

**RULE 6(6) STATEMENT OF CASE
on behalf of
AWE plc and the Ministry of Defence**

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

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

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

LPA Ref: 22/00244/FULEXT

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

Pinsent Masons LLP Ref: 669439.07017

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APPENDICES

- (1)** *Crest Nicholson & Ors v WBDC* [2021] EWHC 289 (Admin)
- (2)** Appeal Decision at Kingfisher Grove Three Mile Cross, Reading (Planning Inspectorate reference: APP/X0360/W/22/3304042)
- (3)** AWE and MOD Comments on Appellant's Site Specific Emergency Plan and proposed section 106 terms

1. INTRODUCTION

Parties and planning context

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

AWE's role and national security function

- 1.2 AWE is MOD's Non-Departmental Public Body (**NDPB**) and operator of two licenced nuclear sites at Aldermaston (**AWE A**) and Burghfield (**AWE B**) (**the Sites**). AWE is responsible for the safe and secure running of these sites and for the delivery of the warhead contribution to the nationally and internationally significant UK nuclear deterrent. AWE A and AWE B are owned by the Secretary of State for Defence and are Crown Land. On 1 July 2021, the MOD took back full ownership of AWE, transitioning AWE's status to a NDPB.
- 1.3 Although much of the detail of AWE's activities is highly sensitive (relating both to sensitive nuclear material and national security) and necessarily held at the highest levels of classification, AWE considers that sufficient information can be made available within the SOC and subsequent evidence to allow the Inspector to undertake a public Planning Inquiry and to make a fully informed decision. This SOC outlines the AWE and MOD objections to the Proposed Development.
- 1.4 The sites are unique and irreplaceable components of the UK's defence nuclear enterprise, which is collectively responsible for the development, build, maintenance and delivery of the UK's nuclear Continuous at Sea Deterrent (**CASD**). MOD has consistently sought to ensure that constraints on delivering this capability are minimised. The success of the UK's defence nuclear

enterprise remains a critical national endeavour, requiring significant and sustained investment and support from Government.

- 1.5 MOD requires AWE to deliver the whole life-cycle of nuclear warheads from concept design to disassembly, and meet stringent safety requirements in doing so. These are all essential elements of CASD capability. AWE A and AWE B are the only locations in the UK that can provide these capabilities.
- 1.6 The need for AWE A and AWE B is not static. The risks that CASD must respond to are dynamic, and the sites must be capable of responding to MOD's evolving requirements of them. The Government's commitment to investing in AWE has been consistently set out since 2005 and this position has not changed, being reiterated most recently in the Integrated Review Refresh 2023¹.
- 1.7 The Secretary of State also announced on 25 February 2020 confirmation of the programme to replace the UK's nuclear warheads. The investment programme at AWE B includes, but is not limited to, new builds along with refurbishment, consolidation and modernisation of existing key facilities. Examples include the new-build warhead assembly/disassembly facility at AWE B (Project MENSA now nearing completion) and the Multi Materials Facility (**MMF**) which commenced construction in 2022.
- 1.8 The criticality of CASD, and the irreplaceable nature of AWE A and AWE B in delivering it inform the precautionary approach that must be applied in this Appeal.

Regulation of AWE's activities

- 1.9 AWE is regulated by the Office for Nuclear Regulation (**ONR**) through two nuclear site licences issued under the Nuclear Installations Act 1965 and also under the Health and Safety at Work etc. Act 1974. AWE warhead aspects are also regulated by the defence nuclear safety regulator (**DNSR**) by way of an authorisation granted to AWE. Both sites also have explosive licences under the Explosives Regulations 2014 and hold various environmental permits under the Environmental Permitting (England and Wales) Regulations 2016. AWE is

¹ 'Integrated Review Refresh 2023: Responding to a more contested and volatile world' published 13 March 2023

further regulated for security matters by the defence nuclear security regulator (**DefNucSyR**).

