

**TOWN AND COUNTRY PLANNING ACT 1990
PLANNING AND COMPULSORY PURCHASE ACT 2004**

**APPEAL BY MANOR FARM PROPCO LIMITED
MANOR FARM, POYLE**

APP/J0350/W/25/3366043

Inquiry sat 14-17, 21-24 October 2025

APPELLANT'S CLOSING SUBMISSIONS

With additions made orally noted in tracked changes

INTRODUCTION

1. This recovered appeal seeks permission for a hyperscale cloud data centre and a BESS (battery electric storage system) at Manor Farm, Poyle.
2. As I said at the outset of the inquiry, the Appellant, is a wholly-owned subsidiary of Tritax Big Box Reit, which is the UK's largest logistics-focused Real Estate Investment Trust and a FTSE 250 listed company. The data centre and the BESS are to be connected to the transmission network by private wire from both Iver and Laleham substations – these wires are the subject of separate applications which have been made to the relevant local planning by EDF, with whom Tritax have formed a joint venture called Juniper to deliver the BESS and the power to the site.
3. Mr O'Reilly told the inquiry that the search for the BESS site was one that EDF had unsuccessfully carried on for some time before Tritax approached them with the potential to place it on the site, which is well-located for the substations and to serve distribution network management functions. It is an ideal site for the BESS not just in operational terms but also, as Mr Webster said, because it can be brought forward on an almost entirely enclosed site with no visual impact. This fortunate combination of lack of alternative sites and ideal specification at Manor Farm is the cornerstone of the BESS aspect of the scheme.

4. The data centre too is highly locationally specific. Since the beginning of the inquiry, the Appellant has entered into an exclusivity agreement with a multinational data centre operator, removing any suggestion that the scheme is speculative; the market demand that has crystallised with the appeal scheme is just part of the extraordinary digital explosion that Mr Powney describes in his evidence, a technological revolution that has already found its way into almost every aspect of our lives and now occupies a central place in the economy, security and civil society.
5. What was perhaps even less predictable even ten years ago is the way that data centre needs cluster in the Slough Availability Zone, the ‘SAZ’: a virtual geography serving needs on a scale which is difficult to conceptualise; it has Segro’s Slough Trading Estate (‘STE’) at its operational, if not strictly locational, heart. As a result of the latency needed by cloud operators, the SAZ is defined by the plentiful fibre that exists in the area. It is located ideally with regard to London and via the fibre to the global IT network. It is no exaggeration to say that the needs of the SAZ are in effect the needs of our national digital existence.
6. Such is the level of demand for cloud computing space in the SAZ that what space Segro can bring forward at STE, and whatever others can get consented elsewhere in the area, is nowhere near sufficient to meet it. There is a huge unmet need here, which cannot be any surprise given the role that data now plays and the role of the SAZ.
7. The consequences of all this for land use planning are significant. The Government has grappled with the need to ensure that the critical national role that data centre infrastructure plays is not blocked or stymied by the planning system: we are in the early stages of a fundamental readjustment of policy as it affects the SAZ area – significant weight is to be given to meeting the specific locational requirements for key sectors like data through the application of the 2024 NPPF. At the same time, the role of the Green Belt has been reimagined for the first time really since its inception – not just as an area of spatial policy restraint, but as an area of potential opportunity where lower performing land, which is often in excellent proximity to other facilities, should be used productively. Those vectors all converge in the SAZ.
8. So in essence this appeal is part of the cutting edge of the reformulated planning system under the current Government. Applicable policy requires more traditional ideas of what the Green Belt is to be put aside in the search for sustainable growth. The Council will soon have to progress a local plan review with the same principles in mind, but for now some realism about the status of the adopted local plan is required, and a full engagement with the suite of new

policies in the NPPF. They have formed the basis for the appeal scheme and their fulfilment is why permission should be granted for the scheme.

NEED FOR THE PROPOSALS

The basics

9. The appeal site lies in the SAZ, which as I have said is the most important cluster of data centres not just in the UK but in Europe¹. The combined requirements of power and fibre without too much distance causing unacceptable latency, have led to this area growing up as the focus for an explosion of digital economy development². All of the information before the inquiry supports the location of new cloud-computing data centres in the SAZ, and this market demand is the real-world manifestation of the fact that data centres have assumed a foundational role in the modern world. Constrained as the Slough and Buckinghamshire areas might be – in common with many other areas of the country for varying reasons – it is *here* that the need arises and national policy tells us it must be met.
10. So one starts by asking: how much need is there? Much of the Council’s case on the topic of need has been based on fundamental lack of understanding of how need assessments for commercial infrastructure work. Although Mr Stimpson recognised the definition that need = demand without adequate supply, he did not appear to have applied that approach to his thinking about the appeal scheme because he did not appraise the demand adequately.
11. As Mr Powney said, the very first thing one has to do when considering need is assess demand, before turning to other planning questions such as constraints, or other competing land uses or balances. Demand is discernible by looking at rates of past take-up and future market signals, as the PPG advises. The PPG does not (as the Council appear to have thought) define ‘past take up’ simply as completed developments³. But even if it did, that would not undermine the approach to assessing need by looking not just at installed IT capacity but at the pipeline. The pipeline represents all the schemes for which demand exists to the extent that permission has been sought and obtained.

¹ Mr Powney, paragraphs 4.3.2-4, page 32.

² Ibid pages 33-35.

³ See ID6 (PPG extract, paragraph 2a-027). Future needs to be assessed using “a range of data which is current and robust, such as...”

12. Before I come to Mr Powney's work in more detail, I observe that the fundamental problem with the Council's approach to this question has therefore been (a) to proceed from a flawed assumption about what level of demand might exist – how that assumption was derived is entirely unclear, and then (b) seek to corroborate that assumption by looking solely at how many MW of data centre capacity have actually been switched on, rather than the copious evidence as to how many times more MW the market is actively seeking to switch on. I return to deal with some specific problems with the Council's evidence, given by Mr Stimpson (who acknowledged that he had never carried out a commercial needs assessment), in a few moments.

Mr Powney's evidence

13. Mr Powney's methodology by contrast reflected his vast experience of carrying out commercial need assessments, including many data centre assessments. The key building blocks were as follows:

- (1) He defined his area of study as the SAZ⁴ – agreed to be the appropriate area.
- (2) He looked for evidence of demand for data centre capacity across a period 6 years before and after the date of the study; he explained that this was because looking any earlier would be to take into account data from a period which bore no real relationship to the market for data centres which has emerged; and to speculate beyond 5 or 6 years into the future would also be untenable given the exponential rate of change in the market, what he described as a 'new technological revolution'⁵.
- (3) He sourced data from a reputable specialist analysis house, DCByte, by asking for the amount of data centre capacity that had arisen in the period in question (which he defined in the request as installed MW of built data centres *and* permissions which had been granted)⁶. This was clarified in his note in response to a request from the Inspector⁷. Whilst it is true that Mr Powney did not say explicitly that his data covered both installed and permitted capacity, it is reasonable to note (a) the misunderstanding of his evidence by the Council was not raised in rebuttal or at any point before the evidence was given at the inquiry, and (b) rather more pointedly, Mr Powney's numbers for data centre capacity

⁴ Ibid pages 35-36.

⁵ Ibid paragraph 5.3.2 page 38.

⁶ See ID8 where Mr Powney clarified what he had asked DCByte for and corroborates it.

⁷ Ibid.

growth are self-evidently much larger than the amount of installed MW of data centres in the SAZ, which are mainly in the Slough Trading Estate ('STE').

- (4) Bearing in mind what the DCByte information shows, Mr Powney was entitled to assess the absolute growth over the relevant period as 1050MW, i.e., a compound annual growth rate ('CAGR') of 25%⁸. It is right to use CAGR because it is the standard tool to show smoothed growth of an economic value over time, and in the period in question (as Mr Powney shows), the use of CAGR adjusts for fluctuations around the time of the pandemic⁹.
- (5) The fruit of this exercise is the starting point MW increase per annum of 280MW. Mr Powney then projects that using the CAGR derived from the past study period to show what the likely MW capacity demand (ie open and permitted) will be in five years' time – the result is 2970MW.

