

# Appeal Statement of Case

## Local Planning Authority

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

**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:** April 2023

**Council Reference:** 22/00244/FULEXT

## Appeal Statement of Case

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3	293 Trusthouse Forte Hotels Ltd. v Secretary of State for the Environment (1987) 53 PCR 293
4	ATOMIC WEAPONS ESTABLISHMENT AWE BURGFIELD Declaration of No Change REPPIR 2019 Issue 1 November 2022. Reference O1AAIG-69573752-866
5	ATOMIC WEAPONS ESTABLISHMENT AWE BURGFIELD CONSEQUENCES REPORT. Issue 1. November 2019
6	AWE DEPZ Determination Report 19 Jan 2023

# 1. Introduction

1.1 This Statement of Case has been prepared in respect of an appeal lodged against the refusal of planning permission (Council reference 22/00244/FULEXT) for development within the Detailed Emergency Planning Zone around the Atomic Weapons Establishment Burghfield comprised of the Erection of 32 dwellings including affordable housing, parking, and landscaping. Access via Regis Manor Road. The major facility at the Atomic Weapons Establishment Burghfield manufactures nuclear warheads for the Government, in particular, for the Ministry of Defence that are also designed there.

## Reasons for Refusal

1.2 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.*

## **Scope of Statement of Case**

- 1.3 This Statement of Case has been prepared in accordance with the Planning Inspectorate's *Procedural Guide (Planning Appeals – England)*. It supports the Council's reasons for refusing (and now for opposing) the development.

## **Procedural Matters**

- 1.4 It is considered at the time of writing that the reason for refusal no.1 in regards to affordable housing could be dealt with by way of an agreed Unilateral Undertaking to which is being drafted and hopefully agreed by the parties. However, such a document remains outstanding and was outstanding at the date of the refusal. . The Appellants have suggested a policy compliant level of affordable housing. As such subject to the provision of an acceptable legal agreement for both parties, it is hoped that this reason for refusal can be dealt with conclusively before the Inquiry opens.

## 2. Appeal Site and Proposal

### Appeal Site

- 2.1 This application site, of 1.83ha, currently open pasture land, seeks full planning permission for the erection of 32 dwellings on land to the rear of the Hollies Nursing Home, within the settlement of Burghfield Common. With associated works, landscaping and access points. 13 of the dwellings [40%] will be affordable.
- 2.2 The application site will be accessed off Regis Manor Road; a non-adopted road lying to the east of the application site which presently serves 28 dwellings which are completed and occupied. The application site is wooded on all sides and is steeply sloping towards the northern boundary. Further existing housing lies to the south of the site.
- 2.3 With a mix of garages and car ports plus open parking spaces, a total of 77 vehicle parking spaces are to be provided on the application site.
- 2.4 There are no designated ecological sites on the site, although ancient woodland is to the boundary of the site. The site lies in flood zone 1 and no assets of heritage significance lie in or just beyond the site red line. A Tree Protection Order lies on the application site.
- 2.5 The site lies with the Detailed Emergency Planning Zone (DEPZ) due to its proximity to Atomic Weapons Establishment Burghfield. The radius of that Zone was extended in 2019 (before the application was made and after the previous grant of planning permission for adjacent land) as a result of the Government's changed calibration of risk engendered by radiation that followed from the coming into force of the Radiation (Emergency Preparedness and Public Information) Regulations 2019 on the 22<sup>nd</sup> May 2019. As was made known by the AWE Burghfield in November 2019 that establishment changed the radius of the Zone pursuant to Schedule 4 of those Regulations and as was set out in Appendix A: Map A (found in Appendices 5). The resulting minimum diameter of the new radius was applied by the local planning authority to establish "AWE Burghfield – DEPZ" shown on the Local Plan Map. The change in the risk radius by the AWE Burghfield resulted to include the application site that lies to the immediate West of the previous (smaller) Zone. The consequence of the change was that whilst the

application site was previously an allocated site for housing, from the date of the change it became covered by the Zone. Consequently, it will be de-allocated for housing under the Local Plan Review.

## **Planning History**

### ***Application Site***

- 2.6 Under the Housing Site Allocations DPD of the Local Plan (2006-2026), Adopted May 2017, under Policy HAS 16, Land to the Rear of the Hollies, (Site Reference BUR002, 002A, 004), the application site is allocated for housing development.
- 2.7 There is no relevant development management planning history of the appeal site prior 2000.
- 2.8 In 2019, the application site became overlaid with the Detailed Emergency Planning Zone relating to the Atomic Weapons Establishment Burghfield.
- 2.9 From the 31st March 2023, the Emerging Draft of the Local Plan Review 2020-2037 submitted to the Secretary of State does not identify the application site as allocated for housing. See also Policy SP4 that describes the approach to development for housing within the DEPZ, and Figure 4 that identifies the changed increased radius of the DEPZ.

### ***Adjacent Site***

- 2.10 The adjacent site for 28 dwellings was granted under the following permission
- 16/01685/OUTMAJ. Permission granted for 28 dwellings on the 30th October 2018.
  - 19/00772/RESMAJ. Reserved matters approval granted on the 8th August 2019.



## 3. Planning Policy

- 3.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise<sup>1</sup>. The development plan is therefore the starting point for decision making. Where a planning application/appeal conflicts with an up-to-date development plan, permission should not usually be granted. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

### Statutory Development Plan

- 3.2 The statutory development plan for West Berkshire is currently made up of a number of different documents<sup>2</sup>. Table 3.1 sets out those development plan documents that are relevant to the appeal proposal, together with a list of the relevant policies.

**Table 3.1: Statutory Development Plan**

Development Plan Document	Relevant Policies
West Berkshire Core Strategy 2006-2026 (WBCS) <a href="http://info.westberks.gov.uk/corestrategy">http://info.westberks.gov.uk/corestrategy</a>	ADPP1, ADPP6, CS1, CS6,CS8, CS13, CS14, CS17,CS19.
Housing Site Allocations Development Plan Document 2006-2026 (HSA DPD) <a href="http://info.westberks.gov.uk/hsa">http://info.westberks.gov.uk/hsa</a>	GS1, HSA16, P1.

### Weight to be given to development plan policies

- 3.3 It is a fundamental principle of the planning system that the weight to be afforded to each issue is solely a matter for the decision maker. The NPPF provides some guidance on what weight should be given to development plan policies given the status of the

<sup>1</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

<sup>2</sup> Full development plan: West Berkshire Core Strategy 2006-2026 (adopted July 2012); Housing Site Allocations DPD 2006-2026 (adopted May 2017); West Berkshire District Local Plan 1991-2006 Saved Policies 2007 (as amended in July 2012 and May 2017); Stratfield Mortimer Neighbourhood Development Plan (adopted June 2017); South East Plan, Natural Resource Management Policy 6 (relating to the Thames Basin Heaths Special Protection Area; Replacement Minerals Local Plan for Berkshire (incorporating alterations adopted in December 1997 and May 2001); Waste Local Plan for Berkshire (adopted December 1998).

NPPF as a material consideration in deciding planning applications/appeals. Paragraphs 218 and 219 state:

*“218. The policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication. Plans may also need to be revised to reflect policy changes which this Framework has made.*

*219. However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”*

- 3.4 The weight to be given to the relevant policies is discussed in this statement under the headings relating to each consideration, as appropriate.