- 1.10 In addition, AWE is required to meet the requirements of the Radiation (Emergency Preparedness and Public Information) Regulations 2019 (**REPIR 2019**). REPIR 2019 impose on AWE the duty to identify the hazards arising from working with ionising radiation which have the potential to cause a radiation emergency and to advise WBDC of the same.
- 1.11 Unlike AWE A, AWE B is not currently a registered site Control of Major Accident Hazards Regulations 2015 (**COMAH**). However, AWE B includes the production of components involving high hazard materials and may fall within COMAH in the future. Key hazards associated with AWE's operations include the potential release of radioactive material, a potential explosive event and potential release of chemicals (including gases) or materials with specific impact that necessitates protective measures. As a matter of policy, AWE follows COMAH procedures for the identification and assessment of risks associated with any hazardous substances in its internal safety analyses.
- 1.12 AWE is exempt from the requirement to hold Hazardous Substances Consent.²

Summary grounds

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

² see Regulation 34 Planning (Hazardous Substances) Regulations 2015

(4) **Ground 4:** the Appellant's proposals do not address these issues.

2. **APPEAL SITE AND RELATIONSHIP WITH AWE B**

- 2.1 The Appeal Site is located around 2,000 metres to the west of AWE B.
- 2.2 AWE and MOD recognise the Appeal Site forms part of a site allocated for housing (60 dwellings) under adopted Policy HSA16 of WBDC's Site Allocations Development Plan Document 2017. Part of this allocation has been built out and this Development Proposal is, effectively, for the balance of that allocation.
- 2.3 However, little weight can now be given to this allocation due to changes in material planning considerations since the Site Allocations Development Plan Document was adopted. This allocation has not been brought forward in WBDC's Regulation 19 draft Local Plan Review (2022-2039) (submitted to examination on 31 March 2023) as it is not considered deliverable. One of the key reasons it is not considered deliverable, are changes to the protective zones around AWE B, as implemented by WBDC pursuant to REPPiR 2019, in May 2020. As a consequence of these changes, the Appeal Site is now within the DEPZ and the "inner consultation zone" for ONR consultation/development plan classification purposes. See further at paragraph 2.4 below.
- 2.4 For REPPiR 2019 classification purposes, the Appeal Site is within three distinct protective zones around AWE B, as follows:
- 2.4.1 Urgent Protective Action (**UPA**) radial distance. REPPiR 2019 requires AWE to determine the UPA distance to define the minimum area where the urgent protective action of sheltering is required in case of a radiation emergency with offsite impact from AWE B to 3,160m. Evacuation is not recommended for populations located within the UPA in line with guidance from the UK Health Security Agency. However, evacuation might occur later on.
- 2.4.2 The DEPZ. This is the area designated by WBDC in 2020 in accordance with REPPiR 2019. The minimum geographical extent of the DEPZ is based on the UPA distance. The purpose of this zone is to set an area around a site where it is proportionate to pre-define protective actions which can then be implemented without delay in the

event of a radiation emergency. It is there for the purposes of public safety. The word 'planning' in the term DEPZ is used in the sense of planning to deal with the immediate consequences of a potential radiation emergency, in order to mitigate the radiological risk to members of the public. The DEPZ is a material consideration to land use planning decisions.

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

2.5 The Appeal Site is situated in an area where the adopted Development Plan states that permission for residential development is likely to be refused in circumstances where the ONR objects to it. See further at paragraph 6.5 below.

3. **REPPIR 2019 MONITORING AND REVIEW**

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

3.2 REPPIR 2019 requires a review to take place every 3 years, starting from 2019 or where there is a material change. The DEPZ was most recently reviewed by WBDC in January 2023. The outcome of this review was to amend the DEPZ

for AWE B to clarify two previously ambiguous areas to the east of the DEPZ (the Six Bells, Shinfield and near Basingstoke Road, Swallowfield). These changes do not relate to the Appeal Site but help illustrate WBDC's ongoing duty to keep the DEPZ and offsite emergency plan under review. Contrary to the Appellant's case, this supports a precautionary approach to locating new development in the DEPZ.

