



Ministry of Housing,  
Communities &  
Local Government

Mr Pieter Claussen

DLA Piper UK LLP  
Two Chamberlain Square  
Paradise  
Birmingham  
B3 3AX

Our ref: APP/N0410/W/24/3337981

Your ref: PL/22/4145/OA

6 December 2024

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY AFFINIUS CAPITAL LLC  
COURT LANE INDUSTRIAL ESTATE, COURT LANE, IVER, SL0 9HL  
APPLICATION REF: PL/22/4145/OA**

*This decision was made by Minister of State for Housing and Planning, Matthew Pennycook MP, on behalf of the Secretary of State*

1. I am directed by the Secretary of State to say that consideration has been given to the report of Thomas Hatfield BA (Hons) MA MRTPI, who held a public local inquiry between 11 June and 14 June 2024 and 18 June and 19 June 2024 into your client's appeal against the decision of Buckinghamshire Council to refuse outline planning permission with all matters reserved for the demolition of the Court Lane Industrial Estate and the redevelopment of the site to comprise a data centre (Use Class B8 (Data Centre)) of up to 65,000sqm (GEA) (excluding generator yard). The data centre buildings will include ancillary offices, internal technical spaces and technical equipment. The development may also include car and cycle parking; external plant and equipment; hard and soft landscaping; security perimeter fencing; lighting; earthworks; waste and recycling; and for the laying out of the building, routes and open spaces, in accordance with application Ref. PL/22/4145/OA, dated 29 November 2022.
2. On 8 July 2024, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act (TCPA) 1990.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed, and planning permission granted.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. She has decided to allow the appeal and grant planning permission. The Inspector's Report (IR) is attached. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Matters arising since the close of the inquiry**

5. A list of other representations which have been received since the inquiry is at Annex A. The Secretary of State is satisfied that the issues raised do not affect her decision, and no new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. A copy of this letter may be obtained on request to the email address at the foot of the first page of this letter.
6. On 30 July 2024, the Written Ministerial Statement (WMS) 'Building the Homes we Need' (UIN HCWS48) was published. On that same date, the government launched a consultation to reform the National Planning Policy Framework (the Framework). Whilst this primarily relates to housing policy, it contains a section entitled 'building infrastructure to grow the economy' which refers to data centres. The main parties were given an opportunity to make further representations after the close of the Inquiry in relation to these matters (IR8) and the Secretary of State is satisfied that no interests have thereby been prejudiced.

### **Policy and statutory considerations**

7. In reaching her decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act (PCPA) 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case the development plan consists of the South Bucks District Local Plan (LP) adopted March 1999, consolidated September 2007 and February 2010, the South Bucks District Core Strategy Development Plan Document (CS) adopted February 2011, the Buckinghamshire Minerals and Waste Local Plan 2016-2036 (MW) adopted July 2019 and the Ivers Neighbourhood Plan (NP) which became part of the development plan in January 2023. The Secretary of State considers that relevant development plan policies include those set out at IR19 to IR20.
9. Other material considerations which the Secretary of State has taken into account include the Framework and associated planning guidance (the Guidance), and the documents referred to in IR21 and IR23.
10. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

### ***Emerging plan***

11. The emerging plan comprises the Buckinghamshire Local Plan for which Regulation 18 Vision and Objectives consultation took place in 2023. There has been no response to the consultation published by the local planning authority to date, and its website sets out that the consultation responses are under consideration.

12. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. Due to the early stage of plan production, the Secretary of State considers that no weight should be attributed to the emerging plan.

## **Main issues**

### *Green Belt openness and purposes*

13. For the reasons given at IR188 to IR195 and IR268, the Secretary of State agrees with the Inspector that the development would constitute inappropriate development in the Green Belt (IR268), and would result in a loss of openness to the Green Belt and some harm to one of the purposes of including land within the Green Belt (IR195). She agrees with the Inspector that the development would be contrary to Policies CP16 of the CS and GB1 of the LP in this regard (IR195), and gives substantial weight to the harm to the Green Belt (IR268).

14. For the reasons given at IR194 the Secretary of State agrees with the Inspector that as Policy GB1 does not make provision for 'very special circumstances' to outweigh the harm to the Green Belt, it is therefore not fully consistent with the Framework. Like the Inspector she has attached substantial weight to Policy GB1, and has applied the 'very special circumstances' test at paragraphs 152-153 of the Framework. The Secretary of State has addressed this test at paragraph 38 below.

### *Character and appearance*

15. For the reasons given at IR199 to IR208, the Secretary of State agrees with the Inspector's conclusions at IR207 that despite its height and width the visual envelope from which the development would be seen is relatively limited and that any harm to the landscape would be minor, and that any visual harm would be no greater than moderate. The Secretary of State gives moderate weight to landscape harm and visual harm.

16. The Secretary of State agrees with the Inspector at IR208 that as there would be some landscape and visual harm arising from the development it would conflict with policies EP3 of the LP and Policy CP9 of the CS. She further agrees that these policies should carry substantial weight. She also agrees that the development would be contrary to Policy IV3 of the NP.

### *Setting of the listed building*

17. For the reasons given at IR210 to IR224 and IR234, the Secretary of State agrees with the Inspector that the introduction of two large data centre buildings to the east of the listed building would be of a scale that would dwarf it in views across the site and the data centre buildings would become the most prominent within the site, whereas the farmhouse would originally have been the dominant structure, albeit it is now hemmed in by industrial buildings and uses (IR220). She further agrees that the loss of the mostly open skyline above the listed building, and the scale of the data centre buildings, would cause some harm to the setting of the listed building and an appreciation of it as a historic farmhouse, and like the Inspector considers that given the existing situation, this harm would be modest (IR221). The Secretary of State considers that the degree of harm to the listed building would be 'less than substantial' and gives great weight to this harm.

Her conclusion on the heritage balance at paragraph 208 of the Framework is set out at paragraph 37 below.

18. The Secretary of State agrees with the Inspector's conclusion at IR215 that overall, the existing setting has a negative effect on the significance of the listed building and how it is experienced, and the original setting of the Grade II listed Iver Court Farmhouse has now been lost. She agrees with the Inspector at IR216 that the removal of all of the surrounding industrial buildings and uses, the galvanised steel palisade fencing, HGV parking and storage areas would significantly improve the setting of the listed building. The Secretary of State also agrees with the Inspector at IR218 that the recently consented repair and restoration works to Iver Court Farmhouse would represent a significant improvement to the condition of the listed building. She agrees with the Inspector's view at IR219 that there is no indication that the proposed works would be likely to be undertaken were the appeal to be dismissed, and given they go well beyond ordinary repairs, it is not clear that there would be any incentive for the owner to do so. The Secretary of State considers that the significant restoration and repair works to the listed building (IR234) and the improvement to its setting (IR216) collectively carry significant weight.

#### *Other considerations*

#### The need for data centres and the appeal scheme's contribution

19. For the reasons given at IR225 to IR230, the Secretary of State agrees with the Inspector that the site is an optimal site and location for data centre use and there is a clear lack of alternative sites available at present to meet the demand for such data centres in the Slough and Hayes Availability Zones. She agrees with the Inspector that failure to meet this need could have significant negative consequences for the UK digital economy (IR227).
20. The Secretary of State further agrees with the Inspector's assessment that significant weight should be attached to the need for new data centres, and that the proposal would make a significant contribution towards meeting the need for data centres both in the UK and in the Slough Availability Zone (IR230).

#### Reduction in HGV movements

21. For the reasons given at IR232 to IR233, the Secretary of State agrees with the Inspector that the reduction in HGV movements, equating to a reduction of around 98%, is a clear benefit of the appeal proposal, which should carry significant weight (IR233).

#### Previously developed land

22. For the reasons given at IR235 to IR236, the Secretary of State agrees that the re-use of a large area of previously developed land would be a clear benefit of the scheme to which significant weight should be attached.

#### Economic benefits and job creation

23. For the reasons given at IR237 to IR239, the Secretary of State agrees with the Inspector that the level of investment and job creation carries significant weight (IR237). She further agrees that the creation of jobs during the construction phase carries limited weight.

### Ecological benefits

24. The Secretary of State agrees with the Inspector that the ecological benefits carry moderate weight (IR241).

### Other benefits

25. For the reasons given at IR242, the Secretary of State agrees with the Inspector that the enhanced pedestrian links carry moderate weight.

26. The Secretary of State agrees with the Inspector that the provision at least 10% of its energy from decentralised and renewable or low-carbon sources, which is a requirement of Policy CP12 of the CS, and the proposed construction to BREEAM very good standard which is not a policy requirement carries limited weight (IR243).

27. The Secretary of State agrees with the Inspector that the CIL contribution carries limited weight (IR244).

### *Other matters*

28. For the reasons given at IR245, the Secretary of State agrees with the Inspector that a different approach to that undertaken in the Woodlands Appeal is justified.

29. The Secretary of State agrees with the Inspector that The Canal and River Trust's comments relating to the historic tunnel and the effect of drainage arrangements on the Grand Union Canal are capable of being addressed by way of planning conditions (IR246).

30. The Secretary of State agrees with the Inspector that a high quality design could be achieved that would successfully address the scale and mass of the proposed buildings (IR247).

### **Planning conditions**

31. The Secretary of State had regard to the Inspector's analysis at IR261 to IR267, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. She is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 56 of the Framework and that the conditions set out at Annex B should form part of her decision.

### **Planning obligations**

32. The Secretary of State has had regard to the Inspector's analysis at IR248 to IR260, the signed Unilateral Undertaking (UU) dated 26 July 2024, paragraph 57 of the Framework, the Guidance and the Community Infrastructure Levy (CIL) Regulations 2010, as amended. The Secretary of State agrees with the Inspector at IR249 and in accordance with clause 11.3 of the UU the contribution amount should be amended so that the first instalment of the Travel Plan Contribution be increased from £1,000 to £1,350. She also agrees with the Inspector's conclusion at IR251 that the Local Labour, Skills and Employment Strategy is not necessary to make the proposal acceptable in planning terms and therefore clause 11.1 of the UU is applied. For the reasons given at IR252 to IR254 the Secretary of State agrees that the payment of the Council's legal fees is not

necessary to make the development acceptable in planning terms and a separate payment is not justified and clause 11.1 of the UU is applied.

33. Except where stated in paragraph 32 above, the Secretary of State is satisfied that the provisions within the Unilateral Undertaking dated 26 July 2024 comply with Regulation 122 of the CIL Regulations 2010 and the tests at paragraph 57 of the Framework.

### **Planning balance and overall conclusion**

34. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies GB1 and EP3 of the LP, is not in accordance with Policy CP9 and conflicts with the Green Belt aspects of policy CP16 of the CS, and conflicts with Policy IV13 of the NP and is not in accordance with the development plan overall. She has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in line with the development plan.
35. Weighing in favour of the proposal are the need for new data centres, reduction in HGV movements, heritage benefits, re-use of previously developed land, and investment and job creation, which each carry significant weight; ecological benefits and enhanced pedestrian links, which each carry moderate weight; and job creation during construction, CIL contribution and energy benefits, which each carry limited weight.
36. Weighing against the proposal are harm to Green Belt, which carries substantial weight; harm to the listed building, which carries great weight; and landscape harm and visual harm, which carries moderate weight.
37. The Secretary of State has considered paragraph 208 of the Framework. She considers that the public benefits of the proposal outweigh the 'less than substantial' harm to the designated heritage asset and therefore, in her judgement, the Framework's heritage balance is favourable to the proposal.
38. The Secretary of State has considered paragraphs 152-153 of the Framework. She considers that the harm to the Green Belt by reason of inappropriateness, harm to openness in this part of Green Belt, harm to the Green Belt purpose of safeguarding the countryside from encroachment, 'less than substantial' harm to the designated heritage asset, minor harm to the landscape and moderate visual harm is clearly outweighed by other considerations. She therefore, in her judgement, considers that there are very special circumstances to justify this development in the Green Belt, and that the Framework's Green Belt test is favourable to the proposal.
39. Overall, in applying s.38(6) of the PCPA 2004, the Secretary of State considers that despite the conflict with the development plan, the material considerations in this case indicate that permission should be granted.
40. The Secretary of State therefore concludes that the appeal should be allowed, and planning permission granted.

### **Formal decision**

41. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. She hereby allows your client's appeal and subject to the conditions set out in Annex B of this decision letter, grants outline planning permission with all matters reserved for the demolition of the Court Lane Industrial Estate and the redevelopment of the site to comprise a data centre (Use Class B8 (Data Centre)) of up

to 65,000sqm (GEA) (excluding generator yard). The data centre buildings will include ancillary offices, internal technical spaces and technical equipment. The development may also include car and cycle parking; external plant and equipment; hard and soft landscaping; security perimeter fencing; lighting; earthworks; waste and recycling; and for the laying out of the building, routes and open spaces, in accordance with application Ref. PL/22/4145/OA, dated 29 November 2022.

42. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the TCPA 1990.

### **Right to challenge the decision**

43. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the TCPA 1990.

44. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

45. A copy of this letter has been sent to Buckinghamshire Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Laura Webster*  
Decision officer

*This decision was made by Minister of State for Housing and Planning, Matthew Pennycook MP, on behalf of the Secretary of State, and signed on his behalf*

## Annex A Schedule of representations

### General representations

| Party            | Date            |
|------------------|-----------------|
| Joy Morrissey MP | 18 October 2024 |

## **Annex B List of conditions**

- 1) Details of the access, appearance, landscaping, layout and scale (hereinafter called the 'reserved matters') shall be submitted to and approved in writing by the Local Planning Authority before any part of the development is commenced.
- 2) Any application for the approval of the reserved matters shall be made to the Local Planning Authority within three years of the date of this permission.
- 3) The Development shall commence within two years from the date of approval of the last of the reserved matters.
- 4) The reserved matters application(s) shall be substantially in accordance with the following: • Parameter Massing Ref LHR01-GEN-XX-XX-D-A-020004 Rev P05 • Parameter Building Heights Plan Ref LHR01-GEN-XX-XX-D-A-020005 Rev P05 • Parameter Sections Ref LHR01-GEN-XX-ZZ-D-A-040001 Rev P04 • Design Code (April 2023 - prepared by Gensler) • Site Demolition Plan Ref LHR01-GEN-XX-XX-D-A-100001 Rev PO4
- 5) The reserved matters application(s) shall be accompanied by a statement to demonstrate compliance with the parameter plans, demolition plan, and design code referred to in Condition 4.

### **Pre-commencement conditions**

- 6) No development shall take place until all relevant interests in the land, including but not limited to the interests of any mortgagees and chargees, are bound into the Unilateral Undertaking made pursuant to section 106 of the Town and Country Planning Act 1990 and given by (1) BNP Paribas Depositary Services Limited (incorporated in Jersey); and (2) BNP Paribas Depositary Services (Jersey) Limited (incorporated in Jersey) to Buckinghamshire Council, dated 26 July 2024.
- 7) No development shall take place until a Construction Environmental Management Plan ('CEMP') has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following:
  - a) Risk assessment of potentially damaging construction activities;
  - b) Identification of "biodiversity protection zones";
  - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
  - d) The location and timing of sensitive works to avoid harm to biodiversity features;
  - e) The times during construction when specialist ecologists need to be present on site to oversee works;
  - f) The role and responsibilities on site of an ecological clerk of works or similarly competent person; and
  - g) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period for the development.

- 8) No development shall take place until a Landscape and Ecological Management Plan ('LEMP'), including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas has been submitted to, and approved in writing by, the Local Planning Authority. The LEMP shall include the following:
- a) Description and evaluation of features to be managed;
  - b) Constraints on site that might influence management;
  - c) Aims and objectives of management which will include the provision of biodiversity net gain within the site as shown within the Biodiversity Net Gain Plan;
  - d) Prescriptions for management actions;
  - e) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period);
  - f) Details of the body or organisation responsible for implementation of the plan; and
  - g) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall be for no less than 30 years. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development delivers the fully functioning biodiversity objectives of the originally approved scheme.

The LEMP shall be implemented prior to the first occupation of the development and shall thereafter be carried out as approved.

- 9) No development shall take place until a revised Biodiversity Net Gain ('BNG') Plan and associated Biodiversity Metric demonstrating that BNG can be achieved on site, has been submitted to, and approved in writing by the Local Planning Authority. The BNG Plan should adhere to best practice and include:
- a) Introduction to the site, project, planning status, certainty of design and assumptions made, the aims and scope of the study and relevant policy and legislation;
  - b) Methods taken at each stage; desk study, approach to BNG and evidence of technical competence;
  - c) Baseline conditions of the site including; important ecological features and their influence on deliverability of BNG, baseline metric calculations and justifying evidence, and a baseline habitat plan that clearly shows each habitat type and the areas in hectares;
  - d) Justification of how each of the BNG Good Practice Principles has been applied;
  - e) A proposed habitat plan and details of what will be created. The plan should clearly show what existing habitat is being retained and what new habitat will be created. It should be easy to identify the different habitat types and show the areas in hectares of each habitat or habitat parcel;
  - f) A Biodiversity Metric spreadsheet, submitted in excel form that can be cross referenced with the appropriate plans;

- g) An Implementation Plan including a timetable for implementation; and
- h) A BNG Management and Monitoring Plan.

The BNG plan shall be implemented in accordance with the approved Implementation Plan and maintained in accordance with the approved BNG Management and Monitoring Plan for at least 30 years.

- 10) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the Local Planning Authority. The scheme for the protection of the retained trees shall be carried out as approved.

Protective fencing detailed in the arboricultural method statement shall be erected to protect existing trees and hedgerows during construction and shall conform to British Standard 5837 (or in an equivalent British Standard if replaced). The approved fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made.

[In this condition “retained tree” means an existing tree which is to be retained in accordance with the approved plans and particulars.]

- 11) No development shall take place until a Construction Management Plan (‘CMP’) has been submitted to and approved in writing by the Local Planning Authority. The CMP shall include:

- a) An indication of the construction programme;
- b) The accessing and routing of construction vehicles;
- c) Number of HGV movements (with an agreed daily maximum);
- d) The parking of vehicles of site operatives and visitors;
- e) Loading and unloading of plant and materials;
- f) Erection and maintenance of security measures;
- g) Storage of plant and materials used in constructing the development; and
- h) Wheel washing facilities.

The approved CMP shall be adhered to throughout the construction period for the development.

- 12) No development shall take place until an Air Quality Dust Management Plan (‘AQDMP’) for the construction phase has been submitted to and approved in writing by the Local Planning Authority. The AQDMP must be informed by a risk assessment that considers sensitive receptors in the surrounding area. The AQDMP shall include an inventory and timetable of dust generating activities during the construction period and dust and emission control measures including on-road and off-road construction

traffic. The approved AQDMP shall be adhered to throughout the construction period for the development.

- 13) No development shall take place until a Demolition and Construction Risk Assessment and Method Statement in relation to the Grand Union Canal has been submitted to and approved in writing by the Local Planning Authority.

This shall demonstrate that the proposed works can be safely carried out without adversely affecting the stability of the land (with particular regard to the cutting slope of the Slough Arm, Grand Union Canal). The Method Statement shall include full details of the demolition and construction methodology within 20 metres of the northern edge of the site including cross sections to the Canal, details of any reprofiling of land levels, retaining structures, investigations of any existing features such as tunnels/culverts, proposed structural loadings and foundation designs and any necessary mitigation measures.

The development shall thereafter be carried out in accordance with the approved details.

- 14) No development shall take place until a scheme to deal with the risks associated with contamination at the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
- a) An options appraisal and Remediation Strategy based on the site investigation results and the detailed risk assessment reported in the Ground Investigation Report prepared by Hydrock (Ref. 22573-HYD-XX-XX-GE-RP-1000 PO4), giving full details of the remediation measures required and how they are to be undertaken, including an implementation timetable; and
  - b) A Verification Plan providing details of the data that will be collected in order to demonstrate that the works set out in a) are complete and identifying any requirements for longer term monitoring of pollutant linkages, maintenance, and arrangements for contingency action.

The approved scheme shall be implemented in accordance with the approved implementation timetable and Verification Plan.

*No development other than demolition*

- 15) No development (excluding any demolition, earthworks or vegetation clearance) shall take place until historical recording of the Canalside Tunnel at the base of the cutting has been undertaken and submitted to and approved in writing by the Local Planning Authority. The historical recording shall include measures to close the Canalside Tunnel, install a historic information plaque, and exposure of the cart track (if present). The development shall be carried out in accordance with the approved measures, which shall thereafter be retained.
- 16) No development (excluding any demolition, earthworks or vegetation clearance) shall take place until a Bird Hazard Management Plan ('BHMP') has been submitted to and approved in writing by the Local Planning Authority. The submitted plan shall include details of the management of any flat/shallow pitched or green roofs on buildings within the site which may be attractive to nesting, roosting and loafing birds. The BHMP shall be implemented as approved and shall remain in force for the lifetime of the development.

17) No development (excluding any demolition, earthworks or vegetation clearance) shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:

- a) A water quality assessment demonstrating that the total pollution mitigation index equals or exceeds the pollution hazard index;
- b) Priority to be given to above ground SuDS components;
- c) Details of existing and proposed discharge rates and volumes;
- d) Flootation calculations based on groundwater levels encountered during winter monitoring (November-March) or based on the worst case scenario of groundwater at surface level;
- e) Permeable paving, geo cellular storage and filter strips;
- f) Full construction details of all SuDS and drainage components;
- g) Detailed drainage layout with pipe numbers, gradients and pipe sizes complete, together with storage volumes of all SuDS components;
- h) Calculations to demonstrate that the proposed drainage system can contain up to the 1 in 30 storm event without flooding. Any onsite flooding between the 1 in 30 and the 1 in 100 plus climate change storm event should be safely contained on site;
- i) Details of proposed overland flood flow routes in the event of system exceedance or failure, demonstrating that such flows can be appropriately managed on site without increasing flood risk to occupants, or to adjacent or downstream sites;
- j) Mitigation measures such as oil interceptors; and
- k) Mitigation measures to protect the water quality of the canal.

The approved surface water drainage scheme shall be implemented prior to the first occupation of the development.

18) No development shall take place (excluding any demolition, earthworks or vegetation clearance) until a whole life carbon emission assessment has been submitted to and approved in writing by the Local Planning Authority. The whole life carbon emission assessment shall demonstrate:

- a) The embodied carbon footprint of the proposed development together with measures to reduce these where practical and feasible; and
- b) The operational carbon footprint of the development over a 30-year period and the measures taken to reduce carbon emissions

The development shall be carried out in accordance with these approved measures.

Prior to development above ground level conditions

19) No development shall take place above ground level until a Secure by Design Statement has been submitted to and approved in writing by the Local Planning Authority. This shall include details of public realm CCTV, access controls, and other security measures. The approved measures shall be implemented prior to the first occupation of the development and shall thereafter be retained.

