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## Appeal Decision

Hearing Held on 20 August 2024

Site visit made on 19 August 2024

**by Mr Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 23<sup>rd</sup> August 2024**

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**Appeal Ref: APP/W0340/W/24/3342596**

**Benhams Farm, Hollybush Lane, Burghfield Common, Reading,  
West Berkshire RG7 3JS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr J Atkinson of Charlesgate Homes Limited against the decision of West Berkshire Council.
  - The application Ref 23/02105/FULMAJ, dated 6 September 2023, was refused by notice dated 19 January 2024.
  - The development proposed is described as: *Phased application for 9 custom build houses with associated triple garages including new access road from Oakley Drive and relocation of existing double garage to number 7 Oakley Drive to enable new access road.*
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### Decision

1. The appeal is dismissed.

### Main Issues

2. A pre-hearing note was issued before the Hearing opened. This set out four main issues. The fourth main issue related to planning obligations. For ease this has been incorporated into the second main issue. The main issues are:
  - (i) Whether or not the proposal would accord with policies which seek to minimise the potential impact on public safety and emergency services in relation to the Aldermaston Atomic Weapons Establishment (location AWE B) Burghfield, Detailed Emergency Planning Zone (DEPZ) and associated Off-Site Emergency Plan (OSEP); and,
  - (ii) Whether or not the proposed development would represent an efficient use of land given the proposed density and the acceptability or not of the proposal on a greenfield site; and,
  - (iii) The effect of the proposal on drainage and/or flood risk within the locality.

### Reasons

#### *Background*

3. The appeal site is approximately 2.5 hectares in size. It is mainly formed of agricultural land, enclosed on two boundaries by extensive existing established

trees. The rear of the site faces onto privately owned open fields that are not accessible to the general public. The principal view into the site from the public realm is from with Oakley Drive; which is an unadopted road that currently serves as access to numbers 1-7 Oakley Drive. The proposal seeks permission for the erection of 9 custom build houses with associated triple garages, as shown on the submitted drawings.

4. The planning history for the site, and the adjacent Oakley Drive, are briefly provided within the Appellant's Appeal Statement. This refers to Nos 2 and 3 Oakley Drive being built after permission was granted at appeal. It also indicates that Nos 4 to 7 Oakley Drive were allowed on appeal in 2016 for four self-build houses.

#### *Public safety*

5. The main parties agree, within the agreed *Statement of Common Ground* (SOCG), dated 2 and 4 July 2024 respectively, that the appeal site lies within the *Detailed Emergency Planning Zone* (DEPZ) of AWE Burghfield<sup>1</sup>. It is also agreed between them that the site lies in the 'outer zone' of the current WBDC Policy CS8<sup>2</sup>. It is also agreed between the main parties that that the DEPZ has increased in size from when Policy CS8 was adopted in 2012<sup>3</sup>. Lastly, the main parties agree that the *2020 AWE Burghfield Consequences Report* was prepared as required under *The Radiation (Emergency Preparedness and Public Information) Regulation 2019* (REPPIR 2019)<sup>4</sup>.
6. Written submissions have been made by the Atomic Weapons Establishment (AWE plc) on behalf of themselves and the Ministry of Defence (MOD), and the Office for Nuclear Regulation (ONR). Both AWE (including the MOD) and the ONR object to the proposal. They also had representatives provide oral evidence at the Hearing. Amongst other points, their written submissions indicate that the site at AWE B, which is at Burghfield, is a licensed nuclear site where nuclear warheads for the United Kingdom's Continuous at Sea Deterrence (CASD) programme are assembled and maintained. The representations go on to detail that as a result of working with ionising radiation, AWE must meet the requirements of REPPIR; which were originally a 2001 version replaced by the 2019 version.
7. Under REPPIR, the representations detail, West Berkshire Council have a number of responsibilities including determining the DEPZ and developing an *Off-Site Emergency Plan* (OSEP). The purpose of the DEPZ is to define an area where the Council needs to have a plan that details how they, the emergency services and other organisations, would respond in the unlikely event of a radiation emergency arising from an AWE site. The process to define the DEPZ was last completed in January 2023<sup>5</sup>. Whilst the DEPZ, OSEP and the REPPIR 2019 are not 'planning matters' in the traditional sense, they are an important material consideration in this case.
8. Turning to planning policy, Paragraph 101 of the Framework sets out that planning decisions should promote public safety and take into account wider security and defence requirements by recognising and supporting development

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<sup>1</sup> Agreed SOCG, bullet point 13.

