

APP/W0340/W/22/3312261

LAND TO THE REAR OF THE HOLLIES NURSING HOME, BURGHFIELD COMMON

APPEAL BY T A FISHER & SONS LIMITED

LPA REF: 22/00244/FULEXT

**OPENING STATEMENT
ON BEHALF OF WEST BERKSHIRE COUNCIL**

1. The principal issue¹ in this appeal is whether the development would accord with policies which seek to minimise the potential impact on public safety in relation to the Atomic Weapons Establishment site at Burghfield (“AWE B”), the Detailed Emergency Planning Zone (“DEPZ”), and the associated Off-Site Emergency Plan (“OSEP”).
2. Notwithstanding the appellant’s technical evidence which interrogates the scientific basis for the contents of the OSEP, the principal issue is not complex.
3. The question for the Inspector is the potential impact, on the OSEP as it could be deployed in an emergency, of increasing the permanent residential population in the DEPZ - and whether that impact accords with relevant local and national policies.
4. The Council’s case is simple : increasing the permanent residential population increases the pressure on the OSEP and the potential for an inadequate response to a radiation emergency, thereby undermining public safety.
5. That is consistent with the advice of the regulator (ONR), and the position of the site operator (AWE) and the Ministry of Defence, who have taken the unprecedented step of direct participation in this appeal.

¹ Main issues 1 and 2 taken together, arising from RfR 2.

6. Given that “*public safety is one of the fundamental principles of the planning system*”² as is reflected in local plan policy CS8, emerging policy SP4 and paragraphs 45 and 101 of the NPPF, increasing pressure on the OSEP - which is already under significant pressure - does not accord with that fundamental principle, or those policies.
7. The appellant’s frustration that its nominally allocated housing site cannot be built out is unsurprising, but the legislative context for local plan policy CS8 has changed since the site was allocated. As a result of REPIR 2019, the Detailed Emergency Planning Zone around AWE Burghfield and the area encompassed by the OSEP expanded, to include the appeal site, and so that the number of people needing protection in the event of an emergency increased significantly. Policy CS8 now falls to be interpreted and applied in that context. Emerging policy SP4 is a clear indication of the direction of travel : where (as here) the ONR advises against a proposal in the DEPZ, permission is “likely to be refused”.³
8. The appellant’s attack on the advice of the regulator against a grant of permission, and the Council’s decision to refuse permission, relies on Dr Pearce’s evidence. Dr Pearce seeks to persuade the Inspector that the likelihood of a radiation emergency at AWE B is so remote as to be “*below recognised boundaries of acceptability*”,⁴ and that if one does occur, the actions in the OSEP beyond immediate sheltering are excessive : the danger will pass with the radiation plume and normal life can resume quickly thereafter.
9. There are four fundamental problems with that approach.
10. First: the likelihood of a radiation emergency occurring is not a material consideration in this appeal. The purpose of REPIR 2019⁵ is to address very

² APP/W0340/W/24/3344580, Benham’s Farm (23 August 2024) at DL/17

³ APP/W0340/W/24/3344580, 132 Recreation Road (27 August 2024) at DL/12

⁴ CD23.3, para 24

⁵ CD12.3

unlikely but potentially high impact emergencies. It is common ground that REPPIR 2019 applies and an “adequate” OSEP is required.⁶

11. Second: the Local Authority (“LA”) under REPPIR 2019 (in this case West Berkshire Council Emergency Planning Service as co-ordinator of the Joint Emergency Planning Unit) is required to produce and review the OSEP based on the operator’s Consequences Report⁷, which, in turn, is based on the operator’s hazard evaluation and consequences assessment (HECA). The HECA is not in the public domain. Interrogation of the Consequences Report is outside the LA’s remit. Its role is to make “*a workable emergency plan on the ground*”.⁸
12. Third : the OSEP is a high-level, multi-agency, evolving plan containing options for responding to an emergency. It is not a directive, it is a set of potential actions. It is required, by law⁹, to be capable of responding to an emergency as it happens.
13. The appellant plainly disagrees with the scope of those potential actions, but this inquiry is not the forum for resolving that disagreement. The “adequacy” or otherwise of the OSEP is a matter for the expert jurisdiction of the ONR¹⁰. There is no other authority which is legally competent to decide whether an OSEP is adequate or not.
14. Consequently, even if it were rationally possible to challenge the contents of the OSEP on the basis that some of the potential actions in it may turn out to be unnecessary in the event of an emergency (which it is not), a planning appeal is not the appropriate forum to do so.
15. Fourth: the real issue in this appeal is the potential impact on the OSEP, as it may be deployed in any given emergency, of increasing the permanent

⁶ REPPIR 2019, Regulation 11

⁷ CD5.31

⁸ CD8.4 Crest Nicholson Operations Ltd & Ors v West Berkshire Council [2021] EWHC 289 (Admin) at [87]

⁹ REPPIR 2019, Sch 7 Part 1 (1)(a)

¹⁰ The Council adopts the AWE/Mod’s position as set out in its updated statement of case [CD26.1 para 7.24.1] that “*the adequacy of the OSEP is a health and safety matter for the ONR*”.

residential population in the DEPZ. That requires an appreciation of the realities of emergency response, including the effect of fear on human behaviour. Ms Richardson, Service Manager for Emergency Planning for Bracknell Forest, Royal Borough of Windsor and Maidenhead and West Berkshire Councils, has very substantial experience of dealing with real-life emergencies in addition to her work with the JEPU for the DEPZ, and is amply qualified to explain how the addition of around 77 permanent residents could impact on the OSEP as it is, and not how the appellant thinks it ought to be.

16. In summary, the Council will demonstrate that the bulk of the appellant's technical evidence is misdirected, and, insofar as it does grapple with the real issue, is unrealistic.

CONCLUSION

17. The Council has consistently acknowledged that the development would bring benefits, principally affordable housing, but these are not sufficient to outweigh the harm of non-accordance with CS8 and the development plan as a whole. Even if (which the Council does not accept), the tilted balance is found to apply, the adverse impacts on public safety would significantly and demonstrably outweigh the benefits, assessed against the policies in the Framework taken as whole.

18. The Council's refusal of permission for residential development in the DEPZ has been endorsed in two very recent appeal decisions¹¹. In due course the Inspector will respectfully be invited to follow his colleagues' reasoning and dismiss this appeal.

17 September 2024

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SIX PUMP COURT

TEMPLE, LONDON EC4Y 7AR

¹¹ Benham's Farm [CD] and 132 Recreation Road [CD]