Pre-occupation conditions

- 20) Prior to the first occupation of the development, the works to Iver Farmhouse as approved under application ref: PL/22/4398/HB shall have been carried out and completed.
- 21) Prior to the first occupation of the development, details of the provision of new bird and bat boxes or roosting features shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be installed prior to the first occupation of the development and shall thereafter be retained.
- 22) Prior to the first occupation of the development, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall set out measures to reduce single occupancy journeys by the private car and indicate how such measures will be implemented and controlled. The Travel Plan shall include targets for modal shift in the forthcoming year and up to 5 years. The approved Travel Plan shall be implemented prior to first occupation and subject to annual review thereafter. For the avoidance of doubt the Travel Plan will require the appointment of a Travel Plan Co-ordinator.
- 23) Prior to the first occupation of the development, a verification report that demonstrates the effectiveness of the remediation carried out under Condition 14 shall be submitted to and approved in writing by the Local Planning Authority. The approved monitoring and maintenance programme shall be implemented prior to first occupation.
- 24) Prior to the first occupation of the development, a statement shall be submitted to and approved in writing by the Local Planning Authority that either:
- a) Confirms that foul water capacity exists off site to serve the development; or
  - b) Confirms all foul water network upgrades required to accommodate the additional flows from the development have been completed; or
  - c) Includes an Infrastructure Phasing Plan to allow the development to be occupied. Where such a plan is approved, no occupation of the development shall take place other than in accordance with it.
- 25) Prior to the first occupation of the development, a scheme for the resurfacing and reinstatement of Footpath IVE/16/5 shall be submitted to and approved in writing by the Local Planning Authority. The footpath shall thereafter be resurfaced and upgraded in accordance with the approved details within 6 months of first occupation of the development.
- 26) Prior to the first occupation of the development, details of a pedestrian crossing on Thorney Lane South and a pedestrian footway connecting to Court Lane, in accordance with the principle shown on drawing 22573-HYD-XX-XX-DR-TP-0001 Rev P01.01, shall be submitted to and approved in writing by the Local Planning Authority. The pedestrian crossing and footway shall be laid out and constructed in accordance with the approved details prior to first occupation of the development.
- 27) Prior to the first occupation of the development, a whole-life maintenance plan for the site surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. This plan shall include a maintenance schedule for each drainage/SuDS component with details of who is to be responsible for carrying

out the maintenance, and as-built drawings and/or photographic evidence of the drainage scheme carried out by a suitably qualified person. The plan shall thereafter be implemented as approved.

- 28) Prior to the first occupation of the development, details of the emissions performance of the proposed emergency generators shall be submitted to and approved in writing by the Local Planning Authority. This shall include technical details for the proposed generators, confirming the number, size, location and height of generator flues, and specifications demonstrating that by using Selective Catalytic Reduction (or other suitable technology) the generators will achieve the same emission levels or cleaner than that specified in the Appendix B of the submitted Air Quality Assessment (Hydrock, October 2022). The emergency generators at the site shall thereafter accord with the approved details.

#### Other conditions

- 29) The details submitted with any reserved matters application(s) shall include a scheme that demonstrates how the development will secure at least 10% of its regulated energy from decentralised and renewable or low carbon sources. The approved scheme shall thereafter be implemented and maintained for the lifetime of the development.
- 30) The details submitted with any reserved matters application(s) shall include details of canalside elevations, cross sections to the canal and shading assessments, where relevant.
- 31) No building or structure of the development hereby permitted shall exceed 67.95m AOD.
- 32) No external lighting shall be installed until a Lighting Design Strategy for Biodiversity has been submitted to and approved in writing by the Local Planning Authority. This shall:
- a) Identify those areas/features on site that are particularly sensitive for bats including breeding sites, resting places, and important routes used to access key areas of their territory; and
  - b) Demonstrate through the provision of appropriate lighting contour plans and technical specifications that the proposed external lighting will not disturb or prevent bats from using their territory or accessing breeding sites and resting places.

All external lighting shall be installed in accordance with the approved strategy and shall thereafter be retained as such.

- 33) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the relevant phase of development is resumed or continued.

- 34) Within 12 months of the first occupation of each building, a BREEAM certificate confirming that the relevant building achieves an 'Very Good' BREEAM rating shall be submitted to and approved in writing by the Local Planning Authority.
- 35) Routine testing of the generators serving the development shall only take place between the hours of 07:30 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays.
- 36) The emergency backup generators shall not exceed 88 generators in number, or the emission level of 0.069 tonnes of Total PM per year.
- 37) The development shall be used as a Data Centre and for no other purpose including any other purpose in Class B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.



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# **Report to the Secretary of State for Housing, Communities and Local Government**

**by Thomas Hatfield BA (Hons) MA MRTPI**

**Inspector appointed by the Secretary of State**

**Date 3 October 2024**

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**TOWN AND COUNTRY PLANNING ACT 1990**

**BUCKINGHAMSHIRE COUNCIL**

**APPEAL BY AFFINIUS CAPITAL LLC**

Inquiry Held on 11-14 June and 18-19 June 2024

Court Lane Industrial Estate, Court Lane, Iver, SL0 9HL

File Ref: APP/N0410/W/24/3337981

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## **Appendices**

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## **GLOSSARY**

|        |                                                                 |
|--------|-----------------------------------------------------------------|
| AOD    | Above Ordnance Datum                                            |
| AQDMP  | Air Quality Dust Management Plan                                |
| BNG    | Biodiversity Net Gain                                           |
| BREEAM | Building Research Establishment Environmental Assessment Method |
| CD     | Core Document                                                   |
| CIL    | Community Infrastructure Levy                                   |
| FTE    | Full-time Equivalent                                            |
| GEA    | Gross External Area                                             |
| Ha     | Hectares                                                        |
| HGV    | Heavy Goods Vehicle                                             |
| LCA    | Landscape Character Area                                        |
| LVIA   | Landscape and Visual Impact Assessment                          |
| MW     | Megawatt                                                        |
| NCA    | National Character Area                                         |
| PPG    | Planning Practice Guidance                                      |
| PPG2   | Planning Policy Guidance 2: Green Belts                         |
| PRoW   | Public Right of Way                                             |
| S106   | Section 106 of the Town and Country Planning Act 1990           |
| SuDS   | Sustainable Drainage Systems                                    |
| TRICS  | Trip Rate Information Computer System                           |
| UU     | Unilateral Undertaking                                          |
| WMS    | Written Ministerial Statement                                   |

**File Ref: APP/N0410/W/24/3337981**

**Court Lane Industrial Estate, Court Lane, Iver, SL0 9HL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Affinius Capital LLC against the decision of Buckinghamshire Council.
- The application Ref PL/22/4145/OA, dated 29 November 2022, was refused by notice dated 17 October 2023.
- The development proposed is described as *"outline planning application with all matters reserved for the demolition of the Court Lane Industrial Estate and the redevelopment of the site to comprise a data centre (Use Class B8 (Data Centre)) of up to 65,000sqm (GEA) (excluding generator yard). The data centre buildings will include ancillary offices, internal technical spaces and technical equipment. The development may also include car and cycle parking; external plant and equipment; hard and soft landscaping; security perimeter fencing; lighting; earthworks; waste and recycling; and for the laying out of the building, routes and open spaces"*.

**Summary of Recommendation: That planning permission for the development be granted subject to conditions.**

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**Procedural Matters**

1. The appeal is in outline with all matters reserved for future consideration. However, parameter plans, a design code, and a demolition plan have been submitted that are intended to guide and set the parameters for the submission of reserved matters. These are as follows:
  - Parameter Massing - Ref LHR01-GEN-XX-XX-D-A-020004 Rev P05
  - Parameter Building Heights Plan - Ref LHR01-GEN-XX-XX-D-A-020005 Rev P05
  - Parameter Sections - Ref LHR01-GEN-XX-ZZ-D-A-040001 Rev P04
  - Site Demolition Plan - Ref LHR01-GEN-XX-XX-D-A-100001 Rev P04
  - Design Code (April 2023)
2. Adherence to the principles set out in the above plans and the design code is capable of being secured by condition. All other submitted plans are treated in this report as being for illustrative purposes only.
3. A screening opinion was issued by the Council on 17 August 2023. This advises that the development would be unlikely to have any significant environmental effects and would therefore not be Environmental Impact Assessment development. A further screening was undertaken by the Planning Inspectorate (on behalf of the Secretary of State) and reached the same conclusion.
4. The appeal was recovered for the Secretary of State's determination after the close of the Inquiry. The reason given for this is that the proposal is for a significant development in the Green Belt, as was confirmed in a letter to the parties dated 8 July 2024.
5. The description of development given above omits some of the text from the description provided on the planning application form. The omitted text simply states *"(each phase being an independent act of development)"*, which is

potentially confusing as the appeal proposal appears to be a single cohesive development and no phasing plan is proposed. This deletion was agreed by both the Council and the Appellant at the Inquiry.

6. My attention has been drawn to a recent dismissed appeal decision<sup>1</sup> (CD5.2) at Woodlands Park Landfill Site, Land South of Iver Road, Iver that was recovered for determination by the Secretary of State. That proposal also related to a proposed data centre in the Green Belt, in the same Council area as the current appeal. Given the similarities between the proposals I have considered that Inspector's and the Secretary of State's findings carefully in reaching my decision.
7. I have received a signed and dated Unilateral Undertaking made under s106 of the Town and Country Planning Act 1990. This covers the following matters: payments towards air quality mitigation and monitoring of the Travel Plan, and provisions relating to a Local Labour, Skills and Employment Strategy and Management Plan. I assess the obligation's compliance with the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the National Planning Policy Framework ('the Framework') later in this report.
8. Following the close of the Inquiry, the Government launched a consultation on proposed changes to the Framework. This closed on 24 September 2024. A number of the proposed changes are relevant to this appeal, including those relating to both Green Belt policy and data centres. A Written Ministerial Statement ('WMS') entitled 'Building the homes we need' was also made on 30 July 2024, after the Inquiry had closed. Whilst this primarily relates to housing policy, it contains a section entitled 'building infrastructure to grow the economy' which refers to data centres. The implications of both the WMS and the proposed changes to the Framework are considered later in this report. The Council and the Appellant were given the opportunity to make written submissions on both of these documents.
9. The Council's Decision Notice identified air quality as a reason for refusal "*in the absence of [a] satisfactory legal agreement to secure a financial contribution towards mitigation measures*". However, the submitted Unilateral Undertaking would provide a financial contribution to address this matter. The Council accepts that this contribution would resolve its concerns with regard to air quality, and I have therefore determined the appeal on that basis. Accordingly, the development would not conflict with Policy CP13 of the South Bucks Core Strategy (2011) or Policy IV7 of the Ivers Neighbourhood Plan (2023), which are referred to in the Decision Notice.

## **The Site and Surroundings**

10. The appeal site is around 5.7 ha in size and is currently used as an industrial estate. It is located between the Grand Union Canal Slough Arm to the north, the M25 motorway to the west, and the Iver North Water Treatment Works to the south. It contains a significant number of industrial buildings, most of which are single storey in height, and large areas of hardstanding that are used for HGV parking, open storage, and car parking. Overall, the site has an industrialised appearance and there is little landscaping or planting within it. Access is taken

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<sup>1</sup> Ref APP/N0410/W/22/3307420

from Court Lane, which leads to Thorney Lane South via an underpass beneath the M25.

11. The Grade II listed Iver Court Farmhouse is located within the western part of the site. This is a late 18<sup>th</sup> century former farmhouse which originally formed part of an important farmstead in the manor of Iver. Historically, the farmhouse was flanked to its north and south by traditional barns, which were demolished to facilitate the construction of the M25. Its original agricultural setting has been eroded over time and it is now largely surrounded by industrial uses.
12. The site falls within the designated Green Belt and lies within the Colne Valley Regional Park. The countryside to the north east and east of the site is characterised by woodland, the River Colne and its tributaries, and several lakes. This land is crossed by footpaths and is well used for recreation by the surrounding communities. There is an existing public right of way ('PRoW') to the north of the site along the towpath adjacent to the canal. Farlows Lake, a popular day fishing lake, is located a short distance to the north east.
13. The site is located near the Buckinghamshire settlements of Iver (to the north west) and Richings Park (to the south west). The Ridgeway Trading Estate is located to the west on the opposite side of the M25 motorway. Slough is located beyond these settlements to the west, and the edge of London is located to the east.

## **The Proposal**

14. The proposal is for a hyperscale data centre of up to 65,000 square metres (GEA). Whilst the appeal is in outline with all matters reserved, the parameter plans (listed at para 1, above) indicate the scale and layout of the development. These plans show 2 large data centre buildings to the east of the listed building, that would be up to 18 metres and 30 metres in height, respectively. In addition, 2 smaller ancillary buildings are shown to the south of the listed building. The submitted demolition plan also shows that, apart from the listed building, all of the existing buildings on site would be demolished.
15. A design code has also been prepared for the site that builds upon the principles established by the parameter plans. This indicates that the massing of the development would be stepped away from the listed building, and that access and circulation roads, car parking, cycle parking, hard and soft landscaping would be provided. Both the Council and Appellant agree that a condition should be imposed requiring the reserved matters application(s) to be substantially in accordance with the parameter plans, demolition plan, and design code.

## **Planning History**

16. Listed building consent<sup>2</sup> was granted in November 2023 for a number of repair and restoration works to Iver Court Farmhouse. These works include the removal of a number of unsympathetic modern additions and finishes, the reinstatement of original features (including period doors, windows, and detailing), and a number of internal and external repairs.

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<sup>2</sup> CD7.2 (Ref PL/22/4398/HB)

17. In addition, a number of planning applications have been sought in relation to the existing employment uses on the site. However, given that these applications were for very different scales and forms of development, they are of limited relevance to the determination of this appeal.

## **Planning Policies and Guidance**

### *The development plan*

18. The development plan for the area comprises the South Bucks District Local Plan (adopted March 1999, consolidated September 2007 and February 2010), the South Bucks District Core Strategy Development Plan Document (adopted February 2011), the Buckinghamshire Minerals and Waste Local Plan 2016-2036 (adopted July 2019) and the Ivers Neighbourhood Plan, which became part of the development plan in 2023.

19. The development plan policies referenced in the Council's Decision Notice were:

- Policy GB1 of the South Bucks District Local Plan – which sets out the approach to the control of development within the Green Belt
- Policy EP3 of the South Bucks District Local Plan – covers the acceptability of development in terms of use, design, and layout
- Policy CP8 of the South Bucks District Core Strategy – relates to the protection of the built and historic environment
- Policy CP9 of the South Bucks District Core Strategy – sets out the approach to protecting the landscape and the natural environment
- Policy CP13 of the South Bucks District Core Strategy – sets out the approach to managing environmental resources, including air quality
- Policy CP16 of the South Bucks District Core Strategy – which identifies the appeal site as an Opportunity Area for appropriate employment generating development, subject to a number of policy criteria
- Policy IV7 of the Ivers Neighbourhood Plan - promotes improvements to air quality throughout the plan area
- Policy IV13 of the Ivers Neighbourhood Plan - seeks to ensure that development makes a positive contribution to the Colne Valley Regional Park in line with its objectives

20. In addition, the following policies were referred to in the evidence given at the Inquiry:

- Policy GB4 of the South Bucks District Local Plan - which sets out the approach to controlling employment development in the Green Belt
- Policy EP4 of the South Bucks District Local Plan - expects development proposals to incorporate appropriate hard and soft landscaping
- Policy EP6 of the South Bucks District Local Plan - requires development to be designed to reduce opportunities for crime

- Policy EP17 of the South Bucks District Local Plan – seeks to prevent development from interfering with the safe movement of air traffic
- Policy TR5 of the South Bucks District Local Plan – sets criteria for proposals that involve a new or altered access onto the highway
- Policy TR7 of the South Bucks District Local Plan - requires development to comply with the relevant parking standards
- Policy CP6 of the South Bucks District Core Strategy – requires that new development provides for necessary infrastructure needs arising from it
- Policy CP7 of the South Bucks District Core Strategy – notes that the adverse impacts associated with HGV movements in and around Iver Village and Richings Park will be addressed through land use changes
- Policy CP10 of the South Bucks District Core Strategy - seeks to retain important employment sites within employment use
- Policy CP12 of the South Bucks District Core Strategy – promotes the energy efficiency of new development and the use of renewable and non-carbon sources
- Policy 1 of the Buckinghamshire Minerals and Waste Local Plan – seeks to safeguard mineral resources
- Policy IV6 of the Ivers Neighbourhood Plan – relates to development proposals within or adjacent to the Active Travel Network (which includes the canal towpath next to the site)
- Policy IV8 of the Ivers Neighbourhood Plan - requires that any proposal for strategic development in the Green Belt contribute to delivering improvements to highway infrastructure
- Policy IV9 of the Ivers Neighbourhood Plan – supports proposals that will lead to a significant reduction in the number of HGV movements to and from existing key sites
- Policy IV14 of the Ivers Neighbourhood Plan – requires development to be 'zero carbon ready' by design

21. Other relevant local documents that do not form part of the development plan:

- Major Developed Sites in the Green Belt - South Bucks Core Strategy Background Paper (March 2010)
- The Buckinghamshire Green Belt Assessment Report: Methodology and Assessment of General Areas (March 2016)
- Chiltern and South Bucks Stage 2 Green Belt Assessment – Strategic Role of the Metropolitan Green Belt in Chiltern and South Bucks (March 2018)
- South Bucks Landscape Character Assessment (October 2011)
- Colne Valley Landscape Character Assessment (August 2017)
- South Bucks Employment Site Appraisals (April 2013)

- South Bucks Local Development Framework Transport Paper - Iver & Richings Park (March 2010)
22. In terms of national planning policy and guidance, the Framework and the Planning Practice Guidance ('PPG') are of relevance to this recommendation.
23. A number of other national policy documents and guidance were referred to by the parties. These include:
- Community Infrastructure Levy Regulations 2010
  - Historic England Advice Note 4 - Tall Buildings (March 2022)
  - Historic England Advice Note 12 - Statements of Heritage Significance: Analysing Significance in Heritage Assets (October 2019)
  - Historic Environment Good Practice Advice in Planning Note 2 - Managing Significance in Decision-Taking in the Historic Environment (Historic England, March 2015)
  - Historic Environment Good Practice Advice in Planning Note 3 - The Setting of Heritage Assets (Historic England, December 2017)
  - Conservation Principles, Policies and Guidance (Historic England, 2008)
  - Building in Context: New Development in Historic Areas (English Heritage & CABI, 2001)
  - National Model Design Code (January 2021)
  - Landscape Institute Technical Guidance Note 06/19: Visual Representation of Development Proposals (September 2019)
  - National Character Area Profile: 115 Thames Valley (NE379) (Natural England, November 2012)
  - National Data Strategy (December 2020)
  - Build Back Better – Our Plan for Growth (March 2021)
  - Government Response to the Consultation on the National Data Strategy (May 2021)
  - Data Centres and Sustainability (May 2021)
  - Digital Trade Objectives Policy Paper (September 2021)
  - Data: A New Direction – Consultation Document (September 2021) & Data, a New Direction – Government Response to Consultation (June 2022)
  - UK Digital Strategy (June 2022)
  - Data Storage and Processing Infrastructure Security and Resilience Call for Views (July 2022)
  - National Cyber Strategy (December 2022)

- Protecting and Enhancing the Security and Resilience of UK Data Infrastructure Consultation (December 2023)

### **Matters Agreed Between the Appellant and the Council**

24. A Statement of Common Ground was signed by the parties prior to the Inquiry and includes the following areas of agreement:

#### *Green Belt*

- The development would constitute inappropriate development in the Green Belt in the terms of paragraph 152 of the Framework.
- In accordance with paragraph 153 of the Framework substantial weight should be given to any harm to the Green Belt.
- The development would have a greater impact on the openness of the Green Belt than the existing development on the site.
- The development would have a greater impact on the spatial openness of the Green Belt than the existing development on the site.
- The development would not result in conflict with Green Belt purposes a), d) or e) as set out at paragraph 143 of the Framework.
- The site constitutes previously developed land as defined in Annex 2 of the Framework.

#### *Landscape and visual impact*

- The methodology used in the submitted Landscape and Visual Impact Assessment ('LVIA') is acceptable.
- The key viewpoints of the site have been assessed in the submitted LVIA.
- The existing site with its current uses has a localised and limited adverse effect upon visual amenity in the surrounding area.
- The site lies within the Colne Valley Regional Park and alongside the Grand Union Canal.
- The existing site has an adverse effect upon the landscape character of this part of the Colne Valley Regional Park due to its industrial use.
- The LVIA demonstrates that views towards the site are screened and/or filtered from several publicly accessible viewpoints.
- The modelling of the site conducted by the Appellant is correct.
- The Appellant's assessment of the baseline character of the site is correct, in particular:
  - the site has been established as an industrialised site since the 1980s;
  - intrusive features in the existing landscape are the platform access vehicles stored at the site (platforms raised above the skyline) and

the digital advertising board facing southbound/anti-clockwise traffic on the M25;

- The character of the site and its visual amenity experience is affected by other urbanising influences which include the M25 motorway, overhead powerlines, and the Iver North Water Treatment Works;
- The site is surrounded by the River Colne Valley (lakes and woodlands from restored gravel workings) and the undulating agricultural landscapes along slightly higher ground surrounding Iver and Richings Park with regard to the Colne Valley; and
- Trees and local topography provide significant screening of settlement edges, the M25 motorway, and some of the more discrete industrial sites.

### *Heritage*

- The significance of the listed building lies principally in its architectural form.
- The condition and appearance of some of the existing buildings and uses on the site make a negative contribution to the significance of the listed building.
- The methodology chapter adopted in Significance Statements submitted as part of the application and the listed building consent application is correct.
- The architectural interest is derived from the design, construction, craftsmanship and surviving decoration of the building which represent historic construction methods and techniques that help to form an understanding of the historic built environment of the local area in the late 18<sup>th</sup> century.
- The historic interest of the listed building is derived from it comprising the nucleus of one of the tenant farmsteads within a manorial estate based around Iver. Its existence as the only surviving element of that farmstead provides a physical record of the past lives and events in the area.
- The heritage works secured by application Ref PL/22/4398/HB offer some benefit in the context of the data centre application.

### *Deliverability*

- The proposed development has a 140MW grid connection reserved. Power to the site is expected to be delivered from the proposed Uxbridge Moor National Grid substation.

### *Ecology*

- The development would result in some Biodiversity Net Gain.
- Subject to appropriate and necessary conditions there is no objection to the development on ecological grounds.

### *Highways*

- The development would result in a reduction in vehicle movements compared to those associated with the current uses on the site, including a significant reduction in HGV movements.
- The development would not lead to an intensification of the use of the Court Lane/Thorney Lane South junction and this junction is considered to be sufficient to serve the site.
- Subject to appropriate and necessary conditions and obligations there is no objection to the development on highways grounds.
- Policy CP16 of the South Bucks District Core Strategy references HGV movements and does not consider other vehicle movements.
- The existing use of the site has the potential to generate around 116 HGV movements to and from the site per day based on a TRICS assessment.

### *Flood risk and drainage*

- The site lies within Flood Zone 1.
- There is an area of critical drainage within the site.
- Areas of the site are at low to high risk of surface water flooding.
- The site is at risk of groundwater flooding.
- Subject to appropriate and necessary conditions, the development would not result in unacceptable harm in respect of flood risk or surface water drainage.

### *Contaminated land*

- Subject to appropriate and necessary conditions, the impact of the development on contaminated land can be appropriately mitigated.

### *Air quality*

- The site lies within an Air Quality Management Area.
- The proposed diesel backup generators would result in a deterioration of existing air quality conditions.
- The terms of the Unilateral Undertaking are required to mitigate the impact of the development on air quality.

### *Energy and sustainability*

- Subject to appropriate and necessary conditions and through the submission of reserved matters applications, details of energy efficiency and renewable/low carbon energy measures can be submitted to demonstrate that the requirements of Policy CP12 of the Core Strategy and Policy IV14 of the Neighbourhood Plan are met.