14. Apart from the inherent robustness of Mr Powney's approach, the result he generates is amply corroborated by independent sources of information:

- (1) The Montagu Evans ("ME") work submitted and accepted in the Woodlands Park 2 appeal and indeed other appeal decisions¹⁰. This reached the conclusion on an equivalised basis that the SAZ demand was 2965MW.
- (2) Data sources from both IDC and McKinsey¹¹ applied again in an equivalent way over the same period, which yield demand figures of between 3,443MW and 3,959MW.
- (3) Requirements in the SAZ: the current representation of the market for space in the area, dated September 2025, shows a current (publicly stated) demand of 2,120MW¹².

15. Each of these sources provides strong positive backing for Mr Powney's conclusion. The ME work indicated a high level of SAZ need, similar to Mr Powney's view. It was based on a different method (assessing the London-wide need and then disaggregating by applying a factor of 65% to reach the relevant figure for the SAZ), but its conclusion (rebased by Mr Powney

⁸ Ibid 5.3.3 page 38.

⁹ Ibid Figure 5.2 and Table 5.1, using 208 increase as the starting point.

¹⁰ Ibid 5.3.6-5.3.9 pages 39-40, drawing on the ME work at CD12.9.

¹¹ Ibid paragraph 5.3.10 and see also the detail set out in Mr Powney's Appendix C.

¹² Ibid Table 5.5, page 45.

using the ME growth assumptions but to bring it in line with the study period Mr Powney has) that some 2,965 MW are required, is extremely close to Mr Powney's figure¹³.

16. No less weight should be given to this strong corroborative evidence because it was not challenged by the local authority (Buckinghamshire) in the Woodlands Park inquiry – rather the reverse is true. ME's full evidence was accepted by the authority and was put before the Inspector and the Secretary of State as undisputed¹⁴. I'm not sure of the basis for Mr Stimpson's initial allegation that the Inspector and the Secretary of State did not look carefully at it – but it was one that he could not maintain. The reality of the Woodlands Park example is that in the very recent past, a very similar SAZ data centre need done on a slightly different basis from Mr Powney's work reached an almost identical conclusion about a high need for data capacity in the SAZ, to the extent that the local authority, the Inspector and the Secretary of State all agreed¹⁵.
17. No particular issue was taken with the helpfulness of the other corroborative data sources – what Mr Powney refers to as '3rd party Sources'¹⁶. As I said, they comprise the IDC data creation trend and two versions of McKinsey's data centre demand forecasting. Both are, as Mr Powney says¹⁷, reputable analyses of the trends in data centre growth, again coming from slightly different angles. The results are similar – ranging from 3,443MW to 3,959MW.
18. As a check¹⁸ Mr Powney applied what he felt was an unrealistically low growth rate of 15% - it still yielded a need of 2,097MW over the study period. 15% is not reliable because it has no basis in the trend of installed and consented capacity and is a 60% reduction on the 25.4% CAGR applied on the basis of actual figures supplied by DCByte.
19. Finally (though as he makes clear, not as a core component of his exercise) Mr Powney presents live requirement data¹⁹. This is not like asking an 'estate agent' how many houses to build, as Mr Stimpson rather contemptuously suggested. The 2,120MW sought by cloud providers in the SAZ in September 2025 represents the publicly-available tally of MW that have been stated within the professional world as definitely sought in the SAZ; they represent part (not including the confidential requirements) of what the market has said that it demands; a fairer analogy

¹³ Mr Powney page 39-40, paras 5.3.7-9 and Table 5.2.

¹⁴ CD7.01.

¹⁵ Ibid 5.3.7 – referring also the earlier Woodlands Park decision where the need figures were also accepted.

¹⁶ Mr Powney page 41.

¹⁷ Ibid para 5.3.10 page 41

¹⁸ Ibid, page 42.

¹⁹ Ibid page 45.

would be a housing needs survey where those who want homes in an area say so. This too provides sensible corroboration.

20. Given the unprecedented growth in cloud storage and data use across every aspect of our lives, none of this is remotely surprising. Much more surprising is that the Council comes to the inquiry without any expert evidence, and seeks to argue the contrary. Not just that the need is a little too high, but that it is wildly wrong – effectively, Mr Stimpson suggests that the data from DCByte and the third party sources, the evidence from other consultants accepted in Secretary of State decisions are all ridiculous. I come in a moment to the on-the-hoof suggestion by Mr Stimpson, made during his evidence for the first time, that the ‘actual’ need figure for data centre need in Europe’s most important availability zone is 236MW in the next 5 years. But first I deal with the points he raised in support of his assertion that the level of need predicted by Mr Powney was unrealistically high.

21. There were three main arguments made:

- (1) That Mr Powney’s demand figure for the SAZ was unrealistic because it equated to a large proportion of the entire UK data centre need, based on the difference between a figure of 6GW of data centre capacity in the Government’s announcement²⁰ and 1.6GW capacity which Mr Stimpson took to be the Government’s estimate of all installed data centre capacity (in the HC Library research note).
- (2) That the demand for data centres was not necessarily securely referable to the SAZ because in future AI-related data centre need was planned to be provided for in AI Growth Zones in other parts of the country.
- (3) In any event, it was said, Mr Powney’s analysis confuses supply with demand and is not therefore reliable.

22. None of these points was accepted by Mr Powney because they all lack force.

23. First, the exercise carried out by Mr Stimpson to derive a figure of 4.4GW of data capacity was incoherent. It is clear that the 6GW figure is a Government estimate of the minimum amount of specific AI data centre capacity they consider is needed²¹; as Mr Powney said, it is not a

²⁰ CD12.10

²¹ CD12.06

summary of the total amount of data centre capacity in the UK either now or in the future – that much is plain from the wording of the document from which Mr Stimpson draws the figure²².

24. Nor is the 1.6GW figure a comparator, even if the 6GW figure related to overall data centre capacity. It appears to represent an estimate of UK colocation data centre capacity as built at the date of the report²³: this is apparent from the fact that the document itself distinguishes between different types of data centres before specifically referring to 1.6GW of colocation capacity; this distinction is obviously well-known, as the Segro press release evidences²⁴. As a result, the point Mr Stimpson seeks to make (ie., Mr Powney’s suggested need figure is unrealistic because of a relationship with a total UK data centre figure) cannot be given any weight.
25. Second, it is a mistake to elide the strategic ambitions for AI data centre growth zones with the needs that are sought to be met in the SAZ. The appeal proposals are intended to meet the cloud computing hyperscale needs of the area, not to house bulk AI training which (as the Government identifies) could be met on powered sites remote from conurbations, since they do not require low latency. Although the appeal proposals would be enabled to deal with what is called ‘AI inference’ demand, that is absolutely not what the AI Growth Zones and their mooted minimum capacity would cater for, and they are therefore, as Mr Powney said, irrelevant to the issue of demand in the SAZ.
26. Third, Mr Powney has not confused the distinction between supply and demand. As he clearly explained, the track record of consents represents the best evidence of the ‘heat’ of the market – how many are being applied for, for what MW capacities and so on. This is obviously right, because not to have regard to the tremendous increase in data centre consents over the study period would be to ignore a critical real-world market signal. It would be like basing one’s view of affordable housing need on the number of affordable homes built rather than the length of the housing waiting list.
27. Mr Stimpson has therefore failed to apply the second part of the key PPG advice, which directs attention to future market demand rather than just “take up”; just as a matter of common sense it seems an entirely unreasonable position to take, when the noise of the market is so deafeningly loud.

²² CD12.10 – entirely focused on AI.

²³ CD12.06 – the document, and its footnoted source, speak of “colocation” data centres only and make a distinction between that segment of the market and hyperscale data centres and enterprise data centres; this is the same distinction drawn in the real world, see eg by Segro (CD11.1 Appx L page 11)

²⁴ Ibid pages 1 and 11.

