Planning

Proof of Evidence

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

Witness:	**Mr Matthew Shepherd Bsc (Hons) Msc**
Subject of Evidence:	**Planning**
Appeal:	APP/W0340/W/22/3312261
Site:	The Hollies Reading Road Burghfield Common Reading RG7 3BH
Proposal:	Erection of 32 dwellings including affordable housing, parking, and landscaping. Access via Regis Manor Road.
Date:	May 2023
Council Reference:	22/00244/FULEXT

West Berkshire
COUNCIL

Proof of Evidence

Mr Matthew Shepherd – Planning

May 2023

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

T: 01635 519111
E: appeals@westberks.gov.uk
www.westberks.gov.uk/planning

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3	Appeal Ref: APP/X0360/W/22/3304042. Land west of Kingfisher Grove, Three Mile Cross, Reading, Berkshire, RG7 1LZ

1. Summary

1.1 My name is Matthew Shepherd. I am a Senior Planning Officer at West Berkshire Council. I hold a Bachelor of Science in Geography from Swansea University and a Master in Science in Spatial Planning from Oxford Brookes University. I have 7 years experience as a planning professional within West Berkshire Council. I am a member of the Development Management team.

1.2 My Planning evidence should be read alongside the proofs of evidence presented by the other expert witnesses for West Berkshire Council. My evidence covers planning matters including the overall planning balance.

1.3 My proof reviews the appeal proposals compliance with Core Strategy Housing Policies and AWE Policies. My proof shows that the Council can display a 5 year housing land supply of 6.3 years and asserts that the development plan is up to date in regards to the policies considered at this appeal and that no tilted balance should be applied in reference to paragraph 11d of the NPPF.

1.4 The appeal proposal is considered to comply, in isolation, with the principles of ADDP1 in terms of its *location* following the Council's spatial strategy and in terms of scale and density of development.

1.5 The Council considers the development largely, but not fully, accords with ADPP6. This is because, in line with the Officer's Report *not* accepting the Principle of the Development, the second bullet point of ADPP6 ties in to Policy CS 8. In this way the proposed development does not accord with policy ADPP6 because of the objections made by AWE Burghfield and by the Council's Emergency Planning Department.

1.6 The Council has agreed as part of negotiations during the application percentage splits and tenures for affordable housing. The outstanding matter is that no legal agreement is in place to secure the affordable housing. At the time of writing this document an acceptable Unilateral Undertaking has still not been presented to the Council.

1.7 The appeal proposal is considered to not accord with CS8 which deals with Nuclear Installations in the district: AWE Aldermaston and Burghfield. The Council has objected

to the development in regards to CS8 due to objections from its Emergency Planning Team, AWE/MOD and the ONR.

1.8 The Council considers the changed legal context in which CS8 falls to be applied and the requirements placed on the Council by the REPIR Legislation. The Council considers there to be a clear conflict with Policy CS8 of the Development Plan by the Application/Appeal Residential Development in this regard. The anticipated "likely" refusal of planning permission referred to in CS8 has been triggered by the ONR objection. In addition, those Regulations and resulting requirements upon the Council are material considerations, as are also the effects on public safety and well-being as a result of an emergency incident at AWE Burghfield.

1.9 The Council has considered the ONR objection terms and that the Appeal proposals would compromise the ability of the Council Emergency Planners to adequately assure the ONR that the additional residential development proposed in the DEPZ could be accommodated within its Emergency Plan so as to ensure public safety in the aftermath of an emergency incident at the AWE Burghfield. The Council attributes full weight to the consequential breach of Policy CS 8 resulting from the proposed residential development and to the reduction in well-being during the aftermath periods.

1.10 The Officer's Report on the Application for 32 dwellings masterplan noted that the Proposal breached GS1, bullet 1 because the Proposal was not included in the previously approved scheme, whilst also noting that HSA16 provided for 60 dwellings. As is also noted in the Officer's Report under "Principle of Development", GS1 also requires compliance with the policies of the development plan including the Core Strategy. Here, as has been noted above, the Application/Appeal proposals also breach Policy CS8 of the Core Strategy.

1.11 The Council's development plan policy for housing predates the 2019 Regulations and the change by the Government to the evaluation of radiation risk to the public.

1.12 The introduction of the REPPIR Radiation [Emergency Preparedness and Public Information) Regulations 2019 is considered to be a material consideration that must be weighed in the planning balance and weighs very heavily against the Appeal development because it is very important to ensure both the safety of the public in the DEPZ and also the ongoing effective operation of the AWE Burghfield as a national defence situation. As the Officer's Report and Reasons for Refusal summarised, the

proposal would result in compromise to public safety and the ongoing effective operation of the AWE Burghfield. The NPPF also requires resilience under paragraph 97 to be ensured and it would be reduced by the proposals as a result of increased numbers of people living permanently inside of the extent of the DEPZ

1.13 The Council notes that the NPPF has been revised twice since this initial document, in 2019 and 2021.

1.14 The Council considers its Policy CS8 to remain in accordance with the most recent paragraph 97 of the NPPF (2021) which has been expanded. The scope of Policy CS8 aligns with the principles of paragraph 97 in terms of public safety and emergency planning. Public safety is considered to encompass both the risk of the public in an emergency and in terms of national defence. Both of which are considered in paragraph 97 of the NPPF.

1.15 The Council considers that the development would not accord with the NPPF paragraph 97 due to the impacts it has assessed on the Council's emergency planning response. It also finds that the ONR have concerns in regards to public safety due to this objection.

1.16 Additionally the objection from AWE and MOD inform the Councils consideration that the development is in conflict with paragraph 97 through the considerations of its consultation response including that AWE is a unique site in the UK.

1.17 The Council has considered appeal Decision at Land at West of Kingfisher Grove APP/X0360/W/22/3304042. It notes that each application must be considered on its own merits and also that this other decision on an appeal is significantly different to this appeal in a number of ways.

1.18 The Appeal proposal by virtue of its size and siting, would result in the direct loss of 4 trees the subject of TPO 201/21/0989. The loss of the trees is unacceptable especially as the proposal has not sought to minimise the impact on the existing TPO trees and also does not allow sufficient space on site to replace the trees that would be lost. This would have an adverse impact on the amenity and character of the area in which it is located. This adverse impact attains negative weight in the planning balance as considered later in this proof.

1.19 In conclusion, the Council's evidence demonstrates that the appeal proposal is contrary to Development Plan policy, national policy, and there have been material changes to legislation resulting from the REPIR 2019 Legislation which weigh against this development site that include the change from Inner Zone to DEPZ now encompassing the Application/Appeal site as a result of the Consequences Report recommendations.

1.20 In view of the above the Council respectfully requests that the appeal is dismissed.

2. Introduction

Qualifications and Experience

2.1 My name is Matthew Shepherd. I am a Senior Planning Officer at West Berkshire Council. I hold a Bachelor of Science in Geography from Swansea University and a Master in Science in Spatial Planning from Oxford Brookes University. I have 7 years of experience as a planning professional within West Berkshire Council. I am a member of the Development Management team whereby I am responsible for determining minor and major planning applications and other commensurate development management duties for the Local Planning Authority.

2.2 I am familiar with the appeal site, the surrounding area, the appeal proposals, and the relevant planning policies and material considerations. My evidence covers those planning matters not covered by my colleagues, including the overall planning balance, and should be read in alongside the proofs of evidence presented by other expert witnesses for West Berkshire Council. My evidence refers to West Berkshire Council both as “the Council” and the “Local Planning Authority (LPA)”.

2.3 I confirm that the evidence which I have prepared and provided for this appeal is true to the best of my knowledge and belief and it has been prepared and is given in accordance with the guidance of the RTPI. I confirm that the opinions expressed are my true and professional opinions.

Purpose and Scope of Evidence

2.4 I will be giving evidence on planning matters. This proof of evidence has been prepared in response of an appeal reference APP/W0340/W/22/3312261 for the Erection of 32 dwellings including affordable housing, parking, and landscaping. Access via Regis Manor Road at the appeal site, The Hollies, Reading Road, Burghfield Common, Reading, RG7 3BH.

2.5 This proof of evidence covers matters related to compliance with the development plan and planning balance. The evidence should be read in conjunction with the Council's other proofs of evidence produced by its respective witnesses. It should also be read in conjunction with the Council's statement of case.

Reasons for Refusal

2.6 The application was refused for the following reasons:

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

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

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

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

   The proposal is accordingly unacceptable.

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

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

3. Compliance with Core Strategy Housing Policies and AWE Policies

3.1 The statutory development plan for the area in which the Appeal Site is situated comprises the West Berkshire Core Strategy (2006-2026) and the Housing Site Allocations DPD (2006-2026).

3.2 The emerging Plan is also a material consideration and the draft has been submitted to the Secretary of State. I refer to this below.

3.3 The Application for the development of the Appeal Site was made on the 22nd February 2022 after the coming into force of the Radiation (Emergency Preparedness and Public Information) Regulations 2019 that required, for the first time on, and from, 22nd May 2019, the Council under Regulation 8 to determine a "Detailed emergency planning zone" ("DEPZ") on the basis of the recommendation of the AWE Burghfield under those Regulations.

3.4 As it correctly records in its Application Form (dated 31st January 2022), the Appellant made no request for pre-application advice before it made its application. This is directly contrary to the clear advice in paragraph 5.41 of the reasoned justification to Policy CS8 of the development plan and, because the Applicant/Appellant refers in its Planning Statement in support of its Application to Policy CS8, the Applicant seems to have just ignored. The Appellant sought pre-application advice post application prior to submitting this appeal. See the Emergency Planning Officer's Notes in her Proof of Evidence.

3.5 The Application Form describes the mix of dwelling and tenure types and the particular mix changed by the time that the Application was considered by the Council.

3.6 The Applicant proposed to develop an area covered by Policy HSA 16, adjacent to a part of an area also covered by that Policy which had permission for 28 dwellings by the Council in outline (reference 16/01685/OUTMAJ) in October 2018 and before the 22nd May 2019 when the 2019 Regulations came into force.

3.7 The Application was accompanied by a Planning Statement that asserted, in paragraphs 6.70-6.73 and without more, that the proposed development should be acceptable

because of the grant of planning permission for 28 dwellings on the 30th October 2018, reference 16/0185/OUTMAJ on part of the adjacent land covered by HSA 16. But that other planning permission actually predated the coming into force of the Radiation (Emergency Preparedness and Public Information) Regulations 2019 after that date on the 22nd May 2019. From May 2019, the new legislation required *the Council* (instead of the Office for Nuclear Regulation) to determine the geographical extent of a “Detailed Emergency Planning Zone” (“DEPZ”) that was itself based on a “Consequences” Report that the AWE Burghfield was itself required to prepare.

3.8 As a result of changed risk parameters, the Consequences Report under the Radiation (Emergency Preparedness and Public Information) Regulations 2019 “recommended” under Part 2 of the Report the enlargement to a new “minimum” geographical extent (and description) of the “Inner Zone” that had been required to have been defined by the Office for Nuclear Regulation under the previous legislation. The new legislation of 2019 also required the actual extent of the DEPZ to be no less than the area referred to in the Consequences Report. The area referred to in the Consequences Report itself extended to encompass the Application Site (now, the Appeal Site), and this was publicised in that Report from November 2019 (after the grant of 16/0185/OUTMAJ and before the Application that is now under Appeal was made on in January 2022).

