the IAEA and national legislation.

We are committed to working with our regulators to maintain safety and high standards of environmental protection. This applies to some of our industry partners and AWE, enshrining the expected standards of safety against the sensitive nature of equipment and materials being handled.

We work closely with the Defence Nuclear Safety Regulator, the Office for Nuclear Regulation, and the Defence Maritime Regulator. All three play a critical role in regulating organisations across the enterprise around nuclear safety, the safety of explosives and ordnance, movements and transport, fuels and gases, and public and occupational safety.

Environmental protection is central to our work and is a key foundation to meeting our sustainability goals. We work closely with the Environment Agency and the Scottish Environment Protection Agency to ensure the work we do across the breadth of the enterprise meets their high standards for protecting our environment.

As outlined in the Defence Command Paper 2023, this government asserts that there is nothing contradictory between Environmental, Social and Governance (ESG) principles and the defence industry. On the contrary, a strong national defence, including our nuclear deterrent, is a pre-requisite for the freedoms (including social liberties) which we often take for granted, and the aspirations that investors and financial services companies seek to address using ESG considerations.

As stated in the Green Finance Strategy published in Spring 2023, the government believes that continued private investment in the UK defence industry and its NATO allies is essential to protect the UK national interest, the UK economy and broader environmental and social goals.

Our preparedness and emergency response

Our nuclear emergency and counter-terrorism teams are on standby to respond to any incident involving nuclear materials, no matter how unlikely.

The risk of an incident that could pose a radiological threat to the public or the environment is extremely low. Despite this, under the Radiation (Emergency Preparedness and Public Information) Regulations 2019, we work closely with all applicable organisations to fully consider and prepare for all possible events that may arise – no matter how unlikely. Our regulators provide appropriate oversight, and all arrangements are regularly tested to guarantee continued effectiveness.

Beyond our statutory and operational responsibilities, the Ministry of Defence is the lead government department for emergencies involving defence nuclear assets. The Home Office is the lead government department for emergencies arising because of a terrorist event.

Nuclear Threat Reduction (NTR)

The Home Office, the DNO, and AWE also conduct a NTR programme. AWE's capabilities help to assure the security of our borders against the illegal transportation of nuclear material, and global security through their monitoring programmes. AWE also maintains emergency and counter-terrorism teams to support the government's wider response in the event of a nuclear or radiological incident, sitting alongside specialist military responders.

We make a significant contribution to global nuclear test monitoring through AWE's forensic seismology and infrasound analysis. This is not only key to maintaining our national security but also upholding our role in monitoring tests in support of the CTBT Organization.

The Nuclear Decommissioning Authority (NDA)

The NDA is responsible for disposal of higher activity wastes at the end of the lifecycle for all UK organisations, including the DNE.

The DNE, NDA and DESNZ are coordinating approaches to consolidate or share storage of waste, materials, and transport. We are also sharing assets involved in dismantling, decommissioning and disposal. The DNE is currently in the process of transferring some legacy defence nuclear liabilities to the NDA. Our collaboration with DESNZ, Sellafield, and the LLW Repository has seen the NDA use its own facilities to treat and manage waste from AWE.

To ensure its safe, secure management, the DNE has already invested in the facilities and skilled resources at Sellafield to prepare some of AWE's Higher Activity Waste for long-term storage.

The DNE continues to fund NDA in support of maturing the concept for a future Geological Disposal Facility and is working across government to develop a packaging and conditioning arrangement for our irradiated fuel, should it be disposed of. We will do this while ensuring that we meet our international security obligations, and that management of our irradiated fuel adheres to the principles of the NPT.

This collaboration not only ensures responsible and efficient waste management that safeguards the public and environment, but also represents a significant saving for the UK taxpayer.



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