

PINS REF: APP/W0340/W/22/3312261

APPEAL BY

T A FISHER & SONS LIMITED

LAND TO THE REAR OF THE HOLLIES NURSING HOME

(LPA REF: 22/00244/FULEXT)

OPENING STATEMENT ON BEHALF OF THE FIRST RULE 6 PARTY

AWE PLC/MINISTRY OF DEFENCE

Introduction

1. AWE plc and the Ministry of Defence's ("AWE", "MOD") case remains as it was in opening: the Development Plan, national policy and material considerations in this case support refusal. More development in the DEPZ puts more pressure on an already strained offsite emergency plan ("OSEP"), which is an important layer of safety put in place to protect the public in the unlikely event that other safety controls fail or do not function as intended. Further residential development in the DEPZ puts more people at risk of being involved in a radiation emergency; at risk of receiving an unconsented dose of radiation; and of experiencing all of the consequences that flow from this and from activation of the OSEP.
2. You have heard from WBDC and the ONR that the OSEP is already under pressure and is being closely monitored. In those circumstances, AWE and MOD's concerns about the potential impact on AWE's operations are credible. Those impacts, should they materialise, are unacceptable from a national security perspective. AWE is integral to the nation's continuous at sea deterrent ("CASD"): Operation Relentless, which has been in place for over sixty years and is the longest sustained military operation ever undertaken by the UK.
3. It is therefore AWE and MOD's position that the planning balance in this case strongly supports refusal and that is the decision the Inspector is invited to make.
4. As said in opening submissions, AWE, the MOD and ONR's appearance at this Inquiry emphasises the importance of the issues in this Appeal. AWE and the MOD's participation

arises from genuine concern about the potential for additional risks to (1) public safety and (2) AWE's operations arising from further development within the DEPZ, in particular residential development. As said in evidence from person MD, the decision in the Kingfisher Appeal was relevant to AWE and MOD's decision to participate.¹ The Appellant's attempt to justify the Appeal Scheme on the basis of assumed low or "minimal" risks to the individuals who will live at the appeal site is of great concern, particularly in circumstances where the evidence before the Inquiry is that the OSEP is under pressure but in the recent past proposals for residential development in the DEPZ have been granted notwithstanding objections from emergency planners, the ONR and AWE (notably the Kingfisher Grove Appeal). AWE and MOD's participation is grounded in legitimate concerns for public safety and national security, as has been shown through the evidence to this Inquiry.

5. Early on in this Inquiry the Inspector heard evidence about the adequacy of WBDC's offsite emergency plan. Submissions on that evidence will follow but it is important to remember that at the time the planning application was submitted the regulator – the ONR – had expressed concern about the OSEP's ability to cope with cumulative increases in residential development.² The ONR then formally objected to the application for planning permission.³ The owner of the plan, WBDC, concluded that the OSEP cannot accommodate this development.⁴ Against that background, AWE and the MOD considered it imperative that they come to the Inquiry to explain the consequences of an inadequate OSEP for AWE's operations and national security. It is submitted that the impacts of the Appeal Scheme in the broadest sense: (1) the potential of these additional houses to affect the OSEP and (2) the Appellant's attempt to embed the "low risk" argument into decision-making (which is not supported by policy, the ONR, the Council or AWE/MOD) carry significant weight in the planning balance.

Planning Policy

6. The starting point is the Development Plan. Section 70(2) of the Town and Country Planning Act 1990 requires regard to be had to the development plan and any other material

¹ MD re-examination.

² ONR letter 31 August 2021 to Chief Executives of Local Authorities, CD 12.14.

³ CD 4.14.

⁴ CD 11.8, Appendix 5.

considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that where regard is to be had to the development plan, a decision should be taken in accordance with it unless material considerations indicate otherwise.

7. The two relevant development plan documents are the Core Strategy (in particular policy CS8⁵) and Housing Site Allocations DPD.⁶ It is well-established that the interpretation of planning policy is ultimately a matter of law for the court (see *Corbett v Cornwall Council* [2022] EWCA Civ 1069 at 19)⁷. The key principles are well-known, but of particular relevance in this Appeal is the consistent message from the Court that planning policy is not to be interpreted like a contract or statute. It is a means to coherent and reasonably predictable decision-making in the public interest. Policies are not rigid but flexible enough to allow for, and require, the exercise of planning judgment. The exercise of interpretation should take into account the underlying aims of the policy: “*Context, as ever, is important...*” (*Corbett* at 19(2)).