<sup>2</sup> Agreed SOCG, bullet point 12.

<sup>3</sup> Agreed SOCG, bullet point 17.

<sup>4</sup> Agreed SOCG, bullet point 16.

<sup>5</sup> See written representation by AWE, dated 14 November 2023

required for operational defence and security purposes, and ensuring operational sites are not affected adversely by the impact of other development proposed in the area.

9. Policy CS8 of the *West Berkshire Core Strategy 2006-2026* (WBCS) sets out that:

*In the interests of public safety, residential development in the inner land use planning consultation zones of AWE Aldermaston and 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.<sup>6</sup>*

10. Following the above text, the Policy sets out in tabular form the criteria for when ONR will be consulted. The Appellant suggests that ONR only needs to be consulted on applications in excess of 200 units as the site sits in the outer zone of the DEPZ (that is around 3-5km). Be that as it may, the table does not prevent or preclude the Local Planning Authority from notifying parties who may have an interest in the proposal. Furthermore, Paragraph 45 of the Framework, sets out that appropriate bodies can be consulted when considering major hazard sites or development around them.
11. Returning to the policy itself, it broadly has two main 'parts' the first relates to the inner land use planning consultation zone. It has not been suggested that the site lies within this zone, and therefore this part of the policy is not directly applicable to the appeal site.
12. The second 'part' of the policy is clear in that all other development in the consultation zones will be considered in consultation with the ONR, having regard to scale, its location, population distribution, the impact on public safety including blue light services, and the emergency off-site plan as well as other planning criteria. At the Hearing, the Appellant suggested that there was a moratorium on new buildings in the DEPZ. However, whilst I acknowledge that the policy does set a high bar, it does not provide a blanket 'ban' on new buildings within the DEPZ. Rather, that for schemes such as the one in this case, there will need to be regard to various factors.
13. Moreover, this is an entirely rationale 'high bar' where detailed consideration needs to be given where there is a 'controlled' addition to the number of people who may be at risk should an adverse event occur at the nearby AWE B Burghfield site. At the same time, I heard from the Council's Emergency Planning Officer at the Hearing, who explained that they have not objected to small developments within the DEPZ such as extensions to existing houses. Whilst this has the potential to increase the 'at risk' population, this in itself is a fluid figure which will fluctuate throughout the day – as people enter and leave the DEPZ for work, school and other activities, or people passing through the

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<sup>6</sup> From policies provided by the Council. Footnotes are contained in the original text, but have been removed from this excerpt to aid reading the policy. I have also spaced between the two 'parts' of the policy; again for ease of reading.

