



Appeal Decision

Inquiry Held on 17 – 19 September, 24 – 26 September and 30 September 2024

Site visit made on 19 September 2024

by Rory Cridland LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 18th November 2024

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

Land to the rear of the Hollies Nursing Home, Reading Road, Burghfield Common RG7 3LZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by T A Fisher and Sons Ltd against the decision of West Berkshire District Council.
 - The application Ref 22/00244/FULEXT, dated 31 January 2022, was refused by notice dated 1 June 2022.
 - The development proposed is the erection of 32 dwellings including affordable housing, parking and landscaping, with access via Regis Manor Road.
 - This decision supersedes that issued on 8 August 2023. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 32 dwellings including affordable housing, parking and landscaping, with access via Regis Manor Road at Land to the rear of The Hollies Nursing Home, Reading Road, Burghfield Common, RG7 3LZ in accordance with the terms of the application Ref: 22/00244/FULEXT, dated 31 January 2022, subject to the conditions set out in the attached Schedule.

Application for Costs

2. An application for costs was made during the Inquiry by the Council against appellant. The appellant responded in writing following the close of the Inquiry. That application is the subject of a separate decision.

Preliminary Matters

3. An Inquiry into this appeal was held in June 2023 and a decision issued shortly thereafter. However, that decision was subsequently quashed by the High Court on the grounds that the reasons for disagreeing with the Office for Nuclear Regulation (ONR) (as statutory consultee) in relation to the off-site emergency plan were not legally adequate. Accordingly, the matter was referred back to the Planning Inspectorate to be redetermined. I have had regard to that decision and the reasons for it being quashed in determining this appeal.
4. The Ministry of Defence/AWE (MoD/AWE) and the ONR appeared at the Inquiry as Rule 6 parties.

5. The Council, in its decision notice, identified three reasons for refusal. Reason for refusal (RFR) 1 relates to affordable housing. The appellant has submitted an executed Unilateral Undertaking to secure 40% (13) on-site affordable housing units, 70% (9) of which are for social rent. This affordable provision would accord with CS Policy CS6 and the West Berkshire Planning Obligations Supplementary Planning Document. The Council confirmed in its written evidence this addresses its concerns in respect of the first reason for refusal. I consider the UU's compliance with the Community Infrastructure Levy Regulations 2010 (CIL Regulations) and the National Planning Policy Framework (the Framework) later in this decision.

Main Issues

6. The main issues are the effect of the proposed development on:
 - (i) the safety and wellbeing of future residents of the proposed development, and the wider public, with regard to the proximity of the Atomic Weapons Establishment site at Burghfield (AWE B); and
 - (ii) the future capability and capacity of AWE B to operate effectively.

Reasons

Planning Policy Context

The appeal site, settlement, population and emergency planning context

7. The appeal site comprises part of the 'Land to the rear of The Hollies Nursing Home', a site allocated for new housing under Policy HSA16 of the Housing Site Allocations Development Plan Document (2006-2026) which was adopted in 2017. It makes up the remaining undeveloped, south-western part of this housing allocation and adjoins various residential developments along Reading Road. These include the recently constructed and occupied 28 dwellings on Regis Manor Road, which form the other part of the HSA16 housing site allocation.
8. It is located approximately 2km from AWE B, within Burghfield Common's settlement boundary - a Rural Service Centre with a range of services and reasonable public transport provision, including bus services to and from Reading. Burghfield Common and the nearby small village of Burghfield together have an estimated population of around 1,500 – 1,700 people, the majority of whom live in Burghfield Common.
9. AWE B is one of the nuclear licenced sites in West Berkshire. Under the requirements of the Radiation (Emergency Preparedness and Public Information) Regulations 2019 (REPP19), West Berkshire District Council determined the detailed emergency planning zone (DEPZ) for AWE B. The DEPZ is the zone around AWE B for which the local authority prepares an off-site emergency plan (OSEP). The OSEP sets out protective actions to be implemented in the event of a radiological emergency at AWE B. The appeal site and Burghfield Common are located within the DEPZ for AWE B. This is within the context of a population in the whole of the DEPZ of around 22,000 – increasing to around 24,000, were other housing developments with planning permission in the DEPZ to be constructed and occupied.

Spatial Strategy

10. Policy ADPP1 of the West Berkshire Core Strategy (2006-2026)¹ (CS) sets out the Council's spatial strategy for West Berkshire – directing development towards the areas existing settlements. As a Rural Service Centre with a range of services and reasonable public transport provision, CS Policy ADDP6 makes clear that Burghfield Common, along with Mortimer, will be the focus of development in the East Kenney Valley Area with some growth planned to help meet the needs of the village communities and to assist with the viability of village shops and services.
11. It also makes clear that the Council will monitor housing completions and population levels in conjunction with the ONR and that residential development within the inner land use planning zone is likely to be refused in accordance with CS Policy CS8.