### **Material Considerations**

- 3.5 A number of considerations material to this appeal including as follows.
- 3.6 The **National Planning Policy Framework (NPPF)** sets out the Government’s planning policies for England and how these should be applied. The NPPF is a material consideration in planning decision, which should be read as a whole (including its footnotes and annexes). The latest version was published in July 2021. The Government’s policies include paragraph 97 that makes clear that “decisions should promote public safety and take into account wider security and defence requirements”. Paragraphs (a) and (b) provide detailed policy, requiring anticipation and addressing of malicious threats and natural hazards, and that policies, layouts and design should be informed about the nature of potential threats and their implications, including, in particular, appropriate and proportionate steps that can be taken to reduce vulnerability, increase resilience and ensure public safety and security. Paragraphs 185, 186-188 are also relevant.
- 3.7 The **31st March 2023 submission Emerging Draft of the Local Plan Review 2020-2037** is a material consideration.

- 3.8 The **Planning Practice Guidance (PPG)** is an online publication which supplements the NPPF and, as a statement of government policy, may also be material when deciding applications/appeals.
- 3.9 The **Quality Design SPD (2006)** aims to help developers create places of high quality design which are sustainable, secure and accessible to all. The SPD series is made up of 10 documents.
- 3.10 The **Planning Obligations SPD (2014)** was adopted by the Council in December 2014, following a period of consultation which took place in Summer 2014. It sets out the Council's approach for securing contributions and obligations from development, alongside the Community Infrastructure Levy (CIL). This approach is in accordance with national CIL Regulations and the council's pdf CIL Regulation 123 List.
- 3.11 The **Sustainable Drainage Systems (SuDS) SPD (2018)** was adopted by the Council in December 2018, following a period of consultation which took place in Summer 2018. It provides guidance on the approach to SuDS in new developments in West Berkshire so as to manage and mitigate surface water flood risk.
- 3.12 The **Cycle and Motorcycle Advice and Standards for New Development (2014)** was published by the Council in November 2014. Policy P1 of the HSA DPD, cycle and motorcycle parking shall be provided in accordance with this document.
- 3.13 The **Secretary of State's decision, reference APP/X0360/W/22/3304042**, permitting development of land west of Kingfisher Grove, Three Mile Cross, Reading, Berkshire RG7 1LZ for 49 dwellings within the Detailed Emergency Planning Zone relating to the Atomic Weapons Establishment Burghfield is a material consideration. (Appendices 1)
- 3.14 The **question of safety of the public occupiers of the proposed development** from irradiation in the event of irradiation emanating from AWE Burghfield. See *Stringer v Minister for Housing and Local Government* [1970] 1 WLR 1281. (Appendices 2)
- 3.15 **Precedent Effect** of a grant of planning permission here. The Local Planning Authority has drawn its Emerging Local Plan on the basis of the changed radii of the DEPZ. A grant of planning permission would undermine its resulting housing policy basis. Further, the Secretary of State determining this appeal has no jurisdiction to prejudge the outcome of the Secretary of State's evaluation of the said resulting housing policy.

## Emerging Policies

- 3.16 The application site was from the 31<sup>st</sup> March 2023 formally deselected at this time as an allocation in the Regulation 19 proposed submission Local Plan Review 2022 – 2039 by Council (December 2022) and the Regulation 22 Local Plan Review 2022 - 2039 formally submitted to the planning inspectorate 31<sup>st</sup> March 2023. Consequently, the application site is today undeveloped countryside under that policy.
- 3.17 The Local Plan Review (LPR) plans for sustainable development including supporting infrastructure for the period up to 2039. Proposed Policy SP4 Atomic Weapons Establishment (AWE) Aldermaston and Atomic Weapons Establishment (AWE) Burghfield updates the adopted Core Strategy Policy to take account of the latest information available to the authority.
- 3.18 The proposed policy SP4 states:

### Policy SP4

#### **Atomic Weapons Establishment (AWE) Aldermaston and Atomic Weapons Establishment (AWE) Burghfield**

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 <sup>(10)</sup> located in the Detailed Emergency Planning Zone (DEPZ)<sup>(11)</sup> 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)<sup>(12)</sup> and any other consultation zone as detailed on [ONR-website](#) which meets the consultation criteria described in the table below (as may be amended by the ONR from time to time).

For development proposals in the DEPZ and OCZ for each of AWE's sites, consideration will be given as to how the proposed development would impact on the AWE Off-Site Emergency Plan and supporting documents.

Development within the Land Use Planning Consultation Zones: Office for Nuclear Regulation	
AWE Aldermaston (AWE A)	
AWE Burghfield (AWE B)	
Zone	Development Type
DEPZ	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.  Any new development, re-use or re-classification of an existing development that could pose an external hazard to the site.
OCZ	Any new residential development of 200 dwellings or greater.  Any re-use or re-classification of an existing development that will lead to a material increase in the size of an existing development (greater than 500 persons).  Any new non-residential development that could introduce vulnerable groups to the OCZ.  Any new development, re-use or re-classification of an existing development that could pose an external hazard to the site.
12km zone	A circular zone of 12km radius around all nuclear sites, for certain types of significant development due to the potential for such developments to pose an external hazard to sites.

3.19 This policy received 21 comments on the policy. All these representations are published on the Council website [www.westberks.gov.uk/lprexamination](http://www.westberks.gov.uk/lprexamination).

3.20 There are no proposals for residential or employment site allocations inside the DEPZ as part of the Local Plan Review.

### Emerging Plans

3.21 Planning law requires that all applications for planning permission are determined in accordance with the approved development plan, unless material considerations indicate otherwise. Paragraph 48 of the NPPF (2021) allows local planning authorities to give weight to relevant policies in emerging plans according to:

- a) Stage of preparation of the plan,
- b) Extent to which there are unresolved objections to relevant policies and,
- c) The degree of consistency of the relevant policies in the emerging plan to the NPPF.

3.22 As stated in paragraph 3.12 the Local Plan Review was submitted to the Secretary of State for examination (Regulation 22) on 31<sup>st</sup> March 2023 and local Plan Review Policy SP4 updates the existing Core Strategy policy CS8 to take account of:

- a) Changes to the NPPF since 2012 namely the duty in paragraph 97 a) appropriate and proportionate steps to reduce vulnerability, increase resilience and ensure public safety and security; and -paragraph 97 b) to ensure operational defences are not adversely impacted by other development; and
- b) Changes to the Detailed Emergency Planning Zone.

3.23 In addition to the weight that may be given to emerging local plans in paragraph 48, paragraph 49 of the NPPF (2021) suggests that an application may be considered to be premature (in limited circumstances) if two conditions are met, namely;

- a) The development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and
- b) The emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

3.24 Chapter 5 provides greater detail on how the policy relating to AWE Aldermaston and Burghfield has evolved since West Berkshire Core Strategy Policy CS8, to provide a policy which meets the requirements of NPPF paragraphs 97a and 97b. This has resulted in changes to the spatial strategy adopted by the Council between the Regulation 18 and Regulation 19 Consolutions in the Local Plan Review. The Council clearly considers that the duty to reduce vulnerability, increase resilience and ensure public safety are such that it has deselected this site and changed the spatial strategy for the District.

3.25 The Council is therefore of the opinion that the conditions set out in paragraph 49 a) and b) are satisfied and cannot be said that the conditions are not capable of being met by the current circumstances.

