

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
APPEAL BY T A Fisher & Sons Ltd

Against the refusal of Full Planning Permission
by
West Berkshire Council

ON

LAND TO THE REAR OF THE HOLLIES, BURGHEFIELD

For

The erection of 32 dwellings including affordable housing,
parking and landscaping. Access via Regis Manor Road.

Application Reference no. 22/00244/FULEXT

STATEMENT OF CASE

Prepared by Pro Vision

LAND TO THE REAR OF THE HOLLIES

APPEAL STATEMENT OF CASE

PROJECT NO. 50929

PREPARED BY:

JAMES BLAKE MRTPI

SENIOR PLANNER

AND

KATHERINE MILES MRTPI

DIRECTOR

DATE:

NOVEMBER 2022

PRO VISION

THE LODGE

HIGHCROFT ROAD

WINCHESTER

HAMPSHIRE

SO22 5GU

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1.0 Introduction

- 1.1 This Statement of Case has been prepared by Pro Vision on behalf of T A Fisher & Sons Ltd ('the Appellant'), in support of a planning appeal against the decision of West Berkshire Council ('the Council') to refuse Full Planning Permission for the following proposed development: *"Application for full planning permission for the erection of 32 dwellings including affordable housing, parking and landscaping. Access via Regis Manor Road"* on land to the rear of The Hollies, Reading Road, Burghfield Common, Reading, RG7 3BH.

Factual Background

- 1.2 The Full Planning Application was received and validated by the Council on 3 February 2022 and was given the reference number 22/00244/FULEXT. The Council refused planning permission under delegated powers on 1 June 2022.
- 1.3 A list of documents submitted with the application and those which the decision was issued in relation to are set out in **Appendix A**. These plans and reports formed the basis of the application and should be considered by the Inspector as part of the appeal.
- 1.4 The appeal was determined by the assigned Planning Officer who issued the Decision Notice under delegated powers with the following reasons for refusal:

"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 HSAPD 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 HSADPD. Policy CS8 in the WBCS of 2006-2026 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 residential 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 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 AEWE 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 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.”

- 1.5 A copy of the Council’s Decision Notice is included at **Appendix B**. The accompanying Officer Report is included at **Appendix C**.

Structure of the Appellant's Case

1.6 This Statement of Case addresses the reasons for refusal and sets out the Appellant's case as to why planning permission should be granted for the development on the appeal site.

1.7 This Statement sets out the characteristics of the site and surrounding area and provides a summary of the main planning policies relevant to the determination of the application. The three reasons for refusal are also analysed and a case to allow the appeal is made. This Statement of Case must be read in conjunction with the evidence submitted by technical experts including:

- Dr Keith Pearce PhD, MBA, MSc, FEPS – Refusal Reason 2

Dr Pearce has many years' experience of working in nuclear environments as a lecturer, mathematical modeller, emergency planning manager and consultant. His experience combines technical and safety case skills, teaching & coaching, managing emergency preparedness and response at ten nuclear sites and a corporate centre.

Whilst working at Magnox, Dr Pearce led the Company's Emergency Planning Services and was responsible for the readiness of 10 nuclear licensed sites to cope with nuclear emergencies. The role involved a considerable body of knowledge and liaison with a wide range of people including company responders, Emergency Services, Local Authorities and Government bodies.

Within the Company's emergency response scheme Dr Pearce was a CESC¹ Emergency Health Physicist, responsible for understanding the radiological implications of any emergency and advising countermeasures to protect the public; an Assistant CESC Controller, the most senior authorised post on standby in the scheme, leading the Company's initial response to an emergency; and a Media Technical Briefer trained to explain the technical background of an event to the world's media.

Dr Pearce has a wide experience of nuclear emergency exercises. He has participated in a large number of exercises playing a number of positions on-site; in the Company's central

¹ Central Emergency Support Centre which coordinates the off-site aspects of a response to an emergency and provides technical and logistical support to the affected site.

facilities and in multi-agency Strategic Coordination Centres. He has undertaken the preparation, management, witnessing and review of many exercises over a range of scales from shift to national and has witnessed emergency exercises in other organisations including several abroad. As a past member of the UK Nuclear Emergency Arrangements Forum he has reviewed the lessons learned from on-site exercises across the industry in the UK and as a member of the UK Nuclear Emergency Planning Liaison Group reviewed the lessons learned from off-site exercises.

Dr Pearce also worked on the NEPLG New Legislation Working Group supporting the revision of REPIR-19 and IRR in line with the BSSD.

- Jago Keen of Keen Consultants in respect of Refusal Reason 3

1.8 In summary, the Appellant's case is that the site has been allocated for housing in the Development Plan, and the appeal proposal is in accordance with the allocation policy. The development can be accommodated without compromising the safe functioning of the Atomic Weapons Establishment (AWE) Burghfield or public safety and as such the principle of development is plainly acceptable. The loss of protected trees within the site would not harm the amenity and character of the area adversely on this allocated site. In relation to the lack of a S106 agreement to secure affordable housing, the Appellant's were always willing to enter into an agreement with the Council however the Council did not proceed with the agreement in light of its recommendation for refusal on other grounds. A s106 agreement will of course be submitted to the Inspector to address this reason.

1.9 The Appellant's appeal case is that on the evidence full planning permission should be granted in accordance with the site's allocation in the Development Plan.

Appeal Procedure

1.10 The appeal is requested to proceed by way of a Hearing. This is to allow a discussion of the issues and evidence around the principle of development on this allocated housing site. It is considered that the Inspector is likely to need to question, seek clarification and test the evidence in relation to the Detailed Emergency Planning Zone (DEPZ) around AWE Burghfield and the Council's Emergency Plan.

2.0 Site and Surrounds

2.1 The Inspector is referred to the description of the site and its surroundings provided within the Planning Statement (see paragraphs 2.1 – 2.12). However, the key details to note are:

- The Appeal Site is within the Settlement Policy Boundary of Burghfield Common.
- Burghfield Common is identified as a rural service centre by the Council, capable of accommodating further residential growth and providing a range of services within reasonable public transport provision.
- The site comprises grassland and paddocks with scattered trees throughout, some subject to Tree Preservation Orders (TPOs).
- The Site is accessed from Regis Manor Road, via Reading Road. Part of the allocated site has been recently developed by Crest Nicholson for 28 new homes.
- The remaining developable site area is approximately 1.83 hectares and the site slopes south-east to north-west, quite significantly in places.
- The site is located on the north-east edge of Burghfield Common, surrounded by existing residential development.
- The site is within the revised Detailed Emergency Planning Zone associated with the AWE facility at Burghfield. The site is approximately two kilometres from AWE Burghfield, which lies to the north-east. The site is not within the 600 metre urgent evacuation zone.
- There are no heritage or ecological designations within or close to the site. The site is not subject to any landscape designations and is not a designated valued landscape. The site is not within the Green Belt or Area of Outstanding Natural Beauty and there are no local landscape designations applicable to the site.
- The site is wholly within Flood Zone 1.

3.0 Planning History

3.1 The site forms part of an allocated site for approximately 60 dwellings under Policy HSA16 of the Council’s Housing Site Allocations Development Plan Document (HSADPD) (2017). The extent of the allocation is shown in Figure 1 and a full copy of the policy provided at **Appendix D**. The Policy requires that the scheme is to be accompanied by an extended phase 1 habitat survey with further detailed surveys as necessary and informed by a Flood Risk Assessment and Landscape and Visual Impact Assessment. The policy states that the development should comprise a design and layout that will:

- Limit the developable area to the west of the site to exclude areas of existing woodland.
- Reflect the semi-rural edge of Burghfield Common through appropriate landscaping.
- Provide a 15-metre buffer to areas of ancient woodland and an appropriate buffer to the rest of the TPO woodland.