3.9 As Part 2 of the report refers to, Appendix A of the Consequences Report showed the change in the geographical coverage from the ragged edged outline around the situation of AWE Burghfield to a blue circle of a minimum radius of 3160m from that site. The Application site (now the Appeal Site) lies immediately West (and previously outside) of the previous edge and (under the new legislation) inside of the changed blue circle. The report explains at Part 2, paragraph 2(b), that the minimum distance to which “Urgent Protective Actions” should be taken corresponds to an area with a radial distance of 3160m.

3.10 Part 3 of the Consequences Report, paragraph 1(a) sets out the rationale supporting the minimum radius of the DEPZ and paragraphs (b)-(f) set out the detailed consequences and the analysis of the weather conditions relevant to AWE Burghfield. Paragraph 2(a) explains the basis of the need for “sheltering” as the basis to reduce dose exposure of residents.

3.11 The Planning Statement accompanying the Application noted (without more) that the Application Site was in the “Middle Land Use Consultation Zone” under Policy CS 8 and makes no mention at all of the DEPZ.

3.12 The procedures undertaken by West Berkshire to determine the DEPZ March 2020 were ratified following a Judicial Review (Appendix 1) which unsuccessfully challenged the process undertaken by the Council and was dismissed in January 2021.

3.13 The Application was evaluated in an Officer’s Report. That Report cited a range of development plan policies: ADPP1, ADPP6, CS 1, CS 6, CS 8, CS 13, CS 17 and CS 19; and also GS1, HSA 16 and P1. The Report evaluated the “Principle of Development” and that “in theory” the development would be acceptable “but note the issue about other technical matters and see below”. Thus, the Council did not in fact and does not in fact accept that the “Principle of the Development” on the Appeal Site is accepted. The technical and matters referred to “below” include “Emergency Planning”, Highways matters, Design Character and Layout, and also Neighbouring Amenity.

3.14 The Council refused the Application for the Reasons for Refusal. In essence: there was and remains no planning obligation to secure the affordable housing identified in paragraphs 5.10 and 6.5 of the Planning Statement supporting the Application; the Application would compromise the safety of the public in the case of an incident at AWE Burghfield because of the addition of the (about) 77 residents of the proposed 28 dwellings, as well as the potential harm to the future capability of that establishment as a result of the additional public in the proposed development; and the loss of trees from the area covered by Tree Preservation Order, reference TPO 201/21/0989, would be unacceptable and the Applicant has not sought to minimise the impact on the protected trees resulting from the development and has not allowed for sufficient space in the Application site to replace the lost trees.

3.15 In this Appeal, the Council considers the main policies relevant to considering Housing in the proximity of AWE Burghfield are listed as follows:

- ADPP1
- ADPP6
- CS1

- CS6
- CS8
- GS1
- HSA16

3.16 The Council will now set out what it considers are the relevant sections of the above listed policies, and will consider the weight the associated policy should be given in terms of it up to datedness.

Approach

3.17 Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF provides a presumption in favour of sustainable development (paragraph 11), which for decision taking means approving development proposals that accord with an up-to-date development plan without delay. Conversely, paragraph 12 states that where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. The NPPF follows statute in this respect.

3.18 Paragraph 11d of the NPPF provides a 'tilted balance' in favour of granting permission where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date. The Council's position is that neither limb applies nor is the 'tilted balance' of paragraph 11d engaged.

ADPP1

3.19 ADPP1 sets out that Development in West Berkshire will follow the existing settlement pattern and comply with the spatial strategy set out in the Area Delivery Plan policies of this document based on the four spatial areas. Provision will be made for the delivery of at least 10,500 net additional dwellings and associated infrastructure over the period 2006 to 2026. Most development will be within or adjacent to the settlements included in the settlement hierarchy. Burghfield Common is identified as a Rural Service Centre.

3.20 The policy goes on to state that the scale and density of development will be related to the site's current or proposed accessibility, character and surroundings. Significant

intensification of residential, employment generating and other intensive uses will be avoided within areas which lack sufficient supporting infrastructure, facilities or services or where opportunities to access them by public transport, cycling and walking are limited.

3.21 The Development Plan Policy identified above is considered to accord with the NPPF as it provides new development in a sustainable manner, being genuinely plan led, and according with the principles of sustainable development. Full weight should be given to this policy.

3.22 At this time the Council can display a 5 year housing land supply of 6.4 years as displayed in the table below.

5 Year Housing Land Supply 2022-2027

	513 dwellings per year (Local Housing Need)
A. Requirement including 5% buffer	2,693
B. Total housing supply over 5 year period (including communal accommodation)	3,448
C. Total deliverable housing supply in years for April 2022 to March 2027 (B ÷ A x 5)	**6.4 years**

	2022/23	2023/24	2024/25	2025/26	2026/27	Total 2022-2027
Core Strategy Allocated Sites	67	152	150	196	100	665
Housing Site Allocations DPD Sites	293	221	209	94	0	817
Permitted non-allocated sites of 10 dwellings or more	367	304	156	68	0	895
Permitted non-allocated small sites	131	243	13	0	0	387
Large and medium sites identified through the prior approval process	161	153	0	0	0	314
Small sites with prior approval	13	31	0	0	0	44
Small site windfall allowance	0	0	0	129	140	269
Total Deliverable Supply excluding communal accommodation	1,032	1,104	528	487	240	3,391
Communal accommodation (dwelling equivalent)	11	46	0	0	0	57
Total Deliverable Supply including communal accommodation	1,043	1,150	528	487	240	**3,448**

3.23 It can be seen that the allocation under HSA 16 of the area of the Appeal Site contributes to the annual supply of housing. It can also be seen that the actual contribution of 28

dwellings from the annual supply would not result to reduce the supply to below 5 years' worth of dwellings.

3.24 The reasoned justification to ADPP1, paragraph 4.12, notes that "*Development within the East Kennet Valley will take into account the presence of AWE … Burghfield, as set out in Policy CS8*". Therefore, Policy ADPP1 reference in paragraph 2 to "*Most*" (*not "all")* development is informed to mean that the strategy for development in the Valley remains conditional upon Policy CS 8 and is not a given. This aligns too with the Officer's Report *not* accepting the Principle of the Development and instead recognising that conditionality.

3.25 The appeal proposal is considered to comply with the principles of ADDP1 in terms of following the Council's spatial strategy and in terms of the scale and density of development being related to the site's current or proposed accessibility, character and surroundings.

3.26 The appeal proposal is considered to comply, in isolation, with the principles of ADDP1 in terms of its *location* following the Council's spatial strategy and in terms of scale and density of development to be related to the site's current or proposed accessibility, character and surroundings

ADPP6

3.27 The spatial strategy for the East Kennet Valley is covered by policy ADPP 6. Figure 5 identifies the "AWE" site. This Policy identifies that some growth is planned for this area to help meet the needs of the village communities and to assist with the viability of village shops and services. This amounts to approximately 800 homes between 2006 and 2026, an average of 40 new homes a year. Paragraph 4.44 of the reasoned justification explains also that the AWE Burghfield "*has implications for the future level of development in this area*". This aligns with the Policy in bullet 2 of ADPP6 that, like ADPP1, also makes *residential* development in the Valley contingent on Policy CS8.

3.28 The relatively low growth proposed for this area of the District reflects the more limited services and poorer transport connections. At March 2011 there had already been considerable housing commitments and completions in the East Kennet Valley, leaving only about 320 dwellings to be allocated.

3.29 With regard to the presence of AWE Burghfield, the Council will monitor housing completions and population levels in conjunction with the ONR and neighbouring authorities. Residential development in the inner land use planning consultation zone is likely to be refused planning permission in accordance with Policy CS8.

3.30 Similarly, the application of CS8 in the context of the new 2019 Regulations means that the Council is now required itself to define the extent of the land use consultation zones (of which the smallest is now described as a “DEPZ”) (whereas, previously that defining role was required by regulations to have been undertaken by the ONR and hence the Footnote 60 to CS8). Therefore, there is today no “Inner Zone” under CS 8 because the Regulations have removed the concept of Inner and Middle Zone and replaced the risk evaluation area with a “DEPZ” and an outer zone. In the new legal context, the Council applies CS8 with regard to the Regulations’ changed definitional roles and the Regulations changed risk evaluation approach and different zonal characterisation, with the result that residential development in what was before the ‘inner land’ use planning consultation zone, is now the DEPZ, and is likely to be refused planning permission where there is an objection by AWE Burghfield. There was an objection by AWE Burghfield to this Application, and by the ONR, and there was also here an objection by the Council’s Emergency Planning. Therefore, under CS8 the Application proposal was likely to be refused, and indeed, was so.

3.1 Flowing on from these policies, the Council adopted the HSADPD in 2017 which was also before the changes referred to above. The DPD made a range of housing allocations across the District and Burghfield including the application site. This application site comprises the *western* half of allocated site under identified under policy HSA16. That policy notes the allocation of approximately 60 dwellings. 28 dwellings were permitted in the different context of the situation before the 2019 Regulations and before the changes to the DEPZ had occurred and those dwellings were constructed to the east in the allocation. The application proposal seeks to secure planning permission for the remainder of 32 allocated under HSA 16.

3.2 The Development Plan Policy identified above is considered to accord with the NPPF as it is consistent with the requirements of the NPPF in respect of providing new development in sustainable manner, being genuinely plan led, and according with the principles of sustainable development. It also accords with the NPPF in regards to safety in having regard to the AWE sites. Full weight should be given to this policy.

3.3 The Council considers the development largely, but not fully, accords with ADPP6. This is because, in line with the Officer's Report *not* accepting the Principle of the Development, the second bullet point of ADPP6 ties in to Policy CS 8. In this way there is no accord with policy ADPP6 because of the objections made by AWE Burghfield and by the Council's Emergency Planning Department in its role under the 2019 Regulations:

"*With regard to the presence of AWE Aldermaston and Burghfield, the Council will monitor housing completions and population levels in conjunction with the ONR and neighbouring authorities. Residential development in the inner land use planning consultation zone is likely to be refused planning permission in accordance with Policy CS8.*"

3.4 Policy ADPP6 is implemented through the Core Policies in Section 5 of the Core Strategy. See below.

3.5 The Council will explore in its evidence later on the application of CS8 in Section 5 to the Appeal proposals and notes here that the spatial strategy for this particular area identifies that due to AWE, sites for residential development in the inner land use planning consultation zones are likely to be refused planning permission in accordance with Policy CS8.

3.6 The Council will address the issue of the reference of 'inner zones' in its section on CS8.

3.7 The spatial strategy of ADPP6 also builds further cautions by noting the Council will monitor *housing* completions and population levels in conjunction with the ONR and neighbouring authorities.

3.8 The Council considers that the development does not accord with ADPP6 due to conflict with the spatial strategy in terms of its wording on CS8.

CS1

3.9 The Core Policies are set out in Section 5 of the Core Strategy.

3.10 Policy CS1 describes that Provision "will be made" for the delivery of at least 10,500 net additional dwellings and associated infrastructure over the period 2006 to 2026 and how it will be made (by Site Allocations). Delivery will be phased and managed in order to

meet at least an annual average net additional dwelling requirement of 525 dwellings per annum and to maintain a rolling five year supply of housing land. It goes on to state that new homes will be located in accordance with the settlement hierarchy outlined in the Spatial Strategy and Area Delivery Plan Policies.