## 4. Main Issues

4.1 Taking into account the Council's reasons for refusal and the Appellant's Statement of Case, the main issues of this appeal can be broadly summarised as follows:

- Whether the proposed housing development complies with current Planning Policy and Allocation
- Whether the proposed housing development provides the required Affordable Housing Provision
- Whether the public in the proposed housing development would be safe from irradiation within the Detailed Emergency Planning Zone of the Atomic Weapons Establishment Burghfield in the event of the emanation of irradiation over the application site
- Whether the Ancient Woodland and Tree Preservation Order would be unnecessarily harmed by the proposed housing

## 5. Local Planning Policy

- 5.1 The Council sets out the context surrounding the Policy considerations of this application site and considerations material to this appeal.
- 5.2 The Council's development plan policy for housing predates the 2019 Regulations and the change by the Government to the evaluation of irradiation risk to the public. The local policy also predates the change by the AWE Burghfield of the risk radius for that major hazard establishment. By contrast, the Emerging Plan policy reflects those recently changed circumstances.
- 5.3 Before the Regulations were in force and the changes referred to above occurred in fact, the Council's overall spatial strategy in the WBCS was that as set out in policy ADPP1. This states that "most development will be within or adjacent to the settlements in the settlement hierarchy.." In addition in the same policy Burghfield Common is identified as being a Rural Service centre which is second in that hierarchy. Secondly policy CS1 relates to delivering new homes and retaining the housing stock. It notes that new homes will be primarily developed on land allocated for residential developments in subsequent DPDs.
- 5.4 Policy CS8 provides for Nuclear Installations at the AWEs including Burghfield. CS8 provides that residential development within the then "inner land use planning consultation zone" would be likely to be refused planning permission in the event that the Office for Nuclear Regulation (ONR) advises against that development. CS8 provides for three zones and a development plan policy response to each zone. Paragraphs 5.41 and 5.43 describe the basis of CS8 in Circular 04/)) "Planning Controls for Hazardous Substances" in which the Government has had a long-standing policy "measure of prudence" regarding local demographics which would limit the radiological consequences to the public in the unlikely event of an accident involving the spread of radioactive materials beyond the nuclear site boundary" and "over and above the stringent regulatory requirements imposed on nuclear operators to prevent such accidents". The ONR's decision to object to development is based on "complex modelling" and it advises against nearly all residential development in the inner zone (and that also largely comprises countryside). 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. Thus, CS8 aligns to the ONR's advice and the Council "would normally follow the ONR's advice in the inner zone".

- 5.5 Flowing on from these policies, the Council adopted the HSADPD, in 2017 and also before the changes referred to above, which 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 before 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 HAS 16.
- 5.6 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, and appropriately, is not an automatic rejection but a strong indication of the outcome.
- 5.7 When the HSADPD was prepared by the LPA, the proposed level of housing on the allocated sites was consulted upon and the Council emergency planners AT THAT TIME, [pre 2017] allowed for the 60 units under HSA16.
- 5.8 However since then in 2019, and following consultation the Government revised the REPPiR Radiation [Emergency Preparedness and Public Information] Regulations 2019; the result of which was that the DEPZ for the AWE Burghfield site was revised.
- 5.9 The introduction of the REPPiR Radiation [Emergency Preparedness and Public Information) Regulations 2019 is considered to be a significant material consideration that must be weighed in the planning balance.
- 5.10 Since no planning permission existed at that time on the application site [albeit it was an allocated site] no allowance was made in the Emergency Plan for the future potential 32 units. Accordingly the Council's Emergency Planning team and the AWE are objecting to the application.

5.11 It is noted that in relation to the proposal:

a) the Council Emergency Planning Team have formally objected to the application, on the basis that, given all of the application site lies within the now changed DEPZ for AWE Burghfield, an increase in the density of population which would arise, and which has not been allowed for within the Councils Emergency Plan for any potential future incidents at the site which might harm public health, will not be acceptable on the grounds of public safety.

b) In addition, the ONR (who are the National Government body who advise on such applications as this) have agreed with the advice of the Council Emergency Planners.

c) in addition, the AWE itself has formally objected to the development, on the grounds of the advice in para 97 of the NPPF.

Paragraph 97(b) notes the following—"recognising and supporting development for operational defence and security purposes , and ensuring that operational sites are not adversely affected by the impact of other development in the area."

5.12 Clearly, the introduction of an additional 32 dwellings (with up to 75 additional residents) within the most recent extent of the DEPZ has the real potential to compromise that future defence capacity and capability as a result of increasing the risk to the public from an emergency at AWE Burghfield. This is in the light of very significant public expenditure in the AWE Burghfield site in the light of recent planning permissions for new nuclear installations which will be coming forward soon. The crystallisation of irradiation risk can be catastrophic for the human individual and have a real impact on real property and the safety of houses contaminated with radioactive particles for human occupation, as well as engendering genuine fear and concern for the potential returning public.

5.13 The Council expands on its case below in regards to Emergency Planning and within its proof of evidence's.

### **Regulation 18 Local Plan Review Emerging Draft**

5.14 The Council began reviewing the existing Local Plan for the District in 2018. It reviewed all existing policies and identified gaps in policies and the evidence base. In December

2020 the Council published the emerging draft version of the LPR for consultation, which not only included a policy on AWE Aldermaston and Burghfield but also proposed “Sites allocated for residential and mixed use development in Eastern Area” and “Sites allocated for residential development: Eastern Area”.

- 5.15 The publication of the Regulation 18 Local Plan Review 2020 – 2037 Emerging Draft, included the revised 2019 DEPZ boundary required under the REPPiR legislation.
- 5.16 Emerging Draft Policy SP4, Atomic Weapon Establishment (AWE) Aldermaston and Atomic Weapons Establishment (AWE) Burghfield stated;

#### Policy SP 4

##### **Atomic Weapons Establishment (AWE) Aldermaston and Atomic Weapons Establishment (AWE) Burghfield**

In the interests of public safety, residential<sup>(9)</sup> development in the Detailed Emergency Planning Zone (DEPZ)<sup>(10)</sup> of AWE Aldermaston and AWE Burghfield is likely to be refused planning permission by the Council, especially when the Office for Nuclear Regulation (ONR) has advised against that development. All other development proposals in the Outer Consultation Zone (OCZ)<sup>(11)</sup> 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. Consultation arrangements for planning applications will be undertaken with the ONR using the table below.

Development within the Land Use Planning Consultation Zones: Office for Nuclear Regulation		
AWE Aldermaston (AWE A)		AWE Burghfield (AWE B)
Zone	Development Type	Development Type
DEPZ	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.	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.
	Any new development, re-use or re-classification of an existing development that could pose an external hazard to the site.	Any new development, re-use or re-classification of an existing development that could pose an external hazard to the site.
Outer	Any new residential development of 200 dwellings or greater.	Any new residential development of 200 dwellings or greater.
	Any re-use or re-classification of an existing development that will lead to a material increase in the size of an existing development (greater than 500 persons).	Any re-use or re-classification of an existing development that will lead to a material increase in the size of an existing development (greater than 500 persons).
	Any new non-residential development that could introduce vulnerable groups to the OCZ.	Any new non-residential development that could introduce vulnerable groups to the OCZ.
	Any new development, re-use or re-classification of an existing development that could pose an external hazard to the site.	Any new development, re-use or re-classification of an existing development that could pose an external hazard to the site.

5.17 This policy SP4 received 21 comments including representations for both ONR and AWE, reference was also made to the Judicial Review into the validity of the new DEPZ (Crest Nicholson Operations Limited, Hallam Land Management Limited, Wilson Enterprises Limited and West Berkshire District Council and AWE Plc, Secretary of State for Defence, Public Health England and Office for Nuclear Regulation Case No CO/214/2020). The Hon. Mrs Justice Thornton DBE 12 February 2021 rejected the claim on all grounds. Therefore, the extent of the changed DEPZ has been held by the High Court to not be unlawful.

