

LAND TO THE REAR OF THE HOLLIES NURSING HOME, READING ROAD
BURGHFIELD COMMONS RG7 3LZ
PLANNING APPEAL REF: APP/W0340/W/22/3312261

CLOSING STATEMENT ON BEHALF OF
THE OFFICE OF NUCLEAR REGULATION (2nd R6 PARTY)

1. The ONR attended this Inquiry in its capacity as regulator with two main purposes:
 - a. To assist the Inspector in respect of the ONR's statutory duties and processes; and
 - b. To ensure that the position of the ONR was not misunderstood.

2. What became plain over the course of the Inquiry is that there is little disagreement between the parties as to the ONR's statutory duties, nor confusion as to the ONR's role. The ONR hopes that its contribution has been of some assistance to the Inspector.

3. However, given that position, the ONR continues to rely on what was said in opening. As was set out, given the statutory role the ONR plays, it can only oppose the proposed development on that limited basis.

4. In respect of some of the particular points raised in opening, Dr Pearce for the Appellant accepted that his evidence was an assessment of individual risk, which has nothing to do with the DEPZ or OSEP¹: as Dr Pearce fairly acknowledged, his evidence was not in respect of REPPIR 19².

5. The Appellant further made very clear that it is not part of this appeal that the DEPZ boundaries could or should be changed³. It was accepted that the OSEP must be adequate for the DEPZ⁴.

6. As a result, so far as it relates to grounds in which the ONR is interested, the Appellant's case might be characterised as an argument that the OSEP is a flexible document which ought to be amended to allow for the proposed development; or that the OSEP could accommodate the proposed development without amendment. The position by the end of the Inquiry appeared

¹ Pearce XX

² Pearce EiC

³ Mr Tabachnik KC in session

⁴ Pearce XX

to be that concerns relating to the OSEP were simply part of the planning balance as a material consideration.

7. The OSEP is the critical component of the last level of defence in depth provided to the local population around AWE(B)⁵. While there has been a lot of discussion at this Inquiry as to what AWE, the Council or the Secretary of State ought or might do, there has been no explicit justification for why the OSEP should be amended in order to accommodate the proposed development.
8. While the Council is the guardian of the OSEP, the ONR has a role in “horizon scanning” to identify threats to the OSEP⁶, working now with the information available to seek to ensure that a point is not reached where the adequacy of the OSEP is at risk, adequacy being a binary position: the OSEP is either adequate, or it is not⁷.
9. The ONR’s position is that any proposed development must take account of the OSEP. Moreover, the OSEP should not be subject to continual increase in burden: it is not infinitely scalable, as that rather defeats the purpose of REPPiR 19, the DEPZ and OSEP. There are real world constraints which limit the capability and capacity of the agencies that make up the emergency response⁸.
10. An issue arose in evidence as to the response of the ONR in relation to the OSEP. It was suggested by several witnesses that the ONR had broad regulatory powers which it could use. Mr Rogers explained to the Inquiry how regulation took place, and made the point that regulation is not binary: the ONR seeks to achieve and sustain compliance via a proportionate and targeted approach to enforcement.
11. The OSEP can only look at the current position – it cannot not take account of prospective development⁹. It is a complex document: it has to cater for what might happen, outside of a pure theoretical analysis of the actual impact of a radiological emergency – people within and outside the DEPZ are likely to have significant concerns, and will need reassurance, possibly decontamination and support in respect of psychological and psychosomatic effects. The definition of the radiological emergency includes perceived risk. The relevant consideration is

⁵ Rogers XX

⁶ Ingham response to Inspector

⁷ Ingham EiC

⁸ Richardson XX

⁹ Ingham XX

far more than a dose of radiation, albeit even a minor dose of radiation emanating from AWE(B) would nevertheless be a radiological emergency¹⁰.

12. The OSEP is stretched¹¹. It is presently subject to recommendations from the ONR arising out the statutory test in 2022 some of which relate to population density in DEPZ¹². The ONR's preliminary observations following ALDEX 23 in April were that there are further areas of improvement which the Council will be required to address in due course¹³. As has been identified, there are a number of committed planning permissions which remain to be built out, and other significant sites within the DEPZ which require particular consideration in the OSEP. Incremental increases in population density are a matter of concern to ONR¹⁴: the OSEP faces a real challenge in respect of remaining adequate in light of the already increasing burden of developments with consent. The Council explained its concern that the committed developments are already a serious challenge to adequacy¹⁵. The ONR agrees with that assessment¹⁶.
13. Dr Pearce accepted in cross-examination that he was not best placed to comment on whether the OSEP was at the "tipping point" and did not wish to speculate on actions that may or may not be taken before that tipping point might be reached.
14. In that context, this is the first planning inquiry in which the ONR has taken part. That in itself is significant, and in the ONR's view, the last remaining element of the "toolkit" or "levers" which it may exercise in order to assure itself that the OSEP is, and remains, adequate. The next stage would be enforcement.
15. The ONR's simple position in that it supports the Council's emergency planning function's analysis of the adequacy of the OSEP, and the Council's perceived threats to that adequacy. Adding more housing to an already expanded and complex DEPZ unnecessarily adds to the administrative and regulatory burden/risks faced by the Council in circumstances where the ONR's view is that the OSEP is already under considerable pressure. Pressure on the OSEP is ultimately a health and safety matter. The health and safety case is the key component as to why Local Plan Policy CS8 requires consultation with the ONR¹⁷.

¹⁰ Ingham response to Inspector

¹¹ Richardson and Ingham EiC

¹² ONR SoC para. 38 - 39

¹³ Ingham XX

¹⁴ Guilfoyle PRT

¹⁵ Richardson EiC

¹⁶ Ingham EiC

¹⁷ Guilfoyle PRT

16. Adopting the approach to REPPIR 19 which appears now not to be controversial, the assessment of the OSEP must be in circumstances where the radiation emergency has happened: however likely or unlikely that might be, and there is no place in REPPIR 19 terms for seeking to minimise harms or to reduce the planned emergency response. Any event which triggers the OSEP is a serious radiological emergency which requires a multi-agency response.
17. To return to the question posed in opening: whether the proposed development can be accommodated within the OSEP.
18. The Council is unable to make a positive case that the proposed development can be accommodated within the OSEP, for the reasons given by Ms Richardson in her evidence. The ONR has assured itself that the Council's decision-making arrangements for recommendations are suitable¹⁸. It follows that the ONR advised that the planning application should be refused, and now advises that this planning appeal should be dismissed.
19. As regards planning balance and material considerations, the ONR's position is that nuclear safety is extraordinarily serious. The issue of the OSEP is significant enough that Parliament has legislated¹⁹. It is difficult to imagine in those circumstances what might balance out nuclear safety in favour of the proposed development in circumstances where the nuclear safety regulator has indicated that its expert advice is that the proposed development should be refused. The ONR's objection should attract very significant weight in the planning balance²⁰.
20. The Inspector is invited to dismiss the appeal.

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14 June 2023

¹⁸ ONR SoC

¹⁹ Ingham EiC

²⁰ Guilfoyle PRT, adopting AWE submissions