Land to the rear of The Hollies Nursing Home and Land opposite 44 Lamden Way, Burghfield Common - Policy HSA16

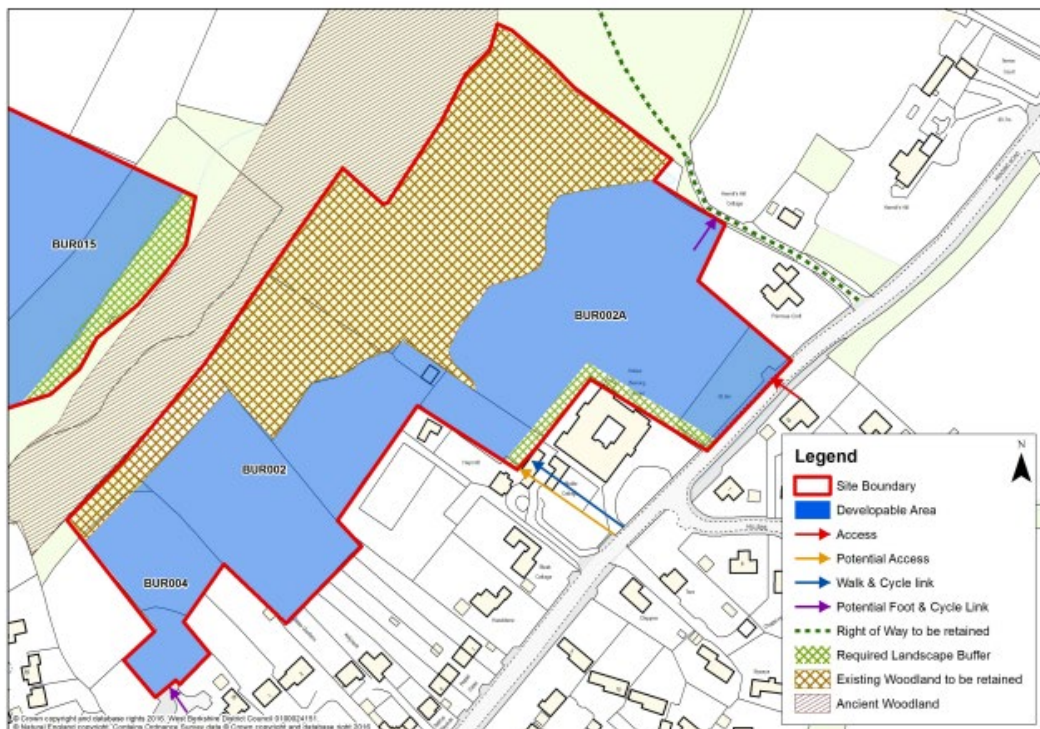


Figure 1: Extract from Housing Site Allocations DPD showing extent of allocation

- 3.2 Part of the allocated site has already received planning permission for 28 residential dwellings. That development has been built out by Crest Nicholson Operations Ltd (planning references 16/01685/OUTMAJ and 19/00772/RESMAJ) and is now occupied. A copy of these approved plans are provided at **Appendix E**.
- 3.3 The appeal application proposes the development of the balance of the allocation on the site and to the west of the crest development. As such, the application was submitted seeking full planning permission for the erection of 32 dwellings including affordable housing, parking and landscaping.
- 3.4 Following the refusal of planning permission, and in an attempt by the Appellant to avoid the need for this appeal, the Appellant submitted a request to the Council on 19 August 2022 for Pre-application Advice for a proposed development of up to 32 residential dwellings (Use Class C3), including access, associated parking, landscaping and public open space (POS). The Council reference for the pre-app submission is 22/02010/preapp and a copy of the submission is at **Appendix F**.
- 3.5 The Appellant posed three questions to the Council as part of the written pre-application submission. These were:
1. *Will the Council off site Emergency Plan in relation to the AWE [Burghfield] site be updated to reflect the ongoing Local Plan allocation under HSA16 in the HSADPD of 2017 for the 32 dwellings identified?*
 2. *Would the Council accept a revised application if a land line was accepted as a condition on any planning permission granted, as per the reserved matters application at Pondhouse Farm, for 100 dwellings?*
 3. *Would the issues about offsite emergency planning be taken into account/resolved by a similar off-site plan being taken into account via a s106 obligation. E.g. to provide a permanent refuge of safety for the residents of the 32 additional dwellings as has been achieved in Basingstoke and Deane Borough Council?*
- 3.6 A meeting was held between the Appellant, represented by Pro Vision, and the Council's Planning Officer Mr Butler and the Emergency Planning Officer Ms Richardson on 5 October

2022 to discuss the pre-application submission. A copy of the agreed meeting notes are at **Appendix G**. The Inspector is asked to note the following key points arising from the discussion which are discussed further in this Statement of Case:

- Ms Richardson advised that there was no statutory process, legislation or guidance for emergency planning purposes on which planning projects should be included within an Emergency Plan.
- Ms Richardson referred to needing to draw a ‘line in the sand’ somewhere, and that personal interpretation led her to choose to draw that line so as to exclude sites which were allocated for development in the Development Plan but which did not, at the time of the review, have permission.
- Ms Richardson accepted that the site was not in the urgent evacuation zone.
- Ms Richardson accepted that some residents would be able to self-evacuate, if necessary, without relying on blue light services or refuge centres.
- Ms Richardson accepted the current emergency plan was out of date and was in the process of being updated.
- Mr Butler advised that from a planning policy perspective, senior officers at the Council now consider there to be a moratorium on all new development in the DEPZ in West Berkshire, but this was not, or never was the intention of the DEPZ. However, it was agreed that this was a different stance to that being taken by Basingstoke and Deane Borough Council in relation to the DEPZ around AWE Aldermaston².
- Mr Butler advised that the Council had a 7-year housing land supply and agreed that the Council’s stance on the DEPZ issue would potentially be different if there was a sub 5 year supply.

3.7 Following the meeting, a written pre-application response was received on 1 November 2022. A copy is enclosed at **Appendix H**, along with comments from AWE Burghfield on the pre-application request.

3.8 With respect to question 1, and whether the emergency plan will be updated to include this allocated site, the Council state that the site was not included in the off-site emergency plan and “*will continue not to be*”. The Council say this is because no planning permission existed for the site in 2019 when the REPPiR Regulations (Radiation (Emergency Preparedness and

² AWE Aldermaston is approximately 7 miles from AWE Burghfield

Public Information) Regulations 2019) made changes to the DEPZ, despite the fact that the site was allocated in the Development Plan at the time.

- 3.9 We pause here to note that prior to the submission of the application, correspondence with the Council's Principal Planning Officer on 14 January 2021 identified that:

"Our position is that the HSA DPD allocation remains in the Local Plan, so the principle of development is established. You will probably have seen our current consultation on the emerging Local Plan Review which proposes rolling forwards this [Policy HSA16] allocation."

- 3.10 This response provided confidence to the Appellant to proceed with the application at the site. Technical work was commissioned through 2021 to support the application made in February 2022. A copy of the response from the Council is at **Appendix I**.

- 3.11 Regarding question 2, and whether the Council would support the application if it were agreed that a land line would be installed in each dwelling, the Council consider that the installation of a land line would not be acceptable as alerting residents to an off-site emergency via a land line would not mitigate the impacts that additional residents will have on blue light emergency services and that land lines are no longer the best means of instant communication.

- 3.12 On the latter comment, it should be noted the Council imposed the following planning condition on the approval of Reserved Matters for the development of 100 dwellings at Pondhouse Farm directly to the north of the application site in July 2022:

*"No dwelling shall be occupied until a telephone land line has been fixed in each house. This land line must be maintained in perpetuity in the dwelling in question in a working order.
Reason: The application site lies in the DEPZ of AWE [Burghfield] and accordingly in the event of an emergency telecommunications must be maintained where possible, in accord with policy CS8 in the WBCS of 2006 to 2026."*

- 3.13 We note that in July 2022, and importantly after the Council refused planning permission on this site, a land line was considered the best means of communication. A copy of the decision notice is at **Appendix J**.

- 3.14 In the pre-application response, the Council also stated that outline planning permission had been granted at Pondhouse Farm (also an allocated site) *"in early 2019"* and the Officer states

that since the permission existed *“the updated Council EP took the additional 100 dwellings into account.”* This is incorrect. Outline Planning Permission was not granted at Pondhouse Farm until 5 December 2019 i.e. after the updated REPIR Regulations were introduced. This clearly highlights an inconsistency in the Council’s decision-making over two adjacent sites both allocated in the Development Plan.

3.15 Finally, question 3 asked the Council to consider whether a s106 obligation binding the applicant and any future owners of the site to the permanent provision of offsite accommodation would address concerns to enable permission to be granted. In short, the Council do not support this suggestion stating that *“this could be highly problematic for viability and practicality reasons”*.