Public Safety

12. CS Policy CS8 seeks to protect public safety by restricting development in close proximity to the AWE sites. In doing so, it controls development by reference to the ONR's land use planning consultation zones, which, at the time the Policy CS8 was adopted included the inner consultation zone, the middle consultation zone and outer consultation zone. In relation to AWE B, these zones are set at distances of 0 - 1.5km, 1.5 – 3km and 3-5 km respectively². This accords with Paragraph 101 of the NPPF which advises that planning policies and decisions should promote public safety and take into account wider security and defence requirements by, amongst other things, ensuring that operational sites are not affected adversely by the impact of other development proposed in the area.
13. Policy CS8 also makes clear that in the inner consultation zone of AWE B, residential development that the ONR advises against is 'likely' to be refused. All other development in the consultation zones will be considered in consultation with the ONR, having regard to the scale of development proposed, its location, population distribution of the area and the impact on public safety, including its impact on blue light services and the emergency off site plan, as well as other planning criteria.
14. It is common ground that the site, in distance terms, falls within the middle consultation zone. However, the Council and the Rule 6 parties argue that due to changes to the size of the DEPZ³, the appeal site should be treated as falling within the inner consultation zone. They argue that, as a result, there should be a presumption against development within this newly enlarged zone, pointing to the first sentence of Policy CS8 in support of their position.
15. I do not agree. The purpose of Policy CS8 is to protect public safety and more specifically to deal with the risk to public safety posed by the AWE sites. It aims to achieve a balance between that risk and the limited development envisaged in the areas surrounding the AWE sites. It does not create a moratorium on development but instead seeks to provide a clear indication to developers of the approach the Council is likely to take to proposals around these high-risk installations. As the CS Inspector's report makes clear, the policy was subject to a number of modifications

¹ Adopted July 2012.

² In respect of the ICZ, this was the area for which detailed emergency planning was required under the Radiation (Emergency Preparedness and Public Information) Regulations 2001 (REPPiR01).

³ brought about by the introduction of REPPiR19.

intended to provide reasonable certainty for all interested parties as to the type and scale of development likely to be acceptable in different locations⁴.

16. Even though Policy CS8 gives centre stage to the ONR's advice, it does not prescribe a particular outcome for development proposals in any of the consultations zones. While the first sentence reflects the Council's intention to normally follow the ONR's advice in the inner zone⁵, it is clear that proposals in the other zones are to be considered on a case-by-case basis. It seems to me that applying the policy as written and treating the appeal site as falling within the middle consultation zone, would not disapply the consequences of ONR's consultation advice from a substantial part of the geographic area to which the policy is intended to apply. Indeed, the ONR's advice will form an important part of the consideration of development proposals within any of the consultation zones.
17. I accept that the changes brought about by REPP19 may require a change to the Council's approach to consultation with the ONR. However, I do not consider this requires a change to the way in which Policy CS8 is applied. Nor do I agree that it would require a finding that detailed emergency planning should only be required in the ICZ. In my view, Policy CS8 is sufficiently flexible to take account of the advice of the ONR on development proposals within any of the consultation zones. Furthermore, the question of whether to consult the ONR in a particular case is a matter for the Council and I see no reason that the Council could not alter its consultation arrangements with the ONR so that they align with the updated zones without affecting the application of Policy CS8. Doing so would enhance the ONR's consultation role and would not undermine public safety or the regulatory rationale on which the consultation zones are based. In the present case, the fact remains that ONR's advice on the proposed development has been sought and will form part of the considerations when applying Policy CS8.
18. My attention has been drawn to Footnote 60 of the policy and paragraph 5.41 of the explanatory text both of which recognise that the consultations zones are as defined by the ONR and as shown on the proposals map. However, in my view this adds little to the understanding of the policy other than to indicate how the consultation zones have been determined. It does not indicate that Policy CS8 should be applied flexibly in the manner suggested by the Council and the Rule 6 parties. To do so would result in considerable uncertainty in the application of the policy, contrary to one of its key aims.
19. Policy CS8, when read as a whole and in its proper context, is sufficiently flexible to accommodate the changes brought in by REPP19 without expanding the ICZ so that it aligns with the enlarged DEPZ. Indeed, as the second sentence makes clear, development proposals 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. This includes 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. Many of these criteria will also be considered by the ONR when responding to all consultations for planning applications in the DEPZ⁶.

⁴ CD13.35 paragraph 84.

⁵ and thus establishes the mechanism by which the ONR is given influence over land use planning decisions around the AWE sites.

⁶ CS Policy CS8, explanatory text paragraph 5.43.

20. While I note that Policy SP4 of the emerging West Berkshire Local Plan Review (LPR) proposes a more restrictive approach to development within the DEPZ, the examination of the LPR is ongoing and still some way from being finalised and adopted. Furthermore, I understand there are a number of outstanding objections to that policy. As such, while I am mindful that the proposal would be in conflict with the current version of that policy, I attach it limited weight.
21. Overall, while I acknowledge the strong views advanced by the Council and the Rule 6 Parties as to the application of Policy CS8, I consider the suggested substitution of the DEPZ for the ICZ would alter the wording of that development plan policy to such an extent that it would fundamentally change its meaning and intent. It would greatly expand the area within which development proposals are likely to be refused and would result in a far more restrictive development plan policy than that which was intended at the time of adoption. It would also result in considerable uncertainty as to the approach the Council is likely to take to development within the DEPZ.
22. Accordingly, I conclude that the Proposed Development should be considered under the second sentence of Policy CS8.