5.18 In addition, the Local Plan Review 2020 – 2037 Emerging Draft, initially proposed to retain the allocation of the Land to the Rear of the Hollies Nursing Home for 60 dwellings first made in the Housing Site Allocations Development Plan Document (adopted 2017) with the reference number HSA16 under a new reference number RSA 19. This is referenced in draft Policy SP14 Sites allocated for residential development in Eastern Area and draft Policy RSA 19 Land to the rear of the Hollies Nursing Home, Reading Road and Land opposite 44 Lamden Way, Burghfield Common (Site Ref HSA19). Draft

Proposed Policy SP14 received 41 responses and Draft Proposed Policy RSA 19 received 7 responses.

### Regulation 19 Local Plan Review Proposed Submission

- 5.19 Following the Regulation 18 consultation, Policy SP4 was extensively reworded based on the comments received from Emergency Planning. In addition, SP14 Sites allocated for residential development in Eastern Area was also extensively reworded. The supporting text was updated to recognise that if the DEPZ around AWE is reviewed and the emergency planning arrangements reviewed, then future reviews of the Local Plan will consider if a strategic allocation in the Grazeley area would be suitable. Also some of the sites proposed for allocation in the emerging draft LPR have been removed. This is due to development of sites being rolled forward from the current Local Plan, being at an advanced stage of construction, and also because of the AWE Burghfield DEPZ.
- 5.20 The Regulation 19 Local Plan Review Proposed Submission Consultation took place for six weeks between 20<sup>th</sup> January and the 3<sup>rd</sup> March 2023. One of the main issues arising from this consultation was the spatial strategy and the constraints imposed by the Detailed Emergency Planning Zone (DEPZ) around the Atomic Weapons Establishment at (AWE) Aldermaston and Burghfield.
- 5.21 The substantially revised Policy SP4, now proposes:

#### Policy SP4

##### **Atomic Weapons Establishment (AWE) Aldermaston and Atomic Weapons Establishment (AWE) Burghfield**

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 <sup>(10)</sup> located in the Detailed Emergency Planning Zone (DEPZ)<sup>(11)</sup> 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)<sup>(12)</sup> and any other consultation zone as detailed on [ONR-website](#) which meets the consultation criteria described in the table below (as may be amended by the ONR from time to time).

For development proposals in the DEPZ and OCZ for each of AWE's sites, consideration will be given as to how the proposed development would impact on the AWE Off-Site Emergency Plan and supporting documents.

Development within the Land Use Planning Consultation Zones: Office for Nuclear Regulation	
AWE Aldermaston (AWE A)	
AWE Burghfield (AWE B)	
Zone	Development Type
DEPZ	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.  Any new development, re-use or re-classification of an existing development that could pose an external hazard to the site.
OCZ	Any new residential development of 200 dwellings or greater.  Any re-use or re-classification of an existing development that will lead to a material increase in the size of an existing development (greater than 500 persons).  Any new non-residential development that could introduce vulnerable groups to the OCZ.  Any new development, re-use or re-classification of an existing development that could pose an external hazard to the site.
12km zone	A circular zone of 12km radius around all nuclear sites, for certain types of significant development due to the potential for such developments to pose an external hazard to sites.

5.22 This policy received 21 comments on the policy. All these representations are published on the Council website [www.westberks.gov.uk/lprexamination](http://www.westberks.gov.uk/lprexamination).

5.23 Thus, due to the changes in SP4 there are no longer any proposals for residential or employment site allocations inside the DEPZ. Thus, the application site is not allocated for residential development under the Emerging Plan.

### **The Removal of The Hollies from the Local Plan Review**

5.24 The application site was included as an allocation within the Housing Site Allocations Development Plan Document (HSA DPD) which was adopted in May 2017. At the time of the preparation of the HSA DPD before May 2017, Council Emergency Planners allowed for the 60 units and, when the new Regulations came into force, since development had yet to commence on the site, by the time of the Regulation 18 it was proposed to retain the allocation in the LPR.

5.25 However, since then, the Government advised that, following *further technical research*, the inner Detailed Emergency Planning Zone (DEPZ) for the Burghfield Atomic Weapons Establishment (AWE) site under the REPPiR Radiation [Emergency Preparedness and Public Information] Regulations 2019 be revised in its extent. In addition the NPPF has been amended by Government to include paragraph 97.

- 5.26 Paragraph 97 (NPPF 2021) requires that planning policies and decisions should promote public safety and take into account wider security and defence requirements. Part a) requires that local planning authorities take appropriate and proportionate steps to reduce vulnerability, increase resilience and ensure public safety.
- 5.27 Subsequently, since the changed extent of the Zone was declared, and its changed extent has resisted a High Court challenge, the application site now lies within the as changed inner DEPZ of AWE Burghfield. Residential development inside that Zone will result to increase the *population density* of the area of the inner zone, and would result to increases the number human receptors who self-evidently would be exposed to a radiation emergency event were it to occur. The increase in population numbers would inevitably compromise the effectiveness of the 2019 Regulation emergency evacuation procedures in the event of an incident of radiation emanating from the AWE. To permit residential development, and to consequently permit the increase in candidate human beings inside the DEPZ being exposed to the harmful, and potentially catastrophic effects of radiation, cannot be said to be reducing vulnerability nor ensuring future public safety nor increasing resilience, in the event that an incident was to occur. Therefore, the application site has been *removed* from the submission version of the Local Plan Review and the spatial strategy has been altered so as to redistribute development to other spatial areas in the Local Plan Review. That policy approach, and the underlying evidence, will be tested by an independent inspector acting on behalf of the Secretary of State in a local plan inquiry. As more widely, planning has to address a range of influences on land use planning of which some are less and some are more harmful on people and on property. The submission Plan reflects the policy approach of the local Council to the shape of residential distribution in its administrative area.
- 5.28 This policy received 21 comments on the policy. All these representations are published on the Council website [www.westberks.gov.uk/lprexamination](http://www.westberks.gov.uk/lprexamination).
- 5.29 There are no proposals residential or employment in this area.
- 5.30 By way of conclusion in this part, the appellant's statement of case raises that the development was included in the Councils Annual Monitoring report. The development appears in the annual monitoring report for 2021 to 2022 due to the monitoring report running from 1<sup>st</sup> April to 31<sup>st</sup> March each year. The decision on this application was still pending consideration at that time and the final decision on the application was made

on the 1<sup>st</sup> June 2022. The decision to deselect the allocated site for the Local Plan Review was not taken until Council in December 2022.

5.30 The Council can display a 5 year housing land supply of 6.4 years as displayed in the table below. It should be noted that 32 dwellings out of the total identified supply of 3,448 represents 0.9% and even after removing the proposed 32 units from the supply side the Council still has a healthy 6.3 years land supply. In short, there is *no need* for the proposed development that is the subject of this appeal. The affordable housing envisaged can be situated on an alternative site outside of the DEPZ (Appendices 3).