3.16 The Council’s response included a letter from AWE. In summary AWE commented:

- The purpose of the DEPZ is to set a zone around a site where it is proportionate to pre-define and implement arrangements for protective actions which can then be implemented without delay in the event of a radiation emergency.
- The purpose of the OPZ (Outline Planning Zone) is to identify protective actions at a more strategic level and to enable emergency responders to provide for arrangements in the OPZ for extremely unlikely but more severe events.
- The development is in conflict with Policy CS8 of the Core Strategy by virtue of location, population increase and its impacts on public safety, emergency services, the effective operation of the Council’s off site plan.
- Concerns are raised regarding *“any additional residential development in the DEPZ”* which AWE allege *“creates significant challenges in terms of effective integration and is likely to result in unreasonable restrictions being placed on AWE’s operations”*
- *“Given the geographic proximity of the proposed development to AWE Burghfield, a substantial radiological dose is possible for anyone within the proposed development site in the event of a radiation emergency. Whilst such an emergency is remote, this risk weighs against locating this development in the DEPZ and at such close proximity to AWE Burghfield”*.
- *“An emergency plan does not make appropriate, a development which is otherwise inappropriate”*

- 3.17 In summary, the Council conclude that introducing around 75 residents into the DEPZ on this allocated site will impact on emergency services and public safety. The Council concluded by *“not encouraging the resubmission”* of the application. Hence the Appellant has no other option but to bring forward this appeal.
- 3.18 The response did not offer any comments on the other two reasons for refusal (lack of s106 for affordable housing and the impact on trees).

4.0 The Appeal Proposals

- 4.1 The appeal proposals are fully described in Section 4 of the Planning Statement. However, in brief, the appeal proposal seeks Full Planning Permission for a development of 32 dwellings as part of an allocated site, including access, associated parking, landscaping and public open space.
- 4.2 The development will comprise of a mixture of dwelling types and sizes to meet local needs and is designed to respond positively to the existing scale and character of the site and surrounding residential development. Dwelling types include apartments, terraced housing, semi-detached and detached housing, containing a mixture of 1-to-4-bedroom units, with affordable homes integrated into the development.
- 4.3 Primary vehicular access to the dwellings will be taken from Regis Manor Road through the construction of a new link road and pavements to the existing and adjoining development to the east. This development forms the residual part of the HSA16 allocation and comprised 28 dwellings. The balance of 32 dwellings (the allocation was for approximately 60 dwellings) is sought through this appeal. A total of 77 car parking spaces are provided throughout the site and visitor spaces, along with cycle parking facilities.
- 4.4 The proposals include a large area of open green space and a 15-metre buffer to ancient woodland along the site's northern boundary. Attractive hard and soft landscaping will be employed across the site. Native tree, hedge and shrub planting will be undertaken to create an attractive landscape and existing vegetation will be retained and enhanced where possible.
- 4.5 An attenuation pond is proposed adjacent to the open space and storage crates are to be installed under the POS area. A private pumping station will be installed to facilitate the foul drainage from the site.

5.0 Planning Policy Context

5.1 Section 38 (6) of the Planning and Compulsory purchase Act 2004 highlights that Local Planning Authorities should determine planning applications in accordance with the policies of the Development Plan, unless material considerations indicate otherwise.

5.2 The Development Plan has not been updated since the refusal of planning permission for the proposed development in June 2022. Therefore, the relevant parts of West Berkshire's Development Plan remain:

- The West Berkshire Core Strategy 2006 – 2026 (adopted July 2012); and
- The Housing Site Allocations Development Plan Document (adopted May 2017).

5.3 The full text of the relevant policies of the Development Plan will be provided in the Council's appeal questionnaire in due course. The Planning Statement at Section 5 sets out the policies relevant to the assessment of the application as a whole. However having regard to the Council's reasons for refusal, the following policies are directly relevant:

Core Strategy 2006-2026 (July 2012)

- Policy ADPP1
- Policy CS6
- Policy CS8
- Policy CS14
- Policy CS18
- Policy CS19

Housing Site Allocations DPD (May 2017)

- Policy HSA16

5.4 These policies are detailed below.

- 5.5 **Policy ADPP1** identifies the Council’s target of providing 10,500 net additional dwellings over the plan period, with most development taking place within or adjacent to existing settlements. Burghfield Common is identified as a rural service centre with a range of services and reasonable public transport provision.
- 5.6 **Policy CS6** identifies the Council’s approach toward the achievement of affordable housing and the provisions sought from residential development. Sites of 15 dwellings or more should provision 40% affordable units which are to be integrated into the development.
- 5.7 **Policy CS8** states that *“in the interests of public safety, residential development in the inner land use planning consultation zones of... 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, 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.”*
- 5.8 The Policy Table identifies that planning applications with over 20 dwellings within the middle land use consultation zone (between 1.5km and 3km) of AWE Burghfield are subject to consultation with the ONR.
- 5.9 Paragraph 5.42 states that *“The land use planning consultation zones for the installations cross over into neighbouring councils. Given the potential cumulative effects of any population increase surrounding the installations, it will be necessary to monitor committed and future development proposals in partnership with neighbouring Councils and the ONR. The Councils will monitor housing completions and commitments as part of the Annual Monitoring Report and send this information directly to the ONR for them to make informed judgements when assessing future development proposals.”*
- 5.10 Paragraph 5.43 identifies that *“The ONR has no objection to the overall scale of development proposed in the East Kennet Valley in policy ADPP6. The ONR’s decision whether to advise against a particular development is based on complex modelling. The ONR has indicated that*

on the basis of its current model for testing the acceptability of residential developments around the AWE sites, it would advise against nearly all new residential development within the inner land use planning zones defined on the Proposals Map. Policy CS8 reflects the Council's intention to normally follow the ONR's advice in the inner zones. The inner zones largely encompass countryside. Whether or not the ONR would advise against a particular proposal beyond the inner zones depends on a variety of factors, including the scale of the development, distance from the relevant AWE site, and the relationship to existing and planned developments. It is not therefore practical to express the ONR's likely advice, or the Council's response, in any further policy in this Plan."

- 5.11 Paragraph 5.44 continues by stating that *"During the plan period there is likely to be changes of inputs to the ONR's model which may result in a less restrictive approach being taken by the ONR. Such changes would include information on population and household size from the 2011 Census. The successful completion and full operation of the MENSA Project at AWE (B) (currently scheduled for completion in 2016), would enable the ONR to take into account the revised safety case for [that] project in the modelling process and may enable a less constraining population density criteria to be applied. As a result, the consultation zones may change as well as ONR's advice on particular proposals."*
- 5.12 **Policy CS14** requires new development to demonstrate a high quality and sustainable design which respects and enhances the character and appearance of the area and which makes a positive contribution to the quality of life in West Berkshire.
- 5.13 **Policy CS18** requires that new developments should make provision for high quality and multifunctional open spaces of an appropriate size.
- 5.14 **Policy CS19** states that the diversity and local distinctiveness of the landscape character of the district must be conserved and enhanced and that a holistic approach be taken in considering new development, where natural, cultural and functions components of character will be considered as a whole.

Housing Site Allocations Development Plan Document (February 2017)

- 5.15 **Policy HSA16** sets out that site references BUR002, 002A and 004 are *"considered together as one site and have a developable area of 2.7 hectares. The sites should be masterplanned comprehensively in accordance with the following parameters:*

- *The provision of approximately 60 dwellings with a mix of dwelling types and sizes.*
- *The site will be accessed from Reading Road, with a potential secondary access from Stable Cottage.*
- *The scheme will be supported by an extended phase 1 habitat survey together with further detailed surveys arising from that as necessary. Appropriate avoidance and mitigation measures will need to be implemented, to ensure any protected species are not adversely affected.*
- *The scheme will be informed by a Flood Risk Assessment to take into account surface water flooding and advise on any appropriate mitigation measures.*
- *The scheme will comprise a development design and layout that will:*
 - *Limit the developable area to the west of the site to exclude the areas of existing woodland.*
 - *Be informed by a Landscape and Visual Impact Assessment which will include measures to:*
 - *Reflect the semi-rural edge of Burghfield Common through appropriate landscaping.*
 - *Provide a buffer of 15 metres to the areas of ancient woodland to the west of the site and provide appropriate buffers to the rest of the TPO woodland.*
 - *Provide an appropriate landscape buffer on the part of the site that is adjacent to The Hollies to minimise any impact on the residents.*
 - *Explore options to provide footpath and cycle links to existing and proposed residential development to increase permeability to other parts of Burghfield Common.”*

5.16 Paragraph 2.35 identifies that the settlement boundary of Burghfield Common has been redrawn to include the developable areas of allocated site BUR002/002A/004 and BUR015 and to exclude the area of woodland in the north west corner of Burghfield Common (Hollybrush Lane).