4. **AWE OFFSITE EMERGENCY PLAN**

4.1 An adequate offsite emergency plan is required to enable AWE to work with ionising radiation (see Regulation 10(4) REPPiR 2019).

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

"To provide:

(a) Information about the sites and their hazards

(b) The roles and responsibilities of each responding agency

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

(d) Protective actions to implement

(e) Warning and Informing, including communication procedures

(f) Information about recovery

(g) Where to find more information."

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

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

(i) the health risks arising from exposure to ionising radiation as a result of the radiation emergency, in both the long and the short term; (ii) the economic consequences of the radiation emergency; (iii) the effects of the disruption, both on the premises and the area immediately surrounding it, and on the public perception of the effects of the radiation emergency;”

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

- 4.4 A judicial review³ was brought in 2020 challenging WBDC’s determination of the DEPZ. The high court dismissed the claim and upheld the determination of the DEPZ and refused leave to appeal (the judgment is enclosed at **Appendix 1**).
- 4.5 The Appellant’s expert evidence questions whether there is a public safety risk within the DEPZ. Aspects of this evidence are similar to arguments made by the claimants in the judicial review where the Appellant’s expert also appeared for the claimants.
- 4.6 It is AWE’s case that REPPIR 2019 assesses the likelihood and impact of a radiation emergency to the public and the presence of the DEPZ demonstrates that there is a risk to people which requires proactive management by way of an onsite and offsite emergency plan which endures for as long as AWE’s operations fall within the scope of the legislation requiring such plans.
- 4.7 One of the principles in REPPIR 2019 is that the emergency plan should “so far as possible” avoid the occurrence of serious physical injury. It is AWE’s case that in line with REPPIR 2019, new development should where possible be located outside of the DEPZ. This is supported by the precautionary approach and is also in line with the nuclear safety concept of ‘Defence-in-Depth’⁴.
- 4.8 The requirement for an offsite emergency plan under REPPIR 2019 seeks to ensure that arrangements are in place to be able to respond to a radiological emergency event. It does not deal with longer-term recovery once the immediate emergency phase has passed as these are covered by separate

³ *Crest Nicholson & Ors v WBDC* [2021] EWHC 289 (Admin)

⁴ See “Defence in Depth in Nuclear Safety” by the International Nuclear Safety Advisory Group, IAEA [Pub1013e_web.pdf (iaea.org)]

emergency planning arrangements under the Civil Contingencies Act 2004. The recovery response is led by Central Government not WBDC. AWE will provide further detail of the regulatory regime as it applies to AWE B in its proofs of evidence.

5. REASONS FOR REFUSAL

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

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

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

The Council accordingly considers that future public safety would be compromised if the development were to proceed, and potential harm would

occur to the future capability and capacity of AWE Burghfield to operate effectively, in the light of the above. These are clear material planning considerations which, despite the site being allocated for housing in the Local Plan, are factors which a responsible LPA cannot set aside. The proposal is accordingly unacceptable.”

6. RELEVANT PLANNING POLICY

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

Relevant National Planning Policy

National Planning Policy Framework (NPPF)

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

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

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

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

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

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

- 6.2.2 NPPF section 8 sets out policy on promoting healthy and safe communities. **Paragraph 97** focuses on the need to not only promote public safety but also to take into account wider security and defence requirements. It states:

"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 congregate ⁴³. 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."

Limb (b) of Paragraph 97 is central to the AWE and MOD case; planning decisions need to ensure that operational defence sites like AWE B are not adversely affected. This is particularly important when there are no alternative sites in the UK which can undertake the activities carried out at AWE A and B.

- 6.2.3 NPPF section 15 sets out policy on conserving and enhancing the natural environment, including by preventing existing development being put at unacceptable risk from or being adversely affected by incoming development. In this context, **Paragraph 187** states:

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

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

National Planning Practice Guidance (NPPG)

6.3 This SOC also sets out the relevant principles for planning decision-making around hazardous installations because (1) these principles may in future apply to AWE B if it becomes subject to COMAH and (2) the guidance reflects well-established principles for planning around sites whose operations involve risks to the public which have been reflected in the requirements of REPIR 2019. These general principles are relevant and material to the Inspector’s determination in this Appeal⁵.