## 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)	<b>6.4 years</b>

	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



## 6. Affordable Housing Provision

- 6.1 Policy CS 6 of the Development 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. 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 fall away.
- 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. Detailed Emergency Planning Zone (DEPZ)

### Relevant Planning Policies

7.1 Paragraph 97. Of the NPPF 2021 states the following: (Emphasis added)

*“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<sup>43</sup>. 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.”*

7.2 Policy CS 8 of the development plan Nuclear Installations - AWE Aldermaston and Burghfield states the following:

*“In the interests of public safety, residential<sup>(59)</sup>development in the inner land use planning consultation zones<sup>(60)</sup>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<sup>(61)</sup>, 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.”*

7.3 It goes on to show a table for consultation arrangements for planning applications.

## Background

- 7.4 The Atomic Weapons Establishments at Aldermaston and Burghfield both within the geographic area of West Berkshire Council are nuclear licenced sites. They are both Ministry of Defence sites which support the UK defence and security work, in particular the nuclear warhead activities. Both sites were previously used in World War II and have been involved in the current work since the 1950s.
- 7.5 The legislative basis relating to protecting the public and the environment from radiation emergencies relates to the Radiation (Emergency Preparedness and Public Information) Regulations 2019<sup>3</sup> (REPPIR 19). REPPIR 19 came into force in May 2019, replacing REPPIR 2001. The changes in the legislation came about following the lessons from the radiation emergency in Japan following the earthquake and Tsunami which caused the Fukushima Daiichi Nuclear Power Plant disaster (2011), and also changes made to the *Basic Safety Standards Directive 2013/59/Euratom*<sup>4</sup> (BSSD 2013) which the UK government agreed to implement in order to *protect the public* and a *reduced appetite to the risks* associated with nuclear licensed sites.
- 7.6 The REPPIR 19 legislation has a number of requirements of Local Authorities which have Nuclear Licenced sites located within their areas including:
- a) Requirement to determining an area known as the Detailed Emergency Planning Zone (DEPZ) (Reg. 8),
  - b) Prepare an Off-Site Emergency Plan (Reg. 11),
  - c) Review and test of emergency plans (Reg. 12)
  - d) Provision of information to the community within the DEPZ. These off-site arrangements link with the requirements on the site operators On-site emergency arrangements. (Reg. 21)

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<sup>3</sup> <https://www.hse.gov.uk/radiation/ionising/reppir.htm>

<sup>4</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0029:EN:HTML>

- 7.7 Within REPPiR 19, the Approved Code of Practice<sup>5</sup> and associated guidance documents and the processes to be undertaken to achieve those set out in the previous paragraphs are clearly set out.
- 7.8 In addition to the REPPiR 19 legislation and guidance there is also the National Nuclear Emergency Planning and Response Guidance<sup>6</sup> which although published in 2015, and therefore prior to REPPiR 19, the majority of the content is still relevant.
- 7.9 The REPPiR 19 legislation is one piece of legislation relating to emergency response and recovery. Other legislation which also applies is the Civil Contingencies Act 2004<sup>7</sup> (CCA) and associated guidance.
- 7.10 The CCA legislation places a number of duties on a number of agencies including local authorities. These duties include to assess risk; put in place emergency plans, put in place business continuity plans; have in place arrangements to make information available to the public and maintain arrangements to warn and inform the public, share information with other responders, cooperate with other responders and provide business continuity advice to businesses and volunteer organisations.
- 7.11 These broad duties cover a wide range of risks including those set out in the Governments National Risk Register<sup>8</sup> such as flooding, cyber, animal diseases, industrial action, malicious attacks, earthquakes and major fires.
- 7.12 These wide range of risks therefore require a wide range of plans to be in place from Emergency Response Frameworks, Recovery Plans, Animal Disease Outbreak Plans, Vulnerable People and Human Aspects plans etc. Some are 'core' plans which can be adapted for any emergency whilst others are more specific in their function.
- 7.13 Some of the plans are written and maintained by the local authority however the vast majority are developed and coordinated through multi-agency working at the Thames Valley Local Resilience Forum. There are currently over 35 such multi-agency plans.

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<sup>5</sup> <https://www.onr.org.uk/documents/2020/reppir-2019-acop.pdf>

<sup>6</sup> <https://www.gov.uk/government/publications/national-nuclear-emergency-planning-and-response-guidance>

<sup>7</sup> <https://www.legislation.gov.uk/ukpga/2004/36/contents>

<sup>8</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/952959/6.6920\\_CO\\_CCS\\_s\\_National\\_Risk\\_Register\\_2020\\_11-1-21-FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952959/6.6920_CO_CCS_s_National_Risk_Register_2020_11-1-21-FINAL.pdf)

- 7.14 Some of the plans are written and maintained by the local authority however the vast majority are developed and coordinated through *multi-agency* working at the Thames Valley Local Resilience Forum. There are currently over 35 such multi-agency plans.
- 7.15 The relevance of the above requirements made of the local authority and other responders to this appeal is that they can appear quite simplistic in relation to what responders do in response to an emergency. However it is very often not the case because the apparent simplicity covers many layers of complexity when the Council is supporting people in very stressful situations. This stress by people to an emergency can be extreme even in 'normal' emergencies. However, when 'radiation' is mentioned, which you cannot see or smell unlike floods or fires, the genuine fear and concern associated with that by the public is likely to cause significant pressures on the responders. This is also an understandable response because of the catastrophic effect of radiation to a human being were the risk of an accidental release to crystallise. That is, there is a small risk of an accident but such an accident has disproportionately significant effects on human. Contrast that risk evaluation with a flood event that may cause much damage to property and risk to life, but can be cleaned up by a lay person relatively quickly after the flood waters have subsided.
- 7.16 Within the National Risk Register an Industrial Accident – Nuclear (Serial 34) is shown to be *lowest* in likelihood (<1 in 500 year) but the *second highest* in impact (Level D). Consequently, the fact that the risk of an accident is "unlikely" is beside the point because the impact of the *second highest*.
- 7.17 Whilst it is hoped that the actual potential likelihood of a radiation emergency arising at an AWE site is very low, due to the layers of safety put in place the details in that it would *appear* almost impossible for a radiation emergency to occur, accidents do happen and the Government approach to *nuclear* risk is prudence rather than imprudence. To assert that accidents never happen is not appropriate in relation to risk management especially when it relates to *public* health, welfare and the environment and the potential impact. It also places people into a false state of security. Indeed, the National Risk Register refers to a number of actual emergencies where there have been *radiation* emergencies in the UK and elsewhere also by way of: Windscale (UK) in 1957, Three Mile Island (US) in 1979, Chernobyl (Ukraine) in 1986 and Fukushima (Japan) in 2011. Therefore, accidental radiation emergencies do happen and the effects can be catastrophic to human beings and have long term effects on people and property.

- 7.18 There are risks, consequences and impacts associated with the AWE sites and if they were not real risk, then REPPIR 19 would not needed to have been enacted and the requirements under REPPIR 19 would not be necessary.
- 7.19 In particular it is the impact on the community and the environment not just in the short term but the long term recovery which drives the work of the local authority.
- 7.20 Whilst reassuring documents are provided to the community within the DEPZ stating in the 'unlikely' event of a radiation emergency, it clearly does not say an accident will not happen. Accepting that flooding is a different hazard the principle is the same in that in West Berkshire we have experienced significant flooding several years in succession when the likelihood of such events were over a 1:100 year event.
- 7.21 As stated in 7.17, whilst it is always hoped that the likelihood of a radiation emergency arising at an AWE site is very low the details provided by the appellant are concerning in that it would appear almost impossible for a radiation emergency to occur. This is not appropriate in relation to risk management especially when it relates to public health, welfare and the environment. It too places people into a false state of security. There is a risk and there is a consequence and impact associated with the AWE sites otherwise there would be no need also for a Urgent Protection Actions (UPA) area, no need for a DEPZ and no need for a Plan. Whilst reassurance documents are provided to the community within the DEPZ stating it in the 'unlikely' event of a radiation emergency it clearly does not say it will not happen which is the inference of the appellants case. Accepting that flooding is a different hazard, of course, the principle is the same in that in West Berkshire administrative area has experienced significant flooding several years *in succession* notwithstanding that the *likelihood* of such events were a 1:100 year event. Therefore, too much reliance can be placed on the probability of the risk instead of the actual consequences of the risk were it to crystallise. The objection by the local planning authority concerns largely the latter *because of the* nature of the crystallised risk on people.
- 7.22 The Council will provide evidence in regards to its Emergency plan, the stresses and strains on its emergency plan and how the development is considered to not be able to be accommodated into the emergency plan given the detailed, comprehensive requirements. It will also consider and argue in regards to the degree of risk associated with AWE.