Resident's safety and wellbeing (in relation to AWE B)

23. The scale of the proposed development is relatively modest. While it falls within the Framework definition of major development, at 32 dwellings it is at the lower end of the scale. Its location on an allocated site in Burghfield Common, a rural service centre located on the outer edge of the DEPZ - an area within which growth is envisaged and one of the more populous parts of the DEPZ - indicates it is in a suitable location from a land use planning perspective. Furthermore, I note the Council accepts that it complies with the spatial strategy set out in CS Policy ADPP1⁷. As such, I consider that the scale and location of the development is acceptable in planning terms.
24. It is not disputed that the risk of a nuclear emergency is low. This is a given in the context of nuclear radiation and emergency planning. Furthermore, even if one did occur, the likely radiation doses that individuals at the appeal site or elsewhere in the DEPZ would experience would also be low. The REPP19 regime, and the requirements it imposes, is precautionary and seeks to mitigate the remote risk of a nuclear incident and its potential to result in harm to the surrounding population.
25. Likewise, I accept that considerations of individual risk at the appeal site are unlikely to be determinative factors in this appeal. Individual risk will be low across the whole of the DEPZ in view of the very low risk of an event occurring. While I acknowledge that the possibility of exposure of the proposed development's future residents to inhalation and external radiation from a plutonium plume from AWE B cannot be ruled out, the individual risks posed to future residents would be tolerable. In many respects, it would be similar to that of many others living within Burghfield Common - with the risk being considerably below the threshold identified by the HSE for refusing planning permission on safety grounds.
26. Furthermore, the changes brought about by REPP19 have not altered the risk to those future residents or anyone else within the DEPZ. It is essentially the same as it was during the time the site was allocated. It is the appetite for risk that has

⁷ Council Closing Para 38.

changed and how the Council should go about planning and preparing for a response to a nuclear emergency. As such, I am satisfied that future residents of the proposed development would not be placed at an unacceptable level of risk or subjected to any materially different risk to other residents in Burghfield Common or the wider DEPZ.

27. Turning then to its impact on the OSEP, the appellant has suggested that the OSEP is not sensitive to population density. I do not agree. While there may be elements that are not, the NPPG makes clear that when considering public safety in planning decisions, account should be taken of the total number of people that are present in the consultation zones and the implications of any increase as a result of a planning decision or policy. Furthermore, it recognises that cumulative development, by whatever means, leads to a rise in population within the consultation zone and a proportionate increase in the consequences should a major accident occur.
28. As such, I agree with the Council and the Rule 6 parties that the addition of up to a further 77 residents to the DEPZ will place an increased burden on emergency responders. Those residents are likely to include vulnerable individuals and others who may require access to a rest or reception centre⁸ and will require the deployment of further resources. It would also increase the burden during the recovery period, including in terms of the potential number of properties to be decontaminated as well as the need for radiation monitoring and alternative accommodation. However, I accept that the quantifiable effect on those resources would be limited and, in itself, is unlikely to materially impact on the effectiveness of the OSEP.
29. Nevertheless, I accept the ONR is best placed to understand the pressures faced by the OSEP and the likely impact of population growth within the DEPZ. Furthermore, I acknowledge its concerns that the additional impact of permitted, but as yet unbuilt, development has placed further strain on an OSEP already under significant pressure. Indeed, it is clear from the results of the ALDEX-23 statutory test that many of the pressures faced by the OSEP following the expansion of the DEPZ have not gone away⁹ and improvements may be required to meet the needs of the existing population and those resulting from consented, but as yet unbuilt, development. As the UK's independent nuclear regulator, the ONR's advice is an important matter to be weighed in the planning balance.
30. However, even taking a precautionary approach, the evidence before me indicates that sufficient resources are available to provide a suitable response to the permanent population of around 22,000, the transient population as well as a potential crowd of 24,000 at the nearby stadium - a figure that I heard could increase substantially in the future. Even though I give significant weight to the expert advice of the ONR, I do not consider that the addition of up to a further 77 permanent residents to the DEPZ would, in itself, have a material impact on the overall emergency response. Similarly, while I accept that the OSEP is under significant pressure, I have seen no robust evidence that the addition of a further 77 residents to the DEPZ would materially affect its adequacy.

⁸ Council's Closing Submissions.

⁹ CD24.7.

31. I do, however, accept that the OSEP is not infinitely scalable and that incremental, unplanned development could, over time, erode the effective management of the land use planning consultation zones and be detrimental to public safety. In that sense, I agree with the Inspectors in the Shyshack Lane appeal¹⁰ the Benham's Farm appeal¹¹ and the 132 Recreation Road appeal¹². However, such concerns do not arise in the present case due to the fact that the appeal site is the only remaining allocated site within the DEPZ. As such, the circumstances of this appeal are unlikely to be repeated elsewhere in the DEPZ.
32. Consequently, while I acknowledge the participation of the Rule 6 parties arises out of genuine concern with regard to the impact of further development on the adequacy of the OSEP, I do not consider the proposed development would place the OSEP at any material risk of failure. Indeed, on the evidence before me it appears that the OSEP is sufficiently flexible to accommodate the relatively minor increase in the population of the DEPZ that would result from the proposed development.
33. Accordingly, having regard to the scale of development proposed, its location, the population distribution of the area and the impact on public safety (including its impact on blue light services and the OSEP) as well as other planning criteria, I do not consider the proposed development would adversely impact on public safety within the DEPZ. As such, I find no conflict with Policy CS8.

