
WEST BERKSHIRE DISTRICT COUNCIL: OPENING NOTE

INTRODUCTION

1. This is an appeal under section 78 of the Town and Country Planning Act 1990 (“TCPA”) against the refusal of West Berkshire District Council (“WBDC”) to refuse planning permission for unnecessary permanent residential development within 3160m of an Atomic Weapons Establishment Burghfield (“AWEB”). The development would result: in harm to, and loss of, green infrastructure and to site character despite available opportunities to keep, conserve and enhance the situation remaining unexplored; to compromise public safety and well-being over an extended period of time; to jeopardise ongoing safe operation of the AWEB support for the nuclear deterrent. The development plan requires refusal.
2. The development for permanent residential accommodation would be in the vicinity of the AWEB. The AWEB has been operational from before the 1950s and is an establishment of national importance. Established as a WWI munitions factory, AWEB was upgraded during WW11 and then in the 1950’s to supply the National nuclear weapons deterrent. “3. ... *The site is of national strategic importance. Nuclear weapons are assembled, maintained and decommissioned there*” for the National submarine deterrent. Its *ongoing subsisting operation* bears significant weight.
3. The situation of a munitions factory can have consequences in relation to other land uses: safety consequences *for* other land uses; operational consequences *for* a Nuclear Licensed site itself; and incoming other land uses can have consequences *for* the munitions factory itself. See *Stringer*. Thus, three aspects arise: compromised public safety (including of proposed residents *from* an incident arising at AWEB relating to the wider area); the resulting *Aftermath* over an *extended period* from such incident; ongoing subsisting AWEB operation (to itself ensure wider public safety) as a result of increasing demographic pressures including the Appeal development. The imperative of these *three different* and inter-related aspects explains the *presence* in this Appeal of representatives of the: WBDC; AWEB; ONR. Their presence evidences the genuine seriousness of, and real concern about, this matter before this Secretary of State (by his Inspector). Indeed, it is common ground that: a) the likelihood of a radiation emergency has been established under the 2019 Regulations; b) the level of harm in the event of a radiation emergency at AWEB has serious consequences; c) the DEPZ is not static and its area evidences the public safety risk from a radiation emergency; d) Emergency planning and response is internationally accepted as a fundamental part of the hierarchy of protection for nuclear safety; e) the Off-site Emergency Plan derives from the 2019 Regulations (preparation and response phase) and the Civil Contingencies Act 2004 (recovery). These circumstances sound in the planning sphere as follows.

THE DEVELOPMENT PLAN & MATERIAL CONSIDERATIONS

4. Unsurprisingly for such an historic feature of this district, the development plan accommodates the AWEB nuclear manufacturing land use, and its *consequences* for public safety, for the proper planning of the district, through development plan policy CS8. CS8 shapes development and highly constrains *permanent residential development* around the AWEB (now pending the Emerging Plan policies in the recent context under SP4). The degree of constraint has resulted to remove the unexpended balance of HSA16 from the Emerging Plan, that allocation not having been before permitted to be further built out by Crest Nicholson.
5. As his current Inspector will of course recognize, CS8 is a policy of the Secretary of State for Communities and Local Government that he required by his then inspector be in the WBDC Core Strategy in 2012. The Secretary of State drew CS8: in the context of, and to reflect the then national policy on hazards and 2001 Regulations; to ensure his requirement to ensure “public safety” *ensured by and around* the AWEB through emergency plans; his appreciation of both the complex modelling of hazards from inputs including changing demographics; and his recognition of the need to enable evolution in hazard safety evaluation to ensure *ongoing* public safety in relation to the hazard risks at the then Secretary of State for Defence’s establishment of AWEB and its function of also ensuring public safety of the realm. Without his policy, the Secretary of State would have found the Plan not sound.
6. Given that context and the stated purpose, he drew the terms of CS 8 to ensure an ongoing high degree of constraint able to respond to changing hazard evaluation. That ability included, by reserving in the terms of his Footnote 60 the definition of the Consultation Zones as a function of a party extrinsic to the Core Strategy. Originally, that function was allocated by the 2001 Regulations to the ONR. Thus, Footnote 60 refers to the ONR as a badge of the then allocation of the definitional function to which Footnote 60 refers.
7. Subsequently, the 2001 Regulations were superseded by the Radiation (Emergency Preparedness and Public Information) Regulations 2019/703 (“the 2019 Regulations”) as a response to Fukushima incident and so too did both the *approach* to hazard assessment evolve to require evaluation of “all” hazards and to an ALARP standard, and the function of determining the relevant area of risk. Thus, the replacement 2019 Regulations allocated the function of defining relevant zones to the local authority instead of to the ONR and tied to a Consequences Report of the site operator, itself based on an undisclosed hazard assessment. In this case, the local authority is, WBDC. Thus, properly understood, by his Footnote 60 to the Secretary of State’s policy CS8, he ensures public safety remains not compromised by AWEB. The CS8 *constraint* bears commensurate *national* weight against certain development.
8. CS8 refers to an emergency plan and requires public safety not be compromised. Public safety would be compromised: a) The OESP is triggered by the occurrence of an incident at AWEB; b) Once the OSEP has

been triggered, “There can be no guarantee of an available rest centre nor alternative accommodation being immediately available in the local just outside the DEPZ for the evacuating population of the Appeal site proposals” (See paragraph 9.29 of PoE of Officer Richardson); c) AWE, as a responsible and mature licensee, would limit operation themselves to ensure public safety in ... circumstances [of the ONR expressing dissatisfaction with the OESP]. This would result in AWE not being able to meet MOD’s requirements in respect of CASD” (see paragraph 4.2 of Person AW RPoE). In its widest sense, public safety would be compromised. CS 8 is breached by the Appeal development for residential accommodation.

9. It is no answer to contend that section 38(5) of the Planning Act 2004 results to require HSA16 to trump CS8. This includes because: a) HSA16 is a *derivative* of the Core Strategy document and is not itself part of a freestanding document; b) the Appellant’s straw grasping can be tested by gauging GS1, its Footnote, and HSA16 against section 38(5). GS1 requires accord by HSA16 development with the development plan that is defined to include the Core Strategy. It would be absurd and unlawful to arbitrarily use 38(5) to override GS1 to arbitrarily suit the case of the Appellant and would render GS1 otiose.
10. Green Infrastructure would also be lost and harmed as a result of the Appeal development. Opportunities – for example, to differently align the roadway to avoid or tree loss – could have been (but were not) explored through pre-application discussions encouraged by the NPPF to ensure sustainable development.
11. The provision of affordable housing falls to be evaluated as a type of permanent residential development that CS8 results to constrain against in the location of the Appeal site. Increased weight in the public interest that might otherwise apply, operates in reverse here under the Secretary of State’s policy.
12. The potential undermining of the subsisting operation of the AWEB to sustain the National nuclear deterrent as a result of the introduction of the Appeal development population bears significantly against the proposal as well as undermining public safety. The economic harm to the District from reduced operation would also be significantly harmful.
13. Material considerations support the refusal of planning permission for the Appeal development also. These mirror the breach of CS8 and the considerations summarized in paragraph 3 above.
14. The evidence of the WBDC and Rule 6 parties shows that the Reasons for Refusal are all made out.
15. The Secretary of State for Local Government and Communities is invited to affirm and apply his Policy CS8 in his determination – via his Inspector as local planning authority here - to refuse planning permission. The Development Plan Policies require refusal of the application for planning permission and material considerations affirm further that refusal.

CHRISTIAAN ZWART