3.11 The Site Allocations and Delivery Development Plan Document will identify specific sites to accommodate the "broad" distribution of housing set out in the Area Delivery Plan policies. Greenfield sites will need to be allocated adjoining settlements in all four of the spatial areas to accommodate the required housing. Taking into account the SHLAA, updated by any further evidence, such sites will be selected to achieve the most sustainable pattern of development consistent with the other policies in the Core Strategy.

3.12 Policy CS1 is considered to accord with the NPPF as it is consistent with the requirement in respect of providing new housing development in sustainable manner, being genuinely plan led, and according with the principles of sustainable development. Full weight should be given to this policy.

3.13 The appeal proposal is considered to be consistent with this Policy CS1 in that, being on a site that is allocated, the Proposal aligns with the "broad" distribution of housing.

CS6

3.14 CS6 seeks to secure affordable housing provision from residential development. In order to address the need for affordable housing in West Berkshire a proportion of affordable homes will be sought from residential development. The Council's priority and starting expectation will be for affordable housing to be provided on-site in line with Government policy.

3.15 On development sites of 15 dwellings or more (or 0.5 hectares or more) 30% provision will be sought on previously developed land, and 40% on greenfield land.

3.16 Policy CS6 is considered to accord with the NPPF by providing affordable housing on new developments. Full weight should be given to this policy.

3.17 The housing officer has noted that should the application be approved the 13 on site affordable units (40% affordable housing of which 70% 9 units should be for social rent)

must be achieved via the completion of a relevant s106 obligation attached to the planning permission.

3.18 The Council has agreed as part of negotiations in the application percentage splits and tenures for the affordable housing. The outstanding matter is that no legal agreement is in place to secure the affordable housing. At the time of writing this document an acceptable Unilateral Undertaking has still not been presented to the Council.

3.19 The Council therefore finds the proposed development conflicts with development plan Policy CS6 because no planning obligation was provided to the Council before it issued its decision notice refusing planning permission and none has been received to the date of this proof.

3.20 Furthermore affordable housing could be situated on an alternative site outside of the DEPZ area and in line with the Emerging Local Plan approach to shaping development over the administrative area of the Council.

CS8

3.21 Policy CS8 deals with Nuclear Installations in the district: AWE Aldermaston and Burghfield. This Appeal concerns only the latter because the Appeal Site is within the DEPZ as recommended by the Emergency Planning Authority as outlined in Carolyn Richards Proof of Evidence.

3.22 Policy CS8 is also addressed by Bryan Lyttle's proof.

3.23 In respect of my proof, the Policy CS8 states:

"*In the interests of public safety, residential(59)development in the inner land use planning consultation zones(60)of AWE Aldermaston and AWE Burghfield is likely to be refused planning permission by the Council when the Office for Nuclear Regulation (ONR) has advised against that development...*"

3.24 Policy CS8 Footnote 60 states that "*Consultation Zones as defined by the ONR and shown on the West Berkshire Proposals Map*". CS8 itself includes a table that refers also to "Land Use Planning Consultation Zones: Office for Nuclear Regulation" and the

table refers to 3 such zones: Inner; Middle; and Outer. The reference in Footnote 60 is a summary reference to *all* of the zones mentioned.

3.25 Paragraph 5.43 of the reasoned justification explains that the Council's intention to "*normally follow*" the advice of the ONR – as the administrator of the Government's policy for control of development near to AWE establishments and nuclear risk – is reflected by CS8.

3.26 The Council interprets CS8 to mean that, when an objection ("advise against") is received by it, then the Council would normally refuse the planning application. This is because the reasoned justification of paragraph 5.43 informs the meaning in Policy CS8 of "*likely to be refused … when*".

3.27 The normal refusal occurs in relation to the "inner land use planning consultation zone" for residential development whereas other development proposals in all other zones are treated on a particular case by case basis by reference to criteria described in CS8. The other zones comprise a middle and an outer zone. As Footnote 60 explains, the definition of the Consultation Zones is "by the ONR.

3.28 Reasoned justification paragraph 5.44 for Policy CS 8 describes how the consultation zones "may change" as a result of changes to the inputs to the ONR's model. The paragraph envisages a revised safety case resulting in less constraining population density criteria being applied – but the justification does not exclude the potential for *increased* constraint on population density. The latter is so after the 2019 Regulations and the AWE Burghfield "Consequences Report". The Council's position is that the "Consultation Zones" (whether, referred to in the CS8 table as "inner"; "Middle"; or "Outer") referred to cannot be regarded as frozen in time.

3.29 In addition, Policy CS8 was formulated at time when the ONR had the function under then legislation of defining "*land use planning consultation zones".* That function has now been allocated by the Secretary of State through the 2019 Regulations to the Council instead of to the ONR. Applying Policy CS8 today in the context of the current legislation of the 2019 Regulations, that attribute the function of defining (by a determination of the Council) the extent of the Detailed Emergency Planning Zone and the Outer Zone also, the reference in Footnote 60 to "as defined by the ONR" is applied to mean "as defined by the Council". If the Council did not apply CS8 in that way, then Policy CS 8 would be robbed of its purpose (of protecting both the public from safety

risks from the AWE establishment and the ongoing operation of the AWE in working in the context of that risk) by regulating the development of land for residential development (including that resulting in a "permanent night time population"). Also, if CS8 were not applied as the Council has done, then a disconnect would result between the extent and content of the Zones in Policy CS8 and the extent and content of the Zones under the 2019 Regulations notwithstanding Footnote 60. This would be inconsistent with the Government's regulation of risk from the AWE facility and ensuring public safety.

3.30 In addition, when CS8 was formulated, the ONR was part of the Health and Safety Executive (HSE). Today, the ONR has been separated out from the "HSE" referred to in CS8 when it was first formulated and into a discrete organisation.

3.31 The Council considers the changed context in which CS8 falls today to be applied and as required by the REPIR Legislation, namely the changing away by the Government from three safety evaluation zones to two: a DEPZ and an Outer Zone; and also the changed role of who defines the zones; are within the scope of Footnote 60 as applied by the Council in that changed legal context.

3.32 The Development Plan Policy identified above is considered to accord with the NPPF as it is consistent with the requirement in respect of promoting public safety and taking into account wider security and defence requirements for which the Council considers an objection from the MOD and /or AWE would meet the requirements of NPPF paragraph 97 (b). Full weight should be given to this policy.

3.33 The Council consulted with the ONR also and note that its response, dated 19th March 2022, advised: (emphasis added):

"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) (REPPIR) 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"

3.34 The ONR's advice (to advise *against* development or not) is based on a range of factors including development scale and distance from the AWE location. The ONR's decision to object to development is based on "complex modelling" and it advised against nearly all residential development in the (former) 'inner' zone (and that also largely comprises countryside).

3.35 Thus, CS8 aligns to the ONR's advice and that the Council "*would normally follow the ONR's advice in the inner zone*". It is therefore clear to the Council that the ONR have advised against this form of development based on a detailed assessment.

3.36 The Council considers there to be a clear conflict with Policy CS8 by the proposed residential development in this regard. The anticipated "likely" refusal of planning permission under CS8 has been triggered by the ONR objection. The Council has considered the ONR objection terms and the compromise to the inability of the Council Emergency Planners to be able to adequately assure the ONR that the residential development could be accommodated within its Emergency Plan. The Council attributes full weight to the breach of this Policy resulting from the proposed Residential Development.

3.37 As well as the ONR, the MOD also formally objected to this application making the following statements on the 07/04/2022 (emphasis added);

"*The purpose of this email is to record the MOD's formal OBJECTION to this proposal for the reasons set out below. The MOD reserves the right to make further representation should the application proceed through the development process for instance to appeal if the application is refused.*

I note that the ONR [19/03/2022] has "advised against" this development and also that WBC Emergency Planners [22/02/2022] has recommended refusal.

AWE Burghfield [AWE B] is owned by the Secretary of State for Defence and together with AWE Aldermaston and Blacknest, delivers the warhead contribution to the nationally and internationally significant nuclear deterrent. AWE B has unique national strategic importance as it is here that warheads are assembled and maintained while in service and decommissioned when out of service. It is the only site in the UK with this capability. The importance of that use is reflected in the current WBC Local Plan,

representations made by MOD to the emerging Local Plan and National Planning Policy Framework paragraph 95.".

The MOD has consistently sought to ensure that any constraints on delivering the capabilities at AWE B now and in the future are minimised. <u>The proposed introduction of this development is directly contrary to safety and emergency planning advice and practice in light of the DEPZ required.</u> It could have an adverse impact upon the nation's security by constraining both the current and future operation of AWE B."

3.38 The objections from AWE and MOD are clear that the development would be contrary to the safety and emergency planning advice put in place and required in the DEPZ. There is clear concern from the Ministry of Defence that the interests of public safety could be put at risk contrary to CS8. It would also have an impact on the emergency off site plan.

3.39 This further informed the Council's decision that the development would conflict with CS8. The Council builds layers of objection from its emergency planner's objection to the developments impact on the emergency plan. Then the ONR advising against the development and finally the Ministry of Defence raising concerns in regards to the emergency planning implications.

3.40 Due to the conflicts with CS8 there is knock on conflict with ADPP6 given the following section of bullet point two of the policy reads "*Residential development in the inner land use planning consultation zone is likely to be refused planning permission in accordance with Policy CS8.*" The overarching spatial strategy acknowledges that development in the inner zone would likely be refused. The Council explored earlier how it considers footnote 60 allows for the inner zone to be exchanged for the updated Detailed Emergency Planning Zone.

3.41 The Council therefore find there is clear conflict with ADPP6 given the conflicts in regards to CS8.

GS 1

3.42 The Officer Report correctly notes that the proposed development is at odds within Policy GS 1 in regards to HSA16. This is because GS1 bullet 1 requires "a single planning application" to be submitted for each allocated site … "to ensure [a]

comprehensive approach to development is achieved". In relation to HSA 16, a single application was made for the development of the area covered by HSA 16 for 28 dwellings and this was permitted by the Council, reference 16/01685/OUTMAJ, on the 30th October 2018, with reserved matters being approved on the 8th August 2019. Therefore, the requirement of GS1, bullet 1 was met by that previously approved scheme but not the current Application/Appeal because it is a second application.

3.43 The Officer's Report on the Application for 32 dwellings masterplan noted that the Proposal breached GS1, bullet 1 because the Proposal was not included in the previously approved scheme under that previous single application, whilst also noting that HSA16 provided for 60 dwellings.

3.44 As is also noted in the Officer's Report under "Principle of Development", GS1 also requires compliance with the policies of the development plan including the Core Strategy. Here, as has been noted above, the Application/Appeal proposals also breach Policy CS8 of the Core Strategy.