5.17 For the avoidance of doubt, the Appeal site sits on land allocated under BUR002 and BUR004.

Material Considerations

5.18 Section 70 (2) of the Town and Country Planning Act 1990 requires that planning decisions should have regard to material considerations. The Planning Statement at Section 5 set out the material considerations as follows:

- The National Planning Policy Framework (NPPF) (July 2021)
- The Planning Practice Guidance (PPG)
- Quality Design Supplementary Planning Document (SPD) (June 2006)
- Burghfield Parish Design Statement (August 2011)
- Emerging Local Plan Review

5.19 The Council's Notice of Refusal only refers to Paragraph 97 of the Framework. This states that:

“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. 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.”

5.20 Although not cited in the reason for refusal the section of the Planning Practice Guidance (PPG) on Hazardous Substances is considered relevant to this appeal. This includes the following:

- *When considering development proposals around hazardous installations the local planning authority is expected to seek technical advice on the risks presented by major accident hazards affecting people in the surrounding area and the environment. This advice*

is sought from the Control of Major Accident Hazards (COMAH) competent authority³. This allows those making planning decisions to give due weight to those risks, when balanced against other relevant planning considerations. The competent authority also provides advice on developments around pipelines, licensed explosives sites, licensed ports, developments around nuclear installations and other relevant sites. There are also additional expectations on how local authorities notify people about applications in the vicinity of a hazardous establishment.⁴

- What expert advice should be sought in relation to development proposals at and around hazardous installations?

“Such proposals include residential development and large retail, office or industrial developments located in consultation zones and development likely to result in an increase in the number of people working in or visiting the relevant area. Particular regard should be had to children, older people, disabled people or a risk to the environment.⁵”

“Consultation requirements can vary between sites for proposed developments in the vicinity of licensed nuclear installations. The Office for Nuclear Regulation specifies consultation distances and the type of developments on which it should be consulted. Where the local planning authority is in any doubt about whether the Office for Nuclear Regulation should be consulted in a particular case, it should contact them at the earliest opportunity.

Policy on public safety from major accidents – including those at nuclear installations – is set out at paragraph 95 and paragraph 45 of the National Planning Policy Framework. Given their statutory role in public safety, local authority emergency planners will have a key role to play in advising local planning authorities on developments around nuclear installations. Early engagement can help to address issues which may otherwise affect development proposals at a later stage⁶.”

³ Paragraph: 079 Reference ID: 39-079-20161209

⁴ Paragraph: 002 Reference ID: 39-002-20161209

⁵ Paragraph: 068 Reference ID: 39-068-20161209

⁶ Paragraph: 075 Reference ID: 39-075-20140306

6.0 Statement of Case

6.1 This section of the Statement of Case discusses the reasons for refusal and presents the Appellants case for why this appeal should be allowed.

General observations relevant to the principle of development

6.2 Applications should be considered in accordance with the Development Plan unless other material considerations indicate otherwise, in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004. In this case, it is very important to note that the appeal site is allocated in the Development Plan. The site allocation was subject to the full local development consultation and adoption process.

6.3 The Policy HSA16 allocates this site for development of approximately 60 dwellings. Planning permission has to date been granted for 28 dwellings and the access off Reading Road, and this appeal application seeks to deliver the balance of 32 dwellings. The Officers report stated:

“the Council adopted the HSADPD in 2017 which made a whole range of housing allocations across the District and Burghfield was no exception. This application site comprises the western half of allocated site under the remit of policy HSA16. That policy notes the allocation of approximately 60 dwellings. 28 dwellings have already been permitted and constructed to the east in the allocation so the remainder of 32 comprises this site application. Accordingly in principle [all other technical matters being satisfactory] the scheme in question is in theory at least acceptable -but note the issue about other technical matters and see below.”⁷

6.4 The appeal proposal is in accordance with the Development Plan - it is clear from the minutes of the meeting with the Council’s Planning Officer in October 2022, that *“if the objection from Emergency Planning is removed, then it is possible a favourable recommendation will be made”⁸* This comment is particularly relevant to the first and third reasons for refusal as discussed below because it indicates the Officer’s view that these reasons can be overcome. It therefore indicates that the principle of development is acceptable if the emergency planning objection can be overcome and that in all other respects the appeal application is considered to accord with the Development Plan.

⁷ The Officers report contains unnumbered paragraphs. This quotation can be found on page 3 in the second paragraph under the heading “Principle of Development”.

⁸ See note 10 at Appendix G

- 6.5 This means that the Council must consider that the design and layout of the development is acceptable, as is its impact on the character of the area, on amenity and on highway safety. The Appellant will work with the Council to reach agreement through the Statement of Common Ground on these matters and the agreed statement will be submitted to the Council in due course. The Inspector is requested to review the comments of the officer under the headings “Design, Character, Layout”; “Neighbouring Amenity”; “Highway Matters” which confirm the acceptability of the proposal in all other respects and which confirm that the only issues at the time of the Council’s decision related to:
- The need for a legal agreement to secure Affordable Housing
 - The impact on protected trees
 - The sites’ location in the DEPZ
- 6.6 The Inspector is asked to note that the allocation of this site has not been revoked or withdrawn by the Council and indeed the Council’s Annual Monitoring Report (AMR) published in August 2022 continues to recognise that the appeal site is allocated for residential development through Policy HSA16, and it is being relied upon by the Council to make up its five year housing land supply. This has been the case since the site was allocated and has not changed since the expansion of the DEPZ in 2019. A copy of the AMR is at **Appendix K**, and the Inspector is directed to page 16, Table 3.7, where the progress of delivery of the local plan housing sites is set out. Nowhere in the AMR does it state that the residual balance of 32 dwellings on site HSA16 is not deliverable.
- 6.7 As a consequence of the REPPIR Regulations in 2019, the DEPZ around AWE Burghfield was expanded to include the Settlement of Burghfield. However, this has not, quite properly, prevented the delivery of development within the DEPZ. Indeed the AMR 2022 shows in Table 3.20 that there is an outstanding commitment for 136 dwellings within the DEPZ at Burghfield.
- 6.8 Further, Paragraph 3.34 of the AMR states that *“Due to the introduction of the new Radiation (Emergency Preparedness and Public Information) Regulations 2019 that came into force in 2019, it extended the existing AWE land use planning consultation zone known as the DEPZ (Detailed Emergency Planning Zone). From 2020/21 onwards any development within the DEPZ will therefore be monitored.”*
- 6.9 The AMR is a significant and material consideration relating to the principle of the development. If the Council intended to prevent any further development in the DEPZ and on this allocated site as the Planning Officer has stated, then the AMR, published after the

decision on this application was made, would have removed the site from the delivery trajectory. It did not. Also, the Council say that development within the DEPZ will be “monitored”. This is entirely different from placing, as the Officer has stated in the pre-application response, a moratorium on all development in the DEPZ.

6.10 Further, the Council is in the process of reviewing its Local Plan and published an “Emerging Draft” document (Regulation 18) for consultation in December 2020. The Regulation 18 draft Local Plan was published for consultation *after* the REPPIR Radiation (Emergency Preparedness and Public Information) Regulations 2019 were revised. Therefore, it is reasonable to assume that the Council would have taken account of these Regulations and the change in the consultation zones around Burghfield in the preparation of this plan. Of particular relevance from the consultation draft plan are the following draft proposals:

- Policy SP3 – Burghfield Common: *“larger rural settlements offer development potential appropriate to the character and function of the settlement through: Infill, changes of use or other development within the settlement boundary non-strategic sites allocated for housing and economic development through other policies in this Plan or Neighbourhood Plans Rural exceptions affordable housing scheme.”*
 - Therefore, the emerging spatial strategy of the Council does not rule out further development in Burghfield
- Provision will be made for between 8,840 – 9,775 net additional new homes for the plan period to 2037. *“New homes will be located in accordance with Policy SP1: Spatial Strategy, SP3: Settlement Hierarchy”.*
- Para 6.7 – meeting housing need is to include *“retained allocations in the Local Plan.”*
- Para 6.8 – *“Retained allocations will therefore form a substantial part of the supply in the LPR.”* Table 2 sets out the Housing Supply as of March 2020 and it confirms that there are 482 dwellings without planning permission on HSADPD Sites. This figure includes the remaining 32 dwellings to be developed at The Hollies.
 - Therefore, the emerging Local Plan continues to rely upon the development of 32 dwellings at The Hollies as a retained allocation to meet the planned housing requirement.
- Policy SP14 – relates to sites allocated for Residential Development in the Eastern Area and clearly shows that the allocation of Appeal Site is to be retained (see highlight below):