7.23 The Council will consider the degree of risk associated with AWE.

### **Detailed Emergency Planning Zone (DEPZ)**

7.24 The DEPZ determination is undertaken by the local authority where the nuclear sites are located. Therefore, for the AWE sites in this administrative area, the determination is made by West Berkshire Council. Prior to determining the DEPZ information is provided by the operator of the nuclear site, in this case AWE, in a Consequence Report. AWE provide two reports, one for each nuclear site, and are publically available on the West Berkshire Councils website<sup>9</sup>. Of particular note in relation to this appeal is the "AWE Burghfield Consequence Report"<sup>10</sup> and the associated report relating to the determination process.

7.25 These Consequence Reports provide the information in relation to the minimum distances for setting the DEPZ and the justification behind the recommendation including *response* times. The Council will explore the implications for residential development and response (and return to residence) times within its evidence.

7.26 The DEPZs for both Nuclear Licenced sites in the West Berkshire Council area, Atomic Weapons Establishment (AWE) Aldermaston and AWE Burghfield, were first determined under this legislation in March 2020. The considerations relating to the size of the DEPZ are set out in the legislation and ACOP which states that the DEPZ should be set taking consideration of:

- local geographic, demographic and practical implementation issues;
- the need to avoid, where practicable, the bisection of local communities and
- the inclusion of vulnerable groups immediately adjacent to the area proposed by the operator'

In addition the DEPZ cannot be smaller than the UPA as detailed in the Consequence Report.

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<sup>9</sup> [Atomic Weapons Establishment \(AWE\) - West Berkshire Council](#)

<sup>10</sup> [https://www.westberks.gov.uk/media/48825/AWE-Burghfield-Consequences-Report/pdf/REPPiR\\_B-Site\\_ConsequencesReport\\_web\\_version1.pdf?m=637256670105370000](https://www.westberks.gov.uk/media/48825/AWE-Burghfield-Consequences-Report/pdf/REPPiR_B-Site_ConsequencesReport_web_version1.pdf?m=637256670105370000)

- 7.27 The procedures undertaken by West Berkshire to determine the DEPZ in March 2020 were ratified following a Judicial Review which unsuccessfully challenged the process undertaken by the Council and was dismissed in January 2021.
- 7.28 The DEPZs for both AWE nuclear sites have been reviewed and re-determined in January 2023. There have been two minor changes made to the AWE Burghfield DEPZ with the *addition* of two small areas to include properties within communities which had previously been excluded.
- 7.29 Prior to REPPiR 19 the determination process was undertaken by the regulators, ONR. The regulators were involved with the determination undertaken by West Berkshire Council in 2020 and 2023 since they are members of the AWE Off-Site Planning Group.
- 7.30 It is important to note that prior to REPPiR 19, and the changes in the DEPZ geographic extent, the application site was not in the DEPZ. This is significant since, as a result of this material change in the situation, any planning applications within the DEPZ would need to be carefully assessed against the impact on the AWE Off-Site Emergency Plan where before they need not have been.
- 7.31 The DEPZ is reviewed and re-determined every 3 years, unless there is a change in operations on the AWE sites and /or the local authority considers there is a change in the local area which necessitates a re-determination. The Council will explore the implications for re-assessment and its possible effect on the DEPZ in terms of increasing or decreasing its extent.

### **AWE Off-Site Emergency Plan**

- 7.32 As required under REPPiR 19 legislation the *operator* is required to have an adequate *on site* emergency plan (Reg.10) and the local authority must make an adequate *off-site* emergency plan covering the DEPZ *and* OPZ. (Reg. 11).
- 7.33 Whilst the two nuclear sites of AWE Aldermaston and Burghfield are within the geographic area of West Berkshire Council (WBDC) the development of the plan requires coordination of a wide range of stakeholders who would be involved in a response relating to a radiation emergency at either site. This makes the plan multi-faceted and complex.



7.34 The development of the most recent plan involved:

- a) over 27 agencies ranging from the emergency services in the Thames Valley and Hampshire;
- b) several government departments and agencies including the Environment Agency and Food Standards Agency;
- c) four local authorities due to the cross border nature of the DEPZs and OPZs;
- d) health services including Integrated Care Boards and hospitals; and
- e) utility companies and transport companies (Rail and Road).

Therefore, the role of WBDC in developing the plan, in particular, is coordination and ensuring compliance with the legislation, as set out in Chapter 1 of part 2 of Schedule 6, Chapter 2 of part 2 of Schedule 6, Chapter 3 of part 2 of Schedule 6 and the principles and purposes of Schedule 7.

7.35 The first version of the plan was developed by May 2020 following the changes to the DEPZ around AWE Burghfield. Since that date there have been a further 4 updates to the plan as a result of agency changes, changes in procedures and lessons identified following 6 focused exercises on 5 themes undertaken over 2021/2022.

7.36 The plan is a living document being amended as necessary with regular training and exercising undertaken with the other responders in order to test the adequacy of the Plan, or elements of it. This is recognised in the ACOP as normal practice.

7.37 Whilst the Plan is detailed it is not expected to and does not cover everything and does not provide all the answers. Rather, each agency owns the response plans and expertise is essential along with other supporting plans and frameworks, as stated earlier in this document. The AWE Off-Site Emergency Plan provides the overall response framework and some specific information in relation to the site, countermeasures and mitigation options in order to support responders in the response.

7.38 The above statements may appear to give the complete assurance that the Plan and all the supporting plans mean that there are no issues in the ability to respond to an AWE

incident at either site. Whilst that is the aim of the development and continual revision and improvement of the Plan, and associated plans, along with the regular testing of not only the Plan but the other supporting documents by this local authority and/or in a multi-agency environment the reality can be and is likely to be very difficult and challenging due to the nature of the emergency – i.e. ‘radiation emergency’, the existing population density, the resource intensity of the response and thereafter the recovery to ‘normality’.

7.38.1 The Council will provide further evidence in the context of the plan. The Council will also seek to explain and explore how lessons from this country and across the world have changed the Plan, and supporting plans and the importance of the robustness of these plans. The learning from these various incidents can be drawn upon to assist in understanding the issues and challenges in response and/or in the recovery phase to a complex challenging major incident such as an AWE Radiation Emergency.