### *Noise*

- The proposed development would not result in unacceptable harm in respect of noise impacts on residential properties.

### *Foul water network*

- Subject to appropriate and necessary conditions, the development would not result in unacceptable harm to the foul water network.

### *Grand Union Canal Slough Arm*

- Subject to appropriate and necessary conditions and obligations, the development would not result in unacceptable harm to land stability in proximity to the canal.

### *Aviation*

- Subject to appropriate and necessary conditions, the development would not result in unacceptable harm to the safe movement of aircraft.

### *Other considerations*

- There is a need for data centres in England and Wales.
- Significant weight should be given to the need for data centres.
- The Council agreed in the context of the Woodlands Appeal (CD5.2) that there was both an "*overwhelming and urgent*" need for additional data centre capacity within the Slough Availability Zone.
- The Secretary of State recognised in the Woodlands Appeal that there is a significant and substantial demand for new data centres in the Slough Availability Zone and that the provision of data centres would make a significant contribution to the UK economy. The Secretary of State concluded that significant weight should be given to the need for additional data centre capacity within the UK and the Slough Availability Zone.
- The development would deliver economic benefits to both the area of the Local Planning Authority, and UK economy as a whole, and significant weight should be given to these benefits.
- The development would support over 11,600 indirect jobs when operational.
- Significant weight should be given to the benefit of the reduction in HGV movements that would result from the development.
- The development would enhance access to Iver High Street and Iver Station through the provision of a new pedestrian crossing.
- Policy CP16 is not a strategic allocation policy. It identifies the site as a Major Developed Site within the Green Belt and encourages its redevelopment subject to certain criteria being met.
- Policy CP16 has been in force for over 10 years, and no development proposal has come forward in that time that would deliver the objectives of the Policy in relation to the Court Lane Industrial site.

- Odour issues are not relevant to the development proposal.
- The proposed data storage use qualifies as being within Class B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended).
- The use of the site for Class B8 would retain the land use of the site in employment use.

### **The Case for the Council**

25. This section is based on the Council's closing submission, its Proofs of Evidence, and evidence presented at the Inquiry.

#### *Harm to the Green Belt*

26. It is common ground that the appeal proposal would be inappropriate development in the Green Belt by reason of its greater impact on openness than the existing development.
27. The existing buildings on the site equate to approximately 7,500 square metres of built footprint and 30,000 cubic metres of built volume (at an average height of 4 metres). In contrast, the development would result in 65,000 square metres of built footprint, a total built volume of 567,720 cubic metres, and would introduce two large buildings of up to 30 metres in height or around 10 domestic storeys. This is a substantial increase in the quantum and volume of built form compared to the existing situation.
28. The development would also comprise two solid buildings, replacing the existing thirty-two individual buildings, thereby resulting in a significant increase in concentration of built form on the site.
29. The parameter plans show that the data centre buildings would have little architectural interest, being perceived as two large boxes in the landscape, averting any perceived break in mass or appearance, and unrelieved in their form by (for example) windows, modulation or architectural detailing. By reason of the form, appearance, scale and quantum of development, it is considered that substantial further harm would result to the spatial sense of openness.
30. The closest views into the site would be predominantly from the countryside to the north and east of the appeal site, at the following locations:
- M25 and footbridge;
  - Farlows Lake and Colne Brook for anglers and Recreational walking routes (IVE/16/1, IVE/16/4 and IVE/30/2);
  - Public Right of Ways IVE/17/1, IVE/17/2, IVE/17/3 and IVE/17/4 along the Grand Union Canal; and
  - Public Right of Way IVE/16/3.
31. The submitted Zone of Theoretical Visibility in Appendix C16 of the Landscape and Visual Impact Assessment (CD4.1) indicates longer-distance views of the proposed development beyond the localised area.
32. The development would be highly visible from the viewpoints identified above, eliminating the current transient nature of site views. The bulky and necessarily

- solid rectilinear form, coupled with its height would make the proposed buildings very prominent, significantly over and above the visual intrusion caused by the cherry pickers within the site, and the presence of skeletal pylon towers.
33. The development would exceed the height of any built form in the immediate vicinity. The change in the nature of the site would be long-standing and would introduce an urban form of development purposed to serve urban users.
  34. The presence of the data centre buildings and their effect on the openness of the Green Belt would be discernible far over and above the existing development on the site. The size, bulk, and height of the proposed buildings would significantly harm the openness of the Green Belt in this location and would be experienced by recreational users enjoying the countryside. The proposed landscaping would do little to help screen these views.
  35. In terms of the 5 purposes that Green Belts serve, purpose b) is to prevent neighbouring towns merging into one another. In this regard, the appeal site forms part of a gap between West Drayton and Slough to the east and west, and a very narrow gap between Iver and Richings Park to the north and south.
  36. The Green Belt Assessment Part 1 (CD7.25) considered the appeal site to form part of an essential gap between Richings Park and West Drayton, and part of the wider gap between West Drayton and Slough. The development would both visually and physically reduce the actual and perceived gap. The appeal land parcel is rated as performing very strongly against this purpose in the Part 1 Assessment. The Green Belt Assessment Part 2 (CD7.26) also identifies this part of the Green Belt as an essential gap, particularly between the Greater London built-up area, Iver Heath/Iver/Richings Park, and Slough. It is identified as being vitally important to prevent the merging of settlements, and any further development in this area could compromise the separation of West Drayton and Slough, in particular.
  37. The development would reduce the gap between both Richings Park and Iver, and between West Drayton and Slough. It is acknowledged that the merging of these settlements would not be immediately apparent, spatially or physically. However, the countryside and open land between towns is constantly under pressure from development and it is rarely the case that a single proposal, on its own, would cause neighbouring towns to merge. Instead, development on fields between these settlements would cumulatively result in smaller and smaller gaps until only a single field might remain. The development would contribute to the merger of these towns and limited harm is therefore identified to purpose b).
  38. Green Belt purpose c) is to assist in safeguarding the countryside from encroachment. Although the appeal site is previously developed land, in *Summers Poultry Products Ltd v SSCLG & Stratford-upon-Avon* [2009] EWHC 533 (Admin) (CD.5.7), the Court highlighted that encroachment into the countryside may be in the form of further loss to openness or intrusion. In this case, the scale, height and bulk of the proposed data centre buildings would result in increased encroachment of built form. This would significantly diminish the existing sense of openness and would result in visual intrusion over and above the current use when observed from the surrounding countryside. The development would therefore result in moderate conflict with purpose c).

*Other harm: landscape character*

39. The proposed development would bring about a significant change to the character of the site and the contribution it makes to the local landscape. Built form, height and mass would increase dramatically to form a significant built-up element in a landscape character area that is relatively unbuilt. Whilst the landscape is not without urban influences and pockets of built development, the existing buildings on the site are low level and in disaggregated footprints. The parameter plans show that the data centre volumes would readily exceed the building heights established in the nearby Ridgeway/Thorney Business Park and result to draw the large-scale industrial landscape character further eastwards into the Colne Valley.
40. The appeal site is located within the Thames Valley National Character Area ('NCA'), which is a mainly low-lying, wedge-shaped area, widening from Reading, which includes Slough, Windsor, the Colne Valley and the southwest London fringes. Whilst this NCA is considered to have a Medium susceptibility to the type of development proposed, rather than Low as put forward in the Appellant's LVIA, the overall sensitivity is agreed to be Medium. Whilst it is accepted that the proposed development would be perceived from a very localised part of the NCA, this can be said of just about any individual development project. It does not diminish the significance of the effect on the NCA that would result.
41. The proposed development is considered to be uncharacteristic of built development and built form in this part of the NCA. The parameter plans show an uncoordinated and unrelated development that has adverse impacts upon the landscape of this part of the NCA, particularly as it is located adjacent to the more relatively tranquil and scenic landscape of the river, lakes and woodland to the east and north, which is important for wildlife and recreation. The likely magnitude of change is considered to be Small to Medium, and, taken with a landscape sensitivity of Medium, the likely resulting landscape effects would be Minor-Moderate and Adverse.
42. The appeal site falls within Landscape Character Area ('LCA') 26.3 'Colne Valley Floodplain' in the South Bucks District Landscape Character Assessment 2011 (CD3.5). The landscape within this LCA has been shaped by historic gravel extraction and subsequent landfilling, whilst the current landscape is crossed by major road and energy infrastructure. Nonetheless, the landscape remains predominantly low-lying agricultural land and lakes, interspersed with mature hedgerows and trees, is mostly unbuilt and contains well established rights of way forming recreational routes throughout the area. This area forms part of the Colne Valley Regional Park and supports a range of recreational activities, both land and water based. Within this context, the appeal site is one of relatively few exceptions in terms of its use and landscape character, being a pocket of low-rise industrial development on slightly elevated land.
43. The Council does not agree with the Appellant's conclusion that this LCA has Medium sensitivity to the proposed development, and it is instead considered to be Medium-High given the prevailing character of this LCA. The proposed development would result in significant change to LCA 26.3 by virtue of the proposed buildings' height and mass resulting in visually prominent built form in an area that is predominately free from built form. The likely magnitude of change would be Medium, and likely landscape effects Medium-High and Adverse.

44. In terms of visual landscape impact, views of the development from the M25 motorway would be available on the final approaches to the site from both directions, perhaps most significantly from the southbound approach. These views would be seen daily, year-round, by many thousands of passers-by, both drivers and their passengers. Existing views across the flat open countryside with trees and grassland, but also with detracting features including the motorway, lighting columns/signage, nearby pylons and occasional buildings, are considered to have a Low to Medium value and Medium susceptibility to the type of development proposed, giving rise to a Medium sensitivity.
45. It is likely that for the short stretches of the motorway approaching the site there would be at the very least a partial view of the development above/between intervening trees, with very little built context beyond the road corridor, except for nearby overhead pylons. The size and form of the development would add highly distinctive linear built forms to the skyline in these views where presently there is little or none. The magnitude of change would be Low to Medium on the approaches, and visual impacts are likely to be Minor to Moderate and Adverse. Upon reaching the appeal site where the magnitude of change is likely to be high, visual impacts are likely to be Moderate to Major and Adverse.
46. The view from the footbridge crossing the M25 is an uncommon opportunity for an extensive panoramic view across the wider landscape, and at a raised level. This view is considered to have a Low to Medium value, as whilst it includes several detracting urbanising features, it also includes lots of grassland and trees as a setting to the motorway and pockets of low-lying development. With visual receptors considered to have High susceptibility to the type of development proposed, sensitivity is Medium. The proposed development would enclose and foreshorten views across the landscape in this direction, greatly intensify the urban features of this landscape, and introduce built forms that are of a height and scale that are currently uncharacteristic of this view. With Medium sensitivity and a High magnitude of change, visual effects would be Moderate to Major and Adverse.
47. The development would impact on views from across Farlows Lake, which lies approximately 100 metres northeast from the appeal site and is apparently one of the most popular day fishing lakes in the country; there is also permissive access for walking around the lake. It offers open views towards the appeal site from a number of vantage points. Further to the northeast, at approximately 600 metres, lies Little Britain Lake, where public access offers glimpsed views across the water towards the site, where intervening trees screen existing development from view. The value of views from this landscape are therefore considered to be High and sensitivity to the type of development proposed is also High.
48. The presence of the development in these views would significantly change the perception of the landscape from being naturalistic and mostly unbuilt to one where built development looms large in the background, lending it a more urban character. It is not agreed that the magnitude of change is likely to be Small in many of the views across the lake. From the visitor centre/shop, the introduction of substantial new buildings into this landscape would be a Medium magnitude of change in a landscape with High sensitivity to the type of development proposed. Visual impacts would therefore be Moderate to Major and Adverse.

49. The development would also be visible from the fringes of Iver and public rights of way in neighbouring fields, where views in the direction of the site currently present as flat and rather more open landscape than that west of the motorway. The addition of large buildings as part of the background to these views is likely to have an adverse visual effect by reinforcing the urban characteristics of the landscape and diminishing the perception of countryside beyond the nearby urban environment. It is agreed that the sensitivity to the type of development in this view is Medium, but nearby vantage points are likely to experience a Small magnitude of change rather than Very Small, which is likely to give rise to a Minor Adverse visual effect upon these views.
50. The proposed development is therefore considered to result in significant harm to landscape character and the visual appearance of the site and its surroundings and is in conflict with saved Local Plan Policies EP3 and EP4, Core Strategy Policies 8 and 9, Ivers Neighbourhood Plan Policy IV13, and with Paragraph 135 of the Framework. This harm should be afforded significant negative weight.

*Other harm: setting of the Grade II listed Iver Court Farmhouse*

51. The listed building is currently flanked on either side by industrial buildings that, although modern, are not dissimilar in form, scale, and position to the historic barns that had stood in that location before they were demolished to make way for the M25 motorway. The form of those 2 buildings therefore does not cause harm to the setting of the listed building but instead chimes with its historic agricultural setting. The views of the listed building that are interrupted by these buildings are also similar to the historic context. In addition, these single storey industrial buildings provide partial shielding from the noise of the motorway which results in a notable reduction in noise levels on the eastern side of the listed building.
52. It is acknowledged that the setting of Iver Court Farmhouse has been significantly altered since it was first built. As such, the significance of its setting is currently diminished. However, it remains a largely open setting that is punctuated with single storey structures of a form that is consistent with agricultural buildings. Whilst these open areas largely comprise hardstanding, that does not remove the interpretation of the former agricultural surroundings of the listed building as the current land use also remains largely open in nature and is not enclosed. This is in part due to the extent of open land and the flat topography, which enables views of the listed building.
53. It is agreed that some of the modern development within the setting of the listed building has a negative impact, and that if that were to be removed then the setting could be enhanced. However, some of the inappropriate features within the site could also be considered transient in nature, and not causing irreparable harm, such as the parked delivery vehicles or temporary portacabins situated on the ground around the listed building.
54. At present, the listed building remains the most significant building on the site, even though there are existing buildings that are marginally larger in volume within its immediate and wider setting. This is due to its architectural interest, its orientation which enables its principal elevations to be seen, and the open areas which enable views across the site, both of, from and across the listed building. When considering the scale of the existing modern buildings around the

listed building, in wider and extended views the skyline is not untypical of a traditional farmstead.

55. Whilst there are some existing features within the setting of the listed building which have a negative impact, there remain elements which are positive. These include the flat topography, uninterrupted skyline and the various views of, across and from the listed building. The Appellant's case that the current setting of the listed building makes no contribution to its significance as its original setting has been totally eviscerated does not accord with the Framework which states that settings can change over time. For the Appellant to assert that the setting of the listed building has been eviscerated because it has changed over time is too simplistic an approach.
56. Due to the scale, block-like massing, and absence of any real modulation of the envelope of the proposed data centre buildings, the setting in which the listed building is experienced and viewed would be entirely overwhelmed. The listed building itself would be dwarfed where currently it is not dwarfed and its setting remains relatively open and unenclosed. The contrast between the domestic scale of the listed building and the anticipated scale of the data centre buildings would be stark. The listed building would entirely lose its current and last connection to the historic setting as being the most architecturally significant building within the site. That change would be harmful to the significance of the historic asset and would be irreversible.
57. Due to the scale, form, and mass of the proposed data centre buildings, the skyline of the site and backdrop to the listed building would be entirely altered. The built development within the site and wider setting has never exceeded the single storey height of typical agricultural barns. Whilst the land use has changed over time, from agricultural, to brickworks, the surrounding water works and the existing buildings, these are all considerably lower than the anticipated scale of the data centre buildings and of an altogether different magnitude.
58. Part of the listed building's significance is its prominence within the site despite being in proximity to buildings of a different but only slightly larger scale. The scale of the current modern structures remains in scale overall with the listed building. By contrast, the proposed data centre buildings would substantially exceed the scale of any of the existing buildings within the site, including the listed building, and dominate the site with a new form and scale. Whilst the indicative scheme includes lower building heights nearest to the listed building, the taller buildings would still be evident in shared views of, across and from the listed building. As such, the significance of the listed building as being the most prominent building would be lost permanently. That harm attracts considerable weight against the development.
59. Due to the proposed use of the site as a data centre, the Appellant has confirmed the need for security fencing, ramps, bollards, and CCTV. As such, whilst some of the palisade fencing within the site would be removed, the impact within the immediate setting of the listed building is likely to be neutral in this regard and not beneficial.
60. The harm identified to Iver Court Farmhouse is to the lower end of less than substantial harm. In accordance with paragraph 205 of the Framework, great weight is attached to this harm. Whilst there are heritage benefits from the removal of certain inappropriate elements within the current setting of the listed

building, and from (if guaranteed) new landscaping in its vicinity, taken together, these would not outweigh the harm from the proposed data centre buildings on the setting of the listed building. As such the appeal scheme would harm the setting and so the value of the significance of Iver Court Farmhouse, a Grade II Listed Building. The development is therefore contrary to Section 66 of the Planning (Listed Buildings and Conservation Area) Act 1990 (as amended) and Policies CP8 and CP16 of the Core Strategy.

*Policy CP16 of the of the South Bucks Core Strategy (2011)*

61. Core Strategy Policy CP16 is one of a suite of policies drawn up for 'Major Developed Sites in the Green Belt' under the then PPG2. PPG2 was in force until March 2012, and set out national planning policy in relation to Green Belts prior to the publication of the Framework. Consequently, the terms of Policy CP16 reflect the particular descriptions in Annex C of PPG2 which previously allowed for the redevelopment of Major Developed Sites in certain circumstances. In line with PPG2, Policy CP16 requires that any scheme should: "*result in no greater impact on the openness of the Green Belt*".
62. It is common ground that the appeal proposal would be inappropriate development in the Green Belt (by virtue of its greater impact on the openness than the existing development) precluding it from qualifying within paragraph 154 g) of the Framework. It ought to be common ground that the first bullet point of CP16 also cannot be satisfied by the development.

*Very special circumstances argument*

63. The appeal submission is accompanied by a Knight Frank report on data centre need (CD4.2). This advances a demand of 1,200 MW for 'cloud data centres' by 2028, with just 381 MW of this anticipated need planned to come forward within this period. However, the proposed data centre is reliant on a National Grid connection anticipated to come forward in November 2029, beyond this demand period (by 2028). There is further uncertainty in relation to the deliverability of the development in that the new National Grid connection is subject to a planning application that is yet to be determined (Ref PL/24/0449/FA).
64. Further, the appeal application proposes the data centre be "*up to*" a certain floor area and so there remains no guarantee of the total floor area being built out or delivered. Instead, if the Appellant's own evidence were to be correct, then one would expect the total area applied for to be underscored by a guarantee that the total would be built out. But it is not.
65. There is also an absence of national planning guidance/policy supporting any identified need for data centres, or specifically hyperscale datacentres. It is currently premature to conclude or second guess the Secretary of State's considered view on the emerging situation, or any particular planning policy situation at national level, for data centres. For this reason, a judgement can only be made from evidence put forward by the Appellant, government strategy and other data centre appeal decisions.
66. The evidence submitted indicates that there is a need for data centres within the country as a whole. Although the proposed development does not currently have an identified final occupier the demand for data centres appears to be such that

there is no reason to believe that should the development proceed, it would not be put to some beneficial use.

67. Consideration is also given to other appeal decisions for hyperscale data centre development within the Green Belt which have been refused (such as Woodlands Park [CD5.2]), despite there being an identified 'significant and substantial' need and demand for the development proposed. These data centre proposals also facilitated supply for the proposed need period due to reserved connection to the existing Iver substation. Moreover, in the case of the Woodlands Park site, the level of need being delivered by the proposed data centre was 147 MW - greater than the 103 MW proposed here. Yet, the Woodlands proposal was refused notwithstanding that contended scale of need.
68. On balance, factoring in previous appeal decisions and the potential deliverability issues with a data centre at Court Lane, at the very most, significant weight can be given to the benefit of the need for a data centre together with the economic benefits that would be delivered to the wider job market and the UK economy.
69. Policy CP16 requires a "*significant reduction in HGV movements*" as part of the comprehensive redevelopment of this site. The exact reduction in HGV movements between the existing light industrial use and proposed datacentre use is not quantified. It is however, anticipated theoretically that the number of HGV movements would reduce by 200 HGVs per day. The Council therefore agrees that the proposed data centre would generate significantly fewer HGV movements per day. Significant weight is afforded to this benefit by the Council.
70. The development would generate high-skilled employment. However, due to the proximity of adjacent neighbouring Boroughs, there is no guarantee that employment benefits, from either construction or operation, would benefit Buckinghamshire residents. It is also acknowledged that substantial secondary employment would be generated by the proposed development. In contrast, the proposed development would result in a loss of 10 individual businesses on site and all of their respective employees. There is no evidence to show to where these businesses and their employees would be relocated. As a result of the loss of the local, existing employment and business operations within the site, the direct employment benefit generated is tempered and carries limited weight.
71. Heritage benefits were put forward as part of a proposal to repair and refurbish the Grade II Listed Building, Iver Court Farmhouse, granted under application Ref PL/22/4398/HB. It is stated that this consent would not be implemented without the commencement of works to the proposed data centre. It is considered that many of the works outlined under this listed building consent could be required under enforcement direction. Nonetheless, moderate weight is attached to this benefit.
72. The appeal site is previously developed land outside of a settlement boundary. It is misconceived for the development to benefit from the previously developed nature of the site in a different way to that described in national Green Belt policy. To attribute "*significant weight*" to its previously developed status would be to rewrite paragraph 154 g) of the Framework to create a freestanding policy gateway for previously developed land in Green Belt that would undermine or dilute national Green Belt policy, and double count the benefit from the previously developed status of the site.

73. The reuse of previously developed land has already been acknowledged through the identification of the site as an Opportunity Area under Policy CP16 of the Core Strategy. However, the appeal site remains Green Belt land protected by national policy and the development plan. The proposed development would result in harm to the openness of the Green Belt and landscape character. Therefore, the weight to be given to this benefit must be tempered as it has already been taken into account in relation to paragraph 154 g), and by Policy CP16 (bullet 1). It is also relevant to note that the site is currently in use, and it is not vacant or derelict land. It is therefore considered that only limited weight should be given to this consideration.
74. The development is projected to result in a biodiversity net gain ('BNG') of around 3,990%. This is a significant uplift, however, this is achievable due to the very limited ecological merit of the existing site. The BNG metric is therefore not necessarily reflective of a significant amount of high biodiversity value being introduced onto the site. This consideration therefore carries moderate weight in favour of the development proposal.
75. The development seeks to realise the objectives of Core Strategy Policy CP16. It has been found contrary to Policy CP16 for reasons of identified harm to Iver Court Farmhouse and to the openness of the Green Belt. Paragraph 3.3 of the Major Developed Sites in the Green Belt Background Paper (CD7.8) is clear that if the Court Lane site, among other South Iver Opportunity Areas, were never to come forward it would not be central to the delivery of the Core Strategy as targets can be achieved without the redevelopment of such sites. That is consistent with such sites not being 'strategic allocation sites' and having been identified as 'Opportunity Sites' to reflect this difference. Very limited weight should therefore be given to this benefit.
76. The apparent benefit of provision for England-based data centres to ensure future resilience in a time of unpredictable global events is agreed. On that basis, it is acknowledged that some sites offer optimum locations for data centres by way of conditions that could quickly and easily lend themselves to becoming a large-scale datacentre facility.
77. London is said by the Appellant to be a key centre for the location of data centres in the whole of the UK. As contended, the locational choice of the data centre within an 'availability zone' which can serve London and link to the international subsea cables leading stations on the west coast is understood and acknowledged. On the basis of the Appellant's own evidence of need, it remains unclear why the Slough and West Drayton Accessibility Zone has been selected above other cluster locations in England generally, and in and around London in particular. It is also considered that a location within an accessibility zone cluster for ensured 100% of uptime may be desirable due to current cable situations, but not essential.
78. Refining the search around the new Iver Power Station is not considered appropriate due to insufficient capacity of substations in Slough, Northholt and Hayes to accommodate development proposals, as these substations could be upgraded and capacity increased to accommodate development proposals, in a similar way to the forthcoming new Iver Power Station.
79. Despite these identified shortcomings, it is agreed that the application site is, from a private developer's perspective, a currently optimal site for a data centre.