Policy CS8

8. CS8 provides that development within the “inner land use planning consultation zone” (a feature of REPPiR 2001) is likely to be refused permission when the ONR has advised against that development. In other zones, development proposals will be considered in consultation with the ONR having regard to scale, location, population distribution and the impact on public safety and the OSEP.
9. The question for this Inquiry is how to interpret CS8 in light of the change in regulations from REPPiR 2001 to 2019 where the “inner land use consultation zone” has been replaced by the “detailed emergency planning zone”. AWE and MOD’s case is that the change in REPPiR 2019 has in effect expanded the “inner land use consultation zone”⁸ and so CS8 can still be given substantial weight. This is for a number of reasons:

- (1) Both the inner consultation zone and the DEPZ are the areas where detailed emergency planning is required under the applicable REPPiR regime. The inner

⁵ CD 6.1

⁶ CD 13.14

⁷ Appendix to Bashforth Rebuttal Proof

⁸ Bashforth 3.3-.7.

zone and the DEPZ are the emergency planning zones that the OSEP applies to. The concept of inner and outer zones remains in the ONR's land use planning guidance and under REPPIR 2019 (the DEPZ and the OPZ).⁹

- (2) The supporting text to CS8 (which is an aid to its interpretation) expressly envisages that consultation zones may change (see paragraph 5.44).¹⁰ It also contemplates the need to monitor committed and future development proposals in partnership with the ONR in light of potential cumulative effects of population increases surrounding AWE's sites (paragraph 5.42).
- (3) The background to the policy is also relevant. It was prepared in response to the Secretary of State's decision in Boundary Hall¹¹, as explained in Sean Bashforth's proof of evidence. CS8 was included in the Core Strategy so as to ensure that a clear policy reflected the high degree of constraint in the inner consultation zone and so as to avoid the case-by-case approach taken by the Secretary of State in Boundary Hall.¹²
- (4) Other planning inspectors have treated the expansion of the DEPZ pragmatically: in the Kingfisher Decision, the Inspector found that although the particular policies were out-of-date, the general principles still applied (see paragraph 64).¹³
- (5) The policy is expressly stated to be concerned with public safety¹⁴ and the expansion of the DEPZ is also concerned with public safety – there is no dispute between the parties that REPPIR 2019 takes a more precautionary approach in part due to lessons learned from the Fukushima disaster.

10. Drawing those threads together, and as said in opening, the expansion of the DEPZ does not justify applying reduced weight to CS8. The clear purpose of CS8 is to provide a framework for decision making where there are proposals to increase residential

⁹ CD 12.7.

¹⁰ CD 5.64.

¹¹ CD 8.1.

¹² Inspector's Report paragraph 85, see Appendix 6 to Sean Bashforth's Proof of Evidence CD 13.45.

¹³ CD 8.3. A similar approach was adopted in the Diana Close Appeal, see CD 8.7 at paragraph 32-33.

¹⁴ The first words of the policy are "*In the interests of public safety...*"

development in the area where the OSEP applies and in light of advice from the expert regulator, the ONR. The principles in CS8 are highly relevant to this Appeal and there is no principled basis for a more permissive approach, focused solely on the narrow issue of radiological health risks to the future inhabitants of the Appeal Scheme. It is agreed that the site-specific individual risk assessment does not feature in REPPIR 2019; it also does not feature in CS8 where the requirement for an OSEP applies. This site-specific approach is precisely what CS8 was designed to avoid.

11. Any alternative analysis of the policy considerations reaches the same result:

- (1) As explained at the Roundtable by Mr Bashforth, if the second limb of CS8 was applied the relevant factors listed point in the direction of refusal. The important consideration under CS8 remains the adequacy of the OSEP and the views of the ONR. You have heard evidence that the OSEP is under pressure and that the participants of the monitoring group (which includes representation from blue light services) objected to the Appeal Scheme.¹⁵ The ONR has also objected and attended the Inquiry. These considerations weigh heavily against the grant of permission.
- (2) The Appellant's position, clarified at the Roundtable, is that the expanded DEPZ is a material consideration. If that is the correct analysis, AWE's position is that the conclusion should be the same, for all of the reasons explained above and in the remainder of these submissions.