Policy SP 14

Sites allocated for residential development in Eastern Area

Development in the Eastern Area will be allocated as follows:

Large sites (1ha or larger)

LPR Policy	Current Policy Ref	Site name	Approx no's
RSA10	HSA10	Stonehams Farm, Tilehurst EUA008	60
RSA12	HSA11	72 Purley Rise, Purley on Thames	35
RSA13	HSA12	Land adjacent to Junction 12 of M4, Bath Road, Calcot	150-200
RSA14	HSA13	Land adjacent to Bath Road and Dorking Way, Calcot	35
RSA15	HSA14	Land between A340 and The Green, Theale	100
RSA16		Whitehart Meadow, Theale	100
RSA17		Former sewage treatment works, Theale	70
RSA18	HSA15	Land adjoining Pondhouse Farm, Clayhill Road, Burghfield Common	100
RSA19	HSA16	Land to the rear of The Hollies Nursing Home and land opposite 44 Lamden Way, Burghfield Common	60
RSA20		Land north of A4 at junction of new Hill Road, Woolhampton	20

- Policy RSA19 carries forward the allocation from the HSADPD unchanged.
- Consultation took place on this emerging plan in December 2020. No comments were received by AWE, ONR or the West Berks Emergency Planning Team on either Policy SP3 or Policy RSA19.
- On Policy SP4, which is the policy which establishes the consultation zones, ONR commented that *“in order for ONR to have no objections to such developments we will require:*
 - *confirmation from relevant Council emergency planners that developments can be accommodated within any emergency plan required under the Radiation (Emergency Preparedness and Public Information) Regulations 2019; and*
 - *that the developments do not pose an external hazard to the site.”*
- As such, ONR is not saying that there is an automatic objection to all new development within the DEPZ, but that there is an expectation that the Council will ensure developments can be accommodated within the emergency plan.

6.11 In summary, the evidence is clear that the REPPiR 2019 regulations have not led the Council to review its spatial strategy in relation to development in Burghfield and in fact the Council proposed in the Draft Regulation 18 Local Plan to rely on the continued allocation of this site

to contribute to meeting its overall housing needs. A copy of the relevant extracts of the Regulation 18 Plan and consultee comments are enclosed at **Appendix L**.

6.12 There is also a significant disparity between the Council's approach to determining this application and its approach in dealing with the application for other developments in the area. The Council will say this is because there is a difference between a site with planning permission and a site that is allocated in the development plan. This is misconceived. There is no material difference in emergency planning terms when the REPPIR Regulations recognise that there will be changes over time within the DEPZ and for this reason require the Council to update its emergency plan every 3 years.

6.13 On 29 July 2022 the Council approved the Reserved Matters on the Pondhouse farm site because:

“Whilst the development will bring perhaps an additional 240 plus residents into the AWE inner protection zone as defined under policy CS8 in the WBCS of 2006 to 2026, since planning permission was granted prior to the new DEPZ being agreed, the Council cannot object to the development. Conditional permission is accordingly recommended, with each household having an obligatory landline in case of an emergency at the AWE. No objections. Condition to be applied.”⁹

6.14 It has also not been evidenced by the Council why the installation of a landline telephone in each new home *“to ensure the AWE Off-Site Emergency Plan can operate effectively and the ability of responders to accommodate all those within the DEPZ”*¹⁰ would not enable an approval to be given in this case.

6.15 Turning now to the main issues in this appeal.

Reason for Refusal 1 – The lack of a s106 Agreement to secure Affordable Housing

6.16 Policy CS6 of the Core Strategy sets out the Council's approach towards provision of affordable housing and the proportion sought from residential development. On sites of 15 dwellings or more, 40% provision will be sought on greenfield land. During the consideration of the application, the Council's housing officer commented that should the application be approved

⁹ Quotation taken from the Officers report at Appendix J

¹⁰ Reason given for imposition of Condition 3 at Appendix J

the 13 on site affordable units (40% affordable housing) would be required, of which 70% (9 units) should be for affordable rent.

- 6.17 Paragraph 6.4 of the Planning Statement set out the proposed housing mix and it is expected that it will be common ground with the Council that this mix is acceptable. The proposed housing mix includes 13 affordable housing units comprising a mix of 1 and 2 bed flats and 3 bed houses. The affordable housing provision therefore accords with the Council's policy requirement at 40.6%.
- 6.18 Paragraph 6.5 of the Planning Statement confirmed that of the 13 affordable homes, 4 dwellings were to be offered as Shared Ownership units which 9 were to be offered as affordable rented homes. As such, the tenure split at 70/30 accords with the Council's requirements. Accordingly, the appeal proposal is consistent and in full accordance with Policy CS6 of the Core Strategy.
- 6.19 The only issue is that at the time of the Council's decision, no legal agreement or unilateral undertaking was in place to secure the affordable housing. This was not because the applicant was unwilling or unable to enter into the agreement, but simply because the Council did not progress an agreement because of its intention to refuse the application on other grounds.
- 6.20 It is therefore expected to be common ground with the Council that the first reason for refusal can be overcome by the completion of a legal agreement. In line with the PINS Procedural Guidance, the obligation will be submitted to the Inspectorate at least 10 working days before the Hearing. It is therefore expected that this reason will fall away by the Hearing date.

Reason for Refusal 2 – Impact on Public Safety

- 6.21 Within the Council's second reason, there are a number of issues raised but broadly the Council's concern is that the additional population generated by the completed development "*would compromise the safety of the public in the case of an incident at AWE*" and "*potential harm would occur to the future capability and capacity of AWE Burghfield to operate effectively*".
- 6.22 As set out above, the appeal site has been allocated in the Development Plan. It was done so at a time when the DEPZ around AWE Burghfield was smaller. Following the REPPiR 2019 regulations, the Council undertook a review of the DEPZ and it was extended to include

Burghfield Common. The Appeal Site is not within the urgent evacuation zone (i.e. 600m from the boundary of AWE Burghfield) but it is within the DEPZ.

- 6.23 In the AWE Detailed Emergency Planning Zone Report dated 4 March 2020 prepared by the Council's Emergency Planner Ms Richardson for Members of West Berkshire Council (at **Appendix M**) it was stated in Section 3 under the heading "risk management", that *"It is important to note that there are no changes in activity on the AWE sites, and there is no greater risk to the public than before this legislation was introduced."*
- 6.24 Paragraph 5.3.2 refers to the consequences report and to the need for a minimum area for any Urgent Protective Action (UPA) to be defined. Again, this section repeats that there has been *"no change in activity, safety or risk, but a change in criteria required to evaluate the risks"*. The report concludes at 7.1 by reminding members that *"there are no changes in activity at either AWE Aldermaston or AWE Burghfield, and there is no greater risk to the public than before the legislation was introduced."*
- 6.25 It is therefore extremely difficult to understand how the development on this allocated site could compromise the safety of the public or potentially harm the future capability of AWE when there is no greater risk to the public from AWE Burghfield now than there was when the site was allocated in 2017.
- 6.26 The Council have, through the pre-application meeting in October and in its written response to the pre-application stated that introducing circa 75 additional residents within the DEPZ will impact on emergency services and public safety.
- 6.27 The Council has provided a copy of its emergency plan and a copy is at **Appendix N**. During the pre-application meeting, discussion was had to seek to establish why the emergency plan was not updated to include this allocated site. The Council's emergency planning officer could only respond that a "line in the sand" had to be drawn somewhere and she personally decided to draw it so as to include sites which had outline planning permission and to exclude sites that were allocated for development. The line taken was therefore not based on any statutory legislative rationale or guidance, but a personal opinion.
- 6.28 During consideration of the application by the Council and when its concerns regarding the site's location within the DEPZ became clear, a legal opinion was sought on behalf of the Appellant and shared with the Council. The Opinion of Mr Gregory Jones KC of Francis Taylor

Building, Temple, is included at **Appendix O**. It is unclear whether the Council ever obtained its own legal opinion since none has been shared with the Appellant or referred to in any correspondence with Officers.

