

Approved on 12 January 2024 by: *Mrs Justice Lang*



CLAIM NUMBER: AC-2023-LON-002758

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

AC-2023-LON-002758

APPLICATION FOR PLANNING STATUTORY REVIEW UNDER SECTION
288 OF THE TOWN AND COUNTRY PLANNING ACT 1990

BETWEEN:

AWE PLC

Claimant

and

**THE SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND
COMMUNITIES**

1st Defendant

WEST BERKSHIRE DISTRICT COUNCIL

2nd Defendant

T A FISHER & SONS LIMITED

3rd Defendant

OFFICE FOR NUCLEAR REGULATION

4th Defendant

SECRETARY OF STATE FOR DEFENCE

5th Defendant

CONSENT ORDER

UPON the Claimant's application for statutory review ("the Claim") of a decision of a Planning Inspector appointed by the First Defendant dated 08 August 2023 to grant planning permission under appeal reference APP/W0340/W/22/331226 ("the **Decision**");

AND UPON the Claimant being granted permission to appeal against the Decision by the Order of 2 November by the Honourable Mrs Justice Lang DBE ("the **Order**");

AND UPON the Order joining West Berkshire District Council, T A Fisher and Sons Limited, the Office for Nuclear Regulation and the Secretary of State for Defence as Defendants instead of Interested Parties;

AND UPON the Court being satisfied that it is appropriate to quash the Decision for the reasons set out in the Statement of Reasons;

AND UPON the parties agreeing terms;

IT IS HEREBY ORDERED BY CONSENT THAT

- 1. The Claim is allowed and the Decision is quashed;
- 2. The Third Defendant’s planning application, which was the subject of the Decision, is remitted for reconsideration by the First Defendant.
- 3. The First Defendant shall pay the Claimant’s costs of the claim to date on the standard basis to be subject to detailed assessment by the court if not agreed.
- 4. The hearing of the substantive matter listed on 23-25 January 2024 be vacated.

We consent to the Order in the above terms:

[Redacted signature]

Signed [Redacted]
Pinsent Masons LLP
Solicitors on behalf of the Claimant

[Redacted signature]

Signed [Redacted]
Government Legal Department
Solicitors on behalf of the First Defendant

[Redacted signature]

Signed [Redacted]
Solicitors on behalf of the Second Defendant

[Redacted signature]

Lester Aldridge LLP
Solicitors on behalf of the Third Defendant

[Redacted signature]

Signed [Redacted]
Government Legal Department
Solicitors on behalf of the Fourth Defendant

[Redacted signature]

Signed [Redacted]
Pinsent Masons LLP
Solicitors on behalf of the Fifth Defendant

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STATEMENT OF REASONS

1. These proceedings concern an application brought under section 288 of the Town and Country Planning Act 1990 ("TCPA 1990") by the Claimant for statutory review of the decision of the First Defendant dated 8 August 2023 to allow the Third Defendant's appeal under s.78 TCPA 1990 against the decision of the Second Defendant to refuse planning permission for the erection of 32 dwellings including affordable housing, parking and landscaping on land to the rear of the Hollies, Reading Road, Burghfield Common, Reading RG7 3BH.
2. The claim was brought on the following grounds:

- a. Ground 1: The Planning Inspector failed to understand or take into account the Fourth Defendant's technical evidence/advice as an expert statutory consultee or failed to give legally adequate reasons, for disagreeing with it.
 - b. Ground 2: The Planning Inspector erred in law by misinterpreting policy CS8 and therefore failed to apply the presumption against residential development in the Detailed Emergency Planning Zone around AWE B.
 - c. Ground 3: The Inspector erred in law in respect of the assessment of the adequacy of the Offsite Emergency Plan.
 - d. Ground 4: The Planning Inspector took into account irrelevant considerations and/or failed to take into account relevant considerations or failed to provide proper reasons in his assessment of the impact of the Scheme on AWE and on the public.
3. The First Defendant accepts that the Planning Inspector's reasons for disagreeing with the position of the Fourth Defendant (as statutory consultee) in relation to the off-site emergency plan were not legally adequate.
4. The First Defendant has agreed to his Decision being quashed on Ground 1 as set out in the Claimant's Statement of Facts and Grounds only. As this will necessarily result in the quashing of the Inspector's decision that also deals with the matters that are the subject of the Claimant's other grounds, and the Defendant accepts that a fresh Inspector should be appointed, the Claimant and the First Defendant consider that the differences between them on the other Grounds have effectively become academic. For the avoidance of doubt, the Claimant and the First Defendant agree that the appeal generally, and the approach to the other issues, will need to be considered afresh by the new Inspector and the agreement to this consent order is without prejudice to the Claimant's position that the approach adopted by the Inspector was also unlawful by reason of those other grounds.

5. In the circumstances appeal reference APP/W0340/W/22/331226 shall be remitted to the Planning Inspectorate for complete redetermination by a fresh inspector or the First Defendant.

BY THE COURT