The Allocation in HSA16

12. HSA16 allocates this site for housing, however, as is apparent from the clear words of the Allocations DPD, the expectation remains that any applications for planning permission on allocated sites must be "*delivered in accordance with the development plan*".¹⁶ HSA16 and CS8 can be read together and the Development Plan applied as a whole. Read in the proper context, the fact that there is a built-in safety check in the Development Plan to control residential development in the emergency planning zone does not give rise to a "conflict"

¹⁵ Carolyn Richardson cross-examination.

¹⁶ See GS1, CD 5.72. See also ADDP6 which cross-refers to CS8.

between earlier and later DPDs. The policies do not conflict with one another – it is the Appeal Scheme that give rise to conflict with one aspect of the development plan. In some cases, CS8 and an allocation would both support granting permission (e.g. if the ONR did not object). The operation of CS8 is not unorthodox, one can think of other examples where a site allocation is subject to other requirements of a development plan, for example highways or design. An allocation is not permission in all circumstances. There is therefore no conflict between CS8 and HSA16 engaging s.36(5) Planning and Compulsory Purchase Act 2004 that needs to be resolved here.

13. AWE makes only a brief comment on the Appellant's forensic points about the lack of objection to HSA16 at the time it was proposed and consulted on. At that time, the offsite emergency plan was not under pressure in the same way that it is now. It is unclear what inferences the Appellant invites you to draw, but no inferences can properly be drawn. Circumstances have changed, meriting a change in approach to residential development proposals in the DEPZ, as contemplated in the supporting text of CS8.

Emerging Policy

14. The principles of CS8 are carried through, and in fact strengthened, in the emerging development plan. Policy SP4 includes the same presumption against residential development within the DEPZ, especially where the ONR or MOD has advised against. AWE and MOD invite you to give weight to this emerging policy, although recognising that the draft policy is yet to be tested in examination. There is no gap in the approach of policy to development within the DEPZ where the ONR advises against permission. Now and in the future, policy says permission should be refused. The consistency in approach should carry weight and the principles applied to this Appeal.
15. It is important to bear in mind that the principles reflected in these policies here are not novel. They are well-established when considering development proposals next to nuclear and other hazardous sites.¹⁷ In that guidance, decision-makers are expressly told that local authorities are best placed to judge the extent of development around major hazard sites, to

¹⁷ See Sean Bashforth's Proof of Evidence at 3.26-3.28, CD 13.44.

keep in mind the impact of cumulative residential development next to sites where a major accident may occur and to follow the advice of the relevant regulator (in this case, ONR).

The NPPF

16. National planning policy is clear that as an operational defence site, AWE B should not suffer adverse effects from new development (see paragraph 97(b) NPPF) and as an existing user it should not have unreasonable restrictions placed upon it as a result of new development (see paragraph 187 NPPF). These national policies were mentioned only very briefly in the Appellant's written evidence for the Inquiry.¹⁸ The impact on AWE was the subject of evidence at the Inquiry and is addressed in more detail later in these submissions.

Site-specific approach

17. What you do not see anywhere in local or national policy is endorsement of Appellant's site-specific assessment of risk to individuals. It is obvious why that is the case. The "low risk" argument only looks at the radiological health impacts on individuals at the specific site and does not put development proposals in the context of the well-established precautionary approach to health and safety running through land use planning policy and health and safety policy and REPPiR 2019. It is for this reason that the Appellant's arguments on risk should be approached with caution, and in any event given limited weight.

Conclusion on Policy

18. The application of development plan policies in this case is straightforward. ONR has advised against the grant of permission for the Appeal Scheme and therefore, applying CS8, the starting point is refusal. The Appellant has not made a convincing case to displace the clear presumption in policy that permission should be refused.

The Main Issues

19. As set out in opening, the main issues relevant to AWE and MOD are:

¹⁸ Katherine Miles Proof of Evidence at 4.75-4.69 CD10.4.

