

TOWN AND COUNTRY PLANNING ACT  
1990 (AS AMENDED)

Appeal by T A Fisher & Sons Limited  
against a refusal by West Berkshire  
District Council of planning permission for:

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

Land to the rear of The Hollies Nursing  
Home, Reading Road, Burghfield  
Common

**24 MAY 2023**

**First Rule 6 Party  
Rebuttal Proof of Evidence Person MD**

**Prepared by:**

Person MD

**LPA Ref:** 22/00244/FULEXT

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

## 1. INTRODUCTION

1.1 I have prepared this rebuttal proof of evidence on behalf of the First Rule 6 Party, in response to the evidence of Dr Pearce, acting on behalf of the Appellant. Consistent with the scope of my original evidence, in which I focus primarily on the Appellant's lack of consideration to the Continuous at Sea Deterrent (CASD) mission, the unique nature of AWE's operations and the potential impact to the security of site.

1.2 References to proofs of evidence are in the form of individuals initials and the paragraph number, with KPX.X for instance referring to paragraph X.X of Dr Keith Pearce's proof of evidence. For the avoidance of any doubt, I continue to rely upon my main proof of evidence (11 May 2023). I do not seek to deal with each point of disagreement in this rebuttal and if I do not mention a point arising from the Appellant's evidence, that does not mean I agree with it. I have instead set out the key points where I disagree with the Appellant's evidence and why.

## 2. ERRATUM

I would like to correct a paragraph with typographical errors/omissions in my original proof of evidence. Paragraph 1.4 should be replaced with:

*1.4 In my day-to-day work I operate in accordance with the Civil Service Code and its core values of integrity, honesty, objectivity and impartiality. In my professional engineering capacity, I also abide by the IMechE's Code of Conduct: (1) to act with care and competence; (2) to act with integrity and in a reliable and trustworthy manner; (3) to engage responsibly with the environment; and (4) to contribute positively to the culture and public perception of the profession and the Institution. I also abide by the IExpE's similar code of conduct, with three principles based on honesty and integrity, competence, and relationships.*

## 3. REPPIR EXEMPTION

3.1 In Dr Pearce's Proof of Evidence at section 5.6.2 there is a scenario presented where the local authority's failure to respond to the Office for Nuclear Regulation (ONR) dissatisfaction or improvement notices, relating to the Off-site Emergency Plan (OSEP), could lead to the ONR issuing a prohibition notice, which would impact site operations.

3.2 From KP201 to KP203 Dr Pearce gives his opinion that a prohibition notice could be dealt with by way of the Secretary of State for Defence exempting AWE from REPPIR, in line with REPPIR regulation 25(2). However, Dr Pearce appears to have overlooked the Secretary of

State's very clear policy statement on health, safety and environmental protection (HS&EP) in Defence<sup>1</sup>.

- 3.3 There is now shown before me marked “**MD1**” a copy of the Secretary of State's policy statement on health, safety and environmental protection in Defence. This provides that:
- 3.3.1 The default position is that within the United Kingdom, Defence complies with all applicable HS&EP legislation; and
- 3.3.2 In circumstances where Defence has derogations<sup>2</sup>, exemptions<sup>3</sup> or disapplications<sup>4</sup> from HS&EP legislation, we maintain Departmental arrangements that produce outcomes that are, so far as reasonably practicable, at least as good as those required by UK legislation.
- 3.4 Put simply, if the Secretary of State for Defence was indeed minded to exempt AWE Burghfield from the legal requirements of REPPiR and a corresponding DEPZ, then MOD would be required to replace these regulations with an 'at least as good' Defence arrangement. Thus, should the population within the DEPZ continue to grow, then a Defence exemption would not mitigate the potential risks to AWE Burghfield's operations, as Dr Pearce proposes.
- 3.5 The application of the Secretary of State for Defence's HS&EP policy is demonstrated clearly by the MOD's overall approach to nuclear regulation. The ONR utilises a system of regulatory controls based on a robust licensing process by which a corporate body is granted a licence to use a site for specified activities. The nuclear site licence granted by ONR is a legal document, issued for the full life cycle of the facility. It contains site-specific information, such as the licensee's address and the location of the site and defines the number and type of installations permitted.
- 3.6 The licences for nuclear sites are regulated by a set of 36 Standard Conditions, covering design, construction, operation and decommissioning. These conditions require licensees to implement adequate arrangements to ensure compliance. ONR has concluded a Letter of Understanding (LoU) with the MOD's Defence Nuclear Safety Regulator (DNSR), that provides a framework for complete, effective and coordinated regulation of licensed and non-licensed defence-related nuclear sites. As such, MOD implements the Secretary of State's

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<sup>1</sup> [Health, safety and environmental protection in defence policy statement \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/61111/health_safety_and_environmental_protection_in_defence_policy_statement.pdf)

<sup>2</sup> Derogations: a relaxation of a statutory requirement, to allow the law to be applied differently for justifiable practical or operational reasons.

<sup>3</sup> Exemptions: a formal written authorisation for all or a part of specific legislation or Defence regulation to not apply.