7.39 Whilst West Berkshire Council is not there to protect the AWE operation per se the local authority has a requirement under REPPiR 19 to have an ‘adequate Off-site emergency plan covering that zone or zones’ (the zones being the DEPZ and Outline Planning Zone (OPZ)) (Reg. 11) ‘and have the capability available to ensure this happens without unnecessary delay’ (Para 238 of ACOP). As set out in the ACOP, Para 338 the process for making an adequate plan involves:

- a) writing the plan, including the minimum content required by Schedule 6 and meeting the principles and purposes in Schedule 7;
- b) implementing the necessary requirements (or seeking confirmation of this) to ensure the plan is capable of being put into effect without delay when required; and
- c) testing the plan to demonstrate its adequacy and making any necessary improvements to the plan as identified by the test.

In relation to development management (and the above requirements relate to paragraph (b) above), if the Plan is not capable of implementing the effect, then the Plan could be deemed to be inadequate and West Berkshire Council would be held to be non-compliant. The knock on effect to this is that non-compliance by the Council places the ongoing holding of the AWE Nuclear Licence *at risk*. The Council will explore these points further in evidence.

7.40 The implications in relation to the impact of the proposed development in relation to the initial response and subsequent recovery will be set out further in evidence.

### Development Control Assessment Process

7.41 There has been a process in place in relation to the AWE sites since 2010. It has been revised almost annually and, in particular, after 2020 when Wokingham and Reading Borough Councils were affected more by the changed DEPZ and when the regulators, Office for Nuclear Regulation (ONR) updated their Land Use process following the revision of the REPPiR legislation. The latest development control process guide for professional partners was being reviewed in late 2022. The intention was to make it a form of public document to assist developers. The final version was paused due to the 3 yearly review and determination of the DEPZ due in January 2023 and is currently being amended in relation to the changes.

7.42 Aside from the current formal status of the process guide document, the principles as to what applications the Emergency Planning, and as necessary the AWE Off-Site Planning Group as a whole or as individual agencies are consulted on, has remained *broadly* the same: the relevant Emergency Planning Service is consulted with respect to any planning application within the DEPZ, or the other consultation zones as detailed by the ONR. These other Zones are set out below and on their website<sup>11</sup>:

Zone	Description
On the nuclear site	Within the nuclear site boundary.
Detailed Emergency Planning Zone (DEPZ)	The DEPZ where set by a Local Authority.
Outer Consultation Zone (OCZ)	Extends from the perimeter of the DEPZ out to a distance defined by ONR from the centre point of the site, where this distance is determined by the nature of the site. For sites without a DEPZ, the OCZ extends outward from the site perimeter fence.
12km zone	A circular zone of 12km radius around all nuclear sites, for certain types of significant development due to the potential for such developments to pose an external hazard to sites.
Special case	ONR also requests to be consulted on planning applications, irrespective of distance from nuclear sites, for special cases. These represent developments that either introduce a new hazard or change the existing external hazards posed to nuclear sites.

7.43 Each application is evaluated by *emergency* planning professionals on its own merits but specifically in relation to the impact the development would have on the Plan and therefore the impact on responders and the community in the short and long term. In so

<sup>11</sup> <https://www.onr.org.uk/land-use-planning.htm>

doing, the adequacy of the plan (and its limits) have been reviewed particularly following the changes in the AWE Burghfield DEPZ in 2020.

- 7.44 The consultation process and considerations in relation to any development proposals within the DEPZ of either AWE site including any mitigation proposals will be demonstrated having regard to this application.
- 7.45 As has been referred to above, Core Strategy Policy CS8 provides for development considerations in the locality of the AWE locations. Both the ONR and West Berkshire Council's Emergency Planning Service advised against this development having given consideration to the specific impacts of the development on the AWE Off-Site Emergency Plan. As such, the proposal development conflicts with the National Planning Policy Framework (NPPF) and Policy CS8 of West Berkshire Core Strategy 2006-2026. The Council will provide evidence on these matters exploring how it the development conflicts with the aims of CS8 and National planning policy paragraph 95.

**The Development of Land at West of Kingfisher Grove (31<sup>st</sup> January 2023)  
(Appendices 1)**

- 7.46 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 31<sup>st</sup> January 2023 (Appendices 1.)
- 7.47 The Council will distinguish that decision, the facts on which it was decided that include there to have been in that District less than a five year housing land supply, and notes the absence of any objection by the ONR or the AWE Burghfield to that development.

## 8. Impact on Trees

### Tree Preservation Orders and Site History

8.1 There are two Tree Preservation Orders recorded on the application site:

a) TPO 835 was signed and sealed in November 2014 following the felling of a number of mature, open-grown trees within one of the existing fields in the September of that year. This was an Area Order, with preparations made for its revision to show individual trees, groups and the woodland. However the Order was not confirmed within the relevant period and so lapsed;

b) 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.

8.2 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.”*

8.3 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 contention that the trees on site lack public visibility is countered within this methodology.

### Relevant Policies

8.4 Relevant Policies include the following.

- 8.5 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...”*
- 8.6 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.”*
- 8.7 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.”*
- 8.8 This policy defines Green Infrastructure as including *“natural and semi-natural green spaces – including woodlands, urban forestry, scrub etc.”*
- 8.9 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.”*
- 8.10 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.”*
- 8.11 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.”*

8.12 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...”*

### **Assessment of Appeal Proposal**

8.13 The application is for 32 new dwellings within small fields bound by mature trees and hedges. The land slopes steeply away to the north, towards Pondhouse Copse Ancient Woodland, which the site abuts. The northern edge of the site falls under the 15m buffer to the Ancient Woodland. If one considers a 50m buffer to the Ancient Woodland, even more of the site is contained within it.

8.14 The site includes two Groups of trees under TPO 989. These are effectively the mature field boundary immediately behind the new dwellings at The Oaks, Reading Road and another perpendicular to that. To the north, part of the red line boundary of the site falls under the Woodland element of the same TPO. This confers protection on all trees, from seedlings upwards. Lastly there is an Ash in the western part of the site under the TPO, which in a poor state of health and due to be felled and replaced (if this has not happened already). Beyond these TPO trees are many others, which are for the most part smaller and younger, with several notable exceptions (some of which are off site).

8.15 The application is accompanied by an Arb Impact Assessment to BS 5837:2012 Trees in relation to design, demolition and construction, recommendations by Keen Consultants. The trees have been graded accordingly, with a 17 U-grade trees recommended for removal. However it should be remembered that these may well have the greatest Ecological value due to cavities, exposed heartwood, wounds, cracks, splits and other niche environments.

8.16 The removal of U-grade trees in general, is only necessary given the proposed development will introduce new targets that may be affected by some of the hazards associated with trees in poorer health. Exceptions to this general rule would apply to trees presenting hazards to neighbouring properties.

8.17 The proposed layout has evidently tried to accommodate many of the trees on site, but there are significant losses and the design overall is compressed with little room for mitigation planting. Significant among the removals is the proposed felling of five stems (plus understory) from group G2 of TPO 989 (G80 in the Keen report). This is to

accommodate the estate road near plot 14. If it is accepted that this tree line should be breached, it would make more sense to remove the C-grade trees slightly further north (trees 75-78 in the Keen report) rather than half of the B-grade TPO trees here. Such an alteration would require a revised layout, but would not necessarily require a reduction in housing numbers.