Policy HSA 16

3.45 Policy HSA 16 relates to the allocation of the area that contains the Application/Appeal site it reads as follows;

Land to the rear of The Hollies Nursing Home, Reading Road and Land opposite 44 Lamden Way, Burghfield Common (site references BUR002, 002A, 004)

These sites are being considered together as one site and have a developable area of approximately 2.7 hectares. The sites should be masterplanned comprehensively in accordance with the following parameters:

- *The provision of approximately 60 dwellings with a mix of dwelling types and sizes.*
- *The site will be accessed from Reading Road, with a potential secondary access from Stable Cottage.*
- *The scheme will be supported by an extended phase 1 habitat survey together with further detailed surveys arising from that as necessary. Appropriate*

avoidance and mitigation measures will need to be implemented, to ensure any protected species are not adversely affected

- *The scheme will be informed by a Flood Risk Assessment to take into account surface water flooding and advise on any appropriate mitigation measures.*
- *The scheme will comprise a development design and layout that will:*
    - *Limit the developable area to the west of the site to exclude the areas of existing woodland.*
    - *Be informed by a Landscape and Visual Impact Assessment which will include measures to:*
        - *Reflect the semi-rural edge of Burghfield Common through appropriate landscaping.*
        - *Provide a buffer of 15 metres to the areas of ancient woodland to the west of the site and provide appropriate buffers to the rest of the TPO woodland.*
        - *Provide an appropriate landscape buffer on the part of the site that is adjacent to The Hollies to minimise any impact on the residents.*
        - *Explore options to provide footpath and cycle links to existing and proposed residential development to increase permeability to other parts of Burghfield Common.*

3.46 The Council considers the Application/Appeal development to breach HSA 16 because: access is not from Reading Road and secondary access is not from Stables Cottage, as is required by Bullet 2 of HSA 16 but is from Regis Manor Road; the proposed development is not part of a single application or comprehensive scheme previously approved and therefore cannot be considered to "*…be masterplanned comprehensively in accordance with the following parameters".*

4. Material Considerations

Emergency Planning Policy Context

4.1 The Council's development plan policy for housing predates the 2019 Regulations and the change by the Government to the evaluation of radiation risk to the public. The local policy also predates the change by the AWE Burghfield of the risk radius for that major hazard establishment.

4.2 The Council adopted the HSADPD, in 2017 and also before the changes referred to above, where the DPD made a range of housing allocations across the District and Burghfield including the application site. This application site comprises the *western* half of an allocated site under identified under policy HSA16. That policy notes the allocation of approximately 60 dwellings. 28 dwellings were permitted before the occurrence of the changes referred to above had occurred and those dwellings were constructed to the east in the allocation. The application proposal seeks to secure planning permission for the remainder of 32 allocated under HSA 16.

4.3 The allocations in the DPD are also subject to Policy GS1 in the HSADPD, the first line of which notes that "*All sites will be delivered in accordance with the West Berkshire Development Plan*". Footnote 2 makes clear that the WBCS is identified as being an integral component of that Plan. Policy CS8, as referred to above, in the Core Strategy identifies three safety zones around the two AWE sites, within which in the inner zone, all residential development, upon which the ONR has advised against, on the grounds of public safety, will likely be refused planning permission. It is noted that this is not, appropriately, an automatic rejection but a strong indication of the outcome.

4.4 When the HSADPD was prepared by the LPA, the proposed level of housing on the allocated site was consulted upon and the Council Emergency Planners AT THAT TIME, [pre 2017] allowed for the 60 units under HSA16.

4.5 Since then in 2019, and following consultation the Government revised the REPPIR Radiation [Emergency Preparedness and Public Information] Regulations 2019. The DEPZ for the AWE Burghfield site was revised.

4.6 The introduction of the REPPIR Radiation [Emergency Preparedness and Public Information) Regulations 2019 is considered to be a material consideration that must be weighed in the planning balance and it weighs very heavily against the proposed development because it is very important to ensure both the safety of the public in the DEPZ and also the ongoing effective operation of the AWE Burghfield as a national defence situation. As the Officer's Report and Reasons for Refusal summarised, the proposal would result in compromise of public safety and the ongoing effective operation of the AWE Burghfield. The NPPF also requires resilience under paragraph 97 to be ensured and it would be reduced by the proposals as a result of increased numbers of people living permanently inside the extent of the DEPZ.

4.7 By increasing the number of people living in the DEPZ should an emergency happen this could cause the resilience of the Emergency Plan to be stretched by 'spreading to thinly' the plan itself and the resources the Emergency plan relies upon. This would therefore increase potential future occupants' vulnerability as a knock on affect from this which clearly conflicts with paragraph 97 of the NPPF.

4.8 The Council considers that there is sufficient flexibility built into policies ADPP6 and CS8, and in their proper application also, to ensure they can respond to the evolving situation around the AWE sites referring to monitoring of housing completions and population levels in conjunction with the ONR and neighbouring authorities. The policies' terms note the potential for change of their parameters and are designed to be flexible both in terms of population's numbers going up and down and having regard to the ONR's views on that situation to ensure AWE's ongoing ability to operate and in regards to public safety with regard to that establishment. Therefore, the contingent nature of the HSA 16 allocation is not here satisfied, in particular as a result of the breach of CS8 and the related policy provisions in other policies that concern development around AWE Burghfield set out above. Therefore, planning permission should be refused.

4.9 In addition to the Policies of the development plan itself, it is also clear to the Council that whilst the site is allocated under the current local plan, the change to the DEPZ due to the introduction of the REPPIR Regulations in 2019 results in material considerations here and that these material considerations outweigh the weight given to HSA16 as an allocation. Therefore, planning permission should be refused on account of material considerations also.

4.10 Furthermore that the changes to the DEPZ also mean, in the Council's view, that the conflict with CS8 must be given significant weight due to the nature of the risk and of the level of conflict and the objection by the ONR, AWE, the MOD and also by the Council's Emergency Planning Department, all of whom are concerned to ensure the safety of the public in the event of an emergency occurring within the Detailed Emergency Planning Zone.

4.11 The potential for the risk to public safety from an incident at AWE Burghfield to be increased by increased numbers of residents in a residential development within the area of the DEPZ is a material consideration, as too is the increased risk of interference with the ongoing operation of AWE Burghfield.

4.12 I am also advised and understand also that a genuine fear or concern of activities that have land use consequences can also be a material consideration. For example, in the West Midlands case (Appendix 2), the fear and concern of local neighbours about the types of activity that may occur at a proposed hostel, and the fear of potential increased siren noise were material considerations. So too in this case, the Emergency Planning witness of the Council explains how the real fear and concern of the general public about longer term radiation effects on real property is a material consideration in this case.

4.13 The evidence provided by the Council's Emergency Planning witness explores their reason in regards to objecting to the application in regards to Emergency Planning. The Council's planning decision is informed by its Emergency Planning Officer and the consultees and that assist it with considering compliance with policies.

National Planning Policy Framework Changes

4.14 The NPPF(2021) is a material consideration.

4.15 The Council notes that CS8 was drafted based on the 2012 NPPF which read as follows in regards to major hazard sites.

"*Public safety from major accidents 172. Planning policies should be based on up-to-date information on the location of major hazards and on the mitigation of the consequences of major accidents*."

4.16 The Council notes that the NPPF has been revised twice since this initial document, in 2019 and 2021. The NPPF states in paragraph 97 the following:

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

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

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

4.17 The Council considers its Policy CS8 to remain in accordance with the most recent paragraph 97 of the NPPF (2021) which has been expanded. The scope of Policy CS8 aligns with the principles of paragraph 97 in terms of public safety and emergency planning. Public safety is considered to encompass both the risk to the public in an emergency and in terms of national defence. Both of which are considered in paragraph 97 of the NPPF.

4.18 The Council considers that the development would not accord with the NPPF paragraph 97 due to the impacts it has assessed on the Council's emergency planning response. It also finds that the ONR have concerns in regards to public safety due to this objection.

4.19 Additionally the objection from AWE and MOD inform the Councils consideration that the development is in conflict with paragraph 97 through its consultation response noting the development "…*could have an adverse impact upon the nation's security by constraining both the current and future operation of AWE B*." Furthermore adding that the AWE is the only site in the UK with this capability.

5. Appeal Decision Land at West of Kingfisher Grove

5.1 The Secretary of State has recently permitted 49 units to be built within the same DEPZ as is relevant in this application. See the decision of the Secretary of State, reference APP/X0360/W/22/3304042, dated 31st January 2023 (Appendix 3.)

5.2 The Council notes that each application must be considered on its own merits and also that the appeal decision referred to above is significantly different to this appeal in a number of ways.

5.3 Paragraph 42 of the Inspector's decision for Kingfisher Grove notes that Wokingham Borough Council does not have a 5 year housing land supply. In the Kingfisher decision Wokingham Borough Council had an unmet housing need and the tilted balance was therefore engaged. Whereas the Council (West Berkshire) in this instance has a healthy land supply of 6.3 years therefore having no short fall unlike that noted in the end of paragraph 42 of the Kingfisher Grove appeal decision, even were one to discount the Appeal proposal of 32 homes from that 6.3 years' worth.

5.4 Furthermore, the paragraph 42 notes that the kingfisher site would "…*provide approximately 6% of the Council's annual supply of homes, which I consider to be a sizeable proportion*." Whereas in the case of this Appeal the contribution to the supply of housing would be around 0.9%, being comparatively very limited. This displays how the contribution of this Appeal proposal is small in the overall scheme but, conversely, would have far reaching implications for safety and national defence in the Councils view.

5.5 In the Kingfisher appeal, it was simply assumed that that council's Emergency Plan was a complete answer to all concerns and so there was not further nor detailed assessment of the Plan and the consequences of the additional burden of that site and its residents to the plan nor to the ongoing effective operation of AWE Burghfield.

5.1 The Kingfisher site was a windfall site and therefore was not factored into any Emergency Plan for that reason. The Council must now revisit its emergency plan to accommodate these 49 dwellings. This is significant as the Council already had concern in terms of accommodating this appeal proposal, now it must accommodate the

Kingfisher decision houses which uses up further capacity. The cumulative impact of the Kingfisher decision and potentially this development, if the appeal is allowed, is on the emergency plan and the future ability of AWE to function.

5.2 The Inspector for appeal APP/X0360/W/22/3304042 appeared to only consider a very short term as described in paragraph 13 “The same low risk factors mean that the requirement to shelter would be over a short period of no more than two days”. The Local Authority’s emergency planning evidence shows consideration should be given to short, medium and long terms implications of an event. The Council’s evidence shows how ongoing well-being of residents needs to be considered in greater depth.

5.3 The Inspector in the Kingfisher development considered the implications for differing sectors that the REPPIR plan sectorises the DEPZ *radially* from the AWE site. The inspector noted that settlements elsewhere (than the Kingfisher appeal site) have settlements that are larger than those in that other appeal site. The Council considers Burghfield Common to be one of those larger settlements. Therefore, the Council considers the Kingfisher appeal to be different to this Appeal due to the smaller settlements in the Kingfisher section compared to the Burghfield Common section that contains a larger settlement and more of the general public being affected by an incident at AWE Burghfield. The Secretary of State in this Appeal must be satisfied that adding to a sector comprised of an already larger settlement would not compromise the emergency plan’s ability to operate affectively but the Emergency Planning Department’s evidence (and that of the ONR and AWE and MoD) shows that he cannot be satisfied that the Plan would not be compromised and that there would be no increased risk to public safety and no reduced resilience.

5.4 The Council notes that the Kingfisher appeal was heard by inquiry but no evidence was given by AWE, MOD, or the ONR unlike in this appeal. Therefore, it cannot be said that the evidence before the Secretary of State at that other appeal was the same as in this Appeal. It is not the same.

5.5 The Council notes the absence of any objection by the ONR or the AWE Burghfield to the Kingfisher appeal decision. This is different to this appeal because both parties have objected to the development.

5.6 The Council considers there is significant differences between this appeal and the Kingfisher Appeal for the Secretary of State to give no weight to it. The differences also

mean that there is no requirement of consistency nor need to follow the decision in the Kingfisher Appeal. Instead, each application for planning permission turns on its own particular facts.