- area – and throughout the year as friends and family visit each other or children move back home from college or university, or different sized households move into existing dwellings in the DEPZ when moving home.
14. At the Hearing, the Appellant contested the base figures used in the Council's formulation of the OSEP. They suggested that the Council had overestimated the numbers. As a result, the Appellant considers that this provides capability within the OSEP to accommodate further residential dwellings. I note the points made. However, there is little to suggest that the figures used by the local authority, which is based upon the Council's data, and in turn which informs the work of the wider group of around 27 organisations that contribute to the process, is fundamentally flawed. Given the ebb and flow of population within the DEPZ at any given time it would appear entirely sensible to have an approximate figure.
15. Moreover, even if the figures is higher than the potential population at the time of an incident occurring, then in practical terms this would mean a greater capability for the support work that may need to take place in the aftermath of what would be an extremely serious, and likely deadly, disaster. I heard that this would likely involve people within the DEPZ having to seek shelter within a very narrow window of around 25 minutes to avoid, for example, a plutonium plume, and then staying inside, under cover for around 48 hours whilst emergency services reacted to the disaster. As indicated by the ONR (the UK's independent nuclear regulator for safety, security and safeguards), the DEPZ and OSEP are all part of the statutory framework to, in essence, protect society by securing safe nuclear operations.
16. I note the Appellant's evidence<sup>7</sup> provided by Dr Pearce, both at the hearing and in writing before. His evidence suggests there being a low probability '*of an accident leading to a significant release of radioactive material to the atmosphere is low. It is argued that this is below 1 in 10,000 years, probably much lower.*' The report goes on to detail that '*the local authority can provide the ONR with "adequate assurance that the proposed development can be accommodated within their existing off-site emergency planning arrangements (or an amended version)" allowing the ONR to approve the development.*'
17. The report also indicates that the appeal site is outside the Urgent Protective Zone (UPAZ), and is summarised by stating that '*There are a number of sensible options to redefine the DEPZ such that the development site would be outside it. This would remove all the REPPIR-19 emergency planning requirements except those associated with severe accidents and outline planning.*'<sup>8</sup>
18. However, even taking into account the above, the ONR, AWE and the MOD maintain their objections to the scheme. As cited in the evidence of AWE/MOD, caselaw<sup>9</sup> makes clear that the REPPIR places the responsibility for defining the DEPZ with the local authority. The increase or reduction in size, or the reshaping of the DEPZ, is not directly a matter for me to determine. In any case, the main parties agree in the SOCG that the site lies within the DEPZ.

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<sup>7</sup> See AWE Burghfield emergency planning implications for a proposed development at Benham's Farm, Hollybush Lane, Burghfield Common, Reading RG7 3JS, dated February 2023, undertaken by Katmal Limited.

<sup>8</sup> Ibid., Page 15 of 25, Paragraph 101.

<sup>9</sup> *Objections on behalf of AWE plc and the Ministry of Defence*, dated July 2024 by Quod, Page 6, paragraphs 2.14 to 2.16 inclusive; including footnote 2, *Crest Nicholson & Ors v WBDC [2021] EWDC 289 (admin)*.

19. The proposal in this case would introduce a further nine households into the DEPZ. These would be substantial-sized dwellings of at least four bedrooms, with triple garages located on generously sized plots. Using the Council's suggested ratio of 2.4 persons per property<sup>10</sup>, the proposal would likely introduce at least 21 further people into the DPEZ. On its face this is a small number. However, the absolute and cumulative impacts cannot be understated. This would knowingly be another nine households who would need to be informed and supported if a disaster scenario happened, and would put further strain on 'blue light services' and other public bodies such as the Council in implementing the OSEP. In this respect, the objections raised by the Emergency Planning Officer at the Council, and by the ONR and AWE/MOD should be afforded significant weight against the proposal.
20. Whilst I fully respect the views of Dr Pearce and his professional experience, ultimately the responsibility for managing and regulating the potential risks from the AWE B site, and responding to emergencies, lies with the local authority and associated bodies such as the ONR, the AWE, and the MOD. On the basis of the evidence before me, I find that the risks to public safety are adverse effects which weigh against the grant of permission in this case.
21. Accordingly, I find that the proposal would conflict with Policy CS8 of the WBCS, which seeks to minimise the potential impact on public safety and emergency services in relation to the Aldermaston Atomic Weapons Establishment (location AWE B) Burghfield. It would also conflict with Paragraph 101 of the Framework in terms of failing to promote public safety.

#### *Land use*

22. The proposal seeks the erection of nine custom build dwellings on a greenfield site located outside, but adjacent to, the settlement boundary. The Appellant has submitted a completed, signed and dated (15 January 2024) unilateral undertaking under s106 of the TCPA, with an obligation that would require the proposed dwellings to only be custom build if permission were granted. This forgoes the need for the site to provide affordable housing in this case. This legal agreement has been taken into account in determining the proposal.
23. Policy CS4 of the WBCS notes that in some cases lower housing densities below 30 units per ha can be acceptable in particularly sensitive locations/non sustainable locations. The Appellant considers that the low density of the appeal scheme in this case [around 3.5 per ha] meets the criteria of the policy, whilst the Council considers that the appeal submission equates to an unacceptably low density and so means a highly inefficient use of land which is considered unacceptable. The Appellant considers it is acceptable given the nature of the area and the type of custom build units required.
24. I saw during my site inspection that the wider area comprises a mixture of dwelling types, with examples of detached, semi-detached and a limited number of short terraces found locally. Moreover, when looking at the submitted drawing titled 'Proposed 9 custom built houses' it is possible to see that both the plot and dwelling sizes proposed would be considerably larger than those on Oakley Drive at Nos 1 to 7, those found on Acorn Gardens, and the dwellings on Bramble Close. In this respect, the density proposed is at odds with the prevailing pattern of development within this area. As such, I do