28. Far too much attention was given by Mr Stimpson to the constraints on data centres in the SAZ with which we are all by now familiar, particularly the lack of plentiful power. Again, to make an analogy with housing, one does not judge how many homes are *needed* by observing that there are too few bricks or too limited a sewage system. Those are *constraints* on the demand, not the demand; they suppress it.
29. Mr Stimpson's evidence also seemed to be directed at the wrong kind of planning exercise – Mr Powney was not carrying out a local plan drafting exercise, despite the invitation in cross examination to imagine he was doing what the Council has not yet properly done. His answer went to the heart of the issue: establish what the need is first. Then other judgments can be made as appropriate.
30. I touch briefly now on the purported need of 236MW that Mr Stimpson proffered in his examination in chief for the first time. It was based purely on an uncompounded mean of data centre MW capacity taken from those that had been built in the SAZ over five years. This was mainly the small ones on the STE.
31. First, (as I've said) restricting the exercise to built IT capacity ignores the real world of escalating demand for permissions in a highly power-constrained environment which manifests itself in a rocketing number of applications and permissions. The figure would equate to only 13% of the 1711 supply that both parties are employing for the need analysis; less than half of what Segro say they alone will deliver over 7 years at STE. Set against all the other data in front of the inquiry on this point, it is not merely the outlier, it is outlandish and cannot be correct.
32. Second, if the 236 were remotely correct, there would be no commercial imperative, no urgency, indeed no reason at all for multinational data centre operators like the one which has signed an exclusivity deal with the Appellant to have anything to do with the SAZ. There would already be an oversupply of nearly 1500MW in the market (1711-256) and obviously the Appellant itself would be wasting considerable sums of money seeking permission for a hyperscale data centre on the appeal site. All these companies (as well as the Secretary of State) are utterly misguided, if you were to believe Mr Stimpson, whose experience of data centre development appears to be confined to being told by Segro which site they are going to redevelop next. If a need figure of 236MW were right, Segro would be planning to bring forward twice as much capacity as the market needs – not a point I suspect Ms Elias has been shown in the Council's submissions. With the greatest respect, absolutely no weight should be given to Mr Stimpson's evidence on this point. None.

Supply

33. The second part of the exercise is to assess the available supply in the SAZ across the study period. Here, there is agreement that Mr Powney's Table 5.4²⁵ represents the correct position in terms of schemes with or nearly with planning permission for data centres in the SAZ: 15 sites, totally up to 1,152MW of capacity. Mr Stimpson confirmed that he agreed with this number once some referencing issues with permissions and applications had been clarified.
34. Mr Powney has also included 559MW²⁶ at STE within the next five years (rather than the 7 year period that Ms Elias suggests in her email). He does not in his evidence deal with whether that figure is realistic (and therefore does not "dispute" it) – but that is not the same thing as accepting that it is likely to be delivered; that was not his evidence.
35. This is not really the forum to delve into the realism of the Segro claimed data centre pipeline at STE, but to be fair there is a certain amount of unevidenced assertion involved. It is true that the SPZ gives Segro a degree of planning flexibility but that comes at the cost of complete opacity when looking at their pipeline. Mr Stimpson in chief commented that "we don't really know what's going coming forward" and when asked by the Inspector about the power constraints at STE, replied "yes, there could be a delay because of electrical supply"²⁷. The STE is fully let including with Industrial & Logistics buildings which have a different income stream profile and will have to be weighed against any data centre ideas from an asset management perspective over the next few years.
36. Against objective evidence which at the very least puts a question mark next to data centre delivery in Slough in any great amount in the next few years, we have next to nothing from the Segro via the Council about the pipeline and the realities of the actual delivery schedule. The highest it is put even in the Segro CEO press release is that they have people "working hard" to power their various sites²⁸. One thing can be said with certainty, however: as far as meeting the need for data centre capacity in the SAZ, it is not "job done". It is job very far from being done.
37. As Mr Powney and later Mr Murphy stressed, in the end the STE outcomes, even if they are overstated, do not matter for the purposes of the key point here, which is what level of unmet

²⁵ Mr Powney pages 43-44.

²⁶ Ms Elias' 4.3m sq ft of space said to be capable of being brought forward, factored to produce a MW equivalent.

²⁷ See now also Mr O'Reilly's note on the electrical capacity constraints in and around Slough, ID11.

²⁸ Mr Stimpson CD11.1 Appx L page 12.

need exists even if one assumes 1,711MW (1,152 + 559) of supply. Mr Powney has assumed the 559MW.

38. Before leaving this topic, I underline again that in Mr Powney's approach the supply is not 'double-counted' or 'confused' with the need – it reflects part of the demand (permissions show what Mr Powney would call the “heat” of the market) and also can be judged in due course to meet part of the demand. Again, to use a perhaps more familiar housing need analogy, the supply of data centre capacity here equates to the sum of the committed and built homes in a five year supply calculation; the *need* for homes in that period will be reflected in those units but may extend beyond it to demand for housing which has not yet been met. To put it another way, if a Council only has 4 years' housing land supply, they are not allowed to look to the commitments within that supply to meet any of the missing 1 year need.

Unmet need

39. The unmet need for data centre capacity in the SAZ is therefore $2970 - 1711 = 1259\text{MW}$ ²⁹. Again, the figure is entirely unsurprising given the market demand for data centres evidenced in the accelerating rate by which permission is being sought and obtained for them in this most sought-after place on the edge of London. The value of certain assets on the STE certainly has an important role to play in the appetite for space in the SAZ, but a glance at Mr Powney's figure 5.4³⁰ (the map of data centre supply sites) that the vast majority of new data centre capacity is not in the STE; some of it relates to hyperscale data centres. There is simply too much need, which is too urgent, to pretend that the STE is the only possible source of supply or indeed to wait for the STE to be re-developed piecemeal for the relatively small data centres³¹ (like the 19MW Equinix data centre currently being constructed) that has been their stock in trade there. Apart from putting all the data centre eggs in one basket, controlled by one landowner, there is no track record in the STE of hyperscale data centres and there would be minimal market activity outside STE if that was a ready-made source of supply which could cater for all the demand. The facts do not support that. The Council's closing (3.34) suggests that Slough Borough Council has done 'so much' already for data centres; but this is not an argument relevant to working out whether there is a demand for more. It is like Westminster City Council saying they've permitted so many shops already, or the City of London saying

²⁹ Mr Powney para 5.5.7 and Table 5.6 page 46.

³⁰ Page 43.

³¹ Which looks still to be the case: Segro's potential 20 further data centres divide the 559MW total notional capacity to show an average sized future data centre there as 28MW.

they've permitted so many office buildings. It simply reflects the demand. It is really extraordinary and troubling that the Council's case at a major public inquiry is that the SAZ need is only 236MW over five years – the deeply negative ramifications of such a statement have hardly been explored and do not seem to have been formally adopted by the Council itself.

40. The evidence is therefore compelling that there is a huge and growing unmet need for data centre capacity in the SAZ.

ALTERNATIVE SITES

41. There is no alternative site for the BESS. Mr O'Reilly was able to inform the inquiry that EDF had the transmission connection for some time, trying to find a site for a BESS (because such a facility allows, amongst other things, much-needed network efficiencies). They need to be close enough to the transmission system to be effective, but EDF had failed to find another site in the relevant area until Tritax brought the appeal site opportunity to them – at that point, such was the impetus to secure the BESS that EDF and Tritax teamed up to form Juniper and deliver the private wire connection that would connect the BESS. No point was taken about this with either Mr O'Reilly or Mr Cole and therefore I say no more about it: the BESS is essential kit and this is the only site for it in the relevant area.

42. As for the data centre, the position is also clear. If the unmet need is Mr Powney's 1259MW (or anything like it, either higher or lower), then there plainly is not enough supply to meet it. It seemed to be acknowledged in the way questions were put to Mr Cole that if there is unmet need to *that* level, there would not be alternative sites³². It all depends on the level of unmet need – that agreed position reflects:

- (1) The guidance of the High Court in the *Wealden* case³³ – i.e., that the “decisive” factor is not whether there is one other site which might meet the same need as the subject site, but whether there was an overall unmet need; and

³² Since the questions were put on the basis that there would not be need if Mr Stimpson's 236MW need was right.

³³ CD7.12, see at [55]-[69] esp [68].

(2) A recent local example of that, in the Woodlands Park decision, where precisely that approach was taken to the idea of alternatives in the SAZ³⁴.

43. If therefore there is more (indeed much more) unmet need than supply, then no single or group of sites can amount to an alternative to the appeal site. I touch nonetheless on Mr Cole's work, which shows two main things: (1) that there are no more available sites to meet the general need other than those in Mr Powney's supply, and (2) that looked at individually, most if not all have problems which mean that they should not be counted as suitable and available.

44. Mr Stimpson's evidence spent some effort criticising the Colliers work, which is not relied on by Mr Cole. Mr Cole's methodology, in four stages³⁵, is appropriate and robust:

(1) The site search area is the agreed SAZ, and is more robust than the Woodlands Park search area which was centred on that appeal site; Mr Cole's area is larger, taking into account not just the relevant distance parameters from power sources at Iver and Laleham but also including the STE and the eastern portion of the Woodlands Park search area; the western portion of the circle in ME's exercise, west of the STE, has no power and was ruled out.