- (1) The effect of the proposal on the safety and wellbeing of future residents of the proposed development, and the wider public, with regard to the proximity of the Atomic Weapons Establishment (AWE) site at Burghfield; and
- (2) The effect of the proposal on the future capability and capacity of AWE Burghfield to operate effectively.

20. These main issues fall for consideration in light of the clear evidence from WBDC¹⁹ and the ONR²⁰ that the OSEP is currently under pressure and is at risk of becoming inadequate. The ONR in particular gave evidence that it has been closely involved in testing and scrutinising the OSEP, it has identified aspects that are sensitive to population increases within the DEPZ and there is work to be done to provide assurance that the OSEP will continue to be adequate if further residential units are permitted or built out²¹. The ONR in its regulatory role does not take into account committed but unbuilt development. This is important. There is a pipeline of unbuilt development which will continue to put pressure on the OSEP and which will need to be considered by the ONR as regulator and accounted for by WBDC in its operational plans.²² For all of the commentary and conjecture from Dr Pearce, he does not live and breathe the plan in the way Ms Richardson does. The Inspector is therefore invited to accept her evidence on the pressures on the OSEP and the credible risk that it may become inadequate if further residential development is permitted. From AWE and MOD's perspective, the risk of inadequacy is enough to raise significant concerns about the impact on AWE's operations, and therefore national security, now and in the future. This is particularly because AWE, as a mature licensee and operator, would consider self-limiting operations if ONR decided to take enforcement action against WBDC.²³

Issue 1: Public Safety

21. AWE's case remains as it was at the beginning of this Inquiry. There is no dispute that the likelihood of a radiation emergency at AWE B is very low and that AWE is operating in a

¹⁹ Carolyn Richardson evidence in chief.

²⁰ See ONR Letter CD 12.14.

²¹ Ingham Proof of Evidence sections 2.4 and 2.5, CD 12.24, Ingham evidence in chief and cross-examination.

²² Carolyn Richardson evidence in chief.

²³ AW Rebuttal Proof 4.2.

manner that seeks to ensure that risks are tolerable and kept as low as reasonably practicable (ALARP). AWE is heavily regulated and takes safety incredibly seriously. The principles of “defence in depth” are there to ensure so far as practicable that emergencies do not occur, but that if they do, there is a functioning offsite emergency plan in place to reduce harm to the public. In the event of a radiation emergency, it is important to recall the principles of radiation protection set out in PHE guidance²⁴: (1) do more good than harm, (2) avoid deterministic effects and (3) where radiation doses are below the threshold for deterministic effects, aim to maximise the benefit achieved.

22. While the likelihood is very low, there remains the possibility that an accident with serious offsite consequences could occur, as previous international incidents have shown. To use the analogy discussed in the Inquiry: the Swiss cheese holes could line up. Any radiation emergency would inevitably be complex and involve a multi-agency response over a long period of time and engage the highest levels of government.

Effects on Individuals at the Appeal Scheme

23. In terms of risk to the future residents of the Hollies, it was agreed by Dr Pearce that the focus of his evidence was on radiological health effects, namely, the risk of early death following exposure to radiation. In light of the national security concerns around AWE’s operations, his calculation is not a full risk assessment based on data but based to an extent on guesswork and assumptions.²⁵ Even so, it is agreed that there is potential for residents of the Hollies to receive a dose of radiation from an incident at AWE if the prevailing wind is in the direction of the Appeal Scheme site. In category F weather, that dose is estimated by Dr Pearce at 11.3 mSv and falls within the “moderate” category in the REPPiR 2019 risk framework and could give rise to health effects.²⁶ Although Dr Pearce put forward reasons why any such dose may be lower²⁷, there is a limit on the assurance that can be drawn from predictions and speculation on matters which Dr Pearce accepted fell outside his expertise.²⁸

²⁴ See CD 13.28 p.16

²⁵ Dr Pearce cross-examination.

²⁶ See REPPiR 2019 Approved Code of Practice (PDF p.180) CD 12.6.

²⁷ See Dr Pearce Proof of Evidence at paragraph 126.

²⁸ Dr Pearce cross-examination.