<sup>4</sup> Disapplications: where all or part of specific legislation does not apply to Defence.

HS&EP policy through the DSA02.DNSR regulations, which defines Authorisation Conditions aligned to ONR Licence Conditions.

- 3.7 Dr Pearce's view that exemptions from legislation should be used as a matter of course, also implies that the local residents may also need to accept an increased level of risk exposure to allow the Hollies development to proceed. This scenario does not comply with the Secretary of State's HS&EP policy statement.
- 3.8 Dr Pearce also refers to external hazards in the form of potential waste products or debris in in KP72 and KP195. To clarify, the MOD is chiefly concerned that this development may lead to regulatory restrictions to the operations at AWE Burghfield. Examples might include restrictions on the type of operations; when they could be conducted; the quantities of hazardous materials that could be transported, held or processed; or even limitations on where activities could take place on site. Any of these scenarios would place an intolerable impact on AWE operations, and by extension to the viability of the CASD mission and national security.

#### 4. **DECLARATION**

The evidence which I have prepared and provide for this planning appeal in this rebuttal proof of evidence is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

**Dated:** 24 May 2023

*Person MD*

**Person MD**

**Senior Civil Servant**

**FIRST RULE 6 PARTY**

**PERSON MD**

**MD1**

**24 MAY 2023**

## Chapter 2

### The Legislative Framework and Departmental Policy

1. **Legislation** SofS's Policy Statement reinforces the requirement for Defence to comply with UK HS&EP legislation, (which includes legislation giving effect to the UK's international obligations). However, as a Department of the Crown, Defence has immunity from prosecution and there are provisions that allow total disapplication, specific disapplication, exemption or derogation from legislation:

a. A non-application of legislation is where an entire set of statutory requirements do not apply to MOD (e.g. Nuclear Installations Act 1965, Air Navigation Order or Control of Major Accidents Hazards);

b. Disapplications from specific parts of statutory requirements (e.g. Environmental Protection Act 1990, Explosive Regulations 2014);

c. Provisions within legislation for exemptions to be granted from specific requirements in recognition of a Defence imperative (e.g. the Health and Safety at Work Act etc. 1974 (HSWA74) permits the SofS's to exempt the Department from any or part of the Act by order "*to the extent that it appears to him requisite or expedient to do so in the interests of the safety of the State*"). Other H&S regulations alternatively specify the exemption in the interests of national security.

d. Derogations are a lessening of a statutory requirement for justifiable practical or operational reasons (e.g. smoking in single living accommodation recognises the distinction from temporary accommodation such as hotels and hostels).

2. **Defence Policy and Regulations** The HSWA74 requires employers to "prepare and, as often as may be appropriate, revise a written statement of his general policy with respect to the health and safety at work of his employees". For these purposes, the SofS is regarded as the employer and complies with this duty through a Policy Statement. For convenience and consistency, this Policy Statement identifies the key requirements and high-level responsibilities for both health and safety and environmental protection and applies to all Defence activities and its personnel.

3. Where there is a disapplication, exemption or derogation from UK HS&EP legislation or where Defence activities are conducted overseas (outside of the requirement to respond to host nations' relevant HS&EP expectations and co-operate with their HS&EP authorities), the Policy Statement requires Defence to put in place arrangements that produce outcomes which are, so far as is reasonably practicable, at least as good as those required by UK legislation. Accordingly, a fundamental responsibility of the Defence Safety Authority (DSA) is to regulate activities against Defence Regulations where there are disapplications, exemptions

and derogations from statute. Defence Regulators are to consult with stakeholders on the maintenance of Defence Regulations that are appropriate to their domains: These regulations are to be coherent, consistent and proportionate to the risk and where possible goal-based across HS&EP Regulatory domains.

4. It is essential that Defence is aware of, and can appropriately influence emerging legislation and consider the potential for consequential constraints on Defence capability. It is this awareness that safeguards those circumstances where disapplications, provisions for exemptions are granted, or, derogations are sought. Therefore, DSA is to ensure that emerging and changing legislation is tracked and influenced in order to protect Defence interests and when necessary seek disapplications, derogations or the provision for exemptions to be granted.

5. **Visiting Forces** Under customary international law, Visiting Forces are not bound by domestic legislation: This is described in the Visiting Forces Act 1952. Visiting NATO Forces are subject to the Articles of the NATO Status of Forces Agreement (SOFA) 1951; of specific relevance to health, safety and environmental protection are Articles II, VII and IX. There is no similar agreement for non-NATO forces who visit, although certain aspects may be addressed in a Memorandum of Understanding; in these circumstances, normal protocol is applied bearing in mind that such Visiting Forces are covered by state immunity.

6. Interface arrangements for safety management between MOD, United States Visiting Forces and the HSE are set out in a Memorandum of Agreement, which is held on the Health and Safety website on the Defence Intranet. Enforcement action is limited to the issue of letters equivalent to Crown Notices with the recipient being an MOD employee. Similarly, there are interface arrangements for environment management between the Department, United States Visiting Forces and the EA.