(2) The site size adopted excludes the BESS (to avoid irrelevant site area) and removes 10% from the data centre size for flexibility.

(3) The site size is therefore only some 63% of the site area in the appeal. It is not right to say, as Mr Stimpson does, that data centre capacity remotely approaching that sought for a hyperscale data centre could be squeezed onto a much smaller site by creating a four or five storey data centre³⁶. The Equinix four storey scheme on STE is only 19MW³⁷, some 26% the size of the appeal proposals, and itself rather larger than the average data centre that the STE hosts. As Mr O'Reilly points out in the rebuttal document, with height comes significant operational constraints and inefficiencies, which mean that a hyperscale data centre could never be built in that way (and indeed there are none built like that).

(4) Criteria were applied to the sites that were first identified through the extensive work that Mr Cole carried out (stages 1 and 2). No other points have been taken about those stages of the appraisal. Similarly, the weeding out of inappropriate sites through the application of the criteria in Stage 3 to 33 sites was sensible and robust. No point about that Stage 3 criteria

³⁴ See CD7.01, IR8.50, pdf page 98.

³⁵ CD11.7

³⁶ See CD11.18 paragraph 3.3 page 17 and Mr O'Reilly's oral evidence on this point.

³⁷ Per Mr Stimpson in XX.

exercise was taken by Mr Stimpson. Most of the ‘red’ tagged sites have more than one key aspect on which they fail.

(5) That took Mr Cole to Stage 4: here there were some 17 sites that were in the Green Belt (and therefore on the face of it not ‘alternatives’ to Green Belt development anyway).

(6) Every single one of the 17 has at least one serious demerit as far as being suitable and/or available is concerned. These are all set out in Mr Cole’s evidence³⁸ and he went through them all at the inquiry. I do not repeat them all in closing. I do note that the reasons that these sites all fail the tests of either availability or suitability is also relevant in part to the policy issue of development being ‘essential’ in the Strategic Gap or Colne Valley Regional Park (CVRP), as all but three of the seventeen are outside the Strategic Gap. However, their failings against the criteria for alternatives (and the overall point about unmet need) mean that they cannot on any basis be considered preferable alternatives to the appeal site.

45. The five sites in Mr Cole’s Stage 4 assessment which lie outside the Green Belt are all in Mr Powney’s supply and therefore cannot be alternatives to meet the unmet need (and also for the reasons given on a site-by-site basis in the Stage 4 assessment).

46. As a result, there are no alternative sites which are available and suitable for the data centre use proposed here, and, decisively, there are no sites which could meet the overall unmet need.

DELIVERY OF THE SCHEME: POWER AND TIMESCALES

47. The Appellant owns the appeal site³⁹. Subject to receiving planning permission for the appeal scheme in the first half of 2026, it anticipates constructing the data centre so that it can be energised from the end of 2027 through to mid 2028. As Mr O’Reilly advised, the powering of a data centre happens in stages, with the power being supplied in tranches, used for powering the shell and then for commissioning and testing of the IT equipment within the data halls, before finally going fully live.

³⁸ Mr Cole Appendix 1 – the ASA, stage 4 and proformas.

³⁹ The site was acquired, along with the blue land to the west, in early 2025.

48. Hence why the arrangements put in place by the Appellant here will be effective. Transmission connections have been contractually secured from both Iver and Laleham substations⁴⁰. Both will be served entirely by private wire (ie not using any connecting power lines from either substation) which are to be separately consented: the applications have both now been submitted in line with the build programme⁴¹. This process is being run by EDF. Having undertaken extensive pre-application technical assessments, involving consultations with all relevant stakeholders, it is not expected that the applications will raise any difficult issues – they are very largely in the public highway and any interaction with existing transport infrastructure has, as you would expect, been very carefully considered⁴².
49. If permission is granted in the first half of 2026, the development would commence in the middle of the year and be ready for occupation by the occupier towards the end of 2027. The occupier has asked for early access to the building to start fitting out as soon as possible. Mr O'Reilly was asked about what the risks were to the project through to the completion stage – other than normal events associated with building and provisioning development sites, he confirmed there was nothing unusual in play here. There is no evidence to suggest that these carefully thought-through arrangements will be subject to material delay.
50. It was a theme of some of the questions to Mr O'Reilly that delay might cause difficulties with taking up the energy supply. There is no evidence to support that suggestion either. Mr O'Reilly expressly confirmed that the dates of 2028/29 represent a contractual 'backstop' date rather than an expected completion point evidencing any slippage⁴³. Similarly, whilst it is the case that there will be milestones in the electricity contract relating to things like permission, investment decision and so on, there is no basis for concluding that any of the milestones will be missed such that the electricity contract is put in question.
51. Nor is there any realism in the suggestion floated with Mr O'Reilly that the fact of a HAL objection to the grant of permission is likely to cause delivery issues with the scheme. The HAL position is clearly stated in public documents which would have been carefully considered by the potential occupier's professional and client team before the exclusivity contract was entered into – arrangements which are subject to planning permission being granted⁴⁴. So the only

⁴⁰ See CD11.18 pages 26-27. The EDF construction programme is in CD11.13 page 751 and the Laleham application included in Mr Murphy's evidence; the Iver application has now been submitted as well.

⁴¹ See CD11.18 page 26, para 4.9.

⁴² Ibid page 26, paragraph 4.9.

⁴³ This point seems to have arisen from a misreading of the CBRE letter at CD11.18 Appendix 1, which does not say that the proposal will come forward in 2028/29 but that one of its advantages in the market is that it can be delivered well before other sites get bulk power from the upgrades at Iver and Laleham. The evidence of Mr O'Reilly confirmed that there is no need for, or intention to, use the backstop dates.

⁴⁴ A point dealt with by Mr Murphy in oral evidence.

critical path risk identified in all of this is the need to secure planning permission from the Secretary of State.

52. Moreover, the Appellant's view of the HAL objection is clear from its responses in evidence and the points I make later in these submissions. The fact that HAL would prefer the site for its own purposes, in the context when the 3R has no status, no draft plans or up to date work to be assessed, and the site lies within an area full of potential ARD locations, does not trouble the Appellant and should not cause any concern for the Secretary of State – both schemes can come forward. Given that the (current – we shall see) timetable for the 3R project is that a DCO would only be submitted in 2028, it is not clear why Tritax would pause its project. By that stage, if permission is granted, it is likely that the data centre will be fully operational. There is therefore no rational planning or commercial basis for the Appellant to consider pausing or halting the appeal proposals.
53. As for the mooted risk of CPO affecting the data centre at some unspecified time in the future – presumably after the DCO is confirmed, perhaps a decade away or more – there is again no substance to the point. It is a remote and untestable hypothesis. If it ever occurred, HAL would have to show that it was necessary to acquire the site, which on the basis of their acceptance of the existence of alternative sites would seem a tall order. I gathered from the cross examination of Mr Murphy on day 1 of the inquiry that the Council consider that the potential need for HAL to spend a large sum acquiring the data centre land compulsorily amounted to a breach of national policy on airports (because, it was suggested, it would not be cost-effective or 'value for money'). The national policies are far too high-level for there to be any conflict *per se* and there is no proper basis for adjudicating on this point at the moment; but even if one imagines the remote world in question, no doubt the costs involved would play a part in whether HAL sought alternatives rather than tried to acquire the site by CPO. Mr Brewis was not able to advance the position that acquiring the data centre would make the 3R unviable or even less value for money. None of this speculation is the basis for a planning objection to the grant of consent for a much-needed data centre in 2025-26.
54. Mr Stimpson also argued that the constraints in power⁴⁵ in the SAZ generally, the need for an occupier to be identified⁴⁶ and claimed remoteness from STE or fibre connections⁴⁷ might lead to the project being delayed and threatening the timely take up of the power connection. He acknowledged at the inquiry that in the light of the exclusivity agreement⁴⁸, he could no longer

⁴⁵ Mr Stimpson CD11.1 paragraph 2.133-134

⁴⁶ Ibid paragraph 2.140; 2.157 referring to a 'pre-let'.

⁴⁷ Ibid paragraph 2.141.