24. AWE in large part does not challenge the individual risk calculation put forward by Dr Pearce. It is an established methodology used in safety cases to demonstrate that risks from their operations are ALARP.²⁹ However, Dr Pearce is using this calculation in a non-standard application, outside of its customary use.³⁰ What the calculation shows is that it is unlikely that individuals will suffer physical health effects from a radiological dose if one takes into account the low likelihood of any hazard occurring at AWE and prevailing wind direction. To that extent, AWE does not dispute it. However, what AWE does dispute is the way in which this calculation is deployed in this Inquiry.

25. Dr Pearce agreed that his calculation is not relevant to establishing the radial UPA distance or the extent of the DEPZ. He agreed it is not relevant on its own to decision making under the OSEP and he agreed it is not relevant to any decisions the ONR might make in its regulatory role in relation to the adequacy of the OSEP or AWE's work with ionising radiation should the OSEP be inadequate.³¹ In light of those concessions, it is submitted that Dr Pearce's evidence on radiological health risk relates to a very narrow point, which is the radiological health effects of the individuals at the Hollies. He does not say there will be no effects or that any such effects are of no importance³², but just that those effects are unlikely. The "low risk" argument is therefore only one of a number of material considerations that need to be taken into account when considering the effects of permitting an additional 32 dwellings within the DEPZ.

26. Those other effects include:

- (1) Psychological effects of radiation emergencies which are documented and not in dispute. Minimal reference was made to these in Dr Pearce's proof. PHE Guidance is clear, however, that psychological effects are relevant and important: "*...the impact on public health is not limited to the exposure of a member of the public to a particular level of radiation dose, but may be wider including, for example,*

²⁹ Dr Pearce cross-examination.

³⁰ Dr Pearce cross-examination.

³¹ Dr Pearce cross-examination.

³² See Dr Pearce proof of evidence at paragraph 129.

psychological damage.”³³ The ONR also gave evidence on the disruptive psychosocial impacts of an ongoing radiation emergency.³⁴

(2) Effects of sheltering and subsequent disruption to daily living. AWE/MOD agrees with the Council’s evidence on these matters and does not seek to repeat them. However, a few further comments are necessary:

- (i) Relevance of individual risk: the principles of radiation protection are clear that there is no safe/unsafe boundary of dose on which to base protection decisions.³⁵ In line with principle 3 of the principles of radiation protection, WBDC will take into consideration the need to reduce the number of people exposed.
- (ii) Duration of sheltering: Dr Pearce’s evidence presents a simple scenario of an instantaneous explosive release of radioactive material into clear air.³⁶ On his analysis, the plume then moves downwind in a short period of time before dissipating and he says that this means any period of sheltering will be short³⁷ and an “inconvenience”. Dr Pearce accepted that he did not have experience in nuclear explosive assessment. Person AW (who has years of experience in nuclear explosives) gave evidence that his scenario does not take into account the nature of the release³⁸ which is likely to be contained within a building and so will be longer in duration and difficult to predict. Hotspots may also occur, which can only be determined by monitoring after the event (as agreed by Dr Pearce). Dr Pearce’s assumption that 90% of the radiation will be contained in the initial release is guesswork based on no detailed knowledge of AWE’s containment systems or operations on site (which he accepted). In addition, the decision to end sheltering is one for those managing the emergency response at the time, balancing a number of factors and based on information available at the time (see PHE guidance CD12.28 at p.9³⁹).

³³ CD 13.27 p.11.

³⁴ Ingham proof of evidence paragraphs 20-21 and evidence in chief.

³⁵ See Dr Pearce cross-examination and CD 13.28 p.17.

³⁶ Dr Pearce Proof of Evidence paragraph 82.

³⁷ Dr Pearce Proof of Evidence paragraph 159 and section 6 “summary and conclusions”.

³⁸ AW Proof of Evidence at 5.18.

³⁹ See heading “withdrawal of sheltering-in-place”.

