

Case Name: *Crest Nicholson Operations Ltd & Ors v West Berkshire District Council & Ors* [2021] EWHC 289 (Admin) (12 February 2021)

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Commentary:

In this case, the High Court ruled in favour of the Defendant, West Berkshire District Council, and upheld their decision to extend a radiation emergency planning zone, potentially jeopardising the Claimants' plans to build new homes.

The Claimants, Crest Nicholson, Hallam Land and Wilson Enterprises brought a judicial review against the Defendant on grounds that they designated the area around the Burghfield Atomic Weapons Establishment as a 'Detailed Emergency Planning Zone' ("DEPZ") without public disclosure. The site is of strategic importance where nuclear weapons are assembled, maintained and decommissioned. Under a previous regime, the DEPZ was based on a minimum radius of 1,600 metres from the site's centre. However, in March 2020 the Defendant extended the area to a minimum radius of 3,160 metres covering much of the Claimants' 700 hectares of land, which was earmarked for the development of 15,000 homes.

The Radiation (Emergency Preparedness and Public Information) Regulations 2019 ("REPPPIR") came into force in May 2019 as part of an international response to the Fukushima earthquake in 2011 which resulted in the meltdown of three reactors at the Fukushima Daiichi nuclear plant. One of the changes in the regulations is that responsibility for deciding the extent of the DEPZ, where it is proportionate to plan for protective action in the event of radiation emergency, now lies with the relevant local authority. The Claimants contended that the rationale for the newly extended DEPZ on a recommendation by a privately run operator, AWE, was not known.

There are two stages in determining a DEPZ; the first is a hazard evaluation which requires the operator to identify all hazards that could potentially cause a radiation emergency and the second stage involves assessing the consequences of those identified emergencies. Regulation 7 of the REPPPIR requires the operator to produce a Consequences Report which, in addition to other factors, must consider a range of weather conditions as these could affect the extent of impact of any radiation emergency; this was, in part, the rationale for extending the DEPZ. Regulation 21 provides that where a report is made pursuant to Regulation 7, the local authority must make that report available to the public as soon as reasonably practicable after it has been sent to the Regulator, the Office for Nuclear Regulation, save for specified reasons including public or national security.

The Claimants argued that the Consequences Report, at best, offered a partial rationale for the DEPZ and was made public only after the decision to designate the DEPZ and therefore was procedurally improper.

The Court held that the Claimants had failed to properly grapple the true significance in public safety terms of the designation process and to show any understanding of the

national security issues arising from the information which led to the decision. They were entirely motivated by their own private proprietary interests in the development of the site. It held that there was no need to publish the Consequences Report before finalisation of the DEPZ as there was no such requirement in Regulation 21 of the REPPIR. The report was not for the purpose of public consultation on the extent of the DEPZ.

Case summary prepared by Lida Nguyen