⁴⁸ See ID9.

maintain the argument that the scheme was “speculative”⁴⁹. The other points are also answered fully by the Appellant’s evidence⁵⁰ and include agreement that the SAZ suffers from serious power constraints – the travails of Equinix at the Akzo Nobel site⁵¹ is a familiar tale. Importantly, the suggestion by Mr Stimpson that the site is too remote from fibre to be an attractive proposition as a cloud hyperscale data centre is completely unfounded and betrays a lack of understanding of how data centres actually operate⁵². These points only go to demonstrate how advanced the delivery of this particular data centre scheme is and why the Inspector and Secretary of State are able to give full weight to its delivery and benefits.

55. It is probably worth picking up some points from the Council’s case here relating to consequences of the scheme *not* being delivered. These emerged in cross examination of Mr O’Reilly, in the main. First it was suggested that the power that the Appellant has secured by way of its transmission contract could or would be reassigned; this seemed to be part of a suggestion that another deserving data centre would benefit and – though the point was entirely unparticularised – would be less harmful in some way (perhaps not in Slough but in Bucks, it was put at one point).
56. However, as Mr O’Reilly said, the process in 2025 for divesting a site of a transmission contract is by no means straightforward. Power is ‘stapled’, as he put it, to the particular red line or site. If the Appellant wished to divest itself of the contractual rights to the power it has secured, the power would have to re-enter the Gate 1 process and then make its way, over a number of years, through the Gate 2 process towards the top of the queue⁵³. Whilst it would be a possible outcome, it would be hard to say that the re-use of the power would be beneficial within the next 5-10 years (Mr O’Reilly’s view was the ‘mid-30s’ before the power would actually be used).
57. The second residual point in this set was the suggestion that there would in fact be little benefit from the return of the 2.8MW distribution contracted to the appeal site for the existing uses. Mr O’Reilly explained that this breaks down into 0.8MW currently used supply and a contract for another 2MW. The latter, as he said in answer to one of the Inspector’s questions, is not capable of being decoupled from the site. So it is the case that the scheme replacing this power draw

⁴⁹ Ibid paragraph 2.140.

⁵⁰ See CD11.18 paragraphs 3.26 (proximity to fibre); ID09 (commercial exclusivity contract signed) and Mr O’Reilly’s evidence (private wire secured and in the process of being brought forward).

⁵¹ See CD11.1 paragraph 2.156 – potentially waiting for 20 years to power the later phase.

⁵² CD11.18 paragraph 3.26 page 23. Cp CD11.1 paragraph 2.141.

⁵³ Miss Elias’ note (ID12) confirmed this – divesting the power would “require entry into the NESO connections process...”. The email then refers to the pressure to deliver as soon as possible, but this is not inconsistent with the predicted time lag by Mr O’Reilly.

with the new transmission contract would have the effect of bringing 2.8MW back into the distribution supply; a small but notable benefit.

58. The final point concerned STE. As the Inspector will realise, the Appellant is not seeking to criticise its colleagues and partners at Segro. The STE is a beacon of achievement in Industrial & Logistics development and, increasingly, in data centre delivery, and it houses LDN4 and internet connection, making it the hub of the SAZ. Mr O'Reilly's note on Slough distribution power supply in the next few years is background to the real challenges that powering the STE and all other normal sites in the SAZ face. As I've said already, it appears a real challenge to provision sufficient power to meet all the possible SPZ data centre sites.
59. Segro has for understandable reasons not produced its power or development pipeline strategy and therefore whilst no doubt some more data centres (relatively small ones, as the STE is used to hosting) may come forward, how 559MW of IT load could be powered in the next 7 years has certainly not been made manifest; it seems somewhat at odds with the network picture that Mr O'Reilly paints⁵⁴. Of course Segro are hugely experienced and their views are treated by the Appellant with respect – but if the Council seeks to suggest, as Mr Stimpson did on numerous occasions, that the search for data capacity in the SAZ begins and ends in the STE, that assertion must be treated with a significant degree of caution due to the network power constraints, and given relatively limited weight as a point of objection to this particular proposal.

BENEFITS

60. With those points on delivery in mind, I turn to the benefits which the Appellant sees as consequential to the grant of permission. Mr Murphy deals with these in his proof⁵⁵ and covered them in chief. Many are not contested so I set them out in brief.
61. It goes without saying that one of the principal benefits of the appeal proposals is the way the proposed data centre would meet part of what is a very large unmet need for a land use highly valued in the Government's policy agenda. It is no idle metaphor to say that data centres are the engines of the digital age and the SAZ is the engine room of cloud computing in the UK.

⁵⁴ In ID11.

⁵⁵ CD11.12 section 16 page 61ff.

The appeal scheme could not be more valuable from a digital economy and economic growth point of view. It would be viewed as critical national infrastructure for that reason and significant weight should be attached to its provision. The Council (closing, 5.71) are quite wrong that the CNI designation is just about protecting assets. See CD5.02 at pages 1-2: the Minister says this: *“I am confident that these measures, taken together and implemented in close consultation with industry, will provide a high level of security and resilience for this increasingly critical infrastructure, giving confidence to the public and investors and supporting the growth of the UK economy.”*

62. Obviously the location of the scheme in the SAZ is its main geographical or locational benefit, but the Mr Cole’s work on alternative sites adds a further important element to it – there are, for a miscellany of reason, no alternative sites available to meet the unmet need. They are either already counted in the supply or ruled out for other good reasons. Meeting this unmet need on effectively the only site that can deliver a fully powered, hyperscale data centre is something very unusual and weighty. Mr Murphy also takes into account the deeply negative consequences of not providing that additional capacity, which extend further than the site and would contribute to companies having to look outside the UK to meet their data needs, a point that Mr Powney also picks up. If we as a country cannot offer suitable IT capacity, then those needs will be met elsewhere, with data security and even national security implications, as the DSIT has said.
63. The timing component adds something as well. The problems of power unavailability are bypassed by the Juniper private wire scheme which would feed the appeal site, and the long wait that many face (well into the 2030s in most cases, as the Iver distribution capacity coming on stream in a few years is already entirely optioned-up) is a serious brake on economic growth in this crucial place. A fully-powered, private wire hyperscale data centre going live in 2027-2028 would be a huge boon.
64. Staying with benefits associated with the site itself, Mr Murphy draws attention to the landscape and BNG enhancements that the scheme would bring. There would be benefit (recognised by the CVRP Trust consultee⁵⁶) in enhancing the route to the Arthur Jacob Nature Reserve. The conditions would *guarantee* 10% BNG improvement but as Mr Murphy says, the technical work shows significantly greater benefit than that is likely – 115% for habitats, 10.5% for hedgerows and 10% for watercourses. That is what the evidence shows can be achieved and he gives moderate weight to those benefits.

⁵⁶ CD3.11.

65. The ripples of effect spread out to national and local economic impacts: Mr Murphy observes that there are a series of innovation clusters around the SAZ and the spin off benefits would be significant for the local economy. There would be around 490 FTE jobs created during the delivery of the project and around 65 FTE when the appeal scheme is up and running. A high proportion would be highly skilled and high wage jobs – significant weight should be attached to them.
66. Aligned to that is the undertaking to implement a Community Development and Skills Strategy through the s.106 obligation, to which moderate weight should be given.
67. The BESS would have strongly beneficial effects as part of the drive to decarbonisation. They are facilities supported in national policy and much sought after given the difficulty of finding sites for them in suitable locations for power connection.
68. Taken together, this would be a comprehensive and powerful set of benefits, with a variety of facets. It would be more than the sum of its parts and carry very significant overall weight; more than that, as I shall say when covering the specific approach to VSC in due course, it is the conjunction of the needs, the time and the place that make the circumstances here so unusual.

HARMS AND ALLEGED HARMS

GREEN BELT

The site is grey belt

69. The appeal site is in the Green Belt. However, its character and the relationship it has with the advice from Government in the February 2025 PPG means that it should now be classified as grey belt.
70. As Mr Webster said, the best way to use the PPG advice is to take into account not just the illustrative features in the ‘Strong’ part of the table but also those in the ‘Moderate’ and ‘Weak’ parts⁵⁷; they are internally reinforcing.

⁵⁷ CD11.8 pages 14-15, 18-19.