- 6.29 It should be noted that at the time the Opinion was prepared, the Council had refused to make available its emergency plan and advice was firstly sought on whether the Council could withhold information it was seeking to rely upon to refuse a planning application. Mr Jones KC advised that there was a presumption in favour of disclosure and that the plan should be provided. A redacted version was subsequently made available to the Appellant after repeated Freedom of Information (FOI) requests on 21 September 2022.
- 6.30 With regard to the question posed to Mr Jones KC on whether the REPPIR Regulations or any associated guidance would impose a ban on new development within the DEPZ, Mr Jones KC advised that on the contrary, the regulations envisage that development will come forward and therefore the Council must consider whether the development can be accommodated within the emergency plan. Therefore, REPPIR-19 does not support the Council's moratorium on development in the DEPZ. At Paragraph 12 of his Opinion, Mr Jones KC cites a number of paragraphs within the REPPIR Regulations which acknowledge that development will take place in the DEPZ.
- 6.31 Turning back to Ms Richardson's 'line in the sand' and this decision resulted in the exclusion of a site for 32 dwellings from the plan, but the inclusion of sites providing 128 dwellings i.e. the residual part of the allocated site under HSA16 and the allocated site to the north at Pondhouse Farm. Regulation 11 of REPPIR-19 requires the Council to prepare an off-site emergency plan to cover the DEPZ, so the question arises as to whether the addition of 32 dwellings to that plan would lead the plan to fail. For example, when asked why she drew the line as she did, Ms Richardson did not say that the additional 32 dwellings would have resulted in the plan failing and so the site could not be included for that reason, instead Ms Richardson drew the line based on the difference between an allocation and a planning permission. This line is therefore entirely unrelated to public safety or the effectiveness of the emergency plan.
- 6.32 Further, Ms Richardson accepted in the pre-application meeting that the Emergency Plan cannot plan for population changes i.e. births, deaths, household formation changes etc. The population within the DEPZ will naturally change within the life of the emergency plan hence why Regulation 12 of REPPIR requires the Council to, at intervals not exceeding three years, review and revise the emergency plan.

6.33 Therefore, the REPIR Regulations clearly expect there to be changes over the life of an emergency plan such that the plan will need to be updated at least every three years. There is therefore no reason that the Council's emergency plan cannot be updated to accommodate this development or that the line needed to be drawn as it was to exclude half of a site allocated for development in the Adopted Development Plan.

6.34 In conclusion, an Emergency Plan is not a stagnant document and indeed should be regularly reviewed and updated to reflect changes in the area. This was recognised in the appeal decision at Boundary Hall, Tadley in 2011 (A copy of the SoS decision is at **Appendix P**). The Inspector is referred in particular to Paragraph 13 where the Secretary of State noted *"that the Off Site Plan is designed to be flexible and extendable and that, while it is possible that the implementation of the application scheme would necessitate changes to the Plan, the evidence does not lead to the conclusion that the Plan would fail"*.

6.35 To determine whether there would be an adverse impact on public safety arising from the proposed development and an adverse impact on the operation of the emergency plan, this Statement considers the following:

- The potential for release of radioactive particles in the event of an incident at AWE Burghfield
- The potential impact of any release to human health
- The requirements of the off-site emergency plan and whether the proposed development would impact its ability to function
- The potential impact on blue light / emergency services

6.36 The Appellant has appointed an independent expert, Dr Keith Pearce to prepare a Statement to support this appeal, and to consider these matters. Dr Pearce's credentials are set out above. The statement can be found at **Appendix Q** of this Statement of Case.

6.37 The evidence from Dr Pearce establishes that:

- The AWE Burghfield site does not represent a great risk to health or life for those living in or near the proposed development site.

- The potential impact of inhalation of radioactive material is minimal. The risk occurs only whilst the plume passes and only to those unable to shelter in time. Residential dwellings avert 40% of the inhalation dose.
 - Weather conditions and wind direction can also affect the direction of the plume and dispersal of radioactive material. The wind blows towards the appeal site from AWE Burghfield less than 3% of the time and in the relevant low windspeed range for less than 1% of the time.
 - At the worst case, with the wind blowing towards the appeal site in an F2 weather condition (which typically only occurs on a cold winters night i.e. when residents would most likely be indoors with windows shut) the projected dose at the site would be 11.3mSv. To provide context to this level of exposure, a whole-body CT scan typically delivers 10mSv whilst the average annual radon dose to a resident of Cornwall is 7.8mSv. The 11.3 mSv dose estimate is at the very low end and therefore the radiation dose that could occur in the event of a major accident at AWE Burghfield is within the range commonly experienced by members of the public in their everyday life.
 - The risk of harm to people living at the proposed development site from AWE(B) has been estimated as 2×10^{-10} per year, about 1 in 5,000 million years.
- The increased number of inhabitants of the DEPZ will not put an overwhelming strain on the resources of the off-site plan, either for warning and informing or for providing medical and quality of life support to those in an area subject to shelter advice.
 - The off-site emergency plan alerts residents of the DEPZ of an incident by landline phone in the first instance with radio, tv and social media posts providing updates.
 - The current system, and advice to shelter, applies to around 7,000 households. 32 additional households is a relatively small increment and is not considered to burden the alerting system which is via a pre-recorded single message issued to all registered landlines in the DEPZ.
 - Shelter is deemed a simple protective action and is reasonably effective if achieved in a timely manner. Residents would have around 10 minutes to shelter from receiving notification – it is estimated that there will be an average of 25 minutes from the initiation of the event until the leading edge of the plume travels to the minimum distance recommended for urgent action.

- It is extremely unlikely that evacuation would be required for the appeal site which is 2.4km from AWE Burghfield. The plume would be overhead for 30 minutes at most.
- The increased number of people living in the area are unlikely to interfere with the emergency services' ability to provide support to the site in an emergency and the potential for impact on blue light / emergency services would not be overwhelming.
- The development itself would not have an adverse impact upon the nation's security by constraining operations on the AWE site.
 - The Council / AWE has provided no that development has reached the point at which the emergency plan is inadequate.
 - ONR has not advised that it has notified the Council of its dissatisfaction with the emergency plan or requirement the Council to address any inadequacies with the plan.
 - Even if it were the case that the Council could not prepare an adequate emergency plan to cover the additional population arising from this development, the Secretary of State has the power to exempt AWE from any requirement or prohibition imposed by the regulations

6.38 In short summary, the evidence of Dr Pearce is clear that the concerns set out in the Council's second reason for refusal are unjustified.

6.39 It is also relevant to note that Policy CS8 of the Core Strategy, adopted in 2012, is outdated in that Paragraph 5.44 recognises that there are likely to be changes to ONR's model over time and following the completion of projects at both AWE Aldermaston and AWE Burghfield. Policy CS8 and Paragraph 5.43 of the Core Strategy are therefore based on the situation as at 2012. Therefore, it would have been appropriate for the Council to have sought ONR's advice based on the current population density and distribution around the appeal site and for the Council to have provided ONR with confidence in the off-site emergency plan.

6.40 The Appellant is also aware of a different approach being taken to the determination of applications within the DEPZ of AWE Aldermaston by the neighbouring Authority of Basingstoke and Deane Borough Council (BDBC). As noted by Dr Pearce, the population density in Tadley around AWE Aldermaston is significantly greater than that at AWE Burghfield.

Therefore, if the emergency plan can be effective and still allow for new development in Tadley, than there is no reason why it could not be effective and allow for new development in Burghfield. A few examples of recent permissions are cited below:

Tadley Hill

- On 14 July 2022, BDBC approved 6 dwellings on land at Tadley Hill (BDBC Ref 21/00893/FUL). A copy of the Decision Notice, Officers Report and Emergency Planning comments were provided at Appendix 2 of the pre-application submission which is at Appendix F of this Statement of Case.
- That application site was 1,728m from the boundary i.e. closer to AWE Aldermaston than The Hollies is to AWE Burghfield. The Emergency Planning comments confirm that an increase of 19.2 people would add to the requirements of the Local Planning Authority but given the distance urgent evacuation is unlikely. It was also acknowledged that having to rehouse these additional households would cause additional strain on recovery facilities. The concerns thus far appear comparable to the issue raised in The Hollies.
- However, the emergency planners concluded: *“The application increases the number of houses which will add a significant burden to the local requirements for support. No objection by HCC on the condition that each property has connection to a live landline or is able to receive a landline phone call which is registered in the area.”*
- In summary therefore, the proposal was found to be acceptable by the emergency planners despite its proximity to AWE Aldermaston on the basis of the installation of a land line phone.

