

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

APPEAL BY

T A FISHER & SONS LIMITED

LAND TO THE REAR OF THE HOLLIES NURSING HOME

(LPA REF: 22/00244/FULEXT)

OPENING STATEMENT ON BEHALF OF THE FIRST RULE 6 PARTY

AWE PLC/MINISTRY OF DEFENCE

Introduction

1. AWE Plc and the Ministry of Defence are joint rule 6 parties to this appeal and support West Berkshire District Council's ("**WBDC**") refusal of planning permission for the proposed development ("**the Scheme**"). The Office of Nuclear Regulation ("**ONR**") also objects to the Scheme and is the second rule 6 party. It is an indication of the seriousness of the issues to be considered that these three organisations are participating in this Appeal. In addition, a report by the UK Health Security Agency ("**UKHSA**")¹, another expert body with statutory responsibilities in the event of a radiation emergency, has been submitted in evidence by WBDC which addresses elements of the Appellant's evidence.
2. As you will know, this is the second inquiry concerning the Appellant's appeal against WBDC's decision. Following the Inspector's decision to grant planning permission after the first Inquiry ("**the First Decision**"), AWE commenced s.288 Town and Country Planning Act 1990 proceedings alleging a number of legal errors in the First Decision. All four grounds of challenge were granted permission by the Court and, shortly afterwards, the First Decision was quashed by consent. You are invited to consider the issues afresh and reach your own view.²

¹ Carolyn Richardson (August 2024) Appendix 10, CD24.11

² The Secretary of State agreed that the First Decision should be quashed on the basis that it was accepted by the Secretary of State that the reasons for disagreeing with the advice of the ONR were not legally adequate. AWE and the Secretary of State agreed that the issues in the appeal would need to be considered afresh by a new inspector and the consent order disposing of the s.288 challenge records that the agreement was without prejudice to AWE's position that the approach adopted in the First Decision was also flawed by reason of its other grounds of challenge.

3. Further, as will be explored in detail at the Inquiry, there have been a number of material changes in circumstance since the last Inquiry, in particular relating to (a) emerging planning policy; (b) national defence policy (as set out in the March 2024 Command Paper)³; (c) the adequacy of WBDC's offsite emergency plan ("**OSEP**"); and (d) recent planning decisions addressing residential development within AWE's detailed emergency planning zone ("**DEPZ**"). All of these developments serve to reinforce AWE and the Ministry of Defence's position that the Appeal should be refused.

AWE Burghfield

4. AWE Burghfield ("**AWE B**"), together with AWE Aldermaston ("**AWE A**"), is responsible for the delivery of the whole life-cycle of nuclear warheads from concept design to disassembly. This is an essential element of the nation's continuous-at-sea-deterrent ("**CASD**"). AWE A and B are the only locations in the UK that can provide these capabilities.⁴ They are subject to the operational demands of the Ministry of Defence and, beyond that, the nation's international obligations. CASD is essential as the ultimate guarantee of our nation's security.⁵
5. In addition to current operations, AWE is undergoing a programme of investment and change, including new-build facilities and refurbishment which seeks to consolidate, rationalise and modernise existing facilities. Now and in the future, AWE requires flexibility to be able to meet the needs of the Ministry of Defence⁶ as well as any future change to law and safety and security standards.⁷
6. AWE's sites operate within a detailed regulatory regime and are held to stringent safety requirements for the protection of the public, following the principles of "defence in depth". One aspect of these safety requirements are the Radiation (Emergency Preparedness and Public Information) Regulations 2019 ("**REPPIR 2019**") and in particular the requirement on WBDC to designate a DEPZ and have in place an OSEP to mitigate the offsite effects of an emergency⁸, having regard to the need, so far as

³ CD26.1

⁴ Person MD 4.2, CD13.43

⁵ Person MD 3.2, CD13.43

⁶ Person MD 5.1, CD13.43

⁷ Person AW 3.9 and 11.2, CD13.42

⁸ See CD12.3, Regulation 11.

possible, to avoid the occurrence of serious physical injury.⁹ The parties have put forward detailed evidence on the OSEP and issues related to it. However, two important points of context should be borne in mind. First, the adequacy of the OSEP is a matter for ONR and ONR is here at this Inquiry objecting to the Scheme on the basis that the OSEP is already under pressure. Second, it is important to step back and remember that the purpose of the OSEP is to protect public safety and mitigate harm. As such, a precautionary approach is needed to any assessment of the risks around the adequacy of the OSEP, the effects of further residential development within the DEPZ, and the impacts on current residents within the DEPZ and on individuals living at the Scheme should a radiation emergency occur.