71. Taking that approach, the site does not sit comfortably in the ‘Strong’ category. It is not “free of existing development”, for a start. That is a simple enough judgement to make and one that could hardly be avoided by Mr Stimson, indeed his repeated use of the future tense to describe when the site might reach a state of being “*almost* entirely free” of development⁵⁸ (my italics) shows that he has to acknowledge it is a long way from being free from development and even if there were to be some future enforcement action(s), the site would remain a developed site. It is true even if one only focuses on the parts of the site – mainly Parcel A and the Link Road – which are agreed between the parties to contain lawful buildings and uses: Mr Murphy’s sites⁵⁹ 55, 56, 57 and 60. These are prominent from the road and entrance into the site, and in the case of site 58, across the ‘horseshoe’ land to the very far part of the site from the Poyle Road. There is therefore a quantity of built form, hardstanding and activity associated with these uses, which are perceptible at depth with the site.
72. It is unnecessary to rehearse in closing the other sites (Mr Murphy’s 68, 63, 61 which now appear to be agreed, and perhaps more contentiously, 66, 59 and 54). Some of them (68, 63 and 61) contain lawful buildings and uses; the others (66, 59 and 54) are not agreed to be lawful and the Council through Mr Ray says that they are not, including the green area⁶⁰ which is covered by the conditions attached to the 2009 permission. There is absolutely no question that the current state of Parcel A and the Link Road is industrial. Mr Murphy accepted that the Planning Statement relied on Parcel A being PDL as defined in the NPPF – that point is no longer taken – but the criticism goes nowhere in the light of the full up to date analysis of the position.
73. Mr Webster takes a conservative baseline for his assessment, only relying on the areas agreed to be lawful. That is more than enough for him to conclude that the site is not free of existing development. The Inspector will consider whether it is also relevant to take into account (a) the actual existing state of the land, and (b) the fact that enforcement action to restore some parts of the land might be taken but has not been, indeed, there has hitherto been no formal consideration of enforcement action in relation to the conditions attached to the 2009 permission (c) as became clear through Mr Stimson’s evidence, the Council continues to support the use of the appeal site for ARD in association with the further development of Heathrow. As I put to him, it is to say the least unclear whether in reality the Council will form the view that it is expedient under s.172 of the Town and Country Planning Act 1990 to seek

⁵⁸ CD11.1 paragraph 3.57. For Mr Stimson’s string of future tenses, see 3.50, 3.57 and 3.64.

⁵⁹ See CD11.9 Document 10.

⁶⁰ ID4.

to remove several buildings, acres of hardstanding and require the grassing of an area on which it wishes to see large-scale logistics development.

74. The site therefore fails that indicator of ‘Strong’ contribution to purpose A and is more in line with the ‘contains existing development’ in the ‘Moderate’ box.
75. The site is probably adjacent to a large built up area, in the sense that the Poyle Industrial Estate lies in very close proximity and then (though some distance away beyond the M25), come Heathrow and London. The identity crisis that the immediate area suffers from is more important when considering purpose B, but here its application is also not entirely straightforward. Nevertheless, Mr Webster assumes that the site lies adjacent to a large built up area.
76. Next question: does the site lack physical features in reasonable proximity that could restrict and contain development? Well, not to the East, North and South – the Poyle Road, the Poyle Channel and vegetation and the Poyle Poplars next to the reservoir all provide relevant containment and are very close to the red line boundary. The site visit will have shown how robust and vegetated the western boundary of the red line site is as well – it is hardly all open to the countryside.
77. Also, one has to give detailed consideration to what the guidance says – it notably does not use the term “adjacent to” or “next to” or even “near” – it asks for features to be identified which are in reasonable proximity. To the west, the site is less well contained at its exact boundary, but forms part of a larger field compartment which is also contained by the three features I have mentioned and by the Colne Brook and its planting and the Arthur Jacobs reservoir. These features, as Mr Webster said, restrict and contain development. They are, as a matter of judgement, in reasonable proximity to the appeal site because there are no intervening features, are not far off and are visually connected and the whole parcel is probably⁶¹ grey belt (i.e., both red and blue land). The development of the appeal site would not interact with the wider Green Belt, or bleed out into countryside, because of those features.
78. It is also not the case that the site’s development for data centre use would be “incongruous”:

- (1) The existing Green Belt in the area is deeply fractured (i.e., broken into pieces with open and built areas obeying no real pattern⁶²) and the overall settlement pattern is not uniform.

⁶¹ Mr Webster had not undertaken that exercise but offered his view on containment of the blue land in his evidence at the inquiry.

⁶² See Mr Stimpson XX on this.

In such a setting the question of ‘congruity with what?’ arises, as ‘incongruous’ means different and ill-suited in a noticeable and negative way. With the area of Green Belt in pieces, it is not an easy question to answer by any means.

- (2) There is development visible at regular intervals all along the western side of Poyle Road – only the solar farm site (not affected here) and the BESS site are free from development (but all agree the BESS would not be visible from the Poyle Road);
- (3) The hotel is a large building extending at depth from the road, with further residential development extending behind it (accessed separately from the north) as well as other physical features and strong vegetation
- (4) The deeper parts of the site are not prominent in the pattern of Green Belt land – as the Inspector said in the 2009 appeal decision⁶³: “*the site is not prominent in this part of the gap*”.
- (5) The appeal site, if developed, would fill in land to the south of the hotel/landscape/residential area, not notably or oddly sticking out like a finger (ie narrow and extending out with nothing on either side).

79. Finally, Mr Webster noted that the ‘Moderate’ descriptors include having “urbanising influences”⁶⁴ – the appeal site surely does have that, with the very direct connection to the industrial estate, the road and the Heathrow flight path close overhead (an urbanising influence if ever there was one).

80. When making the overall judgement as to whether the site performs strongly or only moderately against Purpose A, all of these points are relevant.

81. It would be a mistake to treat all development in the Green Belt which may affect openness as “sprawl”. That would clearly not be right or consistent with the PPG – because it identifies land with existing development as potential grey belt. There is furthermore no support for that idea in the expression used by Lord Carnwath JSC in the *Samuel Smith* case⁶⁵: his reference to openness being the “counterpart to urban sprawl” clearly does not mean that any development in the Green Belt which might affect openness is sprawl. That can be seen from his adoption of

⁶³ CD7.6 DL 15 and see Mr Webster paragraph 4.26 page 15.

⁶⁴ See the Purpose A table, Mr Webster page 14.

⁶⁵ ID14 at [22]

Sales LJ's words⁶⁶: "[t]he concept of 'openness of the Green Belt' is not narrowly limited to the volumetric approach suggested by [counsel]. The word 'openness' is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs ... and factors relevant to the visual impact on the aspect of openness which the Green Belt presents." (my underlining)

82. Turning to Purpose B, the site performs even more weakly. The site has existing development on it; it is not a large part of the gap between Slough and London, however that is defined. It is only 1.9% of the gap as defined in the adopted plan⁶⁷; it is only 14.5%⁶⁸ of the space between the Poyle Industrial Estate and the edge of Slough away to the north west. It is simply not a big part of the gap. These quantitative ways of looking at the question are part of the overall exercise, as Mr Webster said.
83. In terms of perception, it is very difficult indeed to get a sense of the separateness of Slough and London from any viewpoint in which the data centre, or the site as it is, would appear. There is only really the Poyle Road set of kinetic views: and where one is, at that point in the complex townscape pattern, is very hard to pin down. Mr Stimpson thought the M25 was the boundary with London and that on Poyle Road it felt like one was in the "Slough conurbation". The difficulty is that the site does not afford any views which enable a judgement to be made that one is looking at the gap between the two places or indeed an area important for their separate identities.
84. It may be the case that, in terms of postcodes or official designations, Slough ends at Brands Hill, but as Mr Stimpson himself described, that is not the perception. His point was that the solar farm field and the appeal site were the only real visible breaks; but that underplays the fact that whilst they may be more undeveloped than most of the route into Slough, the appeal site is not free from development (it has two residential units and a large lawful area of hardstanding for car parking all the way along the frontage from the site entrance up to near the northern boundary) and plays no real role in informing the perception of a gap *between towns*.
85. Looked at the other way – would one lose the sense of separate identities of the two places if the data centre was in place? Surely not – the pattern is too inchoate and to the extent that one has a sense of different places, that would not be eroded or materially changed. This is another definite indication that the site is grey belt.

⁶⁶ At [25] of ID14

⁶⁷ Mr Webster paragraph 4.54 page 20.

⁶⁸ Ibid paragraph 4.52 page 19.

86. Purpose D is not relevant. Footnote 7 does not apply here, as agreed. The site is therefore grey belt – and no surprise. The poorly performing Green Belt with an urbanised, partly developed character that doesn’t really play a role in the separate identity of settlements and only occupies a small part of the gap, is exactly the kind of site the Government had in mind when writing the December 2024 NPPF and the PPG.