(iii) Recovery: as set out in opening and in Person AW's evidence⁴⁰, the focus of the OSEP is on the first two days after the emergency, but there is a much longer period of recovery that needs to be considered. You have heard evidence that WBDC, and others involved in recovery, will need to consider longer-term evacuation and decontamination. Person AW fairly agreed that based on Dr Pearce's calculations, there may be no "health physics" need to carry out decontamination at the Hollies⁴¹ but inevitably those are decisions that will need to be taken at the time. The Appellant has only provided evidence on the "health physics" point, but there are other considerations including the liabilities under the Nuclear Installations Act 1965 to third parties who have suffered property damage. As is clear from the decision in *Blue Circle Industries Plc v Ministry of Defence* [1998] 3 All E.R. 385, property damage goes beyond just "health physics". In that case there was an obligation to compensate the Claimant for losses arising from contamination below any regulatory threshold (and much lower than likely contamination within the DEPZ⁴²).⁴³ The possibility that AWE/MOD may have to fund decontamination and/or pay other compensation at the Hollies cannot be dismissed. These costs of these effects fall on the public purse and amount to precisely the sort of unreasonable burden contemplated by paragraph 187(b) of the NPPF.⁴⁴

Issue 2: Impact on AWE Operations

27. There is no dispute that AWE's contribution to CASD is unique and critical. Nor is there any dispute that if AWE was required to pause or alter its operations in response to issues with the OSEP, this would have an effect on national security. AWE/MOD witnesses were not challenged on the evidence they gave on these matters.

⁴⁰ AW Proof of Evidence 10.13-10.20.

⁴¹ AW cross-examination.

⁴² Person AW cross-examination.

⁴³ Person AW Appendix XXX.

⁴⁴ Person AW 10.17

28. The main issue between the Appellant and AWE/MOD is whether AWE's concerns about impact on its operations will materialise. The Inspector has heard evidence from the ONR that it is closely monitoring the adequacy of the OSEP and that there is work to be done by the Council. It is accepted by all parties that the Council, ONR and AWE will take the steps that they can – consistent with their roles under REPPiR 2019 – to ensure that the OSEP remains adequate.
29. However, you have also heard that the OSEP operates in a world of limited resources.⁴⁵ The answer is not, as was suggested in cross-examination of AWE/MOD's witnesses, that AWE can simply fund improvements to the OSEP (another unreasonable burden⁴⁶). The Inquiry has also heard that adequacy is binary⁴⁷: the plan is adequate or it is not. In circumstances where the OSEP is inadequate, the immediate consequence is that AWE cannot work with ionising radiation (REPPiR 2019, regulation 10(4)). That is the law.⁴⁸
30. AW's evidence that AWE as a responsible operator may self-limit operations was not challenged.⁴⁹ Dr Pearce attempted to challenge this in his written evidence by suggesting that it was unlikely that the MOD would allow this situation to arise.⁵⁰ However, Dr Pearce has no relevant experience in these matters⁵¹ – all he can do is speculate. You have read and heard evidence from MD and AW that their concerns about the potential impact on operations are credible and grounded in years of experience.⁵² You are invited to accept AW and MD's evidence. In particular, although there is a power to exempt AWE from the requirements of REPPiR 2019, this power has to be exercised lawfully and balancing numerous factors. It is likely to be controversial, particularly because the practical effect of any exemption would be to remove the requirement to have in place one of the levels of defence in depth. It is submitted that no reassurance about impacts on AWE's operations can be gained from the existence of this power and there can be no credible suggestion that the existence of exemption powers would resolve the dilemma that the Secretary of State for Defence would be faced with.

⁴⁵ Agreed by Dr Pearce in cross-examination.

⁴⁶ As discussed at the Roundtable on Planning Matters.

⁴⁷ Ingham oral evidence.

⁴⁸ This was accepted by Dr Pearce in cross-examination.

⁴⁹ Person AW Rebuttal 4.2.

⁵⁰ Dr Pearce Proof of Evidence at paragraph 203.

⁵¹ Dr Pearce cross-examination.

⁵² Person AW evidence in chief and cross-examination, Person MD evidence in chief and cross-examination.