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<sup>10</sup> As advised at the Hearing.

not find that the proposal makes an efficient use of land as envisaged by Policy CS4 of the WBCS.

25. With regard to the custom build nature of the development, the Council has confirmed that at the current time it is able to demonstrate a five year supply of housing land. My attention has also been drawn to Policies ADDP1 and CS1 of the WBCS, and Policy C1 in the *Housing Site Allocations DPD* (2006-2026) (HSADPD). Put simply, these set out the strategic vision for housing delivery within the area, including a District Settlement Hierarchy. On their face, as the proposal seeks to develop an unallocated greenfield site where there is an adequate housing land supply (insofar as required by the adopted development plan) the proposal would conflict with these policies.
26. However, at the Hearing the Council conceded that there are no relevant development plan policies specifically relating to custom build dwellings within its adopted development plan. Accordingly, Paragraph 11 of the Framework is engaged. I see no reason to disagree with this, and I consider this further in the overall planning balance.
27. I also heard at the Hearing that there is a need to provide custom build plots within the West Berkshire area, as expressed within the number of people on the register seeking such plots. The proposal would provide nine plots towards a register demand of around 500 plots. The Council's Planning Officer considered that the provision of nine plots proposed should be afforded 'medium' weight in favour of the proposal. Conversely, the Appellant considered that the provision of nine custom-build dwellings should be afforded significant weight. I note that, as agreed in the SOCG, some appeal decisions have applied significant planning weight in recent custom build schemes.
28. The Framework recognises at Paragraph 70, that small and medium sites can make an important contribution to meeting the housing requirement of an area and are often built out quickly. It also indicates that to promote the development of a good mix of sites local planning authorities should seek opportunities through policies and decisions to support small sites to come forward for self-build and custom-build housing. In light of this, I afford the provision of nine custom-build dwellings in this case moderate weight in favour of the proposal. That is because although the proposal would provide for nine custom build dwellings, the density they are proposed at would not make an efficient use of land.
29. I therefore find that the proposed development would not represent an efficient use of land given the proposed density. Furthermore, there is little evidence before me which justifies the inefficient use of greenfield site for housing in an area where there is a five year supply of housing land. Accordingly, I find that the proposal would not accord with Policies ADDP1, CS1 and CS4 of the WBCS, and Policy C1 in the HSADPD, which seek the aforesaid aims.

#### *Drainage and flood risk*

30. The appeal site lies within Flood Zone 1. At the application stage, the Appellant did not submit a detailed Flood Risk Assessment (FRA). One was submitted, following the Council's request for one, in December 2023. However, the Council considered that this was too late in the process for it to take it into account before it made its decision on 19 January 2024. Subsequently, it is now evidence before the Hearing, and the Council's Principal Engineer

(Drainage) has provided written and oral evidence (at the Hearing) on this matter. This included raising concerns that there was an absence of baseline data within the FRA, which means that it is not possible to accurately assess the potential flood risk arising from the site or what sustainable urban drainage systems (SUDS) may be required.