Not inappropriate development

87. The development of the site would not “fundamentally undermine” the rest of the Green Belt in Slough so that it performed no meaningful role⁶⁹. Though it came as something of a surprise to Mr Stimpson when he was shown it, that is the test. It is also not relevant whether one agrees with the test or not. The Green Belt is much bigger than the site, which lies in a far corner of the Slough Green Belt and is not prominent.

88. There is a need for the appeal proposals and they lie in a sustainable location for transport (as well as bringing with them improvements to bus stops, footway and cycleway provision).

89. The appeal site is therefore grey belt and the scheme would not be inappropriate development. That being the case, there would be no harm to the Green Belt⁷⁰.

90. If a contrary view is taken, (in other words, that the site does not comprise grey belt land), then the question of VSC arises. As that is an overall balancing exercise. I return to it in the concluding section of these submissions.

Policy consequences

91. If those submissions and the Appellant’s evidence are accepted, then the following consequences in policy terms should be taken into account. Green Belt policies in the adopted plan are found in the Core Strategy Policy, adopted in December 2008⁷¹ on the basis of policies

⁶⁹ NPPF paragraph 155a and the PPG.

⁷⁰ See, NPPF footnote 55 and further, for recent confirmation that not inappropriate development cannot give rise to any Green Belt harm, *Mole Valley DC v SSHCLG* [2025] EWHC 2127 at [44]-71], esp [44]. CD7.13.

⁷¹ CD6.11ff. See PPG paragraph 64-008 for the guidance about “meaningful”.

in the South East Plan and (in relation to Green Belt) the then extant PPG2: they are CP1 and CP2⁷².

92. CP1 is the spatial strategy which the Council suggests is the most important policy overall. It seeks to deliver most of the needs of the Council area on brownfield land and to make no change to the Green Belt, referring only to justification by VSC as a way of releasing land from the adopted Green Belt. CP2 says that the Green Belt will be “maintained”, and supporting text paragraph 7.25 explains that as at the date of adoption, the view had been taken that there was no need to review the Green Belt boundary. There are no specific Green Belt policies saved from the even earlier Local Plan, with CG9⁷³ referring to the Strategic Gap rather than the Green Belt *per se*. I shall come back to that in a moment.

93. Assessing those policies now in October 2025, it is abundantly clear that they are out of date for two main reasons:

Conflict with the NPPF 2024

- (1) They do not (could not, of course) take account or include grey belt policies now found in the 2024 NPPF. Applying paragraph 232 of the NPPF, CP1 and CP2 of the Core Strategy are out of date because they represent a PPG2-style approach to Green Belt which precludes the kind of assessment of grey belt that national policy now contains.
- (2) In the case of both policies, the point goes slightly deeper because the spatial strategy and the way needs are sought to be met, were clearly informed by the pre-2024 national policy, which did not allow a relatively constrained Borough like Slough to re-assess some of the fractured sections of Green Belt in the urban fringe to see whether further needs could be met (even those needs identified at the time).
- (3) The policies in the Core Strategy do not recognise – again, there was no way they could – the strong new emphasis on data centres in paragraphs 85-87 of the 2024 NPPF. Having to take into account the plan-making or indeed the general advice on addressing needs for data centres (which of course involves making a proper assessment of that need) was not something done in the policies of the Core Strategy and they are therefore out of date. Mr Stimpson himself begins his substantive evidence⁷⁴ by saying that national policy lacked specific support for data centres before the December 2024 NPPF.

⁷² CD6.11 pages 21-23.

⁷³ CD6.07 page 2.

⁷⁴ Mr Stimpson page 5 paragraph 2.1.

- (4) The same point applies, looking a little way ahead in these submissions, to the CVRP and Strategic Gap policies. They may be consistent with the NPPF on their face, but they were adopted (including of course the even earlier saved policies, CG1 and CG9) without reference to the NPPF on meeting data centre needs and without reference to grey belt, which brings about a substantial change in national policy affecting parts of the Green Belt and its purposes.
- (5) The Council's case as put to Mr Murphy included reference to *Peel Investments*⁷⁵ at paragraph 68, where the Court of Appeal said that paragraphs 17 and 20 of the 2018 NPPF and certain parts of the plan-making Regulations “do not ... provide support for the appellant's case on the second ground of appeal. They relate to the preparation of future plans, not the question whether existing policies are out-of-date.” It was suggested that this means that the NPPF provisions in what are still paragraphs 17 and 20 (in the 2024 version) do not allow the coming into effect of a new NPPF to make adopted policies out-of-date because those paragraphs are about plan-making in the future. However, that misunderstands what paragraph 68 of *Peel* is dealing with. The sentence relied upon is the Court's conclusion on the second ground of appeal (see paragraph 47 of the judgement), which argued that the plan-making policies and regulations indicated that a plan was out of date once it had expired. It is *not* support for the proposition advanced here, that the NPPF policies, or *Peel*, prevents new NPPF policies making adopted plan policies out of date.
- (6) By contrast, *Peel* at paragraph 66 is entirely apposite. That paragraph, which Mr Murphy covered in re-examination, reflects earlier authority. The Court summarised as follows: “[i]f the policies which are most important for determining the planning application have been overtaken by things that have happened since the plan was adopted, either on the ground or through a change in national policy, or for some other reason, so that they are now out-of-date, the decision-makers must apply the tilted balance expressed in the presumption in favour of sustainable development.” That's the position here. The Council's closing at paragraph 3.30 ignores the word “automatically”.
- (7) The recent Thrapston decision letter provides an interesting example of the point in action. There the changed circumstances related to the huge increase in the need for industrial and logistics development on the A14 near a settlement called Thrapston, something which had not been anticipated and was at odds with the adopted spatial strategy for the area, which resisted commercial development of that kind outside larger settlements (“growth towns”)

⁷⁵ CD7.14.

like Corby and Wellingborough. The Inspector found that the high level of unmet need and the support in the December 2024 NPPF for meeting the market's locational requirements made the spatial strategy and other related policies out of date:

“198. The appellant also points out that this policy has been overtaken by events, namely through changes to the Framework. In this respect, I find this policy to be inconsistent with the Framework which strongly supports market-facing logistics policies and decisions. In particular, the need to identify suitable locations for freight and logistics, address the specific locational requirements of different sectors and make provision for storage and distribution operations in suitably accessible locations that allow for the efficient and reliable handling of goods”

199. The inconsistency emerges because Policy 24 resists logistics development unless it complies with a spatial strategy based on the settlement hierarchy. Although STAUNCH seeks to establish that there have been no substantive changes to the Framework, the version against which the JCS was examined and adopted only has a single reference to market signals and lacks any detail concerning the specific requirements of the freight and logistics sector. The substance of paragraphs 86 and 87 are simply not reflected and I find this policy out of date as a result.”

Events on the ground more generally

94. Policies may become out of date in any event by changes “on the ground”, as the cases put it. Here, as I’ve covered in part already, there have been very significant changes indeed to the needs for data centres in the SAZ, centred on Slough and extending over the Green Belt land in question in this appeal.
95. Of course, the Council does not acknowledge this huge rise in demand and the level of unmet need, so clearly it has not properly recognised the effect of the changes in the market in connection with whether the policies in question are out of date. But the evidence is crystal clear, as are the consequences of the exponential increase in data centre need in policy terms.
96. This is another species of change that can render plan policies out of date. Again, the Thrapston example is instructive. The Inspector there said:

“200. Policy 11 of the JCS sets out the spatial strategy and states that development will be distributed to strengthen the network of settlements in accordance with the spatial role allocated to it within the plan. There is a tension between the key themes of the JCS to deliver sustainable development within the settlement hierarchy and the objective to deliver economic prosperity through a more positive and flexible approach.

201. The effect has been to limit the supply of strategic logistics sites needed to meet market demand by restricting it to just four Growth Towns. As with Policy 24, it does not reflect the specific requirements of the freight and logistics sector. This is against a backdrop of significant unmet need of at least 107 ha, according to the Council's own data, let alone the higher estimates that this Inquiry has derived. I therefore find this policy to be out of date as well."

97. The same is true of adopted Policy CP1, which seeks to maintain the Green Belt and meet all or most development needs on brownfield sites. That is the policy which as far as the Council is concerned is the most important development plan policy of all as far as this appeal is concerned.