42-46 New Road, Tadley

- Full Planning permission was granted on 6 October 2022 by BDBC for 42 retirement living apartments (BDBC ref 21/00671/FUL). A copy of the Decision Notice and Officers Report is at **Appendix R**. This permission followed an earlier scheme allowed on appeal. A copy of the Appeal Decision is also at **Appendix R** along with a copy of the comments from ONR and the West Berkshire Emergency Planner pursuant to the appeal application.
- The Officer’s report contains a section on “Public Safety” and refers to BDBC’s Policy SS7 which states that *“development will only [officer emphasis] be permitted where the Off Site Nuclear Emergency Plan can accommodate the needs of the population in the event of an*

emergency". The site is stated to be 1,490m from the AWE site boundary and is within the most densely populated sector: *"This location determines that the site is more likely to be subject to urgent evacuation in the event of an emergency as well as having an increased requirement for short, medium and potentially long term accommodation, which could also include meeting the needs of vulnerable people."*

- The ONR or West Berkshire Emergency Planners did not comment on the application, however the Officer's report notes that comments were received on the extant permission allowed on appeal. The Report notes that the West Berkshire Emergency Planner had raised no objection to the proposal *"subject to the imposition of a condition which secures the provision of an outline Emergency Plan to be submitted and approved the Local Planning Authority. This was secured through the Appeal. This Emergency Plan seeks to address how the occupiers of the site will respond and manage the situation should there be a radiation emergency at AWE Aldermaston. The imposed condition would further require that the site should not be occupied until a detailed Emergency Plan has been developed, submitted and approved and that the Emergency Plan should be kept up-to-date, reviewed and amended as necessary."*
- In summary, the proposal was found to be acceptable by the emergency planners despite its proximity to AWE Aldermaston on the basis of a bespoke emergency plan secured via condition.

Boundary Place

- On 15 October 2019, BDBC granted planning permission for 17 dwellings at Boundary Place, Tadley (BDBC ref 19/00579/FUL). A copy of the Decision Notice, Officers Report, Emergency Planning comments, bespoke Emergency Plan and s106 legal agreement are at Appendix 3 of the pre-application submission which is at Appendix F of this Statement of Case.
- The West Berkshire Emergency planning team had no objection to the proposal on the basis of a bespoke emergency plan beings secured via a legal agreement. ONR stated that is did not advise against the development on that basis.
- In summary, the s106 legal agreement secures a bespoke Emergency Plan for the development. It obligates the owner to:

- Implement the site-specific emergency plan,
- Monitor the site-specific emergency plan,
- Appoint a responsible management organisation,
- In the event of an incident, offer all occupants reasonably suitable temporary accommodation as soon as possible and within 48 hours of being made aware of an incident – the accommodation is to be made available until such time as residents can return to their homes,
- To ensure the site-specific plan remains in place for as long as the dwellings exist / unless the site is no longer in the DEPZ in the future.

6.41 Without prejudice to the Appellants position that the proposed development would not impact public safety and would not impact on the operation of the Council’s emergency plan, the Appellant has prepared a bespoke emergency plan to support this appeal. A copy of this, along with a suggested clause for s106, is enclosed at **Appendix S**. The Appellant intends to submit two legal agreements with this appeal, one which would bind only the provision of affordable housing, the second which would bind both the affordable housing and the bespoke emergency plan.

6.42 The Appellant considers they are in a unique position over other house builders given that the business “House of Fisher” is a daughter company to the parent company T A Fisher. House of Fisher provide serviced apartments and aparthotels across the Thames Valley region including in Basingstoke, Reading, Newbury, Bracknell, Camberley and Farnborough. The serviced apartments provide high quality accommodation for both short and long term stays. In total, the business owns over 160 serviced apartments and aparthotels and could therefore provide temporary accommodation to the 32 households at short notice in the very unlikely event that evacuation was necessary.

6.43 The concerns relating to the viability of the bespoke emergency plan are unfounded. The Council for its own local plan does not keep available the shelters or temporary accommodation but simply has a list of locations that are suitable to provide shelter or temporary accommodation. Therefore, the Appellant does not intend to keep available 32 apartments indefinitely in the extremely unlikely event of an emergency, but through the

bespoke plan is providing a commitment to provide temporary accommodation in one of its properties to future residents of this development for as long as required.

- 6.44 It must be borne in mind that the likelihood of this even being required is extremely remote (2×10^{-10} per year, about 1 in 5,000 million years¹¹) and the emergency plan in the first instance requires residents to shelter in place. Once the plume has passed, the risk of radiation impacting human health also passes and therefore residents should be able to remain in their own homes without the need for evacuation. Even if a resident were exposed to the plume, the risk to health is very low i.e. the exposure to radioactive material is broadly equivalent to that which one might receive during a whole body CT scan or could be compared to the average annual exposure of a resident of Cornwall. The proposed development therefore does not pose an unacceptable risk to public safety.
- 6.45 The Appellant considers the Council's primary concern is a precedent being set and additional, unallocated sites coming forward, although each case should be considered on its own merits and the Council has at the time of writing a plus 5year housing land supply.

Reason for Refusal 3 – Impact on Protected Trees

- 6.46 During the pre-application meeting with Officers in October 2022, Mr Butler (the Planning Officer) confirmed that the allocation of the site within the current Local Plan assumed that the TPO tree impact could be overcome and was not in itself a block on the development of the site, and that if the objection from Emergency Planning is removed, then it is possible a favourable recommendation will likely be made.
- 6.47 It is important to remember that a site is not allocated in a Development Plan Document lightly. The Housing Site Allocations DPD was supported by an evidence base including site assessment work which defined site constraints, considered the deliverability of sites and the quantum of development, and ultimately narrowed the pool of sites to those which were taken forward and adopted into the HSADPD. The DPD was subsequently examined and found sound by an Inspector.
- 6.48 The site contained the same protected trees that are now the issue at the point of allocation, and therefore this was a known constraint at the time the allocation was found sound. To address this, Policy HSA16 has a developable area (shown on figure 1 above) which is smaller

¹¹ See Paragraph 73 of Appendix Q

than the total site area. The allocation of this site for a specific land use within a contained development area and within the adopted Development Plan has therefore established the principle of the development of the site for the proposed use and paves the way for a planning application to come forward to deliver that allocation.

- 6.49 The Officer's report notes that the proposed layout respects the minimum 15m buffer to ancient woodland. The Council's Tree Officer objected to the felling of protected trees on the site. The reason for refusal also raises concern that the proposal does not allow for sufficient space on site to replace the trees that would be lost. The Council state therefore that there is conflict with Policies ADPP1, CS14, CS18 and CS19 of the Core Strategy in this reason.
- 6.50 Keen Consultants undertook an Arboricultural Impact Assessment (AIA) and Tree Survey to inform the design and layout of the proposed development. The tree survey identifies the size and quality of the trees both within the site and immediately offsite. This information was used to prepare the Tree Constraints Plan (drawing ref. 1730-KC-XX-YTREE-TCP01 Rev 0) which identifies the location of each tree, its size and the area around each tree that needs to be considered during the design process. A Tree Protection Plan (drawing ref. 1730-KC-XX-YTREE-TPP01 Rev A) was also prepared to ensure adequate provisions for the protection of trees are in place. All this information was available to the Council at the time of the decision.
- 6.51 The proposed development has been specifically designed to respond to the constraints of the site and to reflect the character and appearance of the surrounding area. The result is a form of development that will successfully integrate into its surroundings and will not harm the character of the area. Following receipt of the tree survey, there was extensive civil engineering input into the design due to the level changes across the site. It was necessary to achieve a gradient of 1:20 from the site access to the north west corner to comply with national and local guidance, and that therefore led to the positioning of the access and its result impact on trees.
- 6.52 Jago Keen of Keen Consultants has prepared a Statement to support this appeal, and this can be found at **Appendix T** of this Statement of Case.
- 6.53 The evidence of Mr Keen is that none of the trees within group 68A to be removed are of exceptional quality and they are barely perceptible from public vantage points. The trees to be removed are within a group TPO and it is considered that these trees are not a constraint to development and can be off-set by new planting.