Operational capacity and capability of AWE B

34. AWE B is the only site in the UK which can undertake its combination of activities associated with the assembly, disassembly, handling and storage of nuclear warheads. These activities are essential to support the UK's Continuous At Sea Deterrent (CASD).
35. Notwithstanding my findings above, in the unlikely event that the OSEP was found to be inadequate, for example as a result of excessive strain on emergency services arising from increased population, there is a risk that AWE would be unable to continue to carry out work with ionising radiation or have limits placed on how and when it could carry out such activities.
36. While I accept this risk is remote, if it were to arise, it is likely to impact on AWE B's ability to meet the MoD's requirements in support of the CASD. I am also mindful of the potential effect that an increased population in the DEPZ might have on AWE B's future operational flexibility and expansion plans.
37. However, while I cannot rule out the possibility that the population increases in the DEPZ might increase the potential for future constraints on AWE B's future operational flexibility and capacity¹³, it is very unlikely that the addition of a further 77 people located around 2 km away would result such curtailment. Furthermore, there is no evidence to suggest that AWE B is itself considering curtailing its activities or is under pressure from the regulator to do so.

¹⁰ APP/H1705/W/23/3326959.

¹¹ APP/W0340/W/24/3342596.

¹² APP/W0340/W/24/3344580.

¹³ with the associated adverse implications for the UK's Continuous At Sea Deterrent capacity and national security.

38. Taking into account the very serious adverse national security consequences of potential constraint of AWE B's operations, but the very limited likelihood of the relatively modest scale of the proposed development causing such constraint, I concur with the previous Inspector that the proposed development would result in very limited harm to the operational capability and capacity of AWE B.
39. Nevertheless, even this very limited harm would result in conflict with paragraphs 97 and 193 of the Framework which seek, among other things, to ensure that the operation of defence and security sites is not adversely affected by other development in the area and that existing businesses and facilities do not have unreasonable restrictions placed on them as a result of development permitted after they were established. I address the weight to be given to this conflict in the overall balance below.

Other Matters

40. RFR 3 relates to the loss of protected trees and the adverse impact this would have on the character and appearance of the surrounding area. The Council and the appellant have confirmed that they accept the findings of the previous Inspector that the proposed development would result in localised harm to the character and appearance of the surrounding area.
41. No oral evidence on loss of trees or its impact on the character of the surrounding area was presented at the Inquiry. I am therefore content to adopt the findings of the previous Inspector that the proposed development would conflict with Policies ADPP1, CS14, CS18 and CS19 of the CS which together seek to ensure that development respects local character, while making efficient use of land. Nevertheless, it remains the case that the main parties do not agree on the weight to be attributed to this conflict. I consider this matter further in the planning balance.
42. The appellant has suggested that the Council is unable to demonstrate a supply of specific deliverable sites sufficient to provide a minimum of 5 years' worth of housing as required by the Framework. However, it was agreed during the Inquiry that the Council is only required to demonstrate a 4-year supply of deliverable housing sites in accordance with paragraph 226 of the Framework. While I note the government is currently considering consultation comments on its proposed changes to the Framework and has indicated its intention to amend paragraph 226, it is unclear at this time what the final form of those changes will take. I am therefore content that the Council can currently demonstrate the requisite supply of deliverable housing sites and that paragraph 11(d) of the Framework is not engaged.
43. I have had regard to the concerns expressed by local residents and others. While I note the concerns regarding the additional traffic along Regis Manor Road, there is no substantive evidence which would indicate it could not satisfactorily withstand traffic to and from the appeal site either during or after construction. Furthermore, I note that no concerns have been expressed by the Local Highway Authority and a Construction Method Statement will be secured by planning condition to help safeguard highway safety and neighbours' living conditions during the development's construction phase.
44. For similar reasons to those of the previous Inspector, I consider the separation distances between proposed and neighbouring houses, existing boundary

treatments and proposed arrangements for bin storage are sufficient to ensure the proposed development would not harm neighbours' amenity, including outlook and privacy.

45. Likewise, I agree that the relatively straight and clear sight lines between motorists and pedestrians along this stretch of Reading Road assist highway safety. Overall, taking into account the existing and proposed access arrangements, I am satisfied that pedestrian access to and from the proposed development would be acceptable.
46. Additional residents of the proposed development would provide additional clientele for local health facilities, potentially helping to justify and sustain future provision, and there is no substantive evidence from health service providers that the appeal proposal's additional residents would undermine local provision. Also, a suite of planning conditions covering lighting, construction and environmental management plans, landscaping and biodiversity measures would suitably provide for biodiversity.
47. Overall, while I have had regard to all of the other concerns raised by local residents and other interested parties, they do not provide sufficient reason to refuse to grant permission in the present case.

Planning Obligation

48. I have considered the UU submitted by the applicant, which provides for 40% of the dwellings to be affordable in accordance with CS Policy CS6. I agree with the Council that the obligations set out in the UU are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind. As such, they meet the tests within CIL Regulation 122 and those set out in paragraph 57 of the Framework and I am satisfied that the submitted UU is acceptable.

Overall Planning Balance

49. I have found above that there is a risk that the proposed development would result in very limited harm to the operational capability and capacity of AWE B. As I have made clear, even this very limited harm would result in conflict with paragraphs 97 and 193 of the Framework which seeks, among other things, to ensure that the operation of defence and security sites are not adversely affected by other development in the area. However, taking into account the remoteness of this risk, I afford it moderate negative weight.
50. Furthermore, I have found that the loss of protected trees would result in some localised harm to the character and appearance of the surrounding area. As such, it would be in conflict with Policies ADPP1, CS14, CS18 and CS19 of the CS. However, in view of the localised nature of that harm, I afford it only moderate negative weight.
51. However, I have also found that the proposal would generally accord with the spatial strategy as well as the land use allocation in Policy HSA16. Furthermore, it would result in the addition of 19 open market dwellings which, while relatively modest, would nevertheless make a meaningful contribution to market housing in the district. I afford this significant positive weight.