Given the lack of alternative sites to meet the identified need, the Council would give this significant weight.

#### *Planning and heritage balance*

80. In the case of the identified harm to the setting of Iver Court Farmhouse, it is considered that the public benefits put forward in favour of the scheme; including data centre need, economic growth, works to the listed building, reduction in HGV movements, BNG, and lack of alternative sites, fail to outweigh the identified heritage harm.
81. The Framework makes clear that "*substantial weight is given to any harm to the Green Belt*" and very special circumstances will not exist unless the harm to the Green Belt, and any other harm, is "*clearly outweighed*" by the benefits of the scheme. In this instance, substantial weight is attributed to the resultant Green Belt harm.
82. Inappropriate development in the Green Belt would derive from the increased urbanisation in form, scale and quantum of proposed replacement built form on the site. This would significantly impact both the spatial and visual aspects of openness, resulting in moderate encroachment into the countryside and limited harm by way of coalescence between Greater London and Slough. The appeal proposal would therefore be in conflict with two of the five Green Belt purposes.
83. Other harm to landscape character and the setting of the Grade II Listed Iver Court Farmhouse amount to significant and great, respectively, harm arising from the development.
84. It is considered that the other considerations put forward in favour of the development collectively carry a very significant amount of weight in favour of the proposal. It is the Council's case however, that the adverse impact of granting permission, namely the harm to the Green Belt and other harm, is not clearly outweighed by the benefits upon which the Appellant relies and therefore very special circumstances do not exist in this case.

#### *Planning obligation*

85. Throughout the course of the appeal, the Appellant has refused to undertake to pay the Council's legal costs in respect of the planning obligation. The Council has incurred legal services fees during the appeal process in the negotiation of the Unilateral Undertaking advanced by the Appellant in support of its development.
86. The Appellant has included in its draft instrument deed a provision for payment of the Council's fees. In law and fact, that provision can only sit outside of the scope of Regulation 122 because it is not a 'planning obligation'. Without prejudice to that position, the Council has provided a proxy Regulation 122(2) explanation for the payment of those fees. This is as follows:
- **Necessary:** required in order to fund the legal review of the obligations and terms of the Unilateral Undertaking.
  - **Directly related:** relates to legal fees incurred in reviewing the Unilateral Undertaking for the development.

- **Fairly and reasonably related in scale and kind:** the purpose of the charge is to cover the time of the Council's legal officer, ensuring that the terms and obligations contained within the deed are appropriate to mitigate the harm caused by the development and ensure the enforceability and legality of the same. This is in accordance with the provision in the City of London model planning obligation provision.
87. The Council notes that the Secretary of State has been given a power to change the terms of the instrument. Because the Appellant has left out the standard provision for payment of the Council's legal fees for negotiation of the instrument terms, the Council requires the Secretary of State to include in the instrument the clause for payment of its legal services fees that aligns with the provision in the City of London model planning obligation provision that remains agreed by the Law Society.
88. If the Secretary of State does not include in the instrument the standard clause referred to, then the following applies.
89. Section 93 of the Local Government Act 2003 provides a power to the Council to charge for services:
- 1) Subject to the following provisions, a relevant authority may charge a person for providing a service to him if—*
    - (a) the authority is authorised, but not required, by an enactment to provide the service to him, and*
    - (b) he has agreed to its provision.*
90. The Town and Country Planning Act 1990 does not require the Council to provide legal services to an Appellant developer but may provide those services to him. The charge for that service requires the Appellant to agree that charge. In this appeal, the Appellant developer has chosen to not agree the charge for legal services.
91. It follows that the Council is not required to provide legal services for the negotiation of the terms of an instrument that contains a planning obligation nor the planning obligation within it, nor evaluate and ensure satisfaction of Regulation 122(2) during an appeal. A responsible authority also has best value considerations to consider as well as the public purse of its administrative area.
92. In circumstances where:
- The Secretary of State refuses to include the model payment provision agreed by the Law Society in the instant planning obligation; and
  - The Appellant chooses under section 93(1)(b) of the 2003 Act to not agree to pay the charge for legal services;

Then the Council, as a responsible public body, is similarly not required to provide legal services in relation to the instrument nor in relation to the 'planning obligation', nor in relation to whether or not Regulation 122(2) is satisfied. There is no requirement for a Council to negotiate with an appellant if they cannot recover their costs. This could set an unfortunate precedent, and Councils may refuse to negotiate planning obligations in the future if their fees were not recoverable.

93. During the currency of an appeal, it is a matter for the Secretary of State, including by her Planning Inspectorate and supported by her Treasury Solicitor and its solicitors as part of the Government Legal Service, to be satisfied by the Appellant (and any appellant) that Regulation 122 and section 106 are (or are not) satisfied in any given case, including here. In the absence, as would be the position, of the Council providing legal services during the currency of any appeal, the Council understands that the Secretary of State may wish to rely on Government Legal Service to negotiate the terms of the planning obligation in support of his Inspectorate. It remains a matter for the Secretary of State whether or not, and how, a charge is made for the provision of any legal services to a developer or ensures that his Inspectorate is competently supported to ensure satisfaction of Regulation 122(2) and section 106 in any given planning appeal in any given district in England during an appeal that the Secretary of state is determining.
94. Upon the Council being advised by the Secretary of State (as informed by such advice from Government Legal Department) that the planning obligation complies with both Regulation 122 and section 106, then in the event of a grant of planning permission resulting in the existence of a 'live' planning obligation, and the discharge of the power under section 79 in relation to that development, the Council would then become again the local planning authority and enforcer of the planning obligation.
95. The Council is not in a position to know how the Secretary of State may choose to proceed. The Council recognizes that the outcome of the foregoing may result in increased resource pressures in each administrative district in England and in relation to each planning appeal (whereby the powers of the local planning authority are transferred under section 79 to the Secretary of State during the currency of the appeal).
96. With regard to the proposed 'Arsenal condition', the Council's position at the roundtable session was that the Appellant had had 12 months to prepare a planning obligation, and that such a condition would further delay matters. Moreover, the Council queried whether such a condition would accord with paragraph 21a-010-20190723 of PPG, which requires: "*clear evidence that the delivery of the development would otherwise be at serious risk*".
97. In terms of the detailed wording of the obligation, the Council identified a number of areas where its standard wording had not been used, and where the proposed wording was considered to be inferior. It also objected to drafting in the obligation relating to both the dispute resolution mechanism and to indexation. In its view, these clauses clearly attempt to bind the Council into dispute resolution. Whilst the Council considered that to be appropriate for a bilateral agreement, a Unilateral Undertaking is by definition one party covenanting in favour of the other.

### *Conclusion*

98. The appeal proposal would be contrary to the development plan taken as a whole, and the material considerations identified do not outweigh the conflict with the development plan. It is concluded that the appeal proposal is contrary to development plan policies insofar as they relate to the Green Belt, South Iver Opportunity Area, landscape character and heritage. The proposals represent unsustainable development and the appeal should be dismissed.

## The Case for the Appellant

99. This section is based on the Appellant's closing submission, its Proofs of Evidence, and evidence presented at the Inquiry.

### *Harm to the Green Belt*

100. First, there is the simple fact that the development is inappropriate development in the Green Belt for the purposes of the Framework. That means that harm to the Green Belt – sometimes termed 'definitional harm' – necessarily follows. In addition, the Appellant has recognised that there would be harm to openness, by reason of the fact that the proposed development would entail greater spatial built form than currently exists on the appeal site.
101. However, the Appellant's landscape evidence notes the degraded character of the appeal site in its current form, as well as the intensive open storage of large vehicles, which it accommodates. To be clear, this is not a "*rural*" area, and this is not a "*rural*" site. On the contrary, it is an intensively used industrial estate. There is substantial built form; indeed, there are more than 30 buildings on it, some of them evidently large ones. These factors, combined with the noise, movement and activity on the site, mean that there would be only moderate harm to the Green Belt.
102. In addition, it is necessary to consider the extent to which the development would conflict with the purposes of designating land as Green Belt. In this regard, the Appellant accepts some degree of conflict with the purpose of safeguarding the countryside from encroachment. It is recognised that the appeal site is in the countryside (in the sense that it does not lie within a settlement boundary), and that there would be some degree of visual impact, amounting to an 'encroachment' of sorts. However, in considering this issue, it is necessary to have regard to the fact that this is already very much a 'built' site; thus, there is no physical encroachment to speak of.
103. In fact, the Council's own Green Belt Assessment concluded that Parcel 93 (which includes the appeal site) performs this Green Belt purpose "*relatively weakly*". Given that this is one of the most built up sites within the parcel, for the Council to assert material conflict with this Green Belt purpose is clearly, and necessarily, overstating the position.
104. The Appellant's judgment in finding only limited harm is entirely justified; indeed, the case officer for the Council expressly recognised that the degree of harm/conflict should be "*reduced*" on this basis.
105. The only other purpose of Green Belt which the Council claim to be engaged is that relating to the prevention of towns merging into one another. The Council sought to rely on two relationships in this regard; Iver/Richings Park and Slough/West Drayton. In fact, it was ultimately compelled to surrender the former, after its landscape witness made the "*very significant*" point that the appeal site is on the east side of the M25, whilst the two settlements are to the west of it. Further, it was noted that the development would not even be visible from Thorney Lane South.
106. The Council maintained its stance that this site would offend the Green Belt purpose by reference to separation between West Drayton/Slough, and in particular its planning witness spoke of incremental loss of the gap until only a

"single field" remains. Again, it is respectfully submitted that its position on this issue was not credible. Indeed, it was ultimately accepted in cross examination that as an industrial estate, the appeal site could not serve as a buffer between settlements in any event, conceding that if all other fields/units to east/west of the appeal site had been built out between these settlements, leaving only the appeal site between the towns, then the towns would already have merged. Thus, there is not, and can be no conflict with this Green Belt purpose.

107. Accordingly, and taking all of these matters into account, the Appellant recognises that the scheme is inappropriate development (and thus necessarily causes Green Belt harm), would cause moderate harm to openness, and would result in limited conflict with one of the purposes of designating land as Green Belt. Further, the Appellant recognises that this harm to the Green Belt attracts substantial weight for the purposes of the 'very special circumstances' test. However, given the nature of the scheme, and its necessary scale, the harm to Green Belt is in fact very restricted.

*Other harm: landscape character*

108. The presence of built development, including residential settlements, major road and rail systems combine to fragment the landscape in the vicinity of the appeal site. Pylons are especially prominent in this generally flat landscape, and noise and movement associated with the M25 have an impact throughout the local area. The detracting features are balanced by the presence of the gravel pits restored into a string of water bodies, and a network of meandering rivers and streams that form the River Colne floodplain. These provide a wildlife resource and recreational opportunity. The immediate vicinity of the appeal site is considered to have a Medium - Low landscape value, despite the presence of the Colne Valley Park, with a Low susceptibility to the type of development proposed. This results in a Low sensitivity.
109. The replacement of the existing industrial landscape within the appeal site is likely to result in a limited alteration to the integrity and character of the immediate vicinity, as the change would only be perceived from a very localised and discreet geographic area. Overall, the proposals are considered to have little bearing on the characteristics of the immediate vicinity, given the existing urban influences and location adjacent to the M25 motorway. On this basis, the overall magnitude of effect is judged to be Medium, resulting in a Minor adverse significance of effect on the immediate vicinity as a result of the introduction of the proposed development. This effect is not expected to change at Year 15.
110. The proposals would represent an improvement to the character of the appeal site. The replacement of the existing disparate industrial elements with a more coherent design would result in overarching benefits to the appeal site's landscape character, including localised environmental improvements.
111. The Appellant's baseline assessment determined that the Thames Valley NCA has Medium value, with a Low susceptibility to the type of development proposed. On this basis, the NCA is judged to have a Medium sensitivity to the proposed development. Overall, the proposed development is considered to be in-keeping with the existing and emerging context, as illustrated by the photographic material at section 2.7 of the Design and Access Statement (CD1.9) and is unlikely to alter any of the stated key characteristics of the NCA. The NCA comprises 86,062.1 ha (86 square km). The site represents only 0.007% of the

NCA. Accordingly, the proposals are not considered to have a significant impact upon the character of the NCA as there would be only a very small change to the existing landscape receptor in a very localised area. Given the above, the magnitude of effect is considered to be Very Small, resulting in a Negligible adverse significance of effect. This effect is not predicted to change at Year 15.

112. The Appellant's baseline assessment determined that both the Colne Valley Floodplain LCA and Richings Lowland LCA have a Medium value and a Medium susceptibility to the type of development proposed, resulting in a Medium sensitivity. The replacement of the existing industrial landscape with the proposed development is unlikely to result in a noticeable alteration to the character of the wider LCAs, as the appeal site is recognised as being isolated from the wider landscape context by existing transport infrastructure.
113. The Colne Valley Floodplain LCA covers approximately 1,290ha (12.9 square km). The appeal site represents only 0.45% of the LCA. Accordingly, whilst the change in the character and appearance of the appeal site itself would be pronounced, the change would only be perceived from a very localised and geographically restricted area. The proposals are considered to have little bearing on the key characteristics of the LCA, given the existing urban influences and location adjacent to the M25 motorway, resulting in a limited change to the existing landscape receptor. On balance, the magnitude of effect is considered to be Small in nature. On this basis, there would be a Negligible adverse significance of effect for both LCAs as a result of the introduction of the proposed development. This effect is not expected to change at Year 15.
114. In terms of visual effects, the viewpoint locations are illustrated at Figure 5: Visual Appraisal Plan (Statement of Case Appendix D11). Viewpoint 1 (North East from Thorney Lane South) is a representative view located 456 metres from the site and is orientated to the north east. The proposed development would be screened from view by the intervening woodland, with the uppermost parts of the introduced built form sitting well below the existing treeline. Accordingly, both the duration and scale of change would be None, resulting in a magnitude of effect of None. On this basis, the significance of effect is judged to be Neutral.
115. Viewpoint 2 (East from PRow South of Iver) is located on a public footpath (IVE/15/3), 540 metres from the site that passes through an agricultural field occupying the landscape between the settlement of Iver (to the north) and the Ridgeway Trading Estate (to the south). Visual receptors include pedestrians using the public footpath network, however given the relatively Low value attached to the view, their sensitivity is considered to be Medium. For the most part the proposed development would be screened from view by the intervening built form and vegetation. The western elevation of Building A (as shown on the parameter plans - 30m maximum height above ground level) would be partially visible in the backdrop, obscuring an existing pylon tower in the distance, and filling a small gap on the horizon between the terraced housing on Barnes Way and existing vegetation that bounds this residential area. Nonetheless, the roofline of the larger building would sit below the residential development that frames the view to the left and would be of a comparable height to the lower parts of the blue/grey industrial building to the right, within the Ridgeway Trading Estate. Overall, the magnitude of change would be Very Small reflecting the barely perceptible change in the composition of the view and distance from the viewer, leading to an overall significance of Negligible adverse.

116. Viewpoint 3 (South from Footbridge over M25) is a specific view from a pedestrian bridge that crosses over the M25 motorway, 291 metres from the appeal site. Visual receptors include pedestrians using the public footpath network where the motorway context results in a Low value attached to the view, leading to a sensitivity of Medium - Low. Specific open and elevated views towards the proposed development would be obtained from this location on the footbridge. The proposals would result in a beneficial change through the removal of the existing detracting features within the appeal site to a more settled form of development, and whilst the eye would naturally still be drawn to the moving vehicles on the M25, there would be a noticeable change to the composition of the view given the increase in built form and reduction in open sky visible across the wider panoramic view. The proposals would be seen set within the industrialised context of overhead transmission lines, the telecommunications tower, and the M25 corridor, resulting in a Medium - Large magnitude of effect. Overall, the significance of effect is judged to be Moderate adverse for receptors at this specific viewpoint.
117. Viewpoint 4 (South West from Farlows Lake) is a specific view located at a fishing pitch on the foreshore of Farlows Lake, 390 metres from the appeal site orientated to the south west. Visual receptors would include those fishing and therefore their visual setting is incidental to their enjoyment, and accordingly their sensitivity is judged to be Medium. The uppermost parts of the development would be partially visible in the backdrop of this view and seen alongside the existing pylon towers, albeit partly screened and filtered by the intervening built form and vegetation. The height of the built form would step down, away from the viewer, which would reduce the perception of mass and minimise the loss of open sky. The roofline of Building A would sit at a similar height to the intervening built form, and the proposed buildings would therefore appear (in this view) to be an extension of the existing fishing shop. This would result in a Small magnitude of effect to reflect the limited change to the composition of the view. On this basis, the significance of effect is determined to be Minor adverse.
118. Viewpoint 5 (West from Grand Union Canal) is a specific view located on the Shakespeare's Way towpath (IVE/17/2) along the Grand Union Canal, 68 metres from the appeal site, looking through a gap in the canal side vegetation. Visual receptors include pedestrians and cyclists using the towpath, and recreational users of the canal, whose sensitivity is considered to be Medium in the immediate vicinity of the appeal site and reducing as receptors move further away.
119. During the winter, intermittent glimpses through the canal-side vegetation would be available when walking along the short stretch (approximately 340m) of the towpath, allowing for heavily filtered views of the proposed development. The canal corridor lies at approximately 30m AOD, with the interior of the appeal site approximately 2 - 7m above this level. The proposals would result in a beneficial change through the removal of the existing detracting features, including palisade fencing, scrap metal, and steel shipping containers. The introduced built form would form a peripheral, but noticeable change to the composition of this briefly experienced oblique view. However, views along the canal towards the M25 flyover would remain unaltered. Overall, the magnitude of change is judged to be Medium, resulting in a Moderate adverse significance of effect. Whilst the management of the intervening vegetation along the Grand Union Canal is not within the control of the Appellant, it is anticipated that the

planting along the canal corridor will mature at an average growth rate of 1m every 3-years to provide a skirt of vegetation that would anchor the proposed buildings within the landscape thereby reducing intervisibility. The magnitude of visual effect is therefore judged to reduce to Small by year 15 reflecting the barely perceptible change in the view. On this basis, the significance of effect would reduce to Minor adverse.

120. Viewpoint 6 (north west from PRoW at Colne Brook) is a representative view located on a public footpath (IVE/16/1), 318 metres from the appeal site. Visual receptors include pedestrians using the public footpath within the Colne Valley Floodplain, however, the industrialised nature of the view lowers its value, resulting in a sensitivity of Medium. The proposed development would largely be screened from view by the dense intervening vegetation, with only the upper part of Building A visible, rising to the approximate mid-point of the prevailing canopy height. Any perception of the proposed development would be appreciated within the context of the existing built form and infrastructure at the water treatment works that would appear as dominating features in the composition of the view. The magnitude of change is judged to be Very Small. Overall, the significance of effect is determined to be Negligible adverse.

*Other harm: setting of the Grade II listed Iver Court Farmhouse*

121. The proposals offer an opportunity to rationalise the setting of Iver Court Farmhouse. They offer the ability to strip back/remove the series of modern structures, spaces, HGVs and machinery that proliferate its immediate and wider setting. These elements, for the large part, obscure Iver Court Farmhouse from view and, where it is visible, severely compromise the way in which it is experienced from within its immediate and wider setting. They form part of a much wider heavily remodelled 20<sup>th</sup> and 21<sup>st</sup> century context that offers no contribution to the significance of Iver Court Farmhouse. Indeed, overall, the current setting diminishes the ability to appreciate the significance of Iver Court Farmhouse, harming it.
122. Removal of these elements would open the immediate and wider setting of Iver Court Farmhouse so that the building can be readily seen, forming a distinguishable entity in its surroundings, something that is not currently possible. The increased visibility of Iver Court Farmhouse from its immediate and wider setting, specifically in views from the north and west, and to a lesser extent from the south and east, would in turn ensure an improved appreciation of its existence as an historic structure of architectural and historic interest. This is not currently achieved due to the surroundings and the proposals would therefore represent an improvement on the current situation.
123. The proposed substation, pumping station, generator yards and data centre buildings would be offset behind Iver Court Farmhouse to the east and south, offering a far greater separation when compared to the existing situation. This reinforces the ambition of stripping back all elements immediately surrounding the listed building to allow it to be seen and ensure an improved appreciation of its existence as an historic structure of architectural and historic interest.
124. Whilst the proposed development is mainly formed of large structures within the wider setting of Iver Court Farmhouse, these structures would be offset, creating generous areas of improved space around it. They would form honest modern additions, staggered and rising within the background, allowing the listed

building to be seen alongside a series of clear modern interventions. They would form distinct additions within the already irrevocably altered setting and would be read as such; old and new. Although large, they would comprise additions that allow for the improved appreciation of Iver Court Farmhouse from its immediate and wider setting, specifically in views from the north and west, and to a lesser extent the south and east. This remodelling of the current setting would not harm but improve the ability to appreciate the significance of the listed building.

125. This approach is in accordance with good practice guidance, which recognises that there are times when new development that juxtaposes with the historic environment can be more suitable than development which seeks to emulate or imitate particular historic elements. At its worst, such development can present as dishonest pastiche which undermines the significance of the very heritage assets it is attempting to reference. This aligns with Historic England's briefing report 'Design codes and the historic environment' (CD7.18), which warns that without careful consideration, replication of distinctive elements can erode what makes them special.
126. Overall, it is important to recognise that the current setting of Iver Court Farmhouse has been totally eviscerated and provides no contribution to its significance. The proposals present a clear opportunity to improve this setting by increasing the visibility of Iver Court Farmhouse as an historic structure of architectural and historic interest by stripping back elements which obscure it from view and compromise the way it is experienced. It is clear that the proposal provides an overall beneficial indirect heritage impact on the setting and significance of Iver Court Farmhouse. This positive impact on the setting comprises the removal of the existing harmful elements resulting in an improved situation. The proposal therefore would not change the setting in such a way that it then makes a positive contribution to the significance of the heritage asset. However, the proposal would improve the setting to such an extent that it becomes a 'neutral' contributor as regards the significance of the heritage asset – making neither a positive, nor a negative contribution to significance.
127. If it is not accepted that the proposal would improve the setting to the extent that it becomes a neutral contributor, then the proposal would still improve the setting to the extent that, while the setting would continue to make a negative contribution to the significance of the heritage asset, the extent of the negative contribution would be reduced. In either case, there would be an improvement to the setting and the ability to appreciate the significance of the heritage asset.
128. Finally, even if it is found that the proposal would not result in an improvement to the setting of Iver Court Farmhouse, it would at the very least not make the setting of the heritage asset worse. Indeed, it would not be possible to cause greater harm by virtue of the proposed changes to the setting, so dire is the existing situation. The proposed changes to the setting do not harm the remaining significance of the listed building, which is solely held within its physical fabric and which the outline planning application and associated listed building consent works would ensure the conservation and a greater appreciation of. Therefore, in this instance, the proposed changes to the setting would as a minimum preserve the significance of the heritage asset.