- 8.18 Also significant is the entire removal of overgrown hedge 92. Although this has been graded as C-class it could be brought into management and retained. This would provide instant screening and preserve some Ecological value at the same time. The site could be re-jigged to utilise this natural feature as an asset, rather than an impediment.
- 8.19 The Council is also concerned about the encroachments into the Woodland element of the TPO in the north of the site. Part of the Attenuation Basin and Open Space are situated here. Such land uses would obliterate any developing seedlings and put considerable anthropological pressure on the glade area which currently exists.
- 8.20 Infill and mass planting is proposed in three areas – Keen SOC paragraph 4.7 refers. Two of these (the southeastern boundary from Plots 1-5 and Plot 15; and the area northeast of Plots 21-23) have the potential to clash with the crowns of the existing TPO trees in these locations as the new planting develops. The crown spread of the TPO trees at these locations from their stems, is recorded as 8m and 9m average respectively – i.e. covering much of the width of these areas and leaving little if any room for saplings to grow. In effect all but the peripheral parts of these planting areas should be considered likely to succeed without damaging existing TPO trees.
- 8.21 The remaining mass planting area proposed along the northwestern boundary, north of Plot 24 is largely occupied by existing trees and saplings (some in the W1 woodland area of TPO 989). So new infill planting in this area is likely to be limited. It is unlikely to offset the losses in Green Infrastructure resulting from the removals of C-grade hedge 91 and tree groups 68 & 68A.
- 8.22 The proposed street tree planting conforms with advice in NPPF paragraph 131. Street trees are usually small or medium sized at maturity and often fastigate varieties. So, they should not be considered replacements for the five B-grade Oak stems of group 80 under TPO 989.



- 8.23 Realistically the proposed planting of 12-13 open grown trees around the open space in the north of the site offers the best mitigation for the loss of the 5 B-grade Oak stems from group 80 (and possibly the 3 C-grade trees from elsewhere on site). However given anticipated losses due to natural causes and vandalism whether five of these trees will successfully reach the same stature and age remains to be seen.
- 8.24 Local Authorities often use the CAVAT method to quantify the value of their tree stock. The system is designed to express public amenity benefits in financial terms. It extrapolates from planting and management costs, viewing the tree(s) as assets based on their size and situation. A calculation of the value of one 650mm dbh stem in West Berkshire (with an asymmetrical crown and life expectancy of over 20 years) as per the details in the Keen tree report, yields a value of £36,925 per stem. So using this the B-grade Oak stems proposed for removal from G80, have a cumulative value of £184,625. This value reflects the value of investing in landscaping planting in order to achieve the necessary level of mitigation the proposal requires.
- 8.25 The Council is therefore concerned that the application is too congested, with little space for mitigation planting or landscaping and requires too many tree / hedge losses which could otherwise be designed out. The removal of good quality B-grade TPO trees and the TPO Woodland area is particularly unwelcome and not sufficiently mitigated.
- 8.26 It is noted that the submitted layout has respected the required minimum 15m buffer strip to the Ancient Woodland which will help protect the woodland in accordance with NPPF paragraph 180. However, a concern remains about the lack of mitigation to reduce the pressures which will arise on this woodland by the number of new occupants on the site if it proceeded.
- 8.27 The application fails to explore alternative layouts that would either avoid and/ or minimise the impact on TPO trees and also allow sufficient space for commensurate replacement, by potentially considering a less intensive layout.

### **Policy Tests**

- 8.28 Given the removal of the trees overall from site which the application will require, plus the limited opportunity for successful mitigation planting the test in Policy ADPP1 for sustainable development has not been met.

- 8.29 The Policy CS14 test for development which “*respects and enhances the character and appearance of the area*” and “*conserve and enhance biodiversity and create linkages between green spaces and wildlife corridors*” is not met as large B-grade Oak stems are proposed for removal from G80, an entire hedgerow 91 and the trees within it are also shown for removal. These losses will break up and remove existing field boundaries acting as wildlife corridors and harm the character of the site currently as discrete land parcels bound by hedges and trees.
- 8.30 The removal of important Green Infrastructure is counter to the requirement in Policy CS18 that “*Green Infrastructure will be protected and enhanced*”. The existing GI is not protected and enhanced by the proposal, but rather removed and disaggregated in places. Whilst this Policy allows for losses in GI, the mitigation proposed is limited and unlikely to offset those losses.
- 8.31 The landscape character of the site – being small fields bound by trees and hedges is largely removed from the proposed layout, so the test in Policy CS19 that this is “*conserved and enhanced*” is not met.
- 8.32 The NPPF test in paragraph 131 that “*existing trees are retained wherever possible*” is not met in that significant, good quality site trees are not retained (G80 in particular) when an alternative layout could be utilised allowing for their retention. Similarly other site trees and hedge 91 could be retained with a slightly different site layout.
- 8.33 The NPPF test of paragraph 174 that development should “*contribute to and enhance the natural and local environment*” is not met due to the tree and hedge losses already outlined. The mitigation planting will potentially clash with existing TPO trees and is not as generous around the Attenuation Basin and Open Space as characterised, because of the presence of existing trees in those areas.
- 8.34 Whilst the proposal does not directly harm the Ancient Woodland and a 15m buffer is proposed in accordance with NPPF paragraph 180, the concern that insufficient mitigation to offset anthropogenic impacts on the woodland remains.

## 9. Planning Balance

- 9.1 The development would assist the Council in its delivery of housing and contribute to its 5 year housing land supply. However, there remains no actual need for the proposed housing because the Council records a housing land supply of 6.4 years. The addition of the proposed housing would not impinge on its 5 year land supply nor due to the relatively low number of units.
- 9.2 The development would deliver 13 affordable units to which is a benefit of the development.
- 9.3 The proposed development would make efficient use of a site, albeit a greenfield site, in a sustainable location.
- 9.4 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 including because 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.
- 9.5 The development would result to compromise local public health and safety in the event of an emergency evacuation in the locality, clearly contrary to national and local policy. This impact would not just be felt by site residents but the potential knock on basis on residents in West Berkshire whose safety may be compromise to the stretching of the emergency services and the affective implementation of the Local Authorities Emergency Plan. Permitting the development would increase vulnerability and reduce resilience. Refusing the development permission remains the appropriate proportionate step here.
- 9.6 The development could also potentially compromise the future effective working of Atomic Weapons Establishment Burghfield. The development could compromise the UK's defence capabilities by curtailing the pre-eminent nuclear installations ability to develop, expand, and address its futures plans.

- 9.7 The Council recognises that the development does bring benefits and the development does accord with some policies of the current adopted Local Plan. However, it is clear to the Council that the development is contrary to the Local Plan in terms of CS8 and the ability to accommodate the development into its Emergency Plan. The development is also contrary to paragraphs 97 a and b of the NPPF as it would increase vulnerability and reduce resilience, and does not ensure that security and defence operational sites are not affected adversely by the impact of other development proposed in the area.
- 9.8 The Council displays a 5 year land supply as agreed by the appellants SOC at point 6.45. The Council is able to show a housing supply of 6.4 years. Given this buffer, there is sufficient delivery of housing elsewhere to which is not at risk in terms of public safety. Furthermore, these other sites do not adversely affect defence operation sites.
- 9.9 The health and safety of the future residents is given significant weight especially when other alternative sites in the Council's housing supply can deliver housing and affordable housing with no risk to future occupants or defence capabilities (Appendices 3).
- 9.10 Further weight against the development is found to the harm to the trees of the site and how this does not comply with the development plan.
- 9.11 The conflict with the development plan policies and with the NPPF outweighs the benefits of the development.

### **Conclusion**

- 9.0 In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990 (as amended), the application should be determined in accordance with the development plan, unless there are material considerations that indicate otherwise. Planning permission should be refused.

### **Suggested list of Conditions**

- 9.1 Without prejudice to the Council's case at appeal, a list of suggested conditions is to be provided by the Council in the Statement of Common Ground provided as a separate document.