52. Similarly, 40% of the proposed dwellings would be affordable. While I note the appeal decisions referred to me by the Council in support of its position that affordable housing should only be afforded moderate weight¹⁴, both of these decisions were in different locations and there is no evidence which would suggest that their circumstances are sufficiently similar for them to act as any sort of precedent. Increasing the supply of affordable homes is a government priority and I consider the provision of 13 affordable homes in a district with a recognised and pressing need should be afforded significant positive weight.
53. In addition, the proposal would result in a number of other socio-economic benefits both during construction and following completion and would help support local facilities, services and businesses in this Rural Service Centre. However, even taken together, the contribution would be relatively modest and, as such, I afford this only a small amount of positive weight.
54. While I acknowledge that, in adding to the existing population, the proposal would result in an additional burden on emergency responders in the event of a radiological emergency, for the reasons given above, I do not consider this would adversely impact on public safety within the DEPZ.
55. It is established government policy that the planning system should be genuinely plan led and I agree with the previous Inspector that, for this to mean something, an applicant must be able to rely on specific site allocations in an adopted development plan unless there are compelling reasons to indicate that they should be set aside.
56. While I afford significant weight to the views of the ONR, overall, I consider the potential benefits of the proposed development, together with the fact that the proposal is for development on a specific site allocated for housing in the adopted development plan, outweigh the very real but small risks attached.
57. Consequently, while I acknowledge there would be some small conflict with Policies ADPP1, CS14, CS18 and CS19 of the CS and paragraphs 97 and 193 of the Framework, in view of its general accordance with the spatial strategy, its allocation as part of Policy HSA16 and its likely impact on public safety, I consider there are material considerations which indicate permission should be granted.

Planning Conditions

58. The necessary planning conditions are set out in the attached schedule and were discussed in detail at the Inquiry.
59. In addition to the standard commencement condition, I consider a condition requiring the development to be carried out in accordance with the approved plans is necessary in order to provide certainty.
60. Conditions regarding tree protection, materials, boundary treatments, spoil and landscaping are necessary in order to protect the character and appearance of the surrounding area. Conditions regarding car parking and carports are required in the interests of highway safety.
61. I consider conditions requiring the provision of cycle parking and storage, electric vehicle charging and drainage are necessary in the interests of environmental

¹⁴ APP/M2270/W/20/3247977 and APP/B1930/W/20/3260479

sustainability while conditions covering construction management, working hours, bin storage, gradients and floor levels are required to safeguard the living conditions of neighbouring occupiers.

62. Furthermore, I consider conditions covering lighting, environmental management, bird nesting and biodiversity enhancement measures are necessary to safeguard biodiversity.
63. In addition, conditions to address possible contamination, emergency notification systems and a development-specific emergency plan are required to safeguard residents' and employees' safety.
64. As the PPG makes clear, conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. While I consider it is necessary to restrict physical alterations to car ports in order to ensure they remain available for their intended purpose, I do not consider it is necessary or reasonable in this case to restrict permitted development rights in respect of gates, fences, walls or other means of enclosure as no detailed justification has been provided.
65. Conditions 3 – 9 need to be discharged before work commences on site as they relate to matters which need to be resolved on a fully coordinated basis.

Conclusion

66. For the reasons set out above, and having had regard to all other matters raised, I conclude the appeal should be allowed.

Rory Cridland

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings:

2021/P0162 LP Rev B Site Location Plan
2021/P0162 01 Rev B Colour Site Layout
2021/P0162 02 Rev B Site Information Plan
2021/P0162 03 Rev A Proposed Plots 1 - 5
2021/P0162 04 Rev A Proposed Plots 6 - 8
2021/P0162 05 Rev A Proposed Plots 9 - 11
2021/P0162 06 Proposed Plots 12 & 13
2021/P0162 07 Proposed Plot 14
2021/P0162 08 Proposed Plot 15
2021/P0162 09 Proposed Plot 16
2021/P0162 10 Proposed Plots 17 & 18
2021/P0162 11 Proposed Plots 19 & 20
2021/P0162 12 Proposed Plot 21
2021/P0162 13 Proposed Plots 22 & 23
2021/P0162 14 Rev A Proposed Plots 24 & 25
2021/P0162 15 Proposed Plots 26 & 27
2021/P0162 16 Proposed Plot 28
2021/P0162 17 Proposed Plot 29
2021/P0162 18 Proposed Plot 30
2021/P0162 19 Proposed Plot 31
2021/P0162 20 Proposed Plot 32
2021/P0162 21 Proposed Garages/Carports Plots 15 & 16
2021/P0162 22 Rev B Proposed Bin and Cycle Store (Plots 1 - 5)
2021/P0162 23 Proposed Street Elevations

- 3) No development shall take place until a detailed schedule of tree works has been submitted to and approved in writing by the local planning authority. This shall include:
 - (a) the timing and phasing of operations; and
 - (b) confirmation of appointment of a project arboriculturist who shall supervise and verify implementation of tree protection and tree works.

The development shall be carried out in accordance with the approved details.