*Policy CP16 of the of the South Bucks Core Strategy (2011)*

129. In approaching the question of whether or not the scheme complies with the development plan, it is important first to acknowledge the practical, holistic approach which should be adopted in making the assessment. In the course of cross examination the Council's planning witness (understandably cautiously) accepted both the proposition that one need not necessarily comply with all policies within the development plan, in order for there to be 'development plan compliance', and also the proposition that – depending on the wording of a policy – a development need not necessarily comply with all provisions in the policy, in order to comply with the policy as a whole.
130. In the present case, the key policy is CP16. That is a site specific policy, which promotes the redevelopment of the Court Lane industrial estate. Critically, it must be borne in mind that the various elements of the policy pull in different directions. On the one hand, the policy requires that the development result in the significant reduction in the number of HGV movements generated by the site, but on the other, it asks that the development have no greater impact on openness. At no time has the Council identified any development capable of addressing every aspect of the policy; a development which is all things to all people. Further, no planning application for any form of comprehensive development of the site has even come forward in all the years – more than a decade – since the policy was adopted. Quite simply, if, contrary to the wording of the policy, strict accordance with every element of the policy were required, then the policy could not be complied with.
131. On a sensible, practical application, the planning application and the scheme comply with Policy CP16.

*Very special circumstances – data centre need and locational requirements*

132. The London data centre market is the second largest globally, behind northern Virginia. The epicentre of activity is situated within the Slough to Hayes corridor. There are three key drivers for the clustering of data centres within this area west of London, which are important to understanding why there is so much demand for data centre development in this location:
- **High Voltage Power:** data centres require large amounts of high voltage power (50 MW +) in order to operate and provide network connectivity services to London and the wider UK population. There are very few substations within the South East that have been sufficiently reinforced through infrastructure improvements that allow for the accommodation of this quantity of power, namely, Iver Heath (Slough), Willesden (North Acton) and East Ham (London Docklands). Historically, the availability of power from the Iver substation was a driving factor in the development of data centres around the Slough area. As a result, power in this area west of London has been quickly absorbed as operators have sought to acquire power and land proximate to the substations which adds to the financial viability of any data centre development scheme given the costs of digging power cables to and from a substation are typically around £2m/km. While the quantities of available power have reduced, the need for data centres in the micro-location has only grown, as the importance of positioning multiple facilities in the availability zone has increased.

- **Fibre Infrastructure:** the Slough to Hayes micro market is one of the most fibre rich areas in the UK due to its proximity to the Great Western Rail Line and Grand Union Canal, which house the fibre ducts for a plethora of national and international telecommunications providers. Both these fibre ducts transport data from London to Bristol and subsequently across the Atlantic via a sub-sea fibre cable to the US. Sites in proximity to these fibre ducts are extremely attractive and have been a driving factor in the development of data centres around the Slough area. The Slough area allows data centre operators to locate themselves close to London in terms of latency (speed at which data is transferred from one source to another) but the location also gives operators attractive connectivity capabilities to the internet exchanges in the US. Most sites to the north or east of London will not benefit from positioning on the existing fibre network.
- **Cloud Availability Zones:** the popularity of cloud computing has increased the need to develop data centres at a rapid rate. However, the main public cloud providers (Microsoft, Amazon, and Google) can only lease space in data centres that are located within their own existing 'availability zones'. An 'availability zone' refers to a geographical area where a Cloud Service Provider has decided to create their network by leasing space in a multitude of existing data centres. In order for Cloud computing companies to provide truly resilient and secure services to their customers, they create availability zones whereby the IT infrastructure of their customers is run across multiple different data centres within this defined zone so that if one data centre fails, the other data centre within that zone will instantaneously pick up the operation of that specific programme.

Crucially, a single availability zone cannot be larger than around a 15-20km fibre cable radius from the initial data centre deployment so that all the facilities effectively act as one. The rationale behind this radius is that, in the event one of the data centres fails, the load and service can be quickly transferred to an alternative facility located within the availability zone. This concept is known as redundancy. Attempting to switch the IT load to another facility outside the 15-20km fibre radius will take too long and applications will likely fail. It is as a result of this that there are locational requirements from data centre operators to be located within the Slough to Hayes corridor, as this was the original Cloud Service Provider hub. All opened their Cloud networks in this area due to the preferential fibre and power connectivity. Due to the beneficial power and fibre capabilities west of London, and also the location's proximity to London itself, it is not only Microsoft but also Google, Amazon, IBM, Alibaba and Oracle that have decided to create an availability zone in the Slough to Hayes area. This structure of deployment is what has driven up demand for data centre development sites within this area of West London.

133. There are a number of key availability zones in London, the largest of which is Slough followed by Hayes. North Acton also serves as an availability zone and The Docklands is at the heart of an emerging East London availability zone. Each availability zone has unique characteristics and has historically catered to different applications i.e. Slough has offered cloud services, North Acton hosts gaming applications, The Docklands serves financial customers. Adding supply in one availability zone will do nothing to cater to need or demand in another. For

example, a data centre development in East London with a reservation from one of the East London substations would only be able to cater to end user demand and applications for this specific location and would have no impact on required IT for Hayes. The Docklands market accounts for 13% of London's live capacity. The market is dominated by retail colocation, largely due to the significant interconnectivity with the City of London and Canary Wharf. Of the 128MW of live IT in Docklands, the key operators are KDDI Telehouse, Digital Realty and Equinix with Telehouse North 2, Digital Realty Sovereign House and Equinix LD8 serving as the main interconnectivity ring for the area. While some wholesale providers such as NTT and Green Mountain have opened facilities to the East of London, these are catering to less latency centric AI applications. The Docklands itself will remain largely as a retail colocation market, as existing providers with a stronghold on the area expand their footprint.

134. As the market has matured and Cloud Service Providers are requiring larger buildings, operators have found it immensely challenging to secure the viable land parcels within these strict locational parameters. This is due to the lack of sizeable land plots under single ownership that contain a route to securing the correct amount of high voltage power and an ability to negotiate vacant possession. Further difficulties have emerged as data centre operators are competing with industrial developers when acquiring brownfield land options within West London which is also a premium 'last mile' logistics location.
135. The appeal site is located within London's most sought-after region (Slough to Hayes corridor). The demand driver within this region is, partly, the proximity to existing hyperscale cloud facilities located at the Slough Trading Estate and Stockley Park, Hayes allowing the facilities to sit within multiple Cloud Service Providers existing availability zones. The location provides a viable opportunity to expand the existing availability zones of Slough and Hayes where there is known demand for extending the availability zones. The micro location benefits from immense fibre richness running along the Grand Union Canal, increasing the attractiveness of the location. The area is quiet, with development limited in comparison to the dense concentration of neighbouring Slough, giving data centre operators the privacy and security required for their customers.
136. The site is just over 2 miles due south of the planned Uxbridge Moor National Grid Substation. Data Centre operators seek sites which offer the ability to secure power directly from National Grid facilities as they are the most secure substations in the UK. Court Lane has reserved 140 MVA from this substation with an expected delivery date of 2028-2029. The confirmed availability of this power supply would allow the operator of a data centre at Court Lane to secure the business of the Cloud Service Providers given this will equate to a data centre load of 90 MW of IT power with the remainder of the site load power to be utilised for the cooling and operation of the facility. This power allocation will likely be delivered from a new and dedicated data centre substation named Uxbridge Moor (Iver B). National Grid has submitted a planning application in respect of this development and completion of the substation is anticipated in 2029. The project is being funded by National Grid at a cost of around £95m with pro-rated securities or refundable cash payments made by those parties with contractual power reservations.
137. National Grid recognised two years ago the urgent need to develop additional power infrastructure for West London, in particular having regard to the increase

in demand from data centre operators. The Uxbridge Moor National Grid Substation will deliver in excess of 1GW (1000MW) of power to the area and the entirety of that power has since been reserved by landowners, data centre operators, battery storage developers and Cloud End Users looking to acquire land for data centre development and battery storage development.

138. 1GW of power will provide around 770MW of IT power able to be utilised by Cloud Service Providers via data centre operators given the market standard power usage efficiency rate of 1.3. This figure of 770MW still falls far short of the 1,700 MW of IT power that Knight Frank know the Cloud Service Providers are looking to acquire in the short to medium term and there is therefore still a gap between in demand and supply for data centres in the area.
139. Whilst there are sites to the west of London that have the required land area (10 acres+) for data centre development, Court Lane is unique in that there are very few which have a power allocation from National Grid. Court Lane is therefore one of very few viable land plots that can help meet the demand from Cloud Service Providers.
140. Known IT demand, mostly driven by Cloud Service Providers, in the West London area on a per MW IT basis is estimated to be in the region of 1,700 MW IT. Demand for capacity far outweighs supply. In this regard, the Appellant's analysis shows that only 243 MW of potential competing supply has been announced to come online for the remainder of the decade.
141. The appeal site provides the data centre operator market with a prime opportunity to develop a genuine hyperscale data centre campus in a relatively short timeframe. Having completed the above analysis on power, fibre and data centre locational requirements, Court Lane exhibits all the desired data centre traits and attributes. Coupling the aforementioned with the minimal availability of alternative, viable land options, Court Lane represents an almost unparalleled opportunity to service the aggressive demand that currently exists for data centre capacity in West London.

*Very special circumstances – other*

142. Perhaps the most important component of Policy CP16 is to secure a development that generates a reduction in HGV movements. Indeed, the main body of the policy provides:

*"Particular encouragement will be given to uses that would result in a reduction in HGV movements"; and*

*"Comprehensive redevelopment proposals should result in a significant reduction in HGV movements."*

143. That a reduction in HGV movements through the village of Iver is the fundamental purpose of the policy is also evident from the supporting text. Indeed, paragraph 3.6.23 is clear that when the Core Strategy was originally being prepared, the Council considered the provision of a relief road (or roads) as an alternative to the introduction of Policy CP16 to address the *"issue of HGV movements"*. However, as acknowledged in paragraph 3.6.24 of the Core Strategy, attempts to secure a relief road option have not gained any traction and the option is not viable without central government support. It is therefore not a realistic option for reducing HGV movements at the site.

144. It is common ground that the appeal scheme would result in the significant reduction of HGV movements to and from the site. The Transport Statement (CD1.24) submitted as part of the application indicates that there are currently 116 HGV movements to and from the site per day. In contrast, the Transport Statement provides that data centres typically generate a very low level of HGV movements, with HGVs only usually being required for the installation of equipment. The Transport Statement concludes that the proposed development is estimated to generate just 2 HGV movements per day, resulting in a 98% reduction in HGV movements. Achieving a reduction in HGV movements at the appeal site is critical not only to Policy CP16, but in delivering the strategic objectives of the Core Strategy which sought to mitigate the existing amenity impacts of HGV movements in and around Iver Village and Richings Park.
145. Clearly, the significant reduction in HGV movements will not be achieved without the appeal scheme. It therefore represents a very special circumstance to which significant weight should be attached.
146. The development would secure the comprehensive redevelopment of the appeal site for a new data centre, which would create new job opportunities, both on site and within the wider economy. Many of these would be highly skilled jobs in the fast-growing technology sector. Given the current disparate uses of the appeal site, the exact number of existing jobs is difficult to calculate, although this is estimated to be in the region of 50 full-time equivalent ('FTE') within the South Bucks Employment Site Appraisal 2013 undertaken by GL Hearn (CD7.7). The application was supported by an Economic Benefit Statement (CD1.18) which concluded that the proposed development would provide on-site employment and add significantly to both the Buckinghamshire local economy and the national economy through new job creation.
147. The development itself would generate around 200 FTE jobs during the construction phase (over a three to five year period), and a further 90 FTE jobs once the development is operational. Further, and perhaps more importantly, the appeal scheme would deliver up to 6,300 FTE indirect job opportunities in tradeable sectors throughout the data economy. The majority of these new job opportunities would be across London, the southeast and within Buckinghamshire. The economic benefits associated with the appeal scheme constitute a very special circumstance to which significant weight should be attached.
148. It is important to note that a separate listed building consent application (Ref PL/22/4398/HB) was approved in relation to Iver Court Farmhouse on 7 November 2023. The Council's Case Officer Report acknowledged that: *"The building has been the subject of a number of alterations over the years, many of which are not sympathetic to the listed status and significance of the building. The proposed works for which consent is sought seek to enhance the appreciation of the elements of the building that define its character, [by] reinstating appropriate period detail and remove modern inappropriate interventions"*. Importantly, it states that the works proposed address not only *"expected maintenance issues"* but also *"more extreme requirements of replacing the existing roof coverings"* and would deliver *"essential remedial works"*.
149. Addressing *"extreme requirements"* of and delivering *"essential remedial works"* to Iver Court Farmhouse clearly goes beyond what is typically expected or

- required to adhere to the 1990 Act, the Framework, and local planning policy. However, these benefits can only be secured through the delivery of the appeal proposal, which cross funds these benefits. Ultimately, if the proposal does not come forward, neither do the benefits associated with the listed building consent.
150. On the basis that great weight should be afforded to harm to a heritage asset, it is considered that great weight should also be given to benefits to a heritage asset. The appeal scheme would enhance both the setting of Iver Court Farmhouse and, by virtue of cross funding the listed building consent, the listed building itself. These benefits amount to a very special circumstance, which can only be delivered by the appeal scheme and should therefore be given significant weight.
151. The appeal site is identified as a major developed site in the Green Belt under Policy CP16 of the Core Strategy. It is visually unattractive, and its existing operation is noted as contributing to existing environmental and amenity issues in the local area. The poor condition of the site and its degraded and unattractive quality are immediately and starkly apparent upon visiting the site. The appeal site's identification as a major developed site within the Core Strategy (Policy CP16) despite its Green Belt status, along with its deteriorated condition, amount to a very special circumstance justifying the proposed development.
152. Furthermore, the appeal site's identification as a major developed site distinguishes it from both the Woodlands Park and Link Park sites – neither of which were expressly identified for development/redevelopment. There are further key distinguishing features, such as the fact that the site is neither greenfield (Woodlands Park) nor operational railway sidings (Link Park). Rather, it is a visually unattractive site which presents an adverse impact on its surroundings because of its current operation and visual appearance.
153. The Appellant is not aware of any comparable alternative sites that meet these criteria. The fact that it is expressly identified for development weighs heavily in favour of the proposal, representing a very special circumstance, and should be afforded significant weight.
154. The appeal scheme would deliver significant biodiversity improvements. The Ecological Impact Assessment (CD1.15) accompanying the application sets out how the appeal scheme would, over a 15 year period, result in an increase of 8.28 habitat units. This represents a 3,990% increase. This is significantly in excess of the policy and legislative requirement relating to BNG and therefore amounts to a very special circumstance, to which moderate weight should be attached.
155. The final very special circumstance which exists in this case relates to the fact that the redevelopment of the appeal site has been a longstanding policy objective. Policy CP16 of the Core Strategy was adopted in 2011. To date no redevelopment has been delivered, and with the exception of the appeal scheme, there have been no planning applications that have sought the redevelopment of the site. If the appeal is unsuccessful, there is no realistic prospect of an alternative redevelopment scheme coming forward in the short to medium term. In the absence of any viable alternative scheme, this amounts to a very special circumstance, which should be attributed significant weight.

156. As well as the significant employment benefits (both direct and indirect) stemming from the appeal scheme, there would be other significant economic benefits including investment value, increased GVA outputs, and business rates. These are explained in detail in the Economic Benefits Statement (CD1.18). These economic benefits are clearly significant and should weigh in favour of the appeal scheme.
157. In addition, the appeal scheme is Community Infrastructure Levy ('CIL') liable and as a result would make a significant contribution towards infrastructure provision in the immediate and wider area. Whilst the exact level of contribution would depend on the final level of floorspace delivered, based on the maximum floorspace proposed (65,000 square metres), the CIL liability would amount to £2.59m. This in itself is not insignificant and should weigh in favour of the appeal scheme.
158. The appeal scheme would also provide a range of environmental benefits including the reuse of an under-utilised, unattractive, brownfield site that has the potential to enhance the overall attractiveness of the local area in line with paragraphs 123 and 124 of the Framework.
159. It would enhance the links between the site, Iver, Iver Railway Station, and the wider Colne Valley Park, by providing a new crossing point on Thorney Lane South and reinstating footpath IVE/16/5 to the north of the site.
160. In addition to a reduction in HGV movements, the development would also involve a significant reduction in all vehicular traffic to the site, providing beneficial effects for the operation of the local highway network, highway safety, air quality and amenity.
161. The proposal also includes filling the small tunnel that runs beneath part of the appeal site and provision of a heritage interpretation plaque to recognise its industrial heritage in relation to the canal and carriage of products from the historic brickyard at the site. This will be agreed with the Canal and River Trust.
162. These additional benefits delivered by the appeal scheme should be given significant weight in the determination of this appeal.

#### *Planning and heritage balance*

163. In one side of this balance lie the various harms identified to the Green Belt; harms which together must be accorded substantial weight. In addition, there are the additional landscape and visual harms, which respectively should be accorded negligible and limited weight.
164. It is respectfully submitted however, that the benefits which stand to be weighed against that harm, clearly – that is, manifestly and demonstrably – outweigh the harm so comprehensively that there can be no question but that very special circumstances exist. Indeed, the imbalance is such that even if it were to be concluded that there were some degree of heritage harm caused by the scheme (such that heritage considerations were transferred from the positive to the negative side of the scales), then benefits would still clearly outweigh harms such that very special circumstances would exist.

### *Planning obligation*

165. The Appellant has refused to pay the Council's legal fees. The Council is, it is fair to say, indignant at this refusal, and has repeatedly sought to insert into the Undertaking, a clause ('the Fees Obligation') which would require the Appellant to pay the relevant fees. The Council now says that notwithstanding it wants the Fees Obligation to be included in a planning obligation, the Fees Obligation should not be regarded as a 'planning obligation' for the purposes of Regulation 122; as such, it does not need to satisfy the statutory tests. That is a remarkable suggestion; quite simply, as a matter of law, any substantive requirement of any kind included within a planning obligation must satisfy the operative requirements of Regulation 122 if it is to be given consideration by the Inspector.
166. Save for demanding its inclusion in the Undertaking (which would require that it be Regulation 122 compliant) the Council has not suggested any other legal power which would enable it to require the Appellant to pay its legal fees. In these circumstances, there is no basis on which the Council can require the inclusion of the Fees Obligation in the Undertaking, or indeed secure them in any other way. In response to this the Council screams 'unfairness', but in truth there is nothing unfair about it. The Appellant has paid a planning application fee in respect of the Application. That fee provides for the administrative cost of determining the application; review of the Undertaking is a part of that process. The Appellant does not pay a separate fee for the ecologist to consider ecology matters, or for the heritage officer to consider heritage matters. There is absolutely no basis on which it should pay a bespoke fee to the Council for dealing with legal matters.
167. In relation to the inability to have all interested parties sign the Undertaking at the present time, the Appellant maintains that the 'Arsenal condition' approach is entirely appropriate for addressing this somewhat complicated position regarding ownership. Such a condition raises no issue as to enforceability, and as such raises no substantive problem. With regard to guidance in PPG, it is not possible to secure signatures from all the current tenants, and it is clear that in the absence of a suitable planning obligation planning permission cannot be granted (if only due to the air quality issue). As such, the delivery of the scheme is evidently at material risk if the Arsenal condition is not imposed, in order to ensure that the Undertaking binds all landowners before development can proceed. Thus, the guidance is satisfied, and the condition should be imposed.
168. In relation to the dispute resolution mechanism, the Appellant maintains that its proposed drafting is entirely sound. That drafting has been approved/endorsed by a previous Inspector in the context of the Camden appeal<sup>3</sup> and that decision was not challenged in the courts; the wording works. The Council says that the Undertaking would – unlawfully – 'bind' it, notwithstanding it is not a signatory. That reasoning is incorrect; the complete answer to the complaint is provided by that Inspector, in the 2nd – 5th sentences of Paragraph 171 of the Camden appeal decision letter. As that Inspector stated, "*...it is wrong to say that [the Council] would be bound by [the Undertaking's] terms*". Thus, the Undertaking is lawful.

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<sup>3</sup> Ref APP/X5210/W/21/3284957

### *Conclusion*

169. For the above reasons, the Appellant respectfully asks that planning permission be granted for this development, which is so desperately needed, on this site, which is so desperately in need of redevelopment.

### **The Case for Interested Persons**

170. The following paragraphs summarise the written statements made by interested parties to the Inquiry.

#### *The Canal and River Trust*

171. The Trust retains its concerns about the heights indicated in the proposed parameter plans and requests that if the appeal were to be allowed that these do not form part of any approval. This would be to ensure that the parameters set at outline stage are not so prescriptive as to limit other ways in which the development may come forward at reserved matters.
172. With regard to the tunnel and cutting slope, the Trust have previously advised that it would be beneficial if the red line boundary could be amended to include these features, though at a minimum these matters should be addressed by conditions.
173. The LVIA at section 5.5 outlines the development opportunities for the site. This includes enhancing accessibility and connectivity, with a financial contribution proposed to support the Trust with the installation of the Reeds Footbridge across the canal and connectivity to the towpath. Whilst the Trust would welcome such a contribution, there have been no discussions with either the Appellant or the Council regarding this. Accordingly, flexibility in the wording of any obligation is recommended to ensure effective delivery of the bridge and any associated works to the towpath or canal corridor.

#### *Mr Amarjit Dhaliwal*

174. The decision to refuse this application has not given sufficient weight to the benefits to the local community in Richings Park. There is a desperate need to reduce traffic, especially HGVs, from local roads. They are not sufficiently sized to accommodate HGV traffic resulting in danger to cyclists and pedestrians, damage to the road surfaces, and both noise and air pollution in the area.
175. The other benefit that has been given insufficient consideration is the improvement to walking and cycling routes. These have been significantly degraded by the existing developments at the site and the proposed improvements would result in a more pleasant/easier access to the areas around the Colne Brook and lakes.
176. The development's contribution towards local business rates has also been set aside but should be considered as the area is poorly funded for maintenance by Buckinghamshire Council and an increase in contribution to budgets should not be ignored.

### **Written Representations**

177. The following paragraphs summarise the written statements made by interested parties at application stage.

### *The Canal and River Trust*

178. The Trust outlined concerns with regard to the overall heights and massing of the buildings as currently indicated and the impact they would have on the character and appearance of the canal corridor. The design as shown to date is considered to be entirely rectilinear, the listed building still appears to be somewhat dwarfed by large, somewhat featureless rectilinear boxes, the largest of which is likely to be highly visible from the canal corridor despite the difference in ground levels.
179. The Trust do not agree with the notion that there should be no screening of a roadway and large, apparently windowless structures from the canal. As previously stated, it is apparent that the designers have gone to some lengths to consider appropriate materials for the proposed data centre buildings, which gives rise to hope that they will be of more interesting form and materials than other similar buildings of this type elsewhere. However, there is little evidence that the precedents cited in the Design and Access Statement such as pitched roofs, with articulated facades and other architectural variation, have made their way into the draft proposals shown in Part 1.4 of the document.
180. The Hydrock tunnel survey report identifies the presence of a tunnel from the site to the canal corridor which was likely utilised in connection with the previous use of the site as a brick works. It is noted that the applicant is proposing to fill this tunnel, including demolition of the concrete cover slab. However, no supporting assessment of the heritage significance of this structure in the context of commercial use of the canal has been provided. An assessment of the heritage significance of this structure should be undertaken and used to inform any proposals to discharge reserved matters relevant to works to or adjacent to the tunnel, such as layout, landscaping, etc. It should also be noted that there are other non-designated items of industrial heritage interest/significance (railway remains associated with a disused quarry and the wharf) at the base of the cutting and other tunnels from the application site may also be present.
181. The drainage methods of new developments can have significant impacts on the structural integrity, water quality and the biodiversity of waterways. It is important to ensure that the drainage strategy for the site does not have any adverse impact on the stability of the cutting slope and that no contaminants enter the canal from surface water drainage.