31. For AWE and MOD their imperative is to ensure that point is never reached. That is why the Council, AWE/MOD and the ONR objected to the Appeal Scheme.
32. AWE has a further concern about the impact on its operations, which is that the ability to obtain future planning and regulatory consents may be affected by increases in residential development within the DEPZ.⁵³ This evidence was not challenged in cross-examination. AWE has in place a multi-billion pound programme of change and development⁵⁴ and needs to retain flexibility in order to meet the dynamic needs of national security and international obligations. Future planning applications or changes in regulatory consents at AWE may engage DEPZ matters and cumulative increases in residential development will be taken into account by decision-makers. This is another potential constraint on AWE's operations and programme of change.
33. The Appellant's answers to the impact on AWE's operations, advanced through cross-examination, are not credible. The Appellant appears to believe that the answer to the problems with the OSEP is for AWE to fund infinite improvements to the OSEP, for the Council to revoke extant planning permissions or for the Secretary of State for Defence to grant wide-reaching exemptions and depart from his own policy on ensuring equivalent protections remain in place. These extreme examples ignore the simple answer – to control further residential development in the DEPZ by refusing planning permission in line with existing policy.

Precedent

34. The potential for this appeal to set a precedent poses a challenge to AWE's operations both now in terms of increased pressure on the OSEP, but also in the future as just referred to. The potential for planning decisions to set a precedent can be material consideration and there is clearly such potential here. The Appellant relies on the Hollies being the last allocated site within the DEPZ, but this is not a one-off (indeed, the developer made the same "no precedent" point in Boundary Hall – see paragraph 88 of the Inspector's

⁵³ Person MD cross-examination, Person AW proof of evidence paragraph 11.2.2/

⁵⁴ See Bashforth proof of evidence appendices 1-3. CD13.45.

Report⁵⁵). The Appellant's approach here is to seek to establish the "low radiological health risk to an individual" for the specific site as the touchstone for decision making on residential development within the DEPZ. This appeal is part of a consistent strategy, evident from the fact that the same team made the same arguments in the Kingfisher appeal that they advance here (and in Boundary Hall). The Inspector has also seen that the Appellants have referred to and relied on the Kingfisher decision in their objection to West Berkshire's emerging local plan and policy SP4.⁵⁶ AWE/MOD's concerns about the potential to set a precedent with this appeal are credible, evidenced and should carry weight.

35. This appeal is materially different to those that have gone before when it comes to the planning balance. Here, the material considerations overwhelmingly support refusal. In Kingfisher and Boundary Hall the planning policy context was materially different⁵⁷; the local authorities in those cases did not have a five year housing supply and in Kingfisher the proposal was for 100% affordable housing. In Boundary Hall the evidence presented to the Inspector was that the OSEP could accommodate the development.⁵⁸ Those features are not present here. In addition, this is the first appeal where the ONR and AWE/MOD have appeared to put forward evidence explaining their concerns about the OSEP and the impact on AWE if the OSEP is found to be inadequate due to increased residential development in the DEPZ.

36. To the extent that previous decisions engaging similar issues are informative, it is clear that the decisions in these types of case are balanced decisions and that the impacts on health and wellbeing of the residents of each scheme arising from the risk of a radiation emergency and the wider effects on the OSEP attracts significant weight and should be balanced against the benefits of the specific proposal under consideration (see Boundary Hall at DL 22-23). That is the exercise you are now invited to carry out.

Conclusion and Planning Balance

37. AWE and MOD's case is that the planning balance favours refusal in this case. The Development Plan supports refusal and as said in opening, cumulative increases in

⁵⁵ CD 8.1

⁵⁶ See KM Appendix 2

⁵⁷ In Boundary Hall the LPA did not have a policy for controlling development within ONR consultation zones (see DL para 11) and in Kingfisher the relevant policies were worded differently.

⁵⁸ See DL 13 and 22 CD8.1.

population within the DEPZ bring with them an increase in the societal risks should a radiation emergency occur and have the potential to affect the adequacy of the OSEP and, in turn, AWE's operations. In the context of AWE's unique and critical national security role, these matters are important and weigh heavily against the Appeal Scheme. The moderate local benefits⁵⁹ of the Appeal Scheme do not outweigh AWE's national and international importance and the other material considerations that weigh against permission in this appeal.

38. As submitted in opening, AWE and MOD maintain that a principled approach, applying established policy, the precautionary principle, and weighing all of the relevant factors, tells us that granting permission here is a step that is not worth taking. Development Plan policy does not support it, national policy does not support it and the clear weight of material considerations does not support it. AWE/MOD respectfully submit that you should dismiss this Appeal.

Rose Grogan
39 Essex Chambers
14 June 2023

⁵⁹ See Sean Bashforth comments in Roundtable discussion.