- 4) No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. Thereafter the demolition and construction works shall incorporate and be undertaken in accordance with the approved CMS. The CMS shall include measures for:

- (a) a site set-up plan during the works;
 - (b) parking of vehicles of site operatives and visitors;
 - (c) loading and unloading of plant and materials;
 - (d) storage of plant and materials used in constructing the development;
 - (e) erection and maintenance of security hoarding including any decorative displays and/or facilities for public viewing;
 - (f) temporary access arrangements to the site, and any temporary hard-standing;
 - (g) wheel washing facilities;
 - (h) measures to control dust, dirt, noise, vibrations, odours, surface water run-off, and pests/vermin during construction;
 - (i) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
 - (j) hours of deliveries and preferred haulage routes.
- 5) No development shall take place (including demolition, ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include the following:
- (a) risk assessment of potentially damaging construction activities;
 - (b) identification of biodiversity protection zones;
 - (c) practical measures, both physical measures and sensitive working practices, to avoid or reduce impacts during construction (these may be provided as a set of method statements);
 - (d) the location and timing of sensitive works to avoid harm to biodiversity features;
 - (e) the times during construction when specialist ecologists need to be present on site to oversee works;
 - (f) responsible persons and lines of communication;
 - (g) the role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
 - (h) use of protective fences, exclusion barriers and warning signs.
- The approved CEMP shall be adhered to and implemented throughout the construction period, strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.
- 6) No development shall take place until details of how all spoil arising from the development will be used and/or disposed have been submitted to and approved in writing by the local planning authority. These details shall:
- (a) show where any spoil to remain on the site will be deposited;
 - (b) show the resultant ground levels for spoil deposited on the site, compared to existing ground levels;
 - (c) include measures to remove all spoil from the site (that is not to be deposited);
 - (d) include timescales for the depositing/removal of spoil.

All spoil arising from the development shall be used and/or disposed of in accordance with the approved details.

- 7) No development shall take place until details of sustainable drainage measures to manage surface water within the site have been submitted to and approved in writing by the local planning authority. These details shall:
- (a) incorporate the implementation of Sustainable Drainage methods (SuDS) in accordance with the Non-Statutory Technical Standards for SuDS (March 2015), the SuDS Manual C753 (2015) and West Berkshire Council local standards, particularly the WBC SuDS Supplementary Planning Document December 2018;
 - (b) include and be informed by a ground investigation survey which establishes the soil characteristics, infiltration rate and groundwater levels. Any soakage testing should be undertaken in accordance with BRE365 methodology;
 - (c) include attenuation measures to retain rainfall run-off within the site and allow discharge from the site to an existing watercourse at no greater than 1 in 1 year Greenfield run-off rates;
 - (d) include construction drawings, cross-sections and specifications of all proposed SuDS measures within the site;
 - (e) include run-off calculations, discharge rates, infiltration and storage capacity calculations for the proposed SuDS measures based on a 1 in 100 year storm +40% for climate change and an additional 10% increase of paved areas over the lifetime of the development (Urban Creep);
 - (f) include pre-treatment methods to prevent any pollution or silt entering SuDS features or causing any contamination to the soil or groundwater;
 - (g) ensure any permeable paved areas are designed and constructed in accordance with manufacturers guidelines;
 - (h) include details of how the SuDS measures will be maintained and managed after completion. These details shall be provided as part of a handover pack for subsequent purchasers and owners of the property/premises;
 - (i) apply for an Ordinary Watercourse Consent in case of surface water discharge into and other works on or adjacent to a watercourse (i.e stream, ditch etc);
 - (j) show that attenuation storage measures have a 300mm freeboard above maximum design freeboard above maximum design water level;
 - (k) provide details of how surface water will be managed and contained within the site during any construction works to prevent silt migration and pollution of watercourses, highway drainage and land either on or adjacent to the site;
 - (l) provide a verification report carried out by a qualified drainage engineer demonstrating that the drainage system has been constructed as per the approved scheme (or detail any minor variations thereof), to be submitted to and approved by the Local Planning Authority on completion of construction. This shall include: plans and details of any key drainage elements (surface water drainage network, attenuation devices/areas, flow restriction devices and outfalls) and details of any management company managing the SuDS measures thereafter.

Thereafter the development shall be carried out in accordance with the approved details.

- 8) No development shall take place until a soft and hard landscaping scheme for the site has been submitted to and approved in writing by the local planning authority. The landscaping scheme shall include:

- (a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas and written specifications (including cultivation and other operations associated with plant and grass establishment i.e. depth of topsoil, mulch etc);
- (b) seed mixes;
- (c) details of existing trees and hedgerows to be retained as well as any to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation; and
- (d) details of hard landscaping, including hard surfaced areas including pavements, pedestrian areas and steps.

The approved landscaping scheme shall be implemented no later than the end of the first planting season following completion of the development. The scheme shall be maintained for a period of 5 years from the completion of the development.

Any trees and/or shrubs which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority agrees any variation in writing.

- 9) No development shall take place until a comprehensive Emergency Plan (EP) has been submitted to and approved in writing by the local planning authority in relation to the construction phase of the development. The EP shall provide policies and procedures for the preparedness and response to an incident at AWE Burghfield. The plan shall include but not be limited to the following aspects:
- (a) details about the site;
 - (b) preparations in advance of any incident;
 - (c) how the site will be notified of an AWE incident;
 - (d) actions to take on notification (set out on a flow chart and/or check list);
 - (e) actions to do to shelter for up to 48 hour period;
 - (f) actions to have in place in relation to preparing for evacuation;
 - (g) recovery.

The Development shall be carried out in accordance with the approved EP.