### *The Ivers Parish Council*

182. The Parish Council objected in principle because the proposed development is in the Green Belt. However, they comment that the site appears to be a brownfield site and that the proposed use is preferable to the existing use.

### *Iver and District Countryside Association*

183. The Iver and District Countryside Association commented that they do not object to the application subject to a reduction of the overall heights of the buildings; a cast iron agreement to provide full public access via a network of paths (not permissive paths) from the canal to the north and Iver FP16 to the east; a substantial sum for mitigation to provide improvements to the landscape and biodiversity in the general area; and a commitment by the developers to liaise constructively with local people and Iver Parish Council.

### *The Inland Waterways Association*

184. The Inland Waterways Association commented that possible heritage links with the canal should be preserved as part of the development. The proposed development should have pedestrian/cycle access points to link to the adjacent public rights of way and the development should contribute to the resurfacing of the towpath enabling a traffic free route to and from the site.

### *Other Representations*

185. As set out in the Council's Officer Report (CD2.1), 17 representations in support of the application were received, which commented as follows:

- The proposed redevelopment of this previously developed site will respond to the growing demand for data centres.
- The development will see the delivery of a range of social and economic benefits, including the creation of approximately 90 jobs on site.
- The proposal would reduce the overall level of traffic and HGV movements associated with the site compared to the existing site.
- The plans to refurbish the Grade II listed Iver Court Farmhouse building as part of the scheme are supported, and removing the buildings and vehicles which currently obscure the Farmhouse will improve the appearance of the building and the site.

### **Conditions**

186. A roundtable discussion was held during the Inquiry regarding potential conditions that could be imposed were planning permission to be granted. I assess whether these suggested conditions meet the tests set out at paragraph 56 of the Framework later in this report.

## **Inspectors' Conclusions**

[Numbers in square brackets denote source paragraphs]

### Main considerations

187. Based on the evidence, policy, and the areas of agreement/disagreement, the main considerations in this case are:

- (a) The effect of the development on the openness of the Green Belt, and on the purposes of including land within it;
- (b) The effect of the development on the character and appearance of the surrounding area;
- (c) The effect of the development on the setting of the Grade II listed Iver Court Farmhouse; and
- (d) Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

### Green Belt openness and purposes

188. The appeal site is an existing industrial estate that contains a significant number of buildings and large areas of hardstanding. It is entirely within the Green Belt and is identified as a 'Major Developed Site in Green Belt' under Policy CP16 of the South Bucks Core Strategy. However, it is common ground that the proposal would be inappropriate development in the Green Belt. In this regard, paragraph 152 of the Framework states that inappropriate development is harmful by definition and should not be approved except in very special circumstances.

189. The existing buildings on the site are largely single storey industrial premises. In addition, there are significant areas of hardstanding within the site which are used for HGV parking, open storage, and for the stationing of equipment such as cherry pickers. Together, these existing buildings and uses significantly affect the openness of the site and it has a developed appearance when viewed from the adjacent M25 motorway and from nearby footpaths. However, the existing buildings are relatively low in height, and the proposed data centre would result in a significant increase in built volume and footprint compared to the current situation [27]. Whilst all matters are reserved for future consideration, the data centre buildings would be up to 30 metres in height (as shown in the parameter plans) and would be more visible in views from the surrounding area [32]. The development would therefore almost certainly result in a significant reduction to the openness of this part of the Green Belt. In this regard, paragraph 142 of the Framework states that openness is an essential characteristic of Green Belts.

190. In terms of the 5 purposes that Green Belt serves, harm is alleged to purpose c) which is to assist in safeguarding the countryside from encroachment [38]. In this regard, it is common ground between the main parties that the appeal site is in the countryside as it is outside of any settlement boundary. The increased height and bulk of the development would be more visible than at present, including in views from the M25 motorway, across Farlows Lake, and from nearby footpaths. It would therefore have some degree of visual impact that would encroach into the countryside. However, given the appeal site's current use, its

industrial character, and the vantage points from which the development would be seen, any harm to this purpose would be limited.

191. Harm is also alleged to purpose b) which is to prevent neighbouring towns merging into one another [37]. In this regard, the appeal site sits within a relatively narrow gap between Slough and West Drayton, which is around 3 km in width. However, as the appeal site has an entirely developed character, it would be incapable of serving as a buffer between Slough and West Drayton in the event that all other land to the east and west of it were developed out [106]. The development would therefore not result in any physical reduction in the gap between West Drayton and Slough. Any perceptual reduction in the gap between these settlements would also be limited as there are few vantage points from where the development would be visible and its present developed nature is not already apparent. Moreover, the gap between Slough and West Drayton is not readily perceptible from these positions. Accordingly, I consider that there would be no harm to this Green Belt purpose.
192. My attention has been drawn to 2 Green Belt assessments dated March 2016 (CD7.25) and March 2018 (CD7.26) that were commissioned by the Buckinghamshire Authorities to inform the Local Plan process [36]. Those documents assess much wider parcels/areas of land which are predominantly open in nature, and their findings therefore do not necessarily reflect the particular circumstances of the appeal site. In this regard, the appeal site has a developed character that is distinct from much of the surrounding Green Belt land. I have therefore come to my own view on the appeal site's contribution to the 5 purposes of including land in the Green Belt.
193. Policy CP16 of the South Bucks Core Strategy identifies the appeal site as an 'Opportunity Area' where appropriate employment generating redevelopment will be supported. However, it also states that any scheme should result in no greater impact to the openness of the Green Belt than at present, which is consistent with paragraph 154 g) of the Framework. As the development would have a greater impact on openness than the existing structures it would conflict with a key requirement of Policy CP16, and would therefore be contrary to it [62, 130]. Whilst this policy identifies the appeal site as a 'Major Developed site in The Green Belt', which are no-longer referred to in national policy, it is otherwise consistent with the Framework. I therefore attach substantial weight to it.
194. The development would also be contrary to Policy GB1 of the South Bucks District Local Plan, which states that planning permission will not be granted for development unless it falls into certain specified categories. However, this Policy does not make provision for 'very special circumstances' to outweigh the harm to the Green Belt and is therefore not fully consistent with the Framework. In the recent Woodlands Appeal, the Secretary of State noted this discrepancy and instead applied the 'very special circumstances' test at paragraphs 152-153 of the Framework. I have taken the same approach here. However, in most other respects Policy GB1 is consistent with the Framework, and I therefore attached substantial weight to it.
195. For the above reasons, I conclude that the development would result in a loss of openness to the Green Belt and would result in some harm to one of the purposes of including land within the Green Belt. It would be contrary to development plan Policies CP16 and GB1 in this regard.

196. Separately, the proposed changes to the Framework that have recently been consulted upon would have significant implications for Green Belt policy were they to be implemented. In particular, the proposed changes include revisions to existing paragraph 154 g), which lists types of new buildings that should not be regarded as inappropriate development in the Green Belt. The changes would allow for the redevelopment of previously developed land that would not cause substantial harm to the openness of the Green Belt. This would be a significant change from the current version of paragraph 154 g) which requires redevelopment proposals to "*not have a greater impact on the openness of the Green Belt than the existing development*" (my emphasis). In this case, the appeal proposal would significantly increase the built volume and footprint of development at the site, which would become more visible in the surrounding area. However, it would also consolidate the developed part of the site, and in my view, the extent of the loss of openness would not be "*substantial*".
197. Under the proposed changes to the Framework, the redevelopment of 'grey belt land' in sustainable locations would also not be regarded as being inappropriate development in the Green Belt. 'Grey belt land' is defined in Annex 2 of the consultation document as "*land in the Green Belt comprising previously developed land and any other parcels and/or areas of Green Belt land that make a limited contribution to the five Green Belt purposes*". In this case, the appeal site comprises previously developed land and, for the reasons given above, makes only a limited contribution to the 5 Green Belt purposes. However, the proposed definition of 'grey belt land' excludes the areas or assets of particular importance listed at footnote 7 of the Framework, which includes designated heritage assets. As the appeal site contains a listed building, it would therefore appear to fall outside of the proposed definition of 'grey belt land'.
198. In any case, were these proposed changes to be implemented then I consider that the appeal proposal would not be inappropriate development in the Green Belt. However, the consultation regarding the proposed changes has only just closed and it is likely to have generated a large number of responses. Accordingly, the form of wording that is currently proposed could be subject to change, and I therefore consider that only limited weight should be given to the consultation version of the Framework at this stage.

#### Character and appearance

199. The appeal site is located within the Colne Valley Floodplain LCA<sup>4</sup>, which consists of predominantly low lying open land on the western fringes of London. The M25 and M40 motorways pass through this LCA, which also contains a significant number of pylon towers. However, it is mostly characterised by open agricultural land, and lakes and woodland that are used for fishing and recreation. The appeal site is also identified as being on the eastern edge of the overlapping Richings Lowland LCA<sup>5</sup>, which is mostly located to the west of the M25. This LCA has a flat lowland topography that consists largely of arable land, pasture, paddocks, and golf courses with relatively sparse tree cover and an open expansive character. These LCAs are both set within the Thames Valley NCA,

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<sup>4</sup> As identified in the South Bucks District Landscape Character Assessment (2011) (CD3.5)

<sup>5</sup> As identified in the Colne Valley Landscape Character Assessment (2017) (CD7.22)

which encompasses a much wider area of land between London and Reading, including most of the former district of South Bucks.

200. The appeal site itself has a highly developed character that is dissimilar to the surrounding open landscape, and the characteristics of the LCAs in which it sits. In this regard, it has an unsympathetic industrial appearance that is clearly visible in views from along the M25, sections of the canal towpath, and a footbridge over the motorway. However, it is largely screened in longer views by trees, planting and intervening structures and it therefore has only a limited presence in the wider landscape. In contrast, the development would introduce much taller and wider structures that would be up to 18 and 30 metres in height respectively. These would be significantly more visible in the surrounding area than the existing single storey buildings.
201. The submitted LVIA (CD4.1) identifies 6 representative and specific views where the development would be visible from, and a number of additional viewpoints are identified in the Council's Landscape Proof of Evidence. Many of the viewpoints identified by the Council are located along the M25 motorway, and the development would be visible on the final approaches to the site from both directions [44,45]. In this regard, it would be seen by many thousands of motorists and passengers year-round. However, the existing industrial estate is already prominent from the motorway, and a visually attractive scheme is capable of being secured at reserved matters stage. Whilst the proposed buildings would inevitably be significantly taller than at present, they would be seen in the context of the motorway itself, existing pylon towers, and the settlement edge. Moreover, the speed of passing motorists (most of whom would be focussing on the road) and the constrained visibility of the development beyond the immediate approaches, would limit its prominence in these views, which in any case would be transitory in nature. I therefore consider that visual harm arising to these viewpoints would be minor.
202. The development would also be clearly visible from the footbridge over the M25 which is located approximately 300 metres to the north [46,116]. This viewpoint currently offers panoramic views across the wider landscape, albeit such views include several pylon towers and the motorway itself. The existing industrial estate can also be clearly seen from the footbridge, although its visibility is filtered by trees and planting. The appeal proposal would clearly have a greater impact on this view than the existing industrial estate and would introduce much taller and wider structures that would be far more prominent. However, pedestrians using the footbridge would primarily be focussed on safely crossing the motorway rather than looking out across the landscape. Views of the appeal site become more apparent when leaving the bridge to the east via the access ramp, although such views are relatively brief, and the eye is drawn by the flow of traffic along the M25. Accordingly, any harm that would arise from the change to this view as a result of the development would be no more than moderate.
203. The development would also be visible in views across Farlows Lake (to the north east) which is a private fishing lake, albeit with permissive access along the footpaths that run through it [47,48,117]. In certain views from around the lake, the development would jut out prominently above the tree line, which largely conceals the existing industrial estate at present. In these views, the appeal proposal would partially enclose the lake and erode its natural and rural

character. However, the development would be most prominent from individual fishing pitches rather than from the footpath network around the lake. These footpaths, and the access route leading to the fishing shop, are the routes most likely to be used by members of the public and the development would be partially obscured from them. In this regard, I consider viewpoint 4 identified in the submitted LVIA to be more representative than viewpoint A9 in the Council's evidence, as the latter is a fishing pitch behind the shop that would only be occasionally seen by members of the public. Other glimpsed views of the development would be available from the paths around the lake, although these would be transient in nature and filtered by trees and planting. The most significant visual impacts would be to private views used largely by individual fishermen, who would be able to use other unaffected fishing pitches. This would limit the visual harm that would arise from around Farlows Lake in my view.

204. The development would also be visible from along the towpath to the Grand Union Canal Slough Arm, which runs along the northern edge of the appeal site [118]. The towpath is well-used for recreational purposes and sits below the appeal site at the foot of a relatively steep wooded bank. The existing industrial estate and galvanised steel perimeter fencing are visible at various points along the nearby sections of the towpath, and such views are unattractive and detrimental to the enjoyment of it. Due to its height and width, the development would be capable of being seen in somewhat longer views and would be a more imposing presence to users of the towpath. However, views of it would be filtered by trees and planting along the bank, and the development would also remove the existing negative features, including the visually harsh palisade fencing. Accordingly, only minor visual harm would arise from the change to these views.
205. The development would also be visible from along a relatively short section of public footpath IVE/15/3 that runs south from Iver towards the Ridgeway Trading Estate [49]. This path is around 540 metres from the appeal site, and views of the development would be available between the edge of Iver and the relatively tall industrial buildings to the south. Whilst the development would be visible in the backdrop to this view, it would only be seen along a relatively short section of the footpath and in the context of the existing Ridgeway Trading Estate. Accordingly, any visual harm arising from this viewpoint would be minor.
206. Other potential views of the development including from Little Brittain Lake (to the north east), from Thorney Lane South (to the south west), and from the footpaths to the south east, would be more distant in nature and heavily filtered by intervening trees and vegetation. Accordingly, any visual harm arising from these vantage points would be negligible.
207. Overall, despite its height and width the visual envelope from which the development would be seen is relatively limited. Moreover, some of the viewpoints that would be most affected are either private (from the fishing pitches) or transient and high speed (from the M25 motorway). Near views from the canal towpath would also be screened by vegetation and would replace views of the existing industrial estate. Moreover, only limited views would be available from the wider footpath network within the Colne Valley, and these would be largely glimpsed or distant in nature. This would significantly limit how any landscape harm would be perceived. The site also makes up only a relatively small part of the respective LCAs in which it sits and is well contained by the M25

motorway, the Grand Union Canal Slough Arm, and the water treatment works to the south. Accordingly, I consider that any harm to the landscape would be minor, and that any visual harm would be no greater than moderate.

208. As there would be some landscape and visual harm arising from the development, it would conflict with Policy EP3 of the South Bucks District Local Plan and Policy CP9 of the South Bucks Core Strategy. These policies seek to ensure, amongst other things, that new development does not harm landscape character or adversely affect the locality. In determining the Woodlands Appeal, the Secretary of State found that Policies EP3 and CP9 should carry substantial weight, and I concur with that view. The development would also be contrary to Policy IV13 of the Ivers Neighbourhood Plan, which requires that development maintain and enhance the landscape within the Colne Valley Regional Park.
209. I return to this conflict with Policies EP3, CP9, and IV13 in the 'planning balance and very special circumstances' section of my report, below.

Setting of the listed building

210. The appeal site contains the Grade II listed Iver Court Farmhouse, which dates to the late 18<sup>th</sup> century. It is constructed in brown brick with old tile hipped roofs and end wall chimney stacks. It is common ground between the main parties that its significance derives primarily from its architectural interest, including its period character and surviving sections of its internal and external historic fabric. It is identifiable as a vernacular late 18<sup>th</sup> century farmhouse illustrating the construction and craftsmanship of this type of building and the use of locally sourced materials. The building is also of historic interest by virtue of its age and rarity as a late 18<sup>th</sup> century farmhouse that was once part of a manorial estate based around Iver.
211. The setting of the listed building has undergone significant change over the years. The building once formed the nucleus of a tenanted farmstead and was flanked on either side by traditional agricultural buildings and set within arable fields and an orchard. However, during the late 19<sup>th</sup> century industrial uses began to encroach into its setting and a brickworks and gravel pits were introduced to the east of the farmhouse. These increased in size over the early 20<sup>th</sup> century and evolved during the post-war period into the present Court Lane Industrial Estate. A large water treatment works was also introduced to the south in the 1970s and the construction of the M25 in the 1980s cut through the former orchard (then the last remaining arable field adjacent to the farm) and necessitated the demolition of the flanking agricultural buildings on either side. Today, the listed building is surrounded by a modern industrial estate and is largely divorced from its original agricultural setting.
212. At present, the setting of the listed building is dominated by industrial buildings and areas of hard standing used for HGV parking and open storage. In this regard, 2 industrial buildings are positioned on either side of it in a similar position to where the original flanking agricultural buildings would once have stood. However, these buildings are not symmetrical and are industrial in character due to their pattern of openings and the materials they are constructed in. Whilst the building to the south is more sympathetic in terms of its appearance and materials, its roof shape and openings are clearly industrial in character. The building to the north is also industrial in its appearance and materials, and contains flues, areas of glazing, and a metal fire escape.

213. Neither of these buildings are particularly agricultural in form, and the appearance of the northernmost building detracts from the setting of the listed building [51]. Both buildings also accommodate car workshop and vehicle repair uses that generate noise, activity, and vehicle parking around the listed building, which also negatively affects how it is experienced. Other nearby structures to both the south and east are also industrial in appearance and detract from the setting of the listed building. However, these surrounding buildings are largely single storey in height and therefore retain a degree of openness above the listed building when viewed from the west.
214. The areas of hardstanding to both the east and west of the building are used for HGV parking and open storage of equipment such as cherry pickers. Partial views of the listed building are available across these areas from along Court Lane from the west and north east, and in glimpsed views from the south. However, such views are restricted by the presence of parked HGVs, vehicles, and other equipment, and are filtered through galvanised steel palisade fencing which encloses these areas [52]. In this regard, the HGV parking and equipment storage areas are not transient features as there is no dispute that such uses are lawful and could continue indefinitely [53]. Any sense of openness around the listed building is therefore limited. A further galvanised steel palisade fence runs immediately alongside the building's western elevation which has a harsh, industrial appearance. The only uninterrupted views of the listed building are from the adjacent cul-de-sac to the east, and its visibility and prominence within the wider industrial estate is limited. Whilst it has some localised prominence in the north west corner of the site that is largely due to its architectural quality in comparison to the surrounding buildings, which draws the eye [54,59].
215. Overall, the existing setting has a negative effect on the significance of the listed building and how it is experienced. In this regard, it is largely hemmed in by unsympathetic buildings and uses that generate noise, activity and a significant number of HGV movements in its vicinity. Accordingly, the original setting of the building has now been lost. Whilst there is a limited degree of openness around, and particularly above, the listed building that is the only element of its setting that contributes positively to its significance at present [55,121,126].
216. The submitted demolition plan and parameter plans indicate that the development would involve the removal of all of the surrounding industrial buildings and uses, and the galvanised steel palisade fencing. It would also involve the removal of the current areas of HGV parking, open and equipment storage, and the noise, smells and HGV movements associated with the existing industrial estate. The removal of these negative elements would significantly improve the setting of the listed building.
217. The land around the listed building would also be opened up which would allow for wider views of it than are available at present. This would significantly increase the building's prominence and would restore some of the openness that characterised its original setting [122,123]. There would also be an opportunity to landscape this area at reserved matters stage which would provide an additional benefit. Whilst the data centre would also require new fencing for security purposes, its form, finish, and position could be controlled to ensure that it was sympathetic. In this regard, a significant improvement is capable of being secured at reserved matters stage compared to the existing palisade fencing.

There is also no indication that it would be necessary to position any new fencing as close to the listed building as the existing palisade fence that runs along its western elevation at a distance of around 1 metre [59].

218. In addition, listed building consent has recently been granted for a number of repair and restoration works to Iver Court Farmhouse (Ref PL/22/4398/HB). Those works include the removal of a number of unsympathetic modern internal additions and finishes, the re-instatement of original features including period doors, windows, and detailing, and a number of internal and external repairs. Such works would go beyond ordinary repairs and would represent a significant improvement to the condition of the listed building. Whilst the Council states that some of these works would simply rectify unauthorised alterations to the listed building, it is unclear from its submissions which of these works are considered to be unauthorised. In this regard, no schedule of any such works has been provided, and no enforcement action is currently being undertaken [71,148,149].
219. Moreover, the building was listed in 1986 and any such works undertaken before then would not be subject to the same restrictions that apply post-listing. There is also no indication that the proposed works would be likely to be undertaken were the appeal to be dismissed, and given that they go well beyond ordinary repairs, it is not clear that there would be any incentive for the owner to do so. Conversely, the implementation of these works is capable of being secured by condition were the development to proceed. Moreover, the development would secure the use of the building as an improved office for the foreseeable future.
220. In terms of the harm that would arise, the development would introduce 2 large data centre buildings to the east of the listed building that would be of a considerable height and scale. These buildings would be stepped in height so that the building nearest to the listed building would be around 18 metres high, whereas the furthest and largest building would be around 30 metres high. However, whilst these buildings would be set back from the listed building itself, they would be of a scale that would dwarf it in views across the site. The data centre buildings would become the most prominent within the site, whereas the farmhouse would originally have been the dominant structure, albeit it is now hemmed in by industrial buildings and uses [56,58,126].
221. The height of these buildings would also significantly encroach into the skyline above the listed building when viewed from the west. The loss of this open aspect above the listed building would remove an element of its original and historic setting. However, opportunities to appreciate the building from the west are limited at present and such views are largely filtered through galvanised steel palisade fencing and areas of HGV parking. Moreover, electricity pylons and cherry pickers are currently visible above the listed building in views from the M25. Notwithstanding this, the loss of the mostly open skyline above the listed building, and the scale of the data centre buildings, would cause some harm to the setting of the listed building and an appreciation of it as a historic farmhouse. Given the existing situation, however, this harm would be modest [57].
222. Road traffic noise from the M25 is significantly lower on the eastern façade of the listed building due to the presence of the flanking industrial buildings on either side [51]. However, the listed building itself would continue to provide

shielding from road traffic noise were the development to proceed. Moreover, the existing car repair workshops on either side currently generate significant noise and activity in close proximity to the eastern elevation of the listed building and attract additional vehicle parking to this area. The removal of these uses would be beneficial to a sense of tranquillity at the eastern elevation and would compensate for any increase in road traffic noise in this location. Accordingly, I consider that the development would have a neutral effect in this regard.