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

6.4.1 **“Handling development proposals around hazardous installations’**. *When considering development proposals around*

⁵ The preface to the Approved Code of Practice accompanying REPIR 2019 states: “The provisions in REPIR have been developed with consideration of provisions in the Control of Major Hazards Regulations 2015...to maximise emergency preparedness consistency between Regulations for major hazards sectors.”

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

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

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

This guidance reflects the ‘agent of change’ principle set out in paragraph 187 NPPF (see above).

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

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

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

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

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

Local planning authorities should ensure that their land-use or other relevant policies take account of public consultation requirements in preventing major accidents and limiting the consequences of such accidents for human health and the environment. They also need to take account of the increase in the number of dwellings (or population at risk) in the consultation zones from the time the hazardous substance consent was granted.

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

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

...”

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

Relevant Local Policy

WBDC Core Strategy (2012)

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

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

- 6.6 Policy CS8 contains a presumption against new residential development within inner land use planning consultation zones, in certain defined circumstances, namely when the ONR has advised against that development. “All other development proposals” i.e. non-residential development and all forms of development outside the inner consultation zone is subject to criteria-based assessment – having regard to scale, location, population distribution and impact on public safety, emergency services and the emergency offsite plan. Supporting paragraph 5.42 explains that this assessment is carried out having regard to “potential cumulative effects of any population increase”. However, the policy is clear that residential development in the inner consultation zone is “likely to be refused planning permission When the ONR has advised against that development”.

6.7 Both the ONR and the WBDC Emergency Planning Team advised against the Proposed Development. WBDC was therefore justified in refusing permission for the Proposed Development given the expansion of the DEPZ as a result of a change in REPPIR 2019, despite the Appeal Site being allocated for residential development before this expansion. The expansion of the DEPZ is a material planning consideration and represents a material change in circumstances since the housing allocation.

6.8 As is well-established by case law, the development plan needs to be applied as a whole. AWE and MOD's position is that policy CS8 takes precedence over the housing allocation and the decision to refuse consent was therefore in accordance with the Development Plan.

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

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

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

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

The ONR will be consulted on applications for new development in the DEPZ, Outer Consultation Zone (OCZ) and any other consultation zone as detailed on ONR website which meets the consultation criteria described".

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

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

“Any new development, re-use or re-classification of an existing development that could lead to an increase in residential or non-residential populations thus impacting on the off-site emergency plan”; and

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

6.13 The text under the consultation table explains that the ONR website provides non-exhaustive examples of the types of developments that could pose an “external hazard” to a nuclear licensed site.

6.14 Supporting paragraphs 4.39 and 4.40 refer back to NPPF Paragraphs 45 and 97(b).

6.15 Supporting paragraph 4.57 notes that during the plan period there may be ‘changes in the inputs to the ONR’s process which may result in consequential changes to the consultation zones or criteria. ‘There may also be changes to the DEPZ as a result of the requirement under REPPiR 2019 legislation...’ Which ‘may result in the DEPZ for either AWE site remaining the same, extending or reducing in size and geography over time’. The potential for change in future zoning supports a precautionary approach to planning decisions in the DEPZ.

6.16 In summary, the Inspector is asked to note and give weight to the direction of travel in draft Policy SP4; this is consistent with and supports the AWE and MOD case against the Proposed Development.

6.17 In addition, the Inspector is asked to note new draft **Policy DM33** (Development within AWE). This provides:

Development within the Aldermaston and Burghfield Atomic Weapons Establishments (AWE) will be supported where it directly sustains the functioning of each of the AWE sites as Government research and defence establishments.

This new policy highlights the significant local economic function of AWE A and AWE B, their potential to evolve and grow as well as the Sites' contribution to national and international UK nuclear deterrent.

