

IN THE HIGH COURT OF JUSTICE

CLAIM NO: AC-2023-LON-002758

KING'S BENCH DIVISION

PLANNING COURT

**IN THE MATTER OF AN APPLICATION FOR PLANNING STATUTORY REVIEW
UNDER SECTION 288 OF THE TOWN AND COUNTRY PLANNING ACT 1990**

B E T W E E N

AWE PLC

Claimant

-and-

**(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND
COMMUNITIES**

(2) T A FISHER & SONS LIMITED

(3) WEST BERKSHIRE DISTRICT COUNCIL

(4) OFFICE FOR NUCLEAR REGULATION

(5) SECRETARY OF STATE FOR DEFENCE

Defendants

FIFTH DEFENDANT'S DETAILED GROUNDS

References in the form [CCB/tab/page] are to the Core Claim Bundle. References in the form [SCB/tab/page] are to the Supplementary Claim Bundle.

1. The Fifth Defendant, the Secretary of State for Defence supports the Claimant's claim and submits that the decision of the Inspector dated 8 August 2023 should be quashed for the reasons set out in the Claimant's statement of facts and grounds dated 18 September 2023¹. The Secretary of State for Defence did not file an acknowledgment of service, but on 18 October 2023 wrote to the Court indicating that if permission to apply for judicial review was granted, he reserved the right to participate in proceedings from that stage.

¹ [CCB/2/9-44]

2. The Secretary of State for Defence does not intend to rehearse and duplicate the points made by the Claimant (“AWE”) which it adopts. It has instructed the same counsel to represent it at the hearing.
3. The Secretary of State’s Ministry of Defence (“MOD”) is responsible for, amongst other matters, delivering the United Kingdom’s nuclear continuous-at-sea-deterrent which is critical to the defence and security of our nation.
4. The Claimant (“AWE”) is a non-departmental public body wholly owned by the MOD.
5. The MOD participated as a Rule 6 party to the planning appeal (“**the Appeal**”) that is the subject of this claim pursuant to Rule 6(6) of the Town and Country Planning (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 and participated fully by submitting a joint statement of case with AWE², instructing counsel to appear on its behalf (jointly with AWE) at the public inquiry and calling witness evidence from Person MD.³
6. AWE Aldermaston (“**AWE A**”) and AWE Burghfield (“**AWE B**”) are unique and irreplaceable components of the UK’s defence nuclear enterprise, which is collectively responsible for the development, build, maintenance and delivery of the UK’s continuous-at-sea-deterrent.
7. MOD requires AWE to deliver the whole life-cycle of nuclear warheads from concept design to disassembly, and meet stringent safety requirements in doing so. These are all essential elements of continuous-at-sea-deterrent capability. AWE A and AWE B are the only locations in the UK that can provide these capabilities. The need for AWE A and AWE B is not static and the risks that the continuous-at-sea-deterrent must respond to are dynamic and the sites must be capable of responding to MOD’s evolving requirements of them.

² [SCB/4/26-51]

³ [SCB/13/549-556] person MD was granted anonymity by the Inspector but the witness appeared in person and gave evidence at the public inquiry.

8. MOD has consistently sought to ensure that constraints on delivering this vital component of the nation's defence and security capability are minimised. It is difficult to overstate its importance.
9. As explained in its evidence to the inquiry, the MOD participated in the Appeal because of fundamental concerns about the effects of increasing population density around AWE B, both in terms of risks to current operations and risks to the activities that MOD will need AWE to deliver in the future.⁴
10. In particular, Person MD explained in evidence that the MOD had decided to participate in this Appeal as a result of, and response to, the decision in the Kingfisher Grove appeal (APP/X0360/W/22/3304042) where planning permission for 49 houses had been granted within the Detailed Emergency Planning Zone on 31 January 2023.
11. MOD's evidence to the inquiry addressed the following topics (among others):
 - a. The critical importance of the CASD to the UK's national security and that of the UK's NATO allies;
 - b. The vital role that AWE B plays in the delivery of the complete life cycle of the UK's nuclear warheads, international legal obligations and specialist defence nuclear capabilities.
 - c. The consequent impact on the UK's national security that would arise if intolerable constraints were placed on AWE Burghfield's operations both now, or in the future as a consequence of further residential development being permitted and constructed within the Detailed Emergency Planning Zone.
12. MOD's witness evidence also responded to the Second Defendant's assertion in its statement of case, and unfounded claim in evidence, that the power of the Secretary of State for Defence to grant an exemption under REPPiR 2019 would somehow be able to address inadequacies in West Berkshire Council's Offsite Emergency Plan ("OSEP") if they were found to exist in consequence of allowing this appeal. As explained in Person MD's

⁴ See Person MD Proof of Evidence paragraphs 5.1-5.6 [SCB/13/552-554]

evidence⁵, the default position in the UK is that the MOD complies with all applicable health and safety legislation. In circumstances where a power of derogation or exemption is available, the MOD maintains arrangements that produce outcomes that are, so far as reasonably practicable, at least as good as those required by UK legislation. Consequently, if the Secretary of State were minded to grant an exemption it would not mitigate the potential risks to AWE B's operations in the event the Office for Nuclear Regulation deem West Berkshire Council's OSEP to be inadequate. Health and safety arrangements would need to be in place to address the need for an adequate OSEP whether under REPPPIR 2019 or under alternative MOD arrangements. If an adequate OSEP (or alternative) was not possible, AWE and the fourth Defendant (the Office for Nuclear Regulation) explained the implications this would present for AWE B's operations.

13. The Secretary of State supports each of the grounds of claim advanced by the Claimant as to the unlawfulness of the Inspector's decision for the reasons elaborated by the Claimant. The Secretary of State for Defence therefore respectfully invites the Court to allow this claim and to quash the Inspector's decision in light of those grounds, and given the clear, cogent and specific evidence as to the prejudice that granting permission for further residential development in the vicinity of AWE B could cause with the consequential threat to AWE B's operations in delivering the crucial CASD vital for the nation's security and defence.

JAMES STRACHAN KC

ROSE GROGAN

7 December 2023

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⁵ See Person MD Proof of Evidence paragraphs 7.2-7.3 [SCB/13/555]; Person MD Rebuttal Proof of Evidence paragraphs 3.1-3.7 [SCB/24/819-821].