223. In summary, the development would have some positive and some negative effects on the setting of the listed building. However, I consider that these would counterbalance each other and so would have a neutral effect overall - the setting of the listed building would therefore be preserved. In addition, the repair and restoration works to the listed building would be a significant benefit. The development would therefore accord with Policy EP3 of the South Bucks District Local Plan and Policy CP8 of the South Bucks Core Strategy. These policies seek to ensure, amongst other things, that development protects the historic environment and is compatible with the character and amenity of the area. The appeal proposal would also accord with the relevant sections of the Framework relating to designated heritage assets.

224. Notwithstanding this, even if I had come to a different view and accepted that the development would result in 'less than substantial harm' [60] for the purposes of paragraphs 207-208 of the Framework, then this harm would have been outweighed by the public benefits of the scheme. These benefits, described in detail below, include the pressing need for new data centres, the proposed restoration/repair of the listed building, the reduction in HGV movements through Iver, the re-use of brownfield land, and economic and ecological benefits.

#### Other considerations

##### *The need for data centres and the appeal schemes contribution*

225. There are a number of 'availability zones' around London that serve different segments of the data centre market. These zones consist of localised clusters of data centres within a defined catchment area that is dictated by latency. This proximity is necessary to transfer information instantaneously between data centres and provide near 100% uptime for digital services. Each availability zone has unique characteristics and caters to different sections of the market.

226. The appeal site is located between the Slough and Hayes Availability Zones and would have the ability to connect to either. These availability zones are particularly important for cloud computing services given their proximity to both the Slough Trading Estate, where many cloud computing firms are located, and the edge of London. They are also in close proximity to the Great Western Rail Line and Grand Union Canal, which house the fibre ducts that transport data between London and the US via a sub-sea cable. This allows attractive connectivity capabilities to the internet exchanges in the US [135].

227. The site therefore benefits from clear locational advantages in terms of its position relative to the Slough and Hayes Availability Zones and the fibre ducts which run along the adjacent Grand Union Canal. Its size is also suitable to accommodate a hyperscale data centre of the size and type envisaged. It is therefore an optimal site and location for such a use. Moreover, there is a clear lack of alternative sites available at present to meet the demand for such data

centres in the Slough and Hayes Availability Zones. Failure to meet this need could have significant negative consequences for the UK digital economy.

228. The Appellant estimates that there is a known short-to-medium term (3-5 year) need for 1,700 MW of capacity arising from Cloud Service Providers to the west of London. Of this, only 243 MW of potential supply is likely to come forward for the remainder of the decade [140]. Whilst there are other 'availability zones' around London, neither the North Acton Availability Zone (which tends to host gaming applications) or The Docklands Availability Zone (which tends to serve financial customers) would necessarily be able to cater for cloud computing services [77,133].
229. The development benefits from a confirmed power supply from the planned Uxbridge Moor National Grid Substation [136]. Whilst this substation is not expected to be delivered until 2028-2029 the need for new data centres is highly unlikely to have been met by then. I further note that the Uxbridge Moor substation is currently subject to a pending planning application [63].
230. It is common ground between the main parties that significant weight should be attached to the need for new data centres, and I concur with that assessment. I further note that in determining the nearby Woodlands Appeal, the Secretary of State found that significant weight should be given to the need for data centres both in the UK and in the Slough Availability Zone. The development would also make a significant contribution towards meeting that need.
231. The recent WMS implies that data centres should be regarded as "*critical national infrastructure*". It further states that the government intends to change policy to make it easier to build "*growth-supporting infrastructure such as ... data centres*" [65]. This is reflected in the proposed changes to the Framework which state that provision should be made for infrastructure (including data centres) to support knowledge and data-driven, creative or high technology industries. However, for the reasons set out above, I attach only limited weight to the proposed changes to the Framework at this stage.

#### *Reduction in HGV movements*

232. Policy CP16 requires that a "*significant reduction in HGV movements*" be delivered as part of any redevelopment of the appeal site, which reflects longstanding concerns about the number of HGVs that pass through Iver and Richings Park. In this regard, the Core Strategy makes several references to the need to reduce HGV movements that are generated by the appeal site and 2 other nearby industrial areas. The Ivers Neighbourhood Plan also refers to "*HGV blight*", including its effect on local air quality and congestion, and seeks to encourage land use change that will lead to the removal of HGV generating uses. The Council's Transport Paper (CD7.9), prepared in 2010 to support the Core Strategy, also makes several references to the concerns of local residents regarding HGV traffic in this area.
233. The Appellant's Transport Assessment (CD1.24) includes a TRICS analysis that identifies 116 daily HGV movements from the site at present. This figure is not disputed by the Council. If the development were to proceed, this would reduce to 2 daily HGV movements once the data centre was operational, equating to a reduction of around 98%. That is a clear benefit of the appeal proposal, which I consider should carry significant weight [69,144,145].

### *Heritage benefits*

234. As set out above, the development would have a neutral effect on the setting of the Grade II listed Iver Court Farmhouse. However, it would also deliver significant restoration and repair works to the listed building and would secure its continuing use as an improved office building. Were the appeal to fail, there would be no apparent incentive for the owner to undertake such works. Accordingly, this would be a clear benefit of the development to which I attach significant weight [71,148-150].

### *Previously developed land*

235. At present, the appeal site largely consists of buildings and hardstanding and it therefore meets the definition of previously developed or 'brownfield' land set out at Annex 2 of the Framework. In this regard, paragraph 123 of the Framework encourages strategic policies to make as much use as possible of such land. In my view, the re-use of a large area of previously developed land is another clear benefit of the scheme to which significant weight should be attached.
236. The Council argues that it would be misconceived for such weight to be attached to the site's brownfield status given that the Framework already allows for some brownfield sites to be developed under paragraph 154 g). However, the purpose of paragraph 154 is simply to identify types of development that are not inappropriate in the Green Belt. It does not dictate which factors should or should not be considered in determining whether very special circumstances exist. Similarly, whilst Policy CP16 identifies the site as an Opportunity Area, that does not mean that its brownfield status cannot also be considered as part of such an assessment. In this regard, neither local nor national policy indicate that a lower order of weight should be attached to the brownfield status of a site, simply because it is in the Green Belt [72,73].

### *Economic benefits and job creation*

237. The South Bucks Employment Site Appraisal (CD7.7), undertaken in 2013, estimated that the existing industrial estate accommodated around 50 FTE jobs. In contrast, the development would generate around 90 FTE jobs once operational and would deliver up to 6,300 FTE indirect job opportunities in tradeable sectors throughout the data economy. Many of these jobs would be highly skilled roles in the technology sector. The Appellant states that the majority of these new job opportunities would be within London, the southeast and Buckinghamshire [147]. I attach significant weight to the level of investment and job creation that the development would bring.
238. Whilst the new job opportunities would not necessarily be taken by Buckinghamshire residents, there is no requirement that such opportunities be restricted to local residents only. In this regard, even if newly arising jobs were taken by those residing in London or the wider south east, that would still represent a clear benefit of the development. Moreover, there is no evidence before me that indicates what proportion of the existing employees at the site are Buckinghamshire residents.
239. The development would involve the loss of the existing business premises on the site, and it is unclear to where these businesses would relocate. However, the development would generate significantly more onsite employment than at

present, and in highly skilled roles. It is also likely that at least some of those existing businesses would be able to relocate locally [70].

240. Separately, a further 200 FTE jobs would be created during the construction phase. However, as these jobs would be transient in nature, I consider that they should carry only limited weight in favour of the development.

#### *Ecological benefits*

241. The development would deliver ecological improvements and would result in an increase of 8.28 habitat units, representing a BNG of 3,990%. However, this level of increase is achievable due to the very low ecological value of the existing industrial estate. Accordingly, the improvement in percentage terms is somewhat misleading and whilst the ecological value of the site would be improved, I consider that this should carry only moderate weight [74,154].

#### *Other benefits*

242. The development would deliver enhanced pedestrian links by providing a new crossing point on Thorney Lane South and reinstating the footpath IVE/16/5 to the north of the site [159]. However, given the relatively short length of the proposed footpath reinstatement, and the lack of a pedestrian footway along parts of Court Lane, only moderate weight should be attached to these benefits.
243. The development would provide at least 10% of its energy from decentralised and renewable or low-carbon sources, which is a requirement of Policy CP12 of the South Bucks Core Strategy. It would also be constructed to BREEAM very good standard which is not a policy requirement. I attach limited weight to these benefits.
244. The development would provide a CIL contribution of £2.59m. However, this is a standard requirement that applies to all chargeable developments [157]. I therefore attach limited weight to this benefit.

#### *Other matters*

245. Both main parties refer to the Woodlands Decision, which was a recovered appeal determined by the Secretary of State in October 2023. That proposal was also for a hyperscale data centre in the Buckinghamshire Green Belt and was dismissed as 'very special circumstances' were found not to exist. However, there are a number of important differences between that development and the current appeal proposal. In particular, that site largely comprised open land, including pasture and a restored former quarry/landfill, whereas the current appeal site is a visually unattractive industrial estate. Moreover, that scheme would not have delivered the reduction in HGV movements and the repair/restoration of a listed building that would be achieved here. Accordingly, a different approach to that undertaken in the Woodlands Appeal is justified [67,152].
246. The Canal and River Trust's comments relating to the historic tunnel and the effect of drainage arrangements on the Grand Union Canal are capable of being addressed by way of planning conditions [172,181].
247. Appearance is a reserved matter for determination at a later stage. However, from the submitted details, including the design code, I am satisfied that a high

quality design could be achieved that would successfully address the scale and mass of the proposed buildings [29].

Planning obligation

248. A signed and dated Unilateral Undertaking ('UU') has been submitted that would secure payments for air quality mitigation and monitoring of the Travel Plan. It also contains provisions relating to a Local Labour, Skills and Employment Strategy and Management Plan that would secure employment, training and skills for local people. With regard to the air quality payment, this is clearly necessary to mitigate the impact of increased pollutants generated by the development, which is located within an Air Quality Management Area. It is directly related to the development and has been calculated using the Defra 'damage cost calculator'. In this regard, it is fairly and reasonably related in scale and kind to the development.
249. The Travel Plan monitoring contribution is necessary to ensure that the Travel Plan is delivered and is set in accordance with a standard formula used by the Council. It is directly related and fairly and reasonably related in scale and kind to the development. However, since the UU was prepared the Council has updated its costs for 2024-25 and so the first instalment at schedule 3 1.1(a) should be increased from £1,000 to £1,350. In this regard, paragraph 11.3 of the UU allows for the Secretary of State to amend the contribution amount.
250. The proposed monitoring contribution is also fairly and reasonably related in scale and kind to the development and does not exceed the Council's estimate of its monitoring costs over the lifetime of the obligation.
251. With regard to the Local Labour, Skills and Employment Strategy and Management Plan, this relates amongst other things to the use of local labour, apprenticeships, and training opportunities. However, there is no local policy that requires this of new development, and I do not consider that this provision is necessary in order to make the appeal proposal acceptable in planning terms. I further note that in determining the Woodlands Appeal, the Secretary of State agreed with that Inspector's conclusion that such a contribution was unnecessary.
252. The UU also includes a provision (at paragraph 11.5) which states that if the Appellant is required to pay the Council's legal fees, then this sum will be transferred within 7 weeks of the date of the decision letter. However, it is unclear why a separate fee is necessary to cover the Council's legal costs in addition to the planning application fee. In this regard, no separate fee is sought for the input of the Council's Ecology Officer, Conservation Officer, or its Urban Designer and Landscape Architect into the application. Moreover, no adequate explanation has been provided as to what distinguishes their input from that of the Council's Legal Services department, so as to justify a separate fee. Furthermore, planning application fees are set nationally and do not specifically exclude the Council's legal costs. I therefore do not consider that such a payment is necessary to make the development acceptable in planning terms [86,166].
253. In its closing submissions, the Council argued that the payment of its legal fees would not constitute a 'planning obligation' and so would not be subject to the Regulation 122 tests. Instead, it argued that these provisions would sit

within the wider instrument which contains the planning obligation. However, even if that were the case, there does not appear to be a legal power that would allow the Council to require such a payment. In this regard, whilst section 93 of the Local Government Act 2003 provides a power to charge for discretionary services, this must be agreed to by the person paying the charge. In this case, however, the Appellant does not agree to the payment of the Council's legal fees. Moreover, neither section 111 of the Local Government Act 1972 or section 1 of the Localism Act 2011 give a power in express words to charge for such fees. The Council has also not sought to argue that these contain the power to charge such a fee by necessary implication. Conversely, the Appellant has pointed to caselaw<sup>6</sup> regarding section 111 of the Local Government Act 1972 (albeit relating to charging for a discretionary service) which held that "*necessary implication*" imposes a rigorous test going far beyond the proposition that it would be reasonable or even conducive to charge for the provision of a service. The Council has also not suggested any other legal power that would allow it to charge the Appellant separately for its legal fees. Accordingly, there appears to be no other legal basis for requiring such a payment if this part of the instrument is not subject to Regulation 122 [86-95,165,166].

254. Consequently, and on the evidence before me, it is not justified for the Appellant to make a separate payment to cover the Council's legal fees. However, should the Secretary of State disagree, then it would be necessary for her to state in her decision letter that such a payment is necessary, given the terms of paragraph 11.5 of the UU.
255. Separately, the UU contains deemed approval provisions relating to indexation, to which the Council objects. These would allow the owner to propose an alternative index in the unlikely event that the Building Cost Information Service All in Tender Price Index ceased to be published. If the Council then objected to that proposed alternative index, it would have 20 working days to request an alternative, otherwise the index would be deemed to have been approved by the Council. Such an approach would be appropriate in my view and would avoid a prolonged impasse if there was a disagreement regarding the proposed index. Moreover, I heard no convincing argument that such an approach would be legally unsound.
256. The Council also objects to the proposed dispute resolution provisions, which it considers to be inappropriate in the context of a UU. These would apply in the event that an alternative index could not be agreed. However, I do not accept that the Council would be bound by these terms as it could choose not to respond, and the deemed approval provisions would then apply. However, it has the option to agree to dispute resolution as set out in the UU. I further note that my colleague in the William Road appeal<sup>7</sup> came to this view in relation to a UU in very similar circumstances [97,168].
257. The definition of 'commencement' in the UU excludes 'structural landscaping works', 'highway access works' and 'temporary construction access works'. These works could therefore be undertaken before payment of the air quality contribution is triggered. However, the installation of structural landscaping

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<sup>6</sup> McCarthy & Stone (Developments) Ltd v Richmond upon Thames LBC [1992] 2 AC 48

<sup>7</sup> APP/X5210/W/21/3284957

would not affect air quality, and the extent of highway works (including the construction access) would be limited given that the access into the site from Court Lane is already established. Accordingly, I do not consider that these exclusions from the definition would raise any significant issues.

258. The trigger for payment of the air quality contribution would be upon occupation of the development. I consider that to be appropriate, given that the Council confirmed that there are no specific mitigation measures that relate solely to this site, and that the air quality impacts will arise post-occupation.
259. Further detailed concerns were raised regarding the drafting of the UU where it departs from the Council's standard wording. However, those concerns do not relate to enforceability or legal soundness but are instead matters of preference. The Council also accepted in the roundtable session that its concerns regarding the enforceability of the UU through the English courts had been addressed by the updated legal opinion (ID.7).
260. The Canal and River Trust requested a contribution towards the installation of a footbridge across the canal and connectivity to the towpath. However, only limited details of that scheme have been provided, including its current status, anticipated costs and programme of implementation. Moreover, no contribution amount has been suggested by the Trust. It is therefore not clear that such a contribution is necessary to make the development acceptable in planning terms [173].

### Conditions

261. The Council suggested a number of planning conditions, some of which I have edited for clarity and enforceability. In addition to the standard outline conditions, I have imposed conditions that require the development to accord with the principles set out in the parameter plans, demolition plan and design code. Whilst scale, layout, and appearance are reserved matters, these conditions are necessary to ensure an acceptable visual and landscape impact, to limit the effect on the openness of the Green Belt, and to ensure a high quality development.
262. An 'Arsenal' style pre-commencement condition requiring all relevant interests in the land to be bound into the submitted UU is necessary given the circumstances that apply in this case. In this regard, the site is subject to multiple leaseholder interests, some of whom are described as being uncooperative given that the development would necessitate the relocation of existing businesses. Moreover, the freehold owner has no ability to compel existing tenants to enter into a planning obligation, and there appears to be little incentive for them to do so. However, the Appellant states that the last of these tenancies will come to an end in March 2025 at which point vacant possession will be secured. In these circumstances, such a condition is the only way to ensure that a planning obligation is secured. In the absence of this, the delivery of the development would clearly be at serious risk given a planning obligation is necessary to overcome the Council's air quality concerns [96,167]. I am therefore satisfied that an 'Arsenal' style condition would meet the relevant PPG tests in this case.
263. I have imposed a condition requiring the submission and approval of a Construction Management Plan, which is necessary in the interests of highway

safety and residential amenity. Further conditions relating to a Construction Environmental Management Plan, a Landscape and Ecological Management Plan, and a Biodiversity Net Gain Plan are necessary to protect biodiversity, deliver biodiversity net gain, and to ensure new habitats are appropriately designed, managed and maintained. Conditions relating to the retained trees and the Grand Union Canal are necessary to ensure that retained trees and the canal embankment are protected during the construction period. Other conditions requiring the submission and approval of an Air Quality Dust Management Plan and a remediation scheme are necessary to ensure that dust is managed during the construction period and that the site is appropriately remediated. These conditions are pre-commencement in nature as they will either inform the entire construction process, relate to works below ground level, or are benchmarked against the existing ecological baseline.

264. Conditions requiring the submission and approval of a Bird Hazard Management Plan and requiring that no building exceed 67.95m AOD, are necessary to ensure the safe operation of aircraft using Heathrow Airport. A condition requiring historical recording of the canalside tunnel is necessary to ensure archaeological remains are analysed and recorded. Further conditions requiring the submission and approval of a surface water drainage scheme, and a maintenance plan, are necessary to ensure that the site is appropriately drained. Other conditions requiring the submission and approval of a whole life carbon emission assessment, and a scheme to ensure at least 10% of regulated energy is from decentralised and renewable or low-carbon sources, are necessary to ensure that the buildings are sustainable and to comply with Policy CP12 of the South Bucks Core Strategy. However, there is no specific policy requirement for the development to be built to BREAM 'excellent' standard, and instead I have modified this to BREEAM 'very good' which the developer has committed to.
265. A condition requiring the submission and approval of a Secure by Design Statement is necessary to ensure that appropriate security measures are installed. A condition requiring works to Iver Court Farmhouse to be undertaken is necessary to ensure that the implementation of the listed building consent is secured. Conditions relating to external lighting and bat boxes are necessary to avoid disturbance to bats in the vicinity and to provide new habitats. Further conditions requiring the submission and approval of a verification report, and relating to unanticipated contamination, are necessary to ensure that the site is appropriately remediated. Other conditions relating to a Travel Plan, a pedestrian crossing on Thorney Lane South, and the reinstatement of Footpath IVE/16/5 are necessary to ensure that the development would be accessible by means other than the private car.
266. Conditions relating to the proposed emergency backup generators are necessary in the interests of air quality, and the living conditions of nearby residents. A further condition relating to the canalside elevations and shading assessments is necessary to ensure that the impact on the canal can be assessed at reserved matters stage. A condition relating to foul water is also necessary to ensure that foul flows can be accommodated in the existing sewer network in order to avoid any pollution or flooding incidents. Finally, a condition restricting the use of the building to a data centre is necessary as I have attached significant weight to the need for such a facility.

267. Separately, a number of other conditions were suggested that relate to parking and manoeuvring, sample panels of external materials, landscaping, and details of any proposed photo voltaic panels on the roofs. However, these relate to matters which are reserved and such conditions are therefore unnecessary. Another condition relating to a Delivery and Servicing Management Plan is also unnecessary given that the development would result in a significant reduction in the number of HGV movements and would be some distance from the nearest residential properties.

Planning balance and very special circumstances

268. The proposal would constitute inappropriate development in the Green Belt and would reduce openness in this location. There would also be some limited harm to the Green Belt purpose of safeguarding the countryside from encroachment. The Framework states that inappropriate development is harmful by definition and that substantial weight should be given to any harm to the Green Belt.

269. As the development would not fall into any of the categories specified in Policy GB1 of the South Bucks District Local Plan, it would be contrary to that policy. It would also be contrary to Policy CP16 of the South Bucks Core Strategy as it would have a greater impact on openness than the existing development. As set out above, I consider that substantial weight should be attached to these policies.

270. In addition, the development would result in minor harm to the landscape and moderate visual harm. It would therefore be contrary to Policy EP3 of the South Bucks District Local Plan and Policy CP9 of the South Bucks Core Strategy. As set out above, I attach substantial weight to these policies. The development would also be at odds with Policy IV13 of the Ivers Neighbourhood Plan.

271. Set against this, the development would provide a new hyperscale data centre that would help to meet the pressing need for such facilities in the Slough and Hayes Availability Zones. It would also provide clear site-specific benefits including securing the repair and restoration of the Grade II listed Iver Court Farmhouse, and a significant reduction in HGV movements through the village of Iver, which is an issue of clear local concern. The development would also involve the re-development of a large area of previously developed land and would generate significant investment and employment opportunities. Moreover, it would provide enhanced pedestrian links in the area, a significant BNG, and would be constructed to modern energy efficient standards.

272. When taken together, these other considerations would clearly outweigh the harm to the Green Belt, the minor harm to the landscape, and the moderate visual harm that would arise. I therefore consider that very special circumstances exist to justify the granting of planning permission. In combination, these considerations would also outweigh the conflict with development plan Policies CP9, CP16, GB1, EP3, and IV13.

273. In this regard, even if I had found that the development would result in 'less than substantial harm' to the setting of the listed building, that would not have altered my view that very special circumstances exist in this case.