- 10) If any previously unidentified contaminated land is found during demolition and/or construction activities, it shall be reported immediately in writing to the local planning authority (LPA). Appropriate investigation and risk assessment shall be undertaken, and any necessary remediation measures shall be submitted and approved in writing by the LPA. These submissions shall be prepared by a competent person (a person with a recognised relevant qualification, sufficient experience in dealing with the type(s) of pollution or land instability, and membership of a relevant professional organisation), and conducted in accordance with current best practice. The remediation scheme shall ensure that, after remediation, as a minimum, the land shall not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990. Thereafter, any remediation measures shall be carried out in accordance with the approved details. Unless otherwise agreed in writing by the LPA, the development

shall not be occupied until any approved remediation measures have been completed and a verification report to demonstrate the effectiveness of the remediation has been submitted to and approved in writing by the LPA.

- 11) No dwelling shall be first occupied until a Lighting Strategy (LS) has first been submitted to and approved in writing by the local planning authority. The LS shall:
- (a) identify any areas on the site that are particularly sensitive to bats;
 - (b) show how and where external lighting will be installed to avoid light spill into existing areas of woodland, and so that it can be clearly demonstrated that illuminated areas will not disturb or prevent use of the site by bats;
 - (c) include an isolux diagram of the proposed lighting.

All external lighting shall be installed in accordance with the specifications and locations set out in the approved LS, and maintained thereafter.

- 12) No dwelling shall be first occupied until a storage area for refuse and recycling receptacles, and collection areas if necessary, has been provided for that dwelling in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 13) No development on any dwelling shall take place until details of the finished floor levels of that dwelling in relation to existing and proposed ground levels of adjoining dwellings have been submitted to and approved in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the approved levels.
- 14) No development above damp-proof course level of any dwelling shall take place until a scheme for the installation of a notification system within each dwelling has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the system to receive a 'Shelter In Place' alert in the event of a radiation emergency at AWE Burghfield. The system should be installed in accordance with the approved details, and thereafter maintained.
- 15) No development above ground level shall take place until a schedule of the materials to be used in the construction of the external surfaces of the development hereby permitted there has been submitted to and approved in writing by the local planning authority. Samples of materials shall be made available to the local planning authority on request. The development shall be carried out in accordance with the approved details.
- 16) No dwelling shall be first occupied until the approved vehicle parking and turning spaces for the dwelling have been completed in accordance with the approved plans, including any surfacing arrangements and marking out. Thereafter the parking and turning spaces shall be kept available for parking and manoeuvring of the private cars at all times.

- 17) No dwelling shall be first occupied until cycle parking/storage facilities for that dwelling have been provided in accordance with the approved drawings. Thereafter the facilities shall be maintained and kept available for that purpose at all times.
- 18) No dwelling shall be first occupied until an electric vehicle charging point for that dwelling has been provided in accordance with details which have been submitted and approved in writing by the local planning authority. Thereafter, the charging points shall be maintained, and kept available and operational for electric vehicles at all times.
- 19) No dwelling shall be first occupied until a Landscape and Ecological Management Plan (LEMP) (also referred to as a Habitat or Biodiversity Management Plan) has been submitted to and be approved in writing by the local planning authority. The content of the LEMP shall include the following:
- (a) description and evaluation of features to be managed;
 - (b) ecological trends and constraints on site that might influence management;
 - (c) aims and objectives of management;
 - (d) appropriate management options for achieving aims and objectives;
 - (e) prescriptions for management actions;
 - (f) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
 - (g) details of the body or organisation responsible for implementation of the plan;
 - (h) ongoing monitoring and remedial measures.
- The LEMP will be implemented in accordance with the approved details.
- 20) The development shall be carried out in accordance with the biodiversity enhancement measures set out at Paragraph 5.13 of the Pro Vision Ecological Assessment dated November 2021. No dwelling shall be occupied until the measures related to that dwelling have been installed/constructed in accordance with the approved details.
- 21) No demolition or construction works shall take place outside the following hours, unless otherwise agreed in writing by the local planning authority: 7:30am to 6:00pm Mondays to Fridays; 8:30am to 1:00pm Saturdays; no work shall be carried out at any time on Sundays or Bank Holidays.
- 22) Protective fencing shall be implemented and retained intact throughout the construction phase of the development in accordance with the tree and landscape protection scheme identified on approved drawing 1730-KC-XX-YTREE-TPP01 Rev A Tree Protection Plan (TPP). Within the fenced areas shown on the TPP, there shall be no excavation, storage of materials or machinery, parking of vehicles or fires.
- 23) The car port(s) hereby permitted shall be kept available for parking of the private cars at all times. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, re-enacting or modifying that Order with or without modification), no physical

alterations shall be made to the car port(s), including enclosing the sides/installed doors) unless permission has been granted by the local planning authority as a result of an application being submitted for that purpose.

- 24) The gradient of private drives shall not exceed 1 in 12.
- 25) No demolition, or site/vegetation clearance shall take place during the bird breeding season (March to August inclusive) unless carried out under the supervision of an experienced ecologist, who will check the habitat to be affected for the presence/absence of any birds' nests. If any active nests are found then works with the potential to impact on the nest must temporarily stop, and an appropriate buffer zone shall be established until the young birds have fledged and the nest is no longer in use.