- 6.54 The loss of 5 trees from group 80 includes the removal of 5 early mature English oak trees and these do have some collective value (as part of a larger group of 10 trees). However, Mr Keen considers that these trees do not bear the characteristics of ancient or veteran trees, so there is no conflict with Paragraph 180 of the Framework in this regard.
- 6.55 These trees need to be removed in order to accommodate the road that links the parcels of land to the north and south of the tree line. Hence we return to the Officer's comments during the pre-application meeting that the allocation of the site within the current Local Plan assumed that the TPO tree impact could be overcome and was not in itself a block on the development of the site.
- 6.56 In the independent expert judgement of Mr Keen, the loss of these trees will not be perceptible from public vantage points and so there is no discernible impact on landscape character.
- 6.57 Turning to replacement planting, a Landscape Strategy Plan was submitted with the application and shows how the site is intended to be landscaped. It is proposed to increase the buffer to the ancient woodland and incorporate new public open space. This will soften the edge to the woodland, but necessitates placing the connecting road through the group 80 tree line in order to gain access to this allocated site. Mr Keen considers that the proposed landscape buffer areas are generous and allow for the planting of replacement trees which can be secured via appropriate planning condition. In fact, 30 new specimen trees are proposed to replace the 5 protected trees to be lost from group 80. These 30 new trees would have ample space to develop and more than compensate for the loss.
- 6.58 The loss of the trees is therefore consistent with Policies ADPP1, CS14, CS18 and CS19 of the Core Strategy for the following reasons:
- Policy ADPP1 – Whilst there is some tree loss, an appropriate buffer to the ancient woodland is proposed along with provision of open space and new tree planting that more than offsets the loss. This ensures the development would enhance green infrastructure as required by the policy.
 - Policy CS14 – The proposal maintains the majority of significant landscape features and the trees to be removed are not perceptible from public vantage points. The proposal conserves and enhances green linkages and bolsters tree cover with new specimen planting.

- Policy CS18 – The policy accepts there could be a loss of green infrastructure where replacement green infrastructure is provided. The proposed new planting more than compensates for the loss i.e. 30 new specimen trees to replace the five removed from group 80.
- Policy CS19 – The proposal preserves the majority of the tree cover on the site. Adequate buffers are proposed to protect retained trees and new planting is proposed to enhance local character.

6.59 In summary, Mr Keen concludes that the proposal would result in the loss of a small area of saplings and five trees from a linear tree group. The trees to be removed are not perceptible from outside the site and are not of exceptional quality. Adequate buffers to the retained trees and Ancient Woodland are proposed and compensatory new planting is proposed in the right places to off-set the loss. In conclusion, the proposal is demonstrably in accordance with the Development Plan in this regard.

7.0 Conclusions

- 7.1 The Appellant's case is that the Appeal Site has been allocated for housing by Policy HSA16 of the Development Plan, and the appeal proposal is in accordance with the allocation policy.
- 7.2 In respect of the main reason for refusal on public safety, it is the Appellant's case that the development can be accommodated without compromising the safe functioning of the Atomic Weapons Establishment (AWE) Burghfield or public safety and as such the principle of development is plainly acceptable.
- 7.3 The AWE Burghfield site does not represent a great risk to health or life for those living in or near the proposed development site. The risk of harm to people living at the proposed development site from AWE(B) has been estimated as 2×10^{-10} per year, about 1 in 5,000 million years. The potential impact of inhalation of radioactive material is therefore minimal. The risk occurs only whilst the plume passes and only to those unable to shelter in time. Residential dwellings avert 40% of the inhalation dose.
- 7.4 Weather conditions and wind direction can also affect the direction of the plume and dispersal of radioactive material. The wind blows towards the appeal site from AWE Burghfield less than 3% of the time and in the relevant low windspeed range for less than 1% of the time. At the worst case, with the wind blowing towards the appeal site in an F2 weather condition (which typically only occurs on a cold winters night i.e. when residents would most likely be indoors with windows shut) the projected dose at the site would be 11.3mSv.
- 7.5 To provide context to this level of exposure, a whole-body CT scan typically delivers 10mSv whilst the average annual radon dose to a resident of Cornwall is 7.8mSv. A resident living in Cornwall who also needed a whole body CT Scan would receive a higher level of radiation than a resident living at the development site would experience in the extremely unlikely event of an accident occurring.
- 7.6 The 11.3 mSv dose estimate is at the very low end and therefore the radiation dose that could occur in the event of a major accident at AWE Burghfield is within the range commonly experienced by members of the public in their everyday life.
- 7.7 The increased number of inhabitants within the DEPZ will not put an overwhelming strain on the resources of the off-site plan, either for warning and informing or for providing medical and quality of life support to those in an area subject to shelter advice. The off-site emergency

plan alerts residents of the DEPZ of an incident by landline phone in the first instance with radio, tv and social media posts providing updates. The current system, and advice to shelter, applies to around 7,000 households. 32 additional households is a relatively small increment and is not considered to burden the alerting system which is via a pre-recorded single message issued to all registered landlines in the DEPZ.

- 7.8 Shelter is deemed a simple protective action and is reasonably effective if achieved in a timely manner. Residents would have around 10 minutes to shelter from receiving notification – it is estimated that there will be an average of 25 minutes from the initiation of the event until the leading edge of the plume travels to the minimum distance recommended for urgent action.
- 7.9 It is extremely unlikely that evacuation would be required for the appeal site which is 2.4km from AWE Burghfield. The plume would be overhead for 30 minutes at most.
- 7.10 The increased number of people living in the area are unlikely to interfere with the emergency services' ability to provide support to the site in an emergency and the potential for impact on blue light / emergency services would not be overwhelming.
- 7.11 The development itself would not have an adverse impact upon the nation's security by constraining operations on the AWE site.
- 7.12 The Council / AWE has provided no that development has reached the point at which the emergency plan is inadequate.
- 7.13 ONR has not advised that it has notified the Council of its dissatisfaction with the emergency plan or requirement the Council to address any inadequacies with the plan.
- 7.14 Even if it were the case that the Council could not prepare an adequate emergency plan to cover the additional population arising from this development, the Secretary of State has the power to exempt AWE from any requirement or prohibition imposed by the regulations.
- 7.15 In respect of the impact on and loss of protected trees within the site, it is important to remember that the appeal site is allocated in the Development Plan despite the presence of protected trees on the site. The Appeal proposal has been carefully designed to minimise tree loss and would not harm the amenity and character of the area. The appropriate buffer to the Ancient Woodland of 15m is achieved, and an adequate root protection area to retained is also provided. 30 new specimen trees are proposed to replace the 5 protected trees to be lost from group 80. These 30 new trees would have ample space to develop and more than

compensate for the loss. As such, the proposal is clearly consistent with Policies ADPP1, CS14, CS18 and CS19 of the Core Strategy.

- 7.16 In relation to the lack of a S106 agreement to secure affordable housing, the Appellant's were always willing to enter into an agreement with the Council however the Council did not proceed with the agreement in light of its recommendation for refusal on other grounds. A s106 agreement will of course be submitted to the Inspector to address this reason and will secure the provision of 40% affordable housing to address the Council's first reason for refusal.
- 7.17 The Appellant concludes on the evidence that the appeal should be allowed and the remaining 32 dwellings on this allocated site should be permitted to complete the comprehensive development of the site as envisaged by the allocation in 2017. The Inspector is therefore respectfully requested to allow this appeal and to grant planning permission.

Appendix A – List of Application Documents

Appendix B – Decision Notice

Appendix C – Delegated Officers Report

Appendix D – HSADPD Policy HSA16

Appendix E – Copy of approved plans, Decision Notice and Officer Reports for application 16/01685/OUTMAJ and 19/00772/RESMAJ relating to the HAS16 allocation

Appendix F – Pre-Application Submission August 2022

Appendix G – Notes of Meeting with Officers 5 October 2022

Appendix H – Officer and AWE response to Pre-Application Submission

Appendix I – Correspondence with Principle Planning Officer 14 January 2021

Appendix J – Pondhouse Farm Decision Notice and Officers Report

Appendix K – Annual Monitoring Report August 2022

Appendix L – Extracts from Regulation 18 Local Plan December 2020

Appendix M – AWE Detailed Emergency Planning Zone Report 4 March 2020

Appendix N – AWE Off-Site Emergency Plan

Appendix O – Covering Letter and Opinion of Mr Gregory Jones KC

Appendix P – Decision of Secretary of State in Boundary Hall Appeal 2011

Appendix Q – Statement of Case by Dr Keith Pearce in respect of Reason for Refusal 2

Appendix R – Officers Report, Decision Notice, Appeal Decision and Emergency Planning Comments
in relation to BDBC application 21/00671/FUL

Appendix S – Appellants Bespoke Emergency Plan and draft s106 Clause

Appendix T – Statement of Case by Jago Keen in relation to Reason for Refusal 3