31. Paragraph 173 c) of the Framework sets out that when determining planning applications local planning authorities should ensure that flood risk is not increased elsewhere. Development should only be allowed if it can be demonstrated that it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate.
32. Policy CS16 of the WBCS sets out that an FRA will be required for sites of 1ha or more in Flood Zone 1. It goes on to detail that on all development sites, surface water will be managed in a sustainable manner through the implementation of Sustainable Drainage Methods (SuDS) in accordance with best practice and the proposed national standards.
33. The FRA dated 30 November 2023 summarises that *'The development will increase the risk of surface water flooding elsewhere with the increase in impermeable area and therefore, SuDS should be considered at the detailed design stage in accordance with Part H of the building Regs.'* However, this appears to conflict with national policy set out in the Framework; where it should incorporate sustainable drainage systems. Furthermore, the absence of this incorporation at the early design stage, taken together with the lack of supporting evidence and data on SUDS, means that it is not possible to conclude that the site will not result in increased flooding or risk of flooding elsewhere – or indeed the impacts or effects of the proposal on water quality, habitat and amenity.
34. I therefore find that the proposed development would have an adverse effect on drainage and/or flood risk within the locality. Accordingly, the proposal would conflict with Policy CS16 of the WBSC and Paragraph 173 of the Framework, the aims of which I have cited above.

### **Other Matters**

35. Towards the proposed access to the site is Crofters Cottage, which is a Grade II Listed Building. The Council's Conservation Officer identified less than substantial harm to the setting of this listed building given the proposed change in the character of the field to a residential development. However, in weighing the public benefits arising; which include the contribution to housing supply including custom build, the public benefits are considered to outweigh the less than substantial harm in relation to heritage matters.
36. I am mindful of the duty imposed by section 66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*, as amended, in terms of the desire to preserve listed buildings and their settings. In this case, I concur with the Council's Conservation Officer in terms of the proposal resulting in less than substantial harm to the designated heritage asset. In articulating that harm, given it would not directly affect the fabric of the listed building it would be to the low end of less than substantial harm. I also agree that on this matter, the public benefits in this case would outweigh the less than substantial harm. Overall, therefore, this factor weighs neutrally in the planning balance.

37. My attention has been drawn to the emerging development plan for the area. However, given its unadopted status and the need for further assessment under the local plan process I afford this minimal weight in this instance. In any case, the Council has an adopted development plan and it is those policies, and other material considerations, which the proposal needs to be considered against.

### **Planning balance**

38. As noted within the land use section of this decision, Paragraph 11 of the Framework is engaged as there are no relevant development plan policies in respect of custom build dwellings. Paragraph 11 sets out that where there are no relevant development plan policies granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
39. The benefits in this case include the site's sustainable location on the edge of an existing established settlement with schools, shops and other day-to-day services, and public transport nearby. Other benefits include the provision of nine custom build dwellings in an area where there is a demand demonstrated in the register, and economic, environmental and social benefits which can arise from the provision of housing more generally.
40. Conversely, there are a number of adverse impacts in this case. These include the potential impact on public safety due to the site's location within the DPEZ and associated impact on the OSEP. The inefficient use of land, which itself is a greenfield site, in terms of the proposed density and the adverse effect on drainage and/or flooding locally. These adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Accordingly, Paragraph 11 of the Framework does not indicate that permission should be granted in this instance.
41. The proposed development would not accord with the adopted development plan for the area when considered as whole, and there are no material considerations which indicate a decision otherwise than in accordance with it.

### **Conclusion**

42. For the reasons given above, I conclude that the appeal should be dismissed.

*C Parker*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

|              |                                       |
|--------------|---------------------------------------|
| Joe Atkinson | Appellant                             |
| Dr K Pearce  | Emergency Planning Consultant         |
| Ben Atkinson | Director at Charlesgate Homes Limited |

### **FOR THE LOCAL PLANNING AUTHORITY:**

|                    |                                     |
|--------------------|-------------------------------------|
| Michael Butler     | Principal Planning Officer          |
| Carolyn Richardson | Service Manager, Emergency Planning |
| Paul Bacchus       | Principal Engineer, Drainage        |

### **INTERESTED PERSONS:**

|                  |                                               |
|------------------|-----------------------------------------------|
| Eamonn Guilfoyle | Office for Nuclear Regulation (ONR)           |
| Sean Bashford    | QUOD Planning on behalf of AWE/MOD            |
| Margaret Baxter  | Chair of Sulhamstead Parish Council           |
| Ivan Wise        | Parish Councillor, Sulhamstead Parish Council |
| John James       | Local resident                                |