END OF SCHEDULE

Richborough

APPEARANCES

FOR THE APPELLANT

Andrew Tabachnik KC called:

Miss Katherine Miles BA (Hons) MSc MRTPI	Director, Pro Vision
Dr Keith Pearce BSc BA MBA MSc PhD FEPS	Katmal Limited
Dr Michael Thorne BSc PhD FInstP FSRP CradP	Mike Thorne and Associates Limited

FOR THE LOCAL PLANNING AUTHORITY (WBDC)

Naoemi Byrd of Counsel called:

Carolyn Richardson BSc (Hons) CIEH	Emergency Planning Service Manager, WBDC et al
Matthew Shepherd BSc H(Hons) Msc	Senior Planning Officer, WBDC
Paul McColgan	Director, Icen Projects

FOR THE FIRST RULE 6 PARTY (AWE PLC AND THE MINISTRY OF DEFENCE)

Rose Grogan of Counsel called:

Person AW	AWE
Tom Bennington	MoD
Sean Bashforth MRTPI	Senior Director, Quod

FOR THE SECOND RULE 6 PARTY (OFFICE FOR NUCLEAR REGULATION)

Michael Fry of Counsel called:

Eamonn Guilfoyle	Emergency Planning and Response Workstream Lead, ONR
Grant Ingham	Policy and International Workstream Lead

DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE INQUIRY

Unilateral Undertaking

Confirmation from Council that UU is agreed.

END



Costs Decision

Inquiry Held on 17 – 19 September, 24 – 26 September and 30 September 2024

Site visit made on 19 September 2024

by Rory Cridland LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 18th November 2024

Costs application in relation to Appeal Ref: APP/W0340/W/22/3312261

Land to the rear of the Hollies Nursing Home, Reading Road, Burghfield Common RG7 3LZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by West Berkshire District Council for a partial award of costs against T A Fisher and Sons.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the erection of 32 dwellings including affordable housing, parking and landscaping, with access via Regis Manor Road.
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Decision

1. The application for a partial award of costs is refused.

The submissions for West Berkshire District Council

2. The application for costs was made in writing prior to the close of the Inquiry and it is not therefore necessary to repeat it in any detail. In summary, the Council argues that the appellant has acted unreasonably in raising an issue late in the appeal process and that its approach to 5-year housing land supply was fundamentally flawed and, as such, had no realistic prospect of success. As a result, the Council considers it has incurred wasted expense in the appeal process.

The response by the appellant

3. The Appellant's response was made in writing after the close of the Inquiry. In summary, the Appellant contends that it was not possible for it to raise its concerns regarding housing land supply at an earlier stage as its submissions relied on matters that it only became aware of late in the appeal process.
4. Furthermore, the appellant considers that planning decisions should be based on the best available evidence and that its argument that a different assessment period should be used to calculate the Council's housing land supply position is not in itself unreasonable. Furthermore, it argues that the differences of opinion between itself and the Council on the government's proposed changes to the Framework and their implications for determining the appeal are not reflective of unreasonable conduct.

Reasons

5. The Planning Practice Guidance ("the PPG") advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur

unnecessary or wasted expense in the appeal process. Furthermore, it indicates that Appellants will be at risk of an award of costs being made against them if they, amongst other things, introduce fresh and substantial evidence at a late stage or where a ground of appeal had no real prospect of succeeding.

6. The Council raises both procedural and substantive grounds in respect of its application; namely that the Appellant raised the matter very late in the appeal process despite opportunities to raise it sooner and, in any event, its arguments on this matter were fundamentally flawed.
7. Dealing first with the procedural grounds, the appellant first raised its concerns in relation to the Council's housing land supply position on 9 August 2024, just over a month before the Inquiry was due to open. Although this is late in the process, I accept that the appellant may not have been aware of the Local Plan Inspector's report until shortly before, and while it introduced a new issue late in the proceedings, its reasons for doing so were explained at the time.
8. While I acknowledge that one of the aims of the costs regime is to encourage the submission of full and detailed evidence in a timely matter, where material information only becomes available late in the process, it is not unreasonable for an appellant to respond to it accordingly. I do not therefore consider a procedural award of costs is justified in the present circumstances.
9. Turning then to the substantive grounds, the Council argues that in providing what it considers is a fundamentally flawed argument in regard to housing land supply, the appellant has acted unreasonably and put the Council to unnecessary expense in having to respond. In summary, it contends that the appellants suggested use of a base period of 2024/2029 to calculate the Council's housing land supply is fundamentally unsound and relies on incomplete information. However, while I accept that here are good reasons for relying on the Council's base period of 2023/2028, it is open to appellants to put forward alternatives where there is evidence that the Council's trajectory is out of date.
10. Furthermore, while I agree with the Council that had the appellant made it clear earlier that it was not seeking to argue that paragraph 11(d) of the Framework was engaged, the matter might have been dealt with more efficiently and without the need to hear oral evidence, I note that the appellant did not actively pursue a case that paragraph 11(d) of the Framework was engaged. Indeed, this matter was clarified early in the round table discussion.
11. Likewise, while my decision makes clear that the proposed changes to the Framework did not have a material bearing on the outcome of the appeal, it is not unreasonable for appellants to advance such arguments, particularly where reforms are announced and consulted upon during the appeal process. In the present case, while I do not agree with the appellant's arguments, they were nevertheless cogent and not entirely without merit.
12. Furthermore, I accept that the Council will have undertaken much of the preparatory work in response to concerns raised by the Local Plan Inspector and any additional expense incurred is unlikely to be significant. Indeed, the Inquiry time spent dealing with housing land supply was a very small part of a much longer Inquiry.

13. Accordingly, I do not consider that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. Therefore, I consider an award of costs is not justified.

Rory Cridland

INSPECTOR

Richborough