6. Affordable Housing

6.1 Policy CS 6 of the Development Plan deals with affordable housing. In order to address the need for affordable housing in West Berkshire a proportion of affordable homes will be sought from residential development. The Council’s priority and starting expectation will be for affordable housing to be provided on-site in line with Government policy.

6.2 On development sites of 15 dwellings or more (or 0.5 hectares or more) 30% provision will be sought on previously developed land, and 40% on greenfield land.

6.3 The housing officer has noted that should the application be approved the 13 on site affordable units (40% affordable housing of which 70% 9 units should be for social rent) must be achieved via the completion of a relevant s106 obligation attached to the planning permission.

6.4 The Council has agreed as part of negotiations in the application percentage splits and tenures for affordable housing. The outstanding matter is that no legal agreement is in place to secure the affordable housing. The Council will work with the appellants to reach an agreement in regards to secure a policy compliant level of Affordable Housing. Subject to a satisfactory Unilateral Undertaking it is considered this reason or refusal is likely to be addressed.

6.5 However, affordable housing could be situated on an alternative site outside of the DEPZ area and in line with the Emerging Local Plan approach to shaping development over the administrative area of the Council.

7. Impact on Trees

7.1 Mr Thomas evidence explores the issues arising from the loss of the trees is unacceptable especially as the proposal has not sought to minimise the impact on the existing TPO trees and also does not allow sufficient space on site to replace the trees that would be lost and this would have an adverse impact on the amenity and character of the area in which it is located.

Tree Preservation Order

7.2 There is one active Tree Preservation Orders recorded on the application site:

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

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

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

7.4 In assessing whether a tree or trees are worthy of protection under a Tree Preservation Order, the Council uses the TEMPO scoring matrix. Guidance accompanying the matrix includes the following comment – *"The first thing to note in this section is the prompt, which reminds the surveyor to consider the 'realistic potential for future visibility with changed land use'. This is designed to address the commonplace circumstance where trees that are currently difficult to see are located on sites for future development, with this likely to result in enhanced visibility. The common situation of backland development is one such example."* So the assertion of the developer in this Appeal - that the trees on site lack public visibility - is misplaced when assessed against this methodology. The trees would in future be visible in the context of development of the area covered by the HSA 16 allocation that would change the greenfield to housing.

Relevant Policies

7.5 Relevant Policies include the following.

7.6 The Introduction to Policy ADPP1 Spatial Strategy states that *"The role of the strategy is to achieve an appropriate balance between protection of the District's environmental assets and improving the quality of life for all, ensuring that necessary change and development is sustainable..."*

7.7 Policy CS14 Design Principles states that *"New development must demonstrate high quality and sustainable design that respects and enhances the character and appearance of the area"* and makes a positive contribution to the quality of life in West Berkshire. It goes on to note that new developments will be expected to achieve, among other aspects the efficient use of land whilst respecting the density, character, landscape and biodiversity of the surrounding area. Specifically it will *"provide, conserve and enhance biodiversity and create linkages between green spaces and wildlife corridors*."

7.8 Policy CS18 Green Infrastructure states that *"The District's green infrastructure will be protected and enhanced… Developments resulting in the loss of green infrastructure or harm to its use or enjoyment by the public will not be permitted. Where exceptionally it is agreed that an area of green infrastructure can be lost a new one of equal or greater size and standard will be required to be provided in an accessible location close by."*

7.9 This policy defines Green Infrastructure as including *"natural and semi-natural green spaces – including woodlands, urban forestry, scrub etc."*

7.10 Policy CS19 Historic Environment and Landscape Character states that *"In order to ensure that the diversity and local distinctiveness of the landscape character of the District is conserved and enhanced, the natural, cultural, and functional components of its character will be considered as a whole."*

7.11 The National Planning Policy Framework paragraph 131 states that: *"Trees make an important contribution to the character and quality of urban environments, and can also help mitigate and adapt to climate change. Planning policies and decisions should ensure that… existing trees are retained wherever possible."*

7.12 Paragraph 174 of the NPPF states that *“Planning policies and decisions should contribute to and enhance the natural and local environment by: (a) protecting and enhancing valued landscapes [and] sites of biodiversity value; (b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services… and of trees and woodland.”*

7.13 Paragraph 180 of the NPPF covers Ancient Woodland, stating that *“development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused…”*

7.14 The Development Plan Policies identified above are considered to accord with the NPPF as they are consistent with the requirement in respect of conserving and enhancing the character and appearance of the area and protection of biodiversity in West Berkshire as demonstrated in the evidence provided by Mr Thomas. Therefore, full weight is attributed to those policies.

Evidence

7.15 As is covered by Mr Thomas’s evidence, the Appeal proposal by virtue of its size and siting, would result in the direct loss of 4 trees the subject of TPO 201/21/0989. The loss of the trees is unacceptable especially as the proposal has not sought to minimise the impact on the existing TPO trees and also does not allow sufficient space on site to replace the trees that would be lost and this would have an adverse impact on the amenity and character of the area in which it is located. This adverse impact attains negative weight in the planning balance as considered later in this proof.

7.16 There is no reason, and no evidenced reason why the Appeal site cannot be graded to ensure the protected trees remain for future enjoyment.

8. Planning Balance

8.1 For clarity, the following hierarchy of terms is used in this Proof;

- Great
- Significant
- Moderate
- Limited
- None

Planning benefits that attract weight

8.2 The Council acknowledges that the development is an allocated site under policy HSA16. It could contribute to the Council's 5 year housing land supply (albeit a low percentage) but only a little. Limited weight is given to this issue. Only limited weight is given to this matter due to the Council displaying a 6.3 year housing land supply. The Council can deliver on its housing numbers without the need for this site (at all). Furthermore the allocation has been formally de-allocated in the emerging local plan that is consistent with there being no assessed need for the site to be further developed.

8.3 The Council acknowledges that the development subject to a satisfactory legal agreement would deliver 13 affordable housing units. Moderate weight is given this particular matter because of the public interest in such housing. It is considered that only moderate weight can be given to the provision of affordable housing in this instance as that affordable housing does come with risk to future such occupiers of their ongoing safety due to the factors relating to unexpected occurrences at AWE and to Emergency Planning. This benefit's weight is also reduced given adequate land supply can be shown by the Council. These affordable units could be delivered elsewhere and where there is no risk or a reduced to future occupiers because the housing type would be outside of the DEPZ.

8.4 This weight is subject to the satisfactory signing of a legal agreement. Should this agreement not prevail as part of this the lack of affordable housing would be a *dis* benefit of the appeal proposal. In that instance the Council would give this conflict moderate weight.

8.5 The development would contribute through the payment of Community Infrastructure Levy. Moderate weight is given to this financial matter.

Planning matters attributing neutral weight in the balance

8.6 The development would not have an unacceptable impact on neighbouring amenity. The development would not have an unacceptable impact on the surrounding Highways. It is accepted that the design of the dwellings themselves are in accordance with development plan policies on design. These matters all attract neutral weight in the planning balance given they are needed to comply with the Development Plan and expected by National Policy.

Planning Dis Benefits

8.7 The Development is considered to potentially compromise the future effective working of the UK pre-eminent nuclear installation for defence purposes, along with AWE Aldermaston. This is given great weight given the national security implications. The Council notes that AWE is the only site in the UK at the moment capable of fulfilling this function according to AWE's consultation. The council apportions great weight to this issue due to the adverse national security implications it could cause.

8.8 The development is considered to potentially compromise the safe working of the Local Authority's emergency plan in the event of an emergency/issue at AWE sites. The additional housing would both compromise the future occupant's safety and other residents already in the area's safety. The development would compromise the future resilience of the emergency plan and increase vulnerability for current and future residents in regards to public safety in the event of an emergency at AWE. The Council apportions great weight to this issue due to the initial health risk to West Berkshire Residents and the long term impact of recovery on their well-being.

8.9 The Council attributes great weight to its Housing Land Supply position of 6.3 years enabling Housing to come forwards in other locations without any associated risk to future occupiers or the UK's defence in terms of AWE functional capability.

8.10 The development would not comply with the spatial strategy ADPP6 due to the ONR advising against this development in light of the above emergency planning issues. It would therefore not comply with the Council's spatial strategy for housing. The Council gives this issue significant weight given the policy conflict. The Council considers a lesser level of weight given to this conflict due to the more important considerations of ongoing public safety and CS8.

8.11 The development would necessitate the unrequired removal of trees having an adverse impact on the character of the area and biodiversity of the West Berkshire. The Council considers this issue attains significant weight due to the trees being under a Tree Protection order.

Applying the Balance

8.12 Whilst the site is an allocated housing site under the current development plan, the allocation is not unconditional and development of the land is based in particular on other policies that include CS8 and recognise the situation at AWE Burghfield. The material considerations that have arisen since this allocation was made in 2017 are significant and greatly outweigh the weight attributed as a result of the policy allocation that covers the Appeal site. Weight cannot be proportioned to the Kingfisher decision due to the significant defences explained in this proof and it would not be inconsistent with that decision for the Secretary of State to refuse permission in this Appeal on its very different facts and evidence.

8.13 Overall the planning weight attributed to the planning benefits of the appeal proposal do not outweigh the planning dis-benefits and conflicts with the development plan. The unnecessary public health risk to future residents inside of the DEPZ, and the need to maintain their ongoing well-being in the event of an occurrence at AWE Burghfield, and the UK's National Security when the Council can display a healthy land supply are material issues that cannot be ignored by the Council nor by the Secretary of State.

Conclusion

8.14 The Council respectfully requests the appeal is dismissed.

Appendix 1

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 REPPIR, 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 REPPIR 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: *'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'*
February 2020	The ONR completes its assessment of AWE's work, concluding that *'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'*

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 '*under [REPPIR] the Local Authority now sets Detailed Emergency Planning Zones. The ONR played no part in the decision under challenge'*
2 June 2020	The Claimants' solicitors write to the ONR asking the ONR to *"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?"*
5 June 2020	The ONR responds to a second letter from the Claimants stating: "*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."*
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: "*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"*
21 July 2020	Permission is granted by Lieven J with the observation that *"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"*
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 WBCC local authority for the AWE site in the REPPIR 19 submission is a reasonable basis for detailed radiological emergency planning purposes."*

<u>The Claimants' evidence about the Consequence Report</u>

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.

<u>The ONR's evidence about its regulatory role</u>

54. The ONR's evidence on its regulatory role in relation to REPPIR 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.

REPPIR regulation

56. As well as publishing the REPPIR 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 REPPIR 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 ONRs 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 REPPIR19, 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 REPPIR19 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 REPPIR 19 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 (<u>R(Mott) v Environment Agency</u> cited by the Court of Appeal in <u>Plan B</u> 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 <u>Plan B</u> 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 <u>Plan B</u> [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 REPPIR 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

WEST MIDLANDS PROBATION COMMITTEE v. SECRETARY OF STATE FOR THE ENVIRONMENT

COURT OF APPEAL (Hirst, Swinton Thomas and Pill L.JJ.): November 7, 1997

Town and country planning—Material planning consideration pursuant to Town and Country Planning Act 1990, section 70(2)—Extension to bail hostel—Fear of crime—Impact of development on use of neighbouring land

The appellants were refused planning permission to extend a bail and probation hostel to accommodate a further 8 bailees. It was located within the green belt adjacent to a quiet suburban housing estate. On appeal, the Inspector found on the evidence, that the apprehensiveness and insecurity of nearby residents was justified because there had been an established pattern of behaviour arising from the hostel in the form of drunken and anti-social behaviour and some of the bailees had committed crimes in the area. He refused the appeal on the basis that the proposal would be likely to exacerbate the disturbance and accentuate the fears of local residents and so impair their living conditions. The Inspector's decision was upheld in the High Court. On appeal to the Court of Appeal, the appellants submitted, amongst other things, that apprehension and fear were not material planning considerations because they did not relate to the character of the use of land. They argued that a distinction had to be drawn between the use of land and the behaviour of people on and off the land.

Held, dismissing the appeal, that where it is justified, a fear of crime emanating from a proposed development is capable of being a material planning consideration to a planning decision. The pattern of anti-social behaviour arose from the use of the land as a bail hostel and did not arise merely because of the identity of the particular occupier or of particular residents.

Legislation referred to:
Town and Country Planning Act 1990, section 70(2).

Cases referred to:

(1) *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation* [1948] 1 K.B. 223.

(2) *Blum v. Secretary of State for the Environment* [1987] J.P.L. 278.

(3) *Bushell v. Secretary of State for the Environment* [1981] A.C. 75.

(4) *East Barnet Urban District Council v. British Transport Commission* [1962] 2 Q.B. 491.

(5) *Finlay v. Secretary of State for the Environment* [1983] J.P.L. 802.

(6) *Fitzpatrick Developments Ltd v. Minister of Housing and Local Government* (unreported, May 24, 1965).

(7) *Gateshead Metropolitan Borough Council v. Secretary of State for the Environment* [1994] 1 P.L.R. 85.

(8) *Newbury District Council v. Secretary of State for the Environment* [1981] A.C. 578.

(9) *Newport C.B.C. v. Secretary of State for Wales* (transcript June 18, 1997).

(10) *Stringer v. Minister of Housing and Local Government* [1970] 1 W.L.R. 1281; [1971] 1 All E.R. 65.

(11) *Tesco Stores v. Secretary of State for the Environment* [1995] 1 W.L.R. 759.

(12) *Westminster City Council v. Great Portland Estates plc* [1985] A.C. 661.

Appeal by West Midlands Probation Committee against the decision of Robin Purchas, Q.C. sitting as a Deputy High Court Judge on August 20,

1996, whereby he dismissed an application to quash a decision of the Secretary of State for the Environment who, through his Inspector, had dismissed an appeal by the appellants against a refusal by Walsall Metropolitan Borough Council to grant planning permission in respect of the extension of a bail and probation hostel at Stonnall Road, Aldridge, West Midlands. The facts are stated in the judgment of Pill L.J.

Robert Griffiths, Q.C. for the appellants.
Michael Bedford for the first respondent.
Ian Ponter for the second respondent.

PILL L.J.: This is an appeal from a decision of Mr Robin Purchas, Q.C. sitting as a Deputy High Court Judge on August 20, 1996. The judge dismissed an application to quash a decision of the Secretary of State for the Environment ("the Secretary of State") whereby he dismissed an appeal by West Midlands Probation Committee ("the Committee") against a refusal by Walsall Metropolitan Borough Council ("the Council") to grant planning permission in respect of the extension of a bail and probation hostel at Stonnall Road, Aldridge, West Midlands. The appeal was determined by an Inspector appointed by the Secretary of State and was announced by letter dated December 7, 1995 following a local public inquiry.

Planning permission was granted in 1980 for the erection of a secure unit for severely disturbed adolescents. The unit formed part of the Druids Heath Community House complex, most of which had later been transformed into a nursing home. The unit was converted in 1989 to a bail hostel, it being determined, given the existing permission, that planning permission was not required for the conversion. Bail and probation hostels were treated by the Council, without objection, as a *sui generis* use, outside the specified use classes in the Use Classes Order.

The hostel provides accommodation for up to 12 bailees, a typical stay being about four weeks. They are required to reside at the hostel by virtue of a condition of residence imposed by the court when granting bail. A curfew operates between 11 p.m. and 6 a.m. During the day bailees are normally supervised by two professional officers and up to four administrative or domestic staff are also involved in running the hostel. At night, an assistant warden and a relief supervisor are present at the hostel.

The committee is a body corporate established under the Probation Services Act 1993 and its responsibilities with respect to the probation service are set out in the Act. Pursuant to section 7 of the Act, the committee is empowered to provide hostels to accommodate those remanded on bail with a condition of residence at an approved bail or bail and probation hostel, those subject to a probation order including a condition to reside at such a hostel, and prisoners released on licence from custody with a condition of residence at such a hostel. Section 27 of the Act empowers the Home Secretary to approve a hostel and he is also empowered to make grants for expenditure in providing bail and probation hostels under section 17 of the Act. In December 1992, the Home Office issued a Guidance Note entitled "Approved Bail and Probation/Bail Hostels Development Guide". It included guidelines on site selection.

Aldridge is described by the Inspector as a modest town and is two miles from Walsall. The hostel is described as being at the very edge of Aldridge and within the West Midlands Green Belt. Opposite, the Inspector found,

stand the neat houses and bungalows of a suburban estate. Adjacent to the hostel is a large nursing home in extensive grounds and a substantial dwelling. The proposal involved a two-storey extension to the side of the building. It would accommodate an additional eight bailees and there would be some increase in staffing.

Planning permission was refused by the council on January 3, 1995, contrary to the advice of the Director of Engineering and Town Planning. The reason given was:

> The residents of the area and the adjoining properties now experience severe and material problems and incidents arising from the existing use of the premises, which are incompatible with the surrounding residential area. The further expansion of a use which, in the considered view of the Local Planning Authority, is unsuitable for that area has the potential to further exacerbate these problems, to the detriment of the amenities which local residents could reasonably be expected to enjoy.

The Inspector defined the issues in the case as follows:

> (1) Whether the scheme would noticeably impair the living conditions that nearby residents might reasonably expect to enjoy in an area like this and, if so,
>
> (2) Whether the need to provide more places in bail hostels throughout the West Midlands would provide a sufficiently cogent reason to warrant expansion of the hostel at Stonnall Road.

On the first issue, the Inspector found that the hostel had attracted numerous police visits, many late at night or early in the morning. Some of the visits involved arrests, personal injuries or the breach of bail conditions. The Inspector stated that:

> It is not surprising that local residents living in such a quiet, sylvan and suburban street should be seriously disturbed by the noise of police cars, police radios and the impact of flashing lights close to their homes, particularly when events occur at times of relative peace and quiet or when police cars have to wait in the street while the hostel gates are opened. The evidence demonstrates that residents might well have to endure such occurrences at fairly regular and frequent intervals. And, of course, the need for ambulances or other vehicles to attend in emergencies must add to this intrusive impact.

The Inspector went on to consider the implications of an expansion of the hostel. He concluded:

> I consider that the proposed expansion of this hostel would be likely to significantly increase the disturbance endured by those living nearby.

He next considered the apprehensiveness and insecurity of residents living in the vicinity of the hostel and stated that:

> Such harmful effects would be capable of being a material consideration provided, of course, that there were reasonable grounds for entertaining them; unsubstantiated fears—even if keenly felt—would not warrant such consideration, in my view.

The Inspector found that residents' apprehensions had some justification. Having considered the evidence, he referred to bailees fighting in the street,

or moaning and mutilating themselves, or smashing crockery in private driveways and milk bottles in the road. These he described as "disturbing incidents". Bailees had committed robberies in the area and had broken into cars. Reference is made to "drunken, intimidating or loutish behaviour". The Inspector stated:

> I consider that such occurrences give reasonable grounds for residents to feel apprehensive; and, the cumulative effect of such events could reasonably be expected to fuel a genuine "fear of crime". That is recognised as a significant problem in its own right particularly if affecting the more vulnerable sections of the community, like some of the relatively elderly people here (Circular 5/94). I think that expansion of the hostel would increase the potential frequency of those occurrences and so exacerbate the "fear of crime" that already exists.

He noted that:

> Rowdy or raucous activity is particularly noticeable amongst the quiet drives and avenues of this neat suburban estate . . . It would be hard to imagine a more incongruous juxtaposition. Quite apart from the fact that there are numerous instances where the identity of an occupant is crucial to the acceptability of a planning proposal (as Circular 11/95 clearly demonstrates), a defining characteristic of using land for a "probation and bail hostel" is that it may provide accommodation for probationers or a particular category of bailee. The proposed extension inevitability increases the possibility of residents encountering more bailees. I consider that local people would thus have good reason to feel more apprehensive than they do now.

The Inspector concluded as follows:

> Taking all those matters into account, I conclude that the expansion of this hostel would be likely to exacerbate the disturbance, and accentuate the fears of those living nearby, and so noticeably impair the living conditions that residents might reasonably expect to enjoy in an area like this.

On the first issue, Mr Robert Griffiths, Q.C. for the committee, submits that apprehension and fear are not material planning considerations since they do not relate to the character of the use of land. Anti-social and criminal behaviour of some of the hostel residents on or near the land was not a material planning consideration. As Mr Griffiths put it, the isolated and idiosyncratic behaviour of some of the residents did not stamp their identity onto the use of the land. A distinction has to be drawn between the use of land and behaviour of people on and off the land. Moreover, apprehension and fear cannot be measured objectively and provide no basis for establishing that there is demonstrable harm to interests of acknowledged importance. Anti-social or criminal behaviour should not be taken into account; the application should be considered on the assumption that the use of the land would be lawful and activities on it would not involve breaches of the law.

It is also submitted that, by his reference to "the identity of an occupant," the Inspector misunderstood Circular 11/95. The Circular is concerned with planning conditions and provides only that, sometimes and exceptionally, the identity of the occupier of land may be relevant for the purpose of

granting permission by attaching an occupancy condition where otherwise permission would have to be refused. It contains no warrant for *refusing* planning permission by reason of the identity of the occupier.

I say at once that I accept Mr Griffiths' submission that, in the present context, reference to Circular 11/95 was inappropriate. Under the heading "Occupancy: general conditions," paragraph 92 provides:

> Since planning controls are concerned with the use of land rather than the identity of the user, the question of who is to occupy premises for which permission is to be granted will normally be irrelevant. Conditions restricting occupancy to a particular occupier or class of occupier should only be used when special planning grounds can be demonstrated, and where the alternative would normally be refusal of permission.

The following paragraphs of the Circular deal with a series of situations in which permission for development would normally be refused but there are grounds for granting it to meet a particular need. Examples are "granny" annexes ancillary to the main dwelling-house, permission for a dwelling to meet an identified need for staff accommodation, and permission to allow a house to be built to accommodate an agricultural or forestry worker. Planning conditions which tie the occupation of the dwelling to the identified need will be appropriate. That principle has, in my view, no bearing upon the present issue as to whether permission can be refused because of the behaviour of bailees and I disagree with the judge on that point. However, I regard the Inspector's reference to the Circular as merely an aside which does not affect the acceptability of his reasoning.

Section 70(2) of The Town and Country Planning Act 1990 requires a planning authority upon an application for planning permission to have regard *inter alia* to "material considerations". In *Stringer v. Minister of Housing and Local Government* [1970] 1 W.L.R. 1281, Cooke J. stated at p. 1295:

> In principle it seems to me that any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration falling within that broad class is material in any given case will depend on the circumstances. However, it seems to me that in considering an appeal the Minister is entitled to ask himself whether the proposed development is compatible with the proper and desirable use of other land in the area. For example if permission is sought to erect an explosives factory adjacent to a school, the Minister must surely be entitled and bound to consider the question of safety. That plainly is not an amenity consideration.

Cooke J. cited the statement of Widgery J. in *Fitzpatrick Developments Ltd v. Minister of Housing and Local Government* (unreported) May 24, 1965 that; "An essential feature of planning must be the separation of different uses or activities which are incompatible the one with the other".

In *Westminster Council v. Great Portland Estates plc* [1985] A.C 661 at 670 Lord Scarman stated that:

> The test, therefore, of what is a "material consideration" in the preparation of plans or in the control of development . . . is whether it serves a planning purpose: see *Newbury District Council v. Secretary of State for the Environment* [1981] A.C. 578, 599 *per* Viscount Dilhorne.

> And a planning purpose is one which relates to the character of the use of the land.

Mr Bedford, for the Secretary of State, relies on two other authorities to demonstrate circumstances in which the impact of a development upon neighbouring land may operate as a material consideration. In *Finlay v. Secretary of State for the Environment* [1983] J.P.L. 802 the Secretary of State refused planning permission for use of premises as a private members club where sexually explicit films were shown. The Secretary of State regarded as an important consideration the fact that the residential use of a maisonette above the appeal site "shared its entrance with the exit from the cinema club. This fact, particularly in view of the nature of the films being shown, is likely to deter potential occupiers and could effectively prevent the occupation of this residential accommodation". It was submitted that the Secretary of State had taken into account an immaterial consideration, namely the nature of the films being shown. Forbes J. is reported as stating that:

> The Secretary of State was not saying "I dislike pornographic films" what he was saying was a pure planning matter, namely if people show pornographic films downstairs, it was likely to be a deterrent to potential occupiers of the residential accommodation upstairs. That may mean that the accommodation may be difficult to let or use for residential purposes. That seemed to him [Forbes J.] to be a wholly unexceptionable way of looking at it from a planning point of view. In other words, that took, in his view, a planning judgment made by the Secretary of State with which the court should not interfere.

In *Blum v. The Secretary of State for the Environment* [1987] J.P.L. 278, an enforcement notice was served in respect of a riding school. Upon an application for planning permission, the Inspector identified as the main issue whether or not a riding school use caused significant harm to the bridleway network in the adjoining public open land and detracted from its visual amenities as part of a conservation area. He found that the very poor state of the network was attributable in large part to horses coming from the appeal site. Simon Brown J. stated, at p. 281, that he:

> recognised that a planning authority might very well place greater weight on questions of, for instance, highway danger, and to considerations of purely visual amenity but that was a very far cry from holding it immaterial and impermissible and an abuse of planning powers to have regard to the environmental impact of a development of this character upon the visual amenities of surrounding land.

The relevance of public concern was considered by this Court in *Gateshead M.B.C. v. Secretary of State for the Environment* [1994] 1 P.L.R. 85. A clinical waste incinerator was proposed and there was public concern about any increase in the emission of noxious substances, especially dioxins, from the proposed plant. Glidewell L.J., with whom Hoffman and Hobhouse L.J., agreed stated:

> Public concern is, of course, and must be recognised by the Secretary of State to be, a material consideration for him to take into account. But, if in the end that public concern is not justified, it cannot be conclusive. If it were, no industrial—indeed very little development of any kind—would ever be permitted.

In the recent decision of this court in *Newport C.B.C. v. Secretary of State for Wales* (transcript June 18, 1997) an award of costs by the Secretary of State was challenged on the basis that the Inspector had been inconsistent in his reasoning on the question of public perception of danger from a proposed chemical waste treatment plant. Hutchison L.J. stated that the Secretary of State had made an error of law in reaching a decision "on the basis that the genuine fears on the part of the public, unless objectively justified, could never amount to a valid ground for refusal" (page 14E). Aldous L.J. stated (page 15D) that the planning authority should have accepted; "that the perceived fears, even though they were not soundly based upon scientific or logical fact, were a relevant planning consideration".

Mr Bedford relies upon the above statements to support his submission that public concern about the effect of a proposed development is a material planning consideration. The difference between Glidewell L.J., on the one hand, and Hutchison and Aldous L.JJ. on the other, need not be resolved in the present case because the Inspector found that the fears were justified. Mr Griffiths submits that there is a distinction between fear of noxious substances emanating from a site and fear of antisocial behaviour. He also submits that the concession made in the *Newport* case that public perception is relevant to the decision whether planning permission should be granted (page 11A) should not have been made.

The manner in which the Inspector dealt with the second issue he identified, that of need, is also challenged in this appeal. It is submitted that the Inspector erred in going behind the judgment of the committee and of the Home Office. Their view that there was a compelling need to provide more hostel places in the West Midlands should not have been subjected to investigation. The Chief Probation Officer for the West Midlands Probation Service gave evidence.

The committee's evidence, as summarized by the Inspector, was that demand for places exceeded supply by almost 13 per cent. The Home Office had compelled the committee to close two existing hostels with the loss of 31 beds. The Home Office had agreed with the proposed extension at Stonnall Road. It was one of the hostels identified for expansion. Extension would be physically possible at reasonable cost, the demand from local courts was high and the hostel is conveniently located. The other options were to create "cluster units," where bailees are not under direct supervision, or to countenance less onerous bail conditions. Either possibility could expose the community to more risk from criminal elements.

The Inspector stated that he was not convinced that the inability to find accommodation for some of those referred necessarily indicated that there was a pressing need for additional hostel space. He did not find a compelling requirement to replace some of the 31 bed-spaces lost in the closure of the other hostels. He thought it inconsistent to claim that the spaces were essential when the committee and the Home Office had implemented the closure without any guarantee that replacement spaces could easily be found. The lack of bed-spaces could not be regarded as an unacceptable impediment; "since it must have been realised that an inevitable consequence of the hostel closures would be to deprive the courts of their capacity for however long it took to find suitable replacements". The need for planning permission did not appear to have been countenanced.

Having made his analysis of need, the Inspector stated that "even if there is a need for more hostel space in the West Midlands I consider that there is

little justification for providing more of it at Stonnall Road". He concluded that the need to provide more places in bail hostels throughout the West Midlands would not provide a sufficiently cogent reason to warrant expansion of the hostel at Stonnall Road.

Mr Griffiths accepts that the Inspector was entitled to balance need for additional hostel spaces with other material considerations and to decide whether the need should be met on this particular site. What he was not entitled to do, Mr Griffiths submits, was to challenge the committee's assessment of the need itself. That was a wrongful intrusion into matters within the sphere of the Home Office and the Secretary of State for the Environment (represented by the Inspector) should not thwart the policy of the Home Office.

A further, and separate, point taken by Mr Griffiths is that the Inspector should not have had regard to the "site selection" criteria in the Home Office Guidance Note. Paragraph 2.0.3 reads:

> Finding a site in a suitable location for a hostel is not easy and can be very time consuming. The purpose of hostels is to enable residents to remain under supervision in the community so, as far as possible, hostels should be sited in areas where they can have good access to public transport, employment, social, recreational and other community facilities. This may not always be possible, but any selection of a site should take into account the possible impact of the hostel on local surroundings.

The guidance was not intended for the Inspector, it is submitted, but for the committee and was irrelevant to the Inspector's function as a planning Inspector. The Inspector formed the view that the Home Office's own criteria were not met at the appeal site. In the Inspector's opinion, for example, there was not "good access to public transport, employment, social, recreational and other community facilities". (It is not submitted by the Secretary of State that the last sentence in paragraph 2.0.3 is relevant to the first issue in this appeal.)

The Inspector also referred to Circular 5/94 when considering fear of crime. The Circular does not in my view throw light on whether such fear is a "material consideration" under the Planning Acts. The Circular is entitled "Planning out Crime" and is said to provide "fresh advice about planning considerations in crime prevention, particularly through urban design measures". The Inspector, in the paragraph already set out, echoes the wording of paragraph A1 of the Circular where it is stated: "Fear of crime, whether warranted or not, is a significant problem in its own right, particularly among those in the more vulnerable sectors of society, such as the elderly, women and ethnic minorities". I regard that as an uncontestable statement but not one which throws light upon the present issue. As the title indicates, the Circular is concerned with the importance of security in the design of development. It is stated in paragraph 3 that, "there should be a balanced approach to design which attempts to reconcile the visual quality of a development with the need for crime prevention". That consideration has no bearing upon the present issue and the Inspector's adoption of a part of the narrative in the Circular does not involve a misdirection upon the point at issue.

In considering the evidence in this case, I do not consider that the "disturbing incidents" and "occurrences" found by the Inspector to have

occurred can be divorced or treated as a separate consideration from the concerns and fears of residents which he also found to be present. The fears arise from the disturbances and the Inspector was entitled to link them in the way he did in his conclusions. It is the impact of the occurrences upon the use of neighbouring land which is said to be relevant.

These propositions, relevant to the first issue, emerge from the authorities:

(1) The impact of a proposed development upon the use of and activities upon neighbouring land may be a material consideration.
(2) In considering the impact, regard may be had to the use to which the neighbouring land is put.
(3) Justified public concern in the locality about emanations from land as a result of its proposed development may be a material consideration.

The contentious point in the present case is whether behaviour on and emanating from the development land in present circumstances attracts the operation of those principles. The "particular purpose of a particular occupier" of land is not normally a material consideration in deciding whether the development should be permitted. (*East Barnet UDC v. British Transport Commission* [1962] 2 Q.B. *per* Lord Parker C.J. at p. 491.)

A significant feature of the present case is the pattern of conduct and behaviour found by the Inspector to have existed over a substantial period of time. I include as part of that pattern the necessary responses of the police to events at the hostel. That behaviour is intimately connected with the use of the land as a bail and probation hostel. As analyzed by the Inspector, it was a feature of the use of the land which inevitably had impact upon the use of other land in the area. On the evidence, the Inspector was entitled not to dismiss it as isolated and idiosyncratic behaviour of particular residents. The established pattern of behaviour found by the Inspector to exist, and to exist by reason of the use of the land as a bail and probation hostel, related to the character of use of the land, use as a bail and probation hostel. Given such an established pattern, I would not distinguish for present purposes the impact of the conduct upon the use of adjoining land from the impact of, for example, polluting discharges by way of smoke or fumes or the uses in *Finlay* and *Blum*. There can be no assumption that the use of the land as a bail and probation hostel will not interfere with the reasonable use of adjoining land when the evidence is that it does. Fear and concern felt by occupants of neighbouring land is as real in this case as in one involving polluting discharges and as relevant to their reasonable use of the land. The pattern of behaviour was such as could properly be said to arise from the use of the land as a bail and probation hostel and did not arise merely because of the identity of the particular occupier or of particular residents.

If that is right, it is a question of planning judgment what weight should be given to the effect of the activity upon the use of the neighbouring land. (*Tesco Stores v. Secretary of State for the Environment* [1995] 1 W.L.R. 759 *per* Lord Hoffmann at page 780F.) The weight to be given in that context to the more intensive use of the hostel proposed by the development at issue is also a question of planning judgment.

Before expressing general conclusions, I turn to the second issue. Had the proposal been by a private developer for residential or shopping use, for example, it would have been open to the Inspector to consider need as a

material consideration. Mr Griffiths relies on the fact that the committee are a statutory body acting under the statute and government guidelines and he submits that different considerations apply.

I regard it as a significant feature of the present case that, neither in their evidence given by the Chief Probation Officer, nor in their submissions, did the committee seek to limit the scope of the Inspector's investigation of need. The witness was cross-examined upon need in the usual way. It is not suggested that a statement of government policy, not susceptible to challenge, was placed before the public local inquiry. That being so, I am not surprised that the Inspector conducted inquiries into need as he did.

The question of the extent to which policy matters may be investigated at a public local inquiry was considered by the House of Lords, in the context of road proposals, and in different circumstances, in *Bushell v. Secretary of State for the Environment* [1981] A.C. 75. In the present context, there is a potential clash of interest between the Secretary of State for the Environment and the Secretary of State for the Home Department and it may fall for consideration whether there are matters of Home Office policy which ought not to be subject to challenge at a local public inquiry into a planning appeal. Upon the procedure followed in this case, however, I do not consider that the Inspector can be criticized for adopting the course he did.

In any event, the Inspector directed his attention to development on the particular site and, subject to the committee's subsidiary point, he stated his conclusion in terms that, even if the need existed, there was "little justification for providing more of it at Stonnall Road." He added, in relation to meeting the need, that; "a location like this one, on the very edge of a small town and in the sort of quiet suburb where the impact of the hostel must be particularly apparent, would be incongruous". That was a proper approach for a planning Inspector to take. I could not envisage a Home Office policy statement which in effect directed the Secretary of State for the Environment to provide for the need at a particular location as distinct from identifying the need. I do express the view that the extent of the Inspector's assumed power to challenge Home Office policy, and indeed criticize it as inconsistent, may be scrutinized in a future case. His conduct does not however, invalidate the conclusion he reached in this case. His finding was based upon the application of planning criteria to a particular site and followed a procedure at the Inquiry to which no objection was taken.

The committee's further submission is in relation to the use made by the Inspector of the site selection criteria, already cited, in the Home Office Guidance Note. The criteria included matters which an Inspector may properly regard as material planning considerations. They may be intended for guidance of committees seeking to establish hostels but, in so far as the considerations set out are material planning considerations, I see no reason why the Inspector should not adopt them, if he sees fit, in considering whether the development on the site should be permitted. He is not obliged to assume that the particular site, from the planning point of view, meets the planning criteria stated by the Home Office.

The Inspector's application of the criteria in the Guidance Note to the appeal site was also attacked on *Wednesbury* grounds. His conclusions were in my view within the range permitted as a matter of planning judgment.

The Inspector expressed as his general conclusion that; "the need to provide more places in bail hostels throughout the West Midlands would not provide a sufficiently cogent reason to warrant expansion of the hostel at

Stonnall Road". For the reasons I have given, and in agreement with the judge, that was in my judgment a conclusion he was entitled to reach and I would dismiss this appeal.

SWINTON THOMAS L.J.: I agree.

HIRST L.J.: I also agree.

Appeal dismissed with costs. Leave to appeal to House of Lords refused.

Solicitors—Wragge and Co., Birmingham; Treasury Solicitor; Solicitor to Walsall Metropolitan Borough Council.

Reporter—Megan Thomas.

Appendix 3

The Planning Inspectorate

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.

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[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 Hall[7] 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 judgement[8].

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 advice[10] 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 dismissal[11]. 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 services[14]. This is not an upper limit and I heard that there may be factors that influence people to consider a longer walking distance to 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 decision[16].

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 Assessment[17] (SHMA) estimates the borough's per annum affordable housing need as 441 dwellings with the Council's more recent Local Housing Needs Assessment[18] (LHNA) stating a requirement for 407 affordable dwellings per annum.

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

[17] CD 10.2.
[18] CD 10.3.

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

Rural exception site

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

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

Biodiversity

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

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

Highways

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

S106 Agreement

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

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

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

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

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

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

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

Planning balance

Policy and Framework considerations

59. Framework paragraph 11 states that plans and decisions should apply a presumption in favour of sustainable development. Paragraph 11d suggests that where the policies which are the most important for determining an application are out-of-date, permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. There is no five-year housing land supply in Wokingham and therefore paragraph 11d is applicable to this appeal, and the policies that are the most important for determining this appeal are deemed to be out of date. I have no discretion within this purpose to consider whether specific policies are out of date. However, I must consider the weight to be given to policies including whether they are out of date in the context of the issues in this appeal.

60. Previous appeal decisions that have been brought to my attention[19] 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 example[20] 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 that provides for the visibility splays shown on plan no. ITB15490-GA-002 Rev E (to include also the removal of any obstruction above a height of 0.6 metres) and the maintenance of the same over the lifetime of the development; and,
   (b) the full implementation of the aforementioned approved scheme.

9) No development shall take place, until a Construction Method Statement, including a CEMP (Construction Ecological Management Plan), has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

   (a) construction of suitable works access;
   (b) the parking of vehicles of site operatives and visitors;
   (c) loading and unloading of plant and materials;
   (d) storage of plant and materials used in constructing the development;
   (e) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
   (f) wheel washing facilities;
   (g) measures to control the emission of dust and dirt during construction;

(h) a scheme for recycling/disposing of waste resulting from demolition and construction works;
(i) hours of construction;
(j) hours of delivery; and
(k) mitigation and avoidance measures for ecology and biodiversity.

10) No work relating to the development hereby approved, including works of demolition or preparation prior to building operations, shall take place other than between the hours of 08:00 and 18:00 Monday to Friday and 08:00 to 13:00 Saturdays and at no time on Sundays or Bank or National Holidays.

11) Prior to the commencement of development details for disposing of surface water by means of a sustainable drainage system (SuDS) shall be submitted to and approved in writing by the Local Planning Authority. No dwelling hereby permitted shall be occupied until the aforementioned approved details (in so far as they apply to that dwelling) have been implemented.

12) No development shall take place until the applicant or their agents or successors in title have secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, which has been submitted by the applicant and approved by the planning authority. The development shall only take place in accordance with the detailed scheme approved pursuant to this condition.

13) No development shall take place until an Arboricultural Method Statement has been submitted to and approved in writing by the local planning authority, this shall include details of existing trees and hedges to be retained in the submitted Arboricultural Impact Assessment, in line with BS5837:2012, and shall include details of;

(a) any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the sub-phase;

(b) any proposed alterations to ground levels within the Root Protection Area or Crown Spread (whichever is the greater) of any retained tree, including trees on land adjacent to the site;

(c) the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development.

(d) the erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made without the written consent of the local planning authority.

(e) Prior to occupation of the first dwelling, a Veteran Tree Management Plan shall be agreed in writing with the local planning authority. This Plan shall include:

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

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

14) No trees, shrubs or hedges within the site which are shown as being retained on the plans approved under condition 13 shall be felled, uprooted wilfully damaged or destroyed, cut back in any way or removed without previous written consent of the local planning authority; any trees, shrubs or hedges removed without consent or dying or being severely damaged or becoming seriously diseased within 5 years from the completion of the development hereby permitted shall be replaced with trees, shrubs or hedge plants of similar size and species unless the local planning authority gives written consent to any variation.

15) Prior to the commencement of development, details of how the development will achieve a biodiversity net gain of 10 % for habitats shall be submitted to and approved in writing by the Local Planning Authority. The details thereby agreed shall be fully implemented in accordance with an agreed timetable.

16) Prior to the commencement of the development a Landscape Environmental Management Plan (LEMP), in accordance with the Update Biodiversity Report by Aspect Ecology dated October 2022, including long term design objectives, management responsibilities, timescales, and maintenance schedules for all landscape areas, other than privately owned domestic gardens, which delivers and demonstrates a habitat and hedgerow biodiversity net gain shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved LEMP.

17) The development hereby approved shall not be occupied until the noise mitigation measures as set out in the Noise assessment report, project number 13390 dated 08/04/2020 submitted with the application, are implemented. The noise mitigation measures shall be retained and maintained thereafter.

18) The development hereby approved shall not be occupied until the pedestrian crossing improvements shown in principle on Drawing ITB15490-GA-017 have been completed to the written satisfaction of the Local Planning Authority.

19) No dwelling shall be more than 2 storeys in height, and no dwelling shall be higher than 61.5mAOD.

20) Prior to first occupation of the development hereby approved, details of any gate, fence or other means of enclosure within or around the public open space as shown on the Parameter Plan (D2871_423_Rev B), shall be submitted to and approved in writing by the Local Planning Authority.

End of schedule.

ANNEX 2: CORE DOCUMENTS REFERENCED IN THIS DECISION

CD 1.6	Appellant's *Landscape and Visual Impact Assessment*, April 2020.
CD 5.1	Adopted *Core Strategy Development Plan Document* (2010).
CD 5.3	Adopted *Managing Development Delivery Local Plan* (2014).
CD 5.5	Made *Shinfield Parish Neighbourhood Plan* (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, Crest Nicholson v West Berkshire Council [2021] EWHC 289 (Admin).
CD 10.2	*Berkshire (including South Bucks) Strategic Housing Market Assessment* (February 2016).
CD 10.3	*Wokingham Borough Local Housing Needs Assessment 2019* (January 2020).
CD 11.5	*AWE Off-site Emergency Plan*, Joint Emergency Planning Unit, August 2022.
CD 11.12	*The Radiation (Emergency Preparedness and Public Information) Regulations 2019*, HSE/ONR.
CD 11.20	*The Radiation (Emergency Preparedness and Public Information) Regulations 2019*, SI 2019 No. 703.
CD 11.21	*REPPIR – What you should do if there is a radiation emergency at the AWE Aldermaston or Burghfield sites*, West Berkshire Council, 2020.
CD 12.1A/B	*Wokingham Borough Landscape Character Assessment*, LUC 2019.
CD 12.3	*Manual for Streets*, DoT/DCLG, 2007.
CD 12.21	*National Design Guide*, 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	Hopkins Homes Ltd, Richborough Estates Partnership LLP v Cheshire East BC, SSCLG [2017] UKSC 37.
ID 10	Hallam Land Management Ltd c v Eastleigh BC, SSCLG [2017] EWHC 2865 (Admin).
ID 11	Old Hunstanton Parish Council v Hastoe Housing Association Ltd, Kings Lynn & West Norforl 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*	Mike Thorne and Associates Ltd
Tim Wall *BA MSc MCIHT CMILT*	Partner, i-Transport LLP
Andrew Smith *BSc(Hons) MSc CMLI*	Joint Managing Director, fabrik
Julian Forbes-Laird *BA(Hons) Dip.GR.Stud MICFor MRICS MEWI Dip.Arb.(RFS)*	Senior Director, Forbes-Laird Arboricultural Consultancy Ltd
Douglas Bond *BA(Hons) MRTPI*	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)*	Emergency Planning Manager, WBC
Gordon Adam *BA DipEcon MA CGIHT MILT*	Principal Development Control Engineer, WBC
Chris Hannington *BSc MPhil CMLI MRTPI*	Team Manager, WBC
Catherine Brimble *BA(Hons) DipLA CMLI*	Senior Landscape Officer, WBC
Ian Church *BA(Hons) MTRP MRTPI*	Team Manager (Senior Specialist), WBC
Mark Croucher *BA(Hons) MSc*	Principal Planning Officer Team Leader, WBC

INTERESTED PERSONS

Darrell Lias	Vice Chair (operations), Shinfield Parish Council