Recommendation

274. That planning permission be granted subject to the conditions listed in Appendix D.

*Thomas Hatfield*

INSPECTOR

## **Appendix A: Appearances**

### FOR THE APPELLANT:

Alexander Booth KC

instructed by DLA Piper

He called:

Henry Ryde

Director, Savills

Matthew Chard

Director, Stantec

Stephen Beard

Global Head of Data Centres, Knight Frank

Paul Newton

Partner, Stantec

### FOR THE LOCAL PLANNING AUTHORITY:

Christiaan Zwart Counsel

instructed by Buckinghamshire Council

He called:

Morwenna Breen-Haynes

Senior Conservation Officer, Buckinghamshire Council

Chris Kennett

Landscape Architect and Urban Designer, Buckinghamshire Council

Rachel Marber

Principal Planning Officer, Buckinghamshire Council

### ADDITIONAL CONTRIBUTORS TO THE ROUND TABLE SESSION ON THE PLANNING OBLIGATION

Trevor Ivory

Partner, DLA Piper

Peiter Claussen

Senior Associate, DLA Piper

Ahmed Syed

Trainee Solicitor, DLA Piper

Rachel Steele

Solicitor, Buckinghamshire Council

Brona Bell

Locum Planning Solicitor, Buckinghamshire Council

Laura Lee Briggs

Assistant Team Leader, Legal & Democratic, Buckinghamshire Council

## **Appendix B: Inquiry Documents**

- ID.1 Attendee list
- ID.2 Opening submissions made on behalf of the Appellant
- ID.3 Opening submissions made on behalf of the Council (and appendices)
- ID.4 Further draft of the Unilateral Undertaking
- ID.5 Council's CIL Compliance Statement
- ID.6 Council's letter regarding the draft Unilateral Undertaking
- ID.7 Revised legal opinion letter by Carey Olsen
- ID.8 Further draft of the Unilateral Undertaking
- ID.9 Planning Practice Guidance 2: Green Belts
- ID.10 Appellant's position statement regarding the planning obligation
- ID.11 Final draft of the Unilateral Undertaking
- ID.12 Appeal Ref APP/X5210/W/21/3284957
- ID.13 Council's suggested conditions regarding an Air Pollution Emissions Monitoring Plan and backup generators.
- ID.14 Appellant's suggested 'Arsenal' condition
- ID.15 Council's updated CIL Compliance Statement
- ID.16 Council's Schedule of Legal fees
- ID.17 Council's Schedule of legal costs incurred
- ID.18 Council's closing submissions (and appendices)
- ID.19 Appellant's closing submissions (and appendix)
- ID.20 Final signed version of the Unilateral Undertaking

## **Appendix C: Core Documents**

|        |                                                                                                                              |
|--------|------------------------------------------------------------------------------------------------------------------------------|
| CD1.1  | Application for planning permission (inclusive of cover letter and Ownership Certificates and Agricultural Land Declaration) |
| CD1.2  | Site Location Plan (drawing ref. LHR01-GEN-XX-XX-D-A-010000)                                                                 |
| CD1.3  | Parameter Massing (drawing ref. LHR01-GEN-XX-XX-D-A-020004) C3                                                               |
| CD1.4  | Parameter Building Heights Plan (drawing ref. LHR01-GEN-XX-XX-D-A-020005) C4                                                 |
| CD1.5  | Parameter Sections (drawing ref. LHR01-GEN-XX-ZZ-D-A-040001)                                                                 |
| CD1.6  | Site Demolition Plan (drawing ref. LHR01-GEN-XX-XX-D-A-100001)                                                               |
| CD1.7  | Design Code (April 2023 – prepared by Gensler)                                                                               |
| CD1.8  | Planning Statement (November 2022)                                                                                           |
| CD1.9  | Design and Access Statement (April 2023)                                                                                     |
| CD1.10 | Supplementary Design Intent Information (March 2023)                                                                         |
| CD1.11 | Illustrative Plans                                                                                                           |
| CD1.12 | Air Quality Assessment (October 2022)                                                                                        |
| CD1.13 | Biodiversity Net Gain Assessment (September 2022)                                                                            |
| CD1.14 | Ecological Preliminary Report & Bat Survey (March 2022)                                                                      |
| CD1.15 | Ecological Impact Assessment (July 2023)                                                                                     |
| CD1.16 | Biodiversity Metric 3.1 (September 2022)                                                                                     |
| CD1.17 | Biodiversity Metric 3.1 Detailed Data Results                                                                                |
| CD1.18 | Economic Benefits Statement (October 2022)                                                                                   |
| CD1.19 | Energy and Sustainability Statement (September 2022)                                                                         |
| CD1.20 | Flood Risk Assessment (October 2022)                                                                                         |
| CD1.21 | Heritage Impact Assessment (November 2022)                                                                                   |
| CD1.22 | Heritage Significance Statement (October 2022)                                                                               |
| CD1.23 | Noise and Vibration Assessment (October 2022)                                                                                |
| CD1.24 | Transport Assessment (October 2022)                                                                                          |

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|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CD1.25 | Illustrative Parameter Master Plan (drawing ref. LHR01-GEN-XX-XX-D-A-020002)                                                                                                                   |
| CD1.26 | Illustrative Parameter Plan (drawing ref. LHR01-GEN-XX-XX-D-A-020003)                                                                                                                          |
| CD1.27 | Illustrative Building Lines Parameter Plan (drawing ref. LHR01-GEN-XX-XX-D-A020006)                                                                                                            |
| CD1.28 | Illustrative Landscape Masterplan Drawing (drawing ref. LHR01-GEN-XX-XX-D-L020001)                                                                                                             |
| CD1.29 | Ground Investigation Report                                                                                                                                                                    |
| CD2.1  | Planning officer delegated report                                                                                                                                                              |
| CD2.2  | Decision Notice                                                                                                                                                                                |
| CD3.1  | South Buckinghamshire Local Plan (1999 Consolidated September 2007 and February 2011)                                                                                                          |
| CD3.2  | South Buckinghamshire Core Strategy Development Plan Document (2011)                                                                                                                           |
| CD3.3  | Buckinghamshire Minerals and Waste Local Plan 2016 - 2036 (2019)                                                                                                                               |
| CD3.4  | The Ivers Neighbourhood Plan 2021 – 2040 (2023)                                                                                                                                                |
| CD3.5  | South Bucks District Landscape Character Assessment (2011)                                                                                                                                     |
| CD4.1  | Landscape and Visual Impact Assessment (January 2024)                                                                                                                                          |
| CD4.2  | Needs Assessment (January 2024)                                                                                                                                                                |
| CD5.1  | Link Park Appeal Decision (PINS Ref: APP/N0410/W/22/3297192 and APP/R5510/W/22/3297194)                                                                                                        |
| CD5.2  | Woodlands Appeal Decision (Ref: APP/N0410/W/22/3307420)                                                                                                                                        |
| CD5.3  | Jones v Mordue [2015] EWCA Civ 1243                                                                                                                                                            |
| CD5.4  | Bedford Borough Council v Secretary of State for Communities and Local Government [2013] EWHC 2847 (Admin)                                                                                     |
| CD5.5  | R (oao Cummins) v Camden LBC [2001] EWHC 1116 (Admin)                                                                                                                                          |
| CD5.6  | Barnwell Manor Wind Energy Limited v East Northamptonshire District Council, English Heritage, National Trust, The Secretary of State for Communities and Local Government [2014] EWCA Civ 137 |
| CD5.7  | Summers Poultry Products Ltd v SSCLG & Stratford-upon-Avon [2009] EWHC 533 (Admin)                                                                                                             |

- CD5.8 Sefton Metropolitan Borough Council v Secretary of State for Housing, Communities, and Local Government [2021] EWHC 1082 (Admin)
- CD5.9 Link Park Heathrow LLP v Secretary of State for Levelling Up, Housing and Communities, [2023] EWHC 1356 (Admin)
- CD5.10 Thorney Business Park Decision (Ref: PL/22/1775/FA)
- CD5.11 Thorney Business Park Committee Report (Ref: PL/22/1775/FA)
- CD6.1 Appellant's Statement of Case
- CD6.2 Council's Statement of Case
- CD7.1 Listed Building Consent Application Form (ref. PL/22/4398/HB) (inclusive of cover letter)
- CD7.2 Listed Building Consent Decision Notice (ref. PL/22/4398/HB)
- CD7.3 Listed Building Consent Officer Report (ref. PL/22/4398/HB)
- CD7.4 Listed Building Consent Heritage Impact Assessment
- CD7.5 Screening Report
- CD7.6 Council's Response to Screening Report
- CD7.7 South Bucks Employment Site Appraisal 2013
- CD7.8 Major Developed Sites in the Green Belt Background Paper (in-house, 2010)
- CD7.9 Transport Paper - Iver and Richings Park Area (BCC, 2010)
- CD7.10 Highway Authority consultation response
- CD7.11 Appellant's further analysis and sensitivity exercise relating to vehicle movements provided to the highway authority during the application process.
- CD7.12 Heritage Officer's consultation response dated 3 March 2023
- CD7.13 Heritage Officer's consultation response dated 10 March 2023
- CD7.14 Historic England, 2019. Historic England Advice Note 12: Statements of Heritage Significance: Analysing Significance in Heritage Assets.
- CD7.15 Historic England, 2015. Historic Environment Good Practice Advice in Planning Note 2 (GPA2): Managing Significance in Decision-Taking in the Historic Environment.

- CD7.16 Historic England, 2017. Historic Environment Good Practice Advice in Planning Note 3 (GPA3): The Setting of Heritage Assets, 2nd Ed.
- CD7.17 Historic England (English Heritage) and Cabe 2001. Building in context, New development in historic areas.
- CD7.18 Historic England and Node, December 2020. Design codes and the historic environment, Briefing Report: Summary of Key Findings.
- CD7.19 Ministry of Housing, Communities & Local Government, 2021. National Model Design Code, S.I.: MHCLG.
- CD7.20 Drone imagery of the Site
- CD7.21 Landscape Institute Technical Guidance Note 06/19: Visual Representation of Development Proposals (2019)
- CD7.22 Colne Valley Landscape Character Assessment (2017)
- CD7.23 Colne Valley Regional Park website: <https://www.colnevalleypark.org.uk/>
- CD7.24 Guidelines for Landscape and Visual Impact Assessment, 3rd Edition (by LI and IEMA) (2013)
- CD7.25 Buckinghamshire Green Belt Assessment Report: Methodology and Assessment of General Areas (2016)
- CD7.26 The Chiltern and South Bucks Stage 2 Green Belt Assessment (2018)
- CD7.27 Canal and River Trust Consultation Responses (x4)
- CD7.28 Canal and River Trust letter (March 2024)
- CD7.29 Iver Parish Council Consultation Response
- CD7.30 Historic England, 2022. Historic England Advice Note 4: Tall Buildings (HEAN4), 2<sup>nd</sup> Ed.
- CD7.31 National Character Area Profile:115 Thames Valley (NE379), Natural England (2012)
- CD7.32 Conservation Principles Policies and Guidance, Historic England (2008)
- CD7.33 Report on the examination into the South Bucks Core Strategy Development Plan Document (2011)

## **Appendix D: Recommended Conditions**

- 1) Details of the access, appearance, landscaping, layout and scale (hereinafter called the 'reserved matters') shall be submitted to and approved in writing by the Local Planning Authority before any part of the development is commenced.
- 2) Any application for the approval of the reserved matters shall be made to the Local Planning Authority within three years of the date of this permission.
- 3) The Development shall commence within two years from the date of approval of the last of the reserved matters.
- 4) The reserved matters application(s) shall be substantially in accordance with the following:
  - Parameter Massing Ref LHR01-GEN-XX-XX-D-A-020004 Rev P05
  - Parameter Building Heights Plan Ref LHR01-GEN-XX-XX-D-A-020005 Rev P05
  - Parameter Sections Ref LHR01-GEN-XX-ZZ-D-A-040001 Rev P04
  - Design Code (April 2023 - prepared by Gensler)
  - Site Demolition Plan Ref LHR01-GEN-XX-XX-D-A-100001 Rev PO4
- 5) The reserved matters application(s) shall be accompanied by a statement to demonstrate compliance with the parameter plans, demolition plan, and design code referred to in Condition 4.

### Pre-commencement conditions

- 6) No development shall take place until all relevant interests in the land, including but not limited to the interests of any mortgagees and chargees, are bound into the Unilateral Undertaking made pursuant to section 106 of the Town and Country Planning Act 1990 and given by (1) BNP Paribas Depositary Services Limited (incorporated in Jersey); and (2) BNP Paribas Depositary Services (Jersey) Limited (incorporated in Jersey) to Buckinghamshire Council, dated 26 July 2024.
- 7) No development shall take place until a Construction Environmental Management Plan ('CEMP') has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following:
  - a) Risk assessment of potentially damaging construction activities;
  - b) Identification of "biodiversity protection zones";
  - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
  - d) The location and timing of sensitive works to avoid harm to biodiversity features;
  - e) The times during construction when specialist ecologists need to be present on site to oversee works;

- f) The role and responsibilities on site of an ecological clerk of works or similarly competent person; and
- g) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period for the development.

- 8) No development shall take place until a Landscape and Ecological Management Plan ('LEMP'), including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas has been submitted to, and approved in writing by, the Local Planning Authority. The LEMP shall include the following:
- a) Description and evaluation of features to be managed;
  - b) Constraints on site that might influence management;
  - c) Aims and objectives of management which will include the provision of biodiversity net gain within the site as shown within the Biodiversity Net Gain Plan;
  - d) Prescriptions for management actions;
  - e) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period);
  - f) Details of the body or organisation responsible for implementation of the plan; and
  - g) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall be for no less than 30 years. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development delivers the fully functioning biodiversity objectives of the originally approved scheme.

The LEMP shall be implemented prior to the first occupation of the development and shall thereafter be carried out as approved.

- 9) No development shall take place until a revised Biodiversity Net Gain ('BNG') Plan and associated Biodiversity Metric demonstrating that BNG can be achieved on site, has been submitted to, and approved in writing by the Local Planning Authority. The BNG Plan should adhere to best practice and include:
- a) Introduction to the site, project, planning status, certainty of design and assumptions made, the aims and scope of the study and relevant policy and legislation;
  - b) Methods taken at each stage; desk study, approach to BNG and evidence of technical competence;
  - c) Baseline conditions of the site including; important ecological features and their influence on deliverability of BNG, baseline metric calculations and justifying evidence, and a baseline habitat

plan that clearly shows each habitat type and the areas in hectares;

- d) Justification of how each of the BNG Good Practice Principles has been applied;
- e) A proposed habitat plan and details of what will be created. The plan should clearly show what existing habitat is being retained and what new habitat will be created. It should be easy to identify the different habitat types and show the areas in hectares of each habitat or habitat parcel;
- f) A Biodiversity Metric spreadsheet, submitted in excel form that can be cross referenced with the appropriate plans;
- g) An Implementation Plan including a timetable for implementation; and
- h) A BNG Management and Monitoring Plan.

The BNG plan shall be implemented in accordance with the approved Implementation Plan and maintained in accordance with the approved BNG Management and Monitoring Plan for at least 30 years.

- 10) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the Local Planning Authority. The scheme for the protection of the retained trees shall be carried out as approved.

Protective fencing detailed in the arboricultural method statement shall be erected to protect existing trees and hedgerows during construction and shall conform to British Standard 5837 (or in an equivalent British Standard if replaced). The approved fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made.

[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]

- 11) No development shall take place until a Construction Management Plan ('CMP') has been submitted to and approved in writing by the Local Planning Authority. The CMP shall include:
- a) An indication of the construction programme;
  - b) The accessing and routing of construction vehicles;
  - c) Number of HGV movements (with an agreed daily maximum);
  - d) The parking of vehicles of site operatives and visitors;

- e) Loading and unloading of plant and materials;
- f) Erection and maintenance of security measures;
- g) Storage of plant and materials used in constructing the development; and
- h) Wheel washing facilities.

The approved CMP shall be adhered to throughout the construction period for the development.

- 12) No development shall take place until an Air Quality Dust Management Plan ('AQDMP') for the construction phase has been submitted to and approved in writing by the Local Planning Authority. The AQDMP must be informed by a risk assessment that considers sensitive receptors in the surrounding area. The AQDMP shall include an inventory and timetable of dust generating activities during the construction period and dust and emission control measures including on-road and off-road construction traffic. The approved AQDMP shall be adhered to throughout the construction period for the development.
- 13) No development shall take place until a Demolition and Construction Risk Assessment and Method Statement in relation to the Grand Union Canal has been submitted to and approved in writing by the Local Planning Authority.

This shall demonstrate that the proposed works can be safely carried out without adversely affecting the stability of the land (with particular regard to the cutting slope of the Slough Arm, Grand Union Canal). The Method Statement shall include full details of the demolition and construction methodology within 20 metres of the northern edge of the site including cross sections to the Canal, details of any reprofiling of land levels, retaining structures, investigations of any existing features such as tunnels/culverts, proposed structural loadings and foundation designs and any necessary mitigation measures.

The development shall thereafter be carried out in accordance with the approved details.

- 14) No development shall take place until a scheme to deal with the risks associated with contamination at the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
- a) An options appraisal and Remediation Strategy based on the site investigation results and the detailed risk assessment reported in the Ground Investigation Report prepared by Hydrock (Ref. 22573-HYD-XX-XX-GE-RP-1000 PO4), giving full details of the remediation measures required and how they are to be undertaken, including an implementation timetable; and
  - b) A Verification Plan providing details of the data that will be collected in order to demonstrate that the works set out in a) are complete and identifying any requirements for longer term monitoring of pollutant linkages, maintenance, and arrangements for contingency action.

The approved scheme shall be implemented in accordance with the approved implementation timetable and Verification Plan.

No development other than demolition

- 15) No development (excluding any demolition, earthworks or vegetation clearance) shall take place until historical recording of the Canalside Tunnel at the base of the cutting has been undertaken and submitted to and approved in writing by the Local Planning Authority. The historical recording shall include measures to close the Canalside Tunnel, install a historic information plaque, and exposure of the cart track (if present). The development shall be carried out in accordance with the approved measures, which shall thereafter be retained.
- 16) No development (excluding any demolition, earthworks or vegetation clearance) shall take place until a Bird Hazard Management Plan ('BHMP') has been submitted to and approved in writing by the Local Planning Authority. The submitted plan shall include details of the management of any flat/shallow pitched or green roofs on buildings within the site which may be attractive to nesting, roosting and loafing birds. The BHMP shall be implemented as approved and shall remain in force for the lifetime of the development.
- 17) No development (excluding any demolition, earthworks or vegetation clearance) shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
  - a) A water quality assessment demonstrating that the total pollution mitigation index equals or exceeds the pollution hazard index;
  - b) Priority to be given to above ground SuDS components;
  - c) Details of existing and proposed discharge rates and volumes;
  - d) Flootation calculations based on groundwater levels encountered during winter monitoring (November-March) or based on the worst case scenario of groundwater at surface level;
  - e) Permeable paving, geo cellular storage and filter strips;
  - f) Full construction details of all SuDS and drainage components;
  - g) Detailed drainage layout with pipe numbers, gradients and pipe sizes complete, together with storage volumes of all SuDS components;
  - h) Calculations to demonstrate that the proposed drainage system can contain up to the 1 in 30 storm event without flooding. Any onsite flooding between the 1 in 30 and the 1 in 100 plus climate change storm event should be safely contained on site;
  - i) Details of proposed overland flood flow routes in the event of system exceedance or failure, demonstrating that such flows can be appropriately managed on site without increasing flood risk to occupants, or to adjacent or downstream sites;
  - j) Mitigation measures such as oil interceptors; and

- k) Mitigation measures to protect the water quality of the canal.

The approved surface water drainage scheme shall be implemented prior to the first occupation of the development.

- 18) No development shall take place (excluding any demolition, earthworks or vegetation clearance) until a whole life carbon emission assessment has been submitted to and approved in writing by the Local Planning Authority. The whole life carbon emission assessment shall demonstrate:
  - a) The embodied carbon footprint of the proposed development together with measures to reduce these where practical and feasible; and
  - b) The operational carbon footprint of the development over a 30-year period and the measures taken to reduce carbon emissions

The development shall be carried out in accordance with these approved measures.

Prior to development above ground level conditions

- 19) No development shall take place above ground level until a Secure by Design Statement has been submitted to and approved in writing by the Local Planning Authority. This shall include details of public realm CCTV, access controls, and other security measures. The approved measures shall be implemented prior to the first occupation of the development and shall thereafter be retained.

Pre-occupation conditions

- 20) Prior to the first occupation of the development, the works to Iver Farmhouse as approved under application ref: PL/22/4398/HB shall have been carried out and completed.
- 21) Prior to the first occupation of the development, details of the provision of new bird and bat boxes or roosting features shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be installed prior to the first occupation of the development and shall thereafter be retained.
- 22) Prior to the first occupation of the development, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall set out measures to reduce single occupancy journeys by the private car and indicate how such measures will be implemented and controlled. The Travel Plan shall include targets for modal shift in the forthcoming year and up to 5 years. The approved Travel Plan shall be implemented prior to first occupation and subject to annual review thereafter. For the avoidance of doubt the Travel Plan will require the appointment of a Travel Plan Co-ordinator.
- 23) Prior to the first occupation of the development, a verification report that demonstrates the effectiveness of the remediation carried out under Condition 14 shall be submitted to and approved in writing by the Local Planning Authority. The approved monitoring and maintenance programme shall be implemented prior to first occupation.

- 24) Prior to the first occupation of the development, a statement shall be submitted to and approved in writing by the Local Planning Authority that either:
- a) Confirms that foul water capacity exists off site to serve the development; or
  - b) Confirms all foul water network upgrades required to accommodate the additional flows from the development have been completed; or
  - c) Includes an Infrastructure Phasing Plan to allow the development to be occupied. Where such a plan is approved, no occupation of the development shall take place other than in accordance with it.
- 25) Prior to the first occupation of the development, a scheme for the resurfacing and reinstatement of Footpath IVE/16/5 shall be submitted to and approved in writing by the Local Planning Authority. The footpath shall thereafter be resurfaced and upgraded in accordance with the approved details within 6 months of first occupation of the development.
- 26) Prior to the first occupation of the development, details of a pedestrian crossing on Thorney Lane South and a pedestrian footway connecting to Court Lane, in accordance with the principle shown on drawing 22573-HYD-XX-XX-DR-TP-0001 Rev P01.01, shall be submitted to and approved in writing by the Local Planning Authority. The pedestrian crossing and footway shall be laid out and constructed in accordance with the approved details prior to first occupation of the development.
- 27) Prior to the first occupation of the development, a whole-life maintenance plan for the site surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. This plan shall include a maintenance schedule for each drainage/SuDS component with details of who is to be responsible for carrying out the maintenance, and as-built drawings and/or photographic evidence of the drainage scheme carried out by a suitably qualified person. The plan shall thereafter be implemented as approved.
- 28) Prior to the first occupation of the development, details of the emissions performance of the proposed emergency generators shall be submitted to and approved in writing by the Local Planning Authority. This shall include technical details for the proposed generators, confirming the number, size, location and height of generator flues, and specifications demonstrating that by using Selective Catalytic Reduction (or other suitable technology) the generators will achieve the same emission levels or cleaner than that specified in the Appendix B of the submitted Air Quality Assessment (Hydrock, October 2022). The emergency generators at the site shall thereafter accord with the approved details.

Other conditions

- 29) The details submitted with any reserved matters application(s) shall include a scheme that demonstrates how the development will secure at least 10% of its regulated energy from decentralised and renewable or low carbon sources. The approved scheme shall thereafter be implemented and maintained for the lifetime of the development.

- 30) The details submitted with any reserved matters application(s) shall include details of canalside elevations, cross sections to the canal and shading assessments, where relevant.
- 31) No building or structure of the development hereby permitted shall exceed 67.95m AOD.
- 32) No external lighting shall be installed until a Lighting Design Strategy for Biodiversity has been submitted to and approved in writing by the Local Planning Authority. This shall:
  - a) Identify those areas/features on site that are particularly sensitive for bats including breeding sites, resting places, and important routes used to access key areas of their territory; and
  - b) Demonstrate through the provision of appropriate lighting contour plans and technical specifications that the proposed external lighting will not disturb or prevent bats from using their territory or accessing breeding sites and resting places.

All external lighting shall be installed in accordance with the approved strategy and shall thereafter be retained as such.

- 33) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the relevant phase of development is resumed or continued.
- 34) Within 12 months of the first occupation of each building, a BREEAM certificate confirming that the relevant building achieves an 'Very Good' BREEAM rating shall be submitted to and approved in writing by the Local Planning Authority.
- 35) Routine testing of the generators serving the development shall only take place between the hours of 07:30 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays.
- 36) The emergency backup generators shall not exceed 88 generators in number, or the emission level of 0.069 tonnes of Total PM per year.
- 37) The development shall be used as a Data Centre and for no other purpose including any other purpose in Class B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.



# Ministry of Housing, Communities & Local Government

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## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, King's Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### SECTION 2: ENFORCEMENT APPEALS

#### Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.