Most important policies and the tilted balance

98. Nor is it right to say that the presence of *other* "most important policies" – of which here comprise only CP2 and the two gap/CVRP policies - means that the basket of cases is not out of date. Here, they are also affected by the same issues as CP1, as I've said. But even if one took the view that those policies were only affected to a small degree by later national policy, the weight of CP1 (on the Council's own case, NB) is such that if *that* policy is out of date, then the overall conclusion would logically be that the *entire basket* is out of date. Again, something similar happened in the Thrapston case, where the Inspector took the view that the spatial strategy was out of date, but the landscape policies were not; however, given the critical nature of the spatial strategy as a policy, he found as follows:

203. Turning to the other policies in the basket, namely Policies 2 and 3 of the JCS and Policies EN1 and EN12 of the LP, I find these to be consistent with the Framework and this is not disputed by any of the parties. However, stepping back and considering the basket as a whole, I give Policies 11, 23 and 24 greater weight as a result of the bearing they have on the determinative matters of this case and the putative reasons for refusal. Consequently, the basket is dominated by the constraints of the spatial strategy in relation to logistics development and its inconsistency with the Framework. As such, I find the whole basket to be out of date.

99. The final point to note there is that the tilted balance is engaged if the most important policies are out of date. There was some suggestion by Mr Stimpson that the tilted balance could not be engaged because there were no "targets" in the NPPF for data centres but that simply betrays a basic lack of understanding of the way that national policy works. Paragraph 11d is engaged when the most important policies are "out of date", an expression which is subject to footnote

8, which starts “[t]his includes, for applications involving the provision of housing, situations where: the local planning authority cannot demonstrate a five year supply of deliverable housing sites.” (my underlining). One doesn’t need a target to be missed for policies to be out of date.

100. There is recognition of that point too in the Thrapston decision letter, where the Inspector dismisses precisely the same misunderstanding:

“204. Both STAUNCH and the Council suggest that there is no trigger in the Framework for any presumption in favour of logistics development. This is because there is no explicit B8 requirement comparable to the requirement for a 5-year Housing Land Supply for residential development that is highlighted in Footnote 8 of paragraph 11(d). However, the footnote highlights what should be done in relation to applications involving the provision of housing and ‘includes’ this as an example rather than stating that this is the only circumstance in which less weight to policy conflicts may apply. Consequently, the Framework applies this balance where the planning facts require that judgement to be made and it applies to logistics just as much as any other type of development.”

101. For all these reasons, the position here is that the most important policies in the development plan for determining the application are out of date, and the tilted balance applies.

STRATEGIC GAP

102. I want to start this part of the submissions by staying with the theme of change in policy weighting over time. The Strategic Gap Policy in Slough has a history which has been well set out in the evidence before the inquiry – it is a further elaboration of Green Belt policy to reflect the fragmented and vulnerable nature of the Green Belt between Slough and London by adding a higher policy hurdle, namely the need for development there to be ‘essential’ (both in terms of the development and the fact it has to be in the Strategic Gap).

103. All that is well understood. The genesis of the policy and its articulation in the *Helioslough* litigation is clear. The issue however is that all of that preceded the changes in national policy in respect of grey belt in December 2024. Mr Stimpson rightly acknowledged

that whereas the *policy test* ('essential') for the gap was different and higher than the Green Belt policy, the *purpose* of the policy was the same as the purposes (particularly purposes A and B) of the Green Belt.

104. It must follow at the very least that some consideration needs to be given to whether the Strategic Gap policy is affected in terms of weight by the advent of the NPPF. The fact it is basically an 'intensifier' of purposes A and B here as they were set out in PPG2, built further to safeguard against the very things that Green Belt policy in national policy was intended to prevent, surely must mean that if the underlying Green Belt policy objectives in national policy have materially changed, the underpinning purpose of the Strategic Gap must also be affected.
105. Much of this reflects the points made by Mr Webster and Mr Murphy on Green Belt. The fragmented nature of the area which led to the superimposition of the Strategic Gap policy in local policy makes it the very kind of area which falls within the purview of the grey belt policy in the current NPPF. In the old days, saying that this part of the Green Belt was effectively just clinging on and needed a helping hand now makes it the kind of lower-performing Green Belt that the Government has decided ought to be released.
106. There is nothing surprising or repugnant about any of this. Grey belt is a very major policy shift and as a matter of principle runs counter to the traditional approach that every square metre of the Green Belt must be kept permanently open. It is true that the Government has not weakened its commitment to Green Belt overall and still regards it as something permanent, etc, but one has to read the whole chapter of the NPPF – the grey belt parts now comprise a significant, in-built exception to that general principle.
107. The conclusion is that if the site is considered to be grey belt, there would be some consequences for the application of Core Strategy Policies CP1 and CP2 and Policy CG9 of the saved local plan. Grey belt itself would weaken the weight to be given to the policies. Moreover, if the view was taken that the appeal proposals were 'not inappropriate' development in the light of the new NPPF, then *Mole Valley* reminds us that would mean the scheme would cause no harm in Green Belt terms. It would be illogical then to give much if any weight to the fact that the development is in the Strategic Gap (policy put in place to super-protect Green Belt in this area).
108. Mr Webster acknowledged that there might be some limited impact on Purpose B and therefore to a commensurate degree harm to the Strategic Gap's openness. But the main CP2 test – is the development essential – is met here:

- (1) The scheme is a data centre which is needed to meet some of the very large unmet need that exists; it is essential to meet that need for many reasons: economic, policy and social.
- (2) The need is referable to the SAZ area.
- (3) The SAZ area includes the Strategic Gap between Slough and London.
- (4) There is no evidence of any other alternative site which is capable of meeting that need in the SAZ but outside the Strategic Gap. Mr Cole was careful to identify that those sites that made it through his sieving exercise to Stage 4 included the five non-Green Belt sites (all included in the supply already and therefore not going to meet the unmet, or net outstanding need) and seventeen others, of which fourteen were outside the Strategic Gap. However, he sets out in detail in his work that none of those is suitable and available for data centre use.
- (5) As with the Green Belt generally, there is no specific alternative location to meet the essential data centre facility and therefore the policy test is met.

109. For these reasons, there is no breach of the Strategic Gap policy's essential test. There would be some adverse impact on the more general restraint policy in CG9 but regard should be had to that policy's focus on the openness and role of the gap, which of course takes one back to Green Belt policy. Nothing more than very limited weight should be attached to that if the scheme is not inappropriate.

COLNE VALLEY REGIONAL PARK

110. Very similar points apply to the CVRP; the difference, if there is one, lies in the slightly broader, more landscape and amenity based objectives of the park. There is no landscape harm objection registered by the Council. The Trust's consultation letter recognises that there might be some benefit in recreation terms from the scheme due to the proposed pedestrian link to the Arthur Jacobs reserve.

111. Mr Webster's evidence helps. He says that there is very limited landscape harm due to the nature of the site (including assuming the Council's baseline – the notional re-grassing of part of the appeal site would hardly transform it into a Valued Landscape). He says that the location of the site is not prominent and also points out how very limited the visual envelope of the data centre would be, despite its size and height. The visual effect is highly localised on a busy stretch of urban street opposite the Poyle Industrial Estate and what would be lost in those views includes the clear view one has now of the lawful structures spread through to the back of Parcel A. There would effectively be no visual effect from the BESS at all.
112. The site visit as ever will play a big part in assessing these points, but by way of submissions, the Appellant says that the effects on the CVRP will be very limited.

HEATHROW

113. Heathrow Airport Limited ("HAL") objected to the appeal scheme by letter dated 15 July 2025. It raised three points, only one of which was the subject of live evidence when HAL appeared on day 1 of the Inquiry as a third party objector⁷⁶. That point relates to the alleged negative impact on the ability of HAL potentially to use the appeal site for the purposes of Airport Related Development ("ARD") in the form of freight forwarding storage and distribution facilities as part of its potential Third Runway ("3R") proposals.
114. Mr Ray also gave evidence on this point for the Council, although it is quite clear that his evidence is very largely parasitic on the HAL objection. Mr Ray has no direct involvement in the HAL work and is obviously unable to speak on behalf of HAL; his evidence effectively added nothing substantive to the issue other than the fact that some years ago the Council were considering favourably the re-development of the appeal site and the land behind entirely for freight forwarding⁷⁷. This is the famous 'brown blob' that in the Council's indicative thinking covers the