7. THE CASE FOR AWE AND MOD

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

Ground 1: refusal was in accordance with the development plan

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

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

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

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

7.6 This case can be clearly distinguished from others which the Appellant has, and may, draw attention to. It must be determined against the policies relevant to the appeal site in the West Berkshire Local Plan and requires full consideration

of the current safety risks (see below). For example, on 31 January 2023 an appeal was allowed for 49 homes (all affordable) on a site at Kingfisher Grove, Three Mile Cross, Reading (Planning Inspectorate reference: APP/X0360/W/22/3304042) (**Appendix 2**) where proximity to the AWE B Site was also an important consideration. Neither AWE nor MOD presented its own evidence at that inquiry. The Inspector's reasoning in that case can clearly be differentiated from the consideration of these appeal proposals. Amongst other things, that appeal was decided against a different development plan (Wokingham Borough Local Plan), whose policies are less equivocal than the Local Plan policies cited above (see paragraph 9 of the decision) and where there was no five-year housing land supply. That Inspector also stressed that: *'Given its bespoke circumstances, I do not consider that it would result in the creation of a precedent for allowing other development that in any case must be assessed on its own merit.'* (Paragraph 21).

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

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

(1) Risk of a radiation emergency

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

“(a) of a hazard resulting from that situation or event;

(b) of a perceived risk arising from such a hazard; or

(c) to any one or more of:-

i. human life;

ii. health and safety;

iii. quality of life;

iv. property;

v. the environment”.

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

7.10 The Appellant's position is that the likelihood of an event and any resulting harm to the public is minimal. AWE will adduce expert evidence to rebut this point, and present its own evidence on the nature of the risk and its consequences.

(2) Consequences of the emergency for the public

7.11 AWE will adduce expert evidence to evaluate and, where appropriate, rebut the Appellant's evidence on the risk to health in the event of exposure, and put forward its own evidence. However, a summary of the relevant public safety considerations is set out below.

7.12 Granting permission for additional development carries a risk to public safety. The more people in an area, the greater the impact of a radiological emergency if one was to occur. This point is expressly made in the supporting text to policy CS8 and the NPPG in relation to planning around hazardous installations. Adding additional receptors (however few) increases the risk of radiation exposure and the accompanying impact on health to the public. The risk does not solely arise from inhalation exposure during the immediate passage of the radiation plume, but may also arise in the longer-term from other pathways such as ground or crop contamination.

7.13 The Appellant relies on the fact that AWE's operations have not changed, it is just the DEPZ that has increased and, on this basis, the Appellant alleges there is no 'increased risk'. This misunderstands the reasons why REPIR 2019 came into force, which reflected a reduced tolerance for risk and updated safety standards in response to real-world events.

7.14 The risk is not just a risk to health from immediate or longer-term exposure to radiation, which is the Appellant's focus, it is also a risk of other societal disruption arising from a radiation emergency. There are longer-term societal impacts such as access restrictions and relocation at a later stage; decontamination and clean-up; disruption from the aftermath and other civil contingency considerations, which will be addressed in proofs of evidence.

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

(1) Consequences of a radiological event

7.15 The first consequence is the immediate ability of the emergency services to deal with an event. AWE and MOD support WBDC's case on this matter.

7.16 The second issue is the long-term consequences of an event. The Appellant's evidence fails to grapple with this at all.

7.17 The response phase is followed by a recovery phase⁶ which has adverse economic impacts on AWE, MOD and the public purse in terms of funding, remediation and providing compensation in accordance with the Nuclear Installations Act 1965. Increasing population density around AWE B has the potential to increase these economic impacts. AWE's proofs of evidence will expand upon these points.

7.18 These local and national resource implications are, in themselves, a material planning consideration.

(2) Consequences to AWE's operations

⁶ Recovery is defined as the process of rebuilding, restoring and rehabilitating the community following an emergency. Recovery is a complex and long running process that will involve many more agencies and participants than the response phase.