7. AWE and the Ministry of Defence do not appear at this Inquiry lightly. They are here to assist the Inspector in understanding the particular issues in this appeal that engage AWE's operations and the nation's security. In addition, they have become increasingly concerned about the potential for additional risks to (1) public safety and (2) AWE's operations arising from further development within the DEPZ, in particular residential development. These concerns relate to the Scheme itself in this case. However, and just as importantly, the Applicant is seeking to justify the Scheme on the basis of assumed low or "minimal" risks to the individuals who will live at the appeal site (which has no foundation in REPPIR 2019 or national policy). This approach has been advanced in other appeals (most recently unsuccessfully on three separate occasions¹⁰) and AWE and the Ministry of Defence's position, supported by others at this Inquiry, is that the individual risk assessment advanced by the Appellant is irrelevant to REPPIR (including the adequacy of the OSEP) and carries no material weight in the overall planning balance.

The Main Issues

8. There is clear policy support for refusal in the development plan and emerging policy:
 - a. The Development Plan: there is a debate about which limb of CS8 applies in light of the changes to the consultation zones brought about by REPPIR 2019. However, in this case, the ONR has advised against the Scheme and there is evidence that the OSEP cannot accommodate further residential development.

⁹ See CD12.3, Regulation 1.

¹⁰ CD8.8 and CD8.9 and CD24.8

Therefore, whichever limb of CS8 applies, the Development Plan indicates that consent should be refused.

- b. Emerging Policy: the Council's emerging policy also clearly supports refusal and is at a more advanced stage of preparation than at the last inquiry. It can be given moderate weight, for the reasons set out in Mr Bashforth's further proof.¹¹

- c. National Policy: the NPPF is also clear that as an operational defence site, AWE B should not suffer adverse effects from new development (see paragraph 101(b) NPPF) and as an existing user it should not have unreasonable restrictions placed upon it as a result of new development (see paragraph 193 NPPF). The Inquiry will hear evidence from AWE and Ministry of Defence witnesses on these points.

Issue 1: Public Safety

- 9. AWE advances a simple case on public safety in this Appeal. A radiation emergency is a serious event with the potential to expose the public to ionising radiation that they would not otherwise experience and have not consented to. Radiation emergencies are in their nature unpredictable (unlike the simple scenario presented by the Appellant¹²), hence the need for detailed emergency planning and a precautionary approach. Adding more people to the DEPZ means that if there is a radiation emergency, more people are at risk of exposure and the OSEP and responding organisations must accommodate them.

- 10. The focus of the OSEP is on the first two days after the emergency, but there is a much longer period of recovery that needs to be considered. You will hear evidence that further development within the DEPZ adds further individuals who will be at risk of receiving a radiation dose, require monitoring and may suffer the psychological effects of a radiation emergency, more buildings to decontaminate (a costly and complicated process) and extended disruption to normal living and burdens on public authorities. The costs of recovery fall on the public purse.¹³

¹¹ Bashforth Addendum Proof 4.12-4.16, CD26.7

¹² Person AW Rebuttal 3.3, CD13.46

¹³ Person AW 10.17, CD13.42

Issue 2: Impact on AWE Operations

11. As already explained, AWE B is the only site in the UK that can provide the capabilities for the assembly and disassembly of nuclear warheads. It is unique. It is critical to delivery of CASD and requires flexibility to develop, expand and/or change in response to Ministry of Defence requirements and any future changes in regulation.
12. You will hear evidence that increasing the population within the DEPZ has the potential to affect CASD. If increases in population density put the adequacy of the OSEP into question, AWE's regulators may impose additional requirements or restrictions on AWE's operations. At the far end of that scale – if WBDC cannot demonstrate to the ONR that it has an adequate offsite emergency plan, AWE would be unable to work with ionising radiation.¹⁴ However, even before this point, AWE as a responsible operator may self-limit operations, affecting its ability to support CASD.¹⁵ You will hear that exemptions to REPPIR are not the answer.

Conclusion

13. For all of the above reasons, which will be explored in more detail at this Inquiry, AWE and the Ministry of Defence respectfully submit that you should dismiss this Appeal.

Rose Grogan
39 Essex Chambers
17 September 2024

¹⁴ REPPIR regulation 10(4)(b), CD12.3.

¹⁵ Person AW Rebuttal 4.2, CD13.46.