- 7.19 The Appellant accepts the need “not to hamper current and future use” of AWE B (paragraph 22(c) of Statement of Case by Dr Keith Pearce). However, the Appellant’s evidence misunderstands the requirements for continuing AWE B’s unique contribution to national security and therefore fails to address how the Proposed Development prejudices critical elements of AWE B’s current and future use.
- 7.20 As set out in the Introduction to this SOC, AWE B is the only site in the UK that can provide the capabilities for the assembly, disassembly, handling and storage of nuclear warheads for the nation’s nuclear deterrent. As a strategic defence site, AWE B requires flexibility and to be able to develop, expand and/or change its activities to respond to requirements of MOD. Increasing the population within the DEPZ has the potential to limit this flexibility. These points will be expanded on in proofs of evidence, however in summary:
- 7.20.1 If the offsite emergency plan is considered to be unsuitable, licensable activities may be curtailed (see paragraph 4.1 above). This directly affects the ability of AWE B to support the CASD.
- 7.20.2 The process of incrementally increasing population increases potential for consents to be refused or additional conditions or restrictions attached to consents that may impact AWE’s current or future operations. AWE needs to be able to operate and expand and/or develop its operations in response to MOD requirements and may need to secure further or different consents in the future. Cumulative increases to the population affect the assessment that regulators will undertake when considering risk to the public.
- 7.20.3 Population increases also add to the risk of challenge to, or complaints about, AWE’s operations. This creates a burden on AWE and MOD in responding to complaints and engaging with local stakeholders. Complaints or challenges may also require AWE to alter its operations, or for regulators to impose additional restrictions on AWE. Such limitations on AWE’s functionality could adversely affect the current or future provision of CASD. These are precisely the issues that the NPPF “agent of change” principle recognises and seeks to avoid.

7.20.4 Population increases also increase the possibility of security risks. The security arrangements at the AWE sites are particularly sensitive. The Government has made clear in similar contexts that the proximity of an asset to sensitive sites can engage national security risk.

7.21 In all cases of risk, it is necessary to balance the risks and the harms at the time the decision is made. Past decisions for development in the DEPZ are therefore of limited relevance and can be distinguished. It is not the case that because permission has been granted for development within the DEPZ in the past, adding more residential development is in principle acceptable. Decision-makers need to consider the current population and ask whether adding additional receptors, and potentially setting a precedent for further cumulative increases in population, is justified. As population density increases, scrutiny of any proposals for additional households should be more intensive, not less.

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

(1) An exemption is not the answer

7.22 The Appellant's evidence relies on the fact that even where ONR determines that there is a risk of serious personal injury, the Secretary of State can grant an exemption from the operation of REPPiR 2019. This is not a solution to the issues outlined above. There would be weighty public law considerations for the Secretary of State if they were prepared to even consider certifying an exemption, not least relating to public safety and liability.

7.23 Even setting aside the exemption process, it is plainly unarguable that the Proposed Development could proceed regardless of the safety concerns simply because there is an exceptional legal mechanism to disapply REPPiR 2019.

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

7.24 The Proposed Development is supported by draft contract clauses which make provision for a bespoke 'Site Specific Emergency Plan' which the Appellant is willing to secure under section 106 of the Town and Country Planning Act 1990 (**TCPA 1990**).

7.25 The AWE and MOD view is that the Proposed Development is contrary to the Local Plan and should be refused permission. Without prejudice to this fundamental position, the draft section 106 obligations are highly problematic and would not meet the relevant tests (necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development)⁷. Please refer to **Appendix 3** for the AWE and MOD initial comments on these provisions, including comments on enforceability and effectiveness. Further arguments will be advanced in proofs of evidence, as appropriate.

7.26 Further, even if the Site Specific Emergency Plan were revised to address AWE's legal and technical concerns, a site specific emergency plan is not capable of meeting the wider concerns for AWE's operation raised in Ground 3.

8. **WITNESSES FOR AWE AND MOD**

8.1 AWE will call evidence from its own Safety Assessment Specialist as well as an independent planning expert.

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

9. **CONCLUSION**

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

⁷ Section 122(2) of the Community Infrastructure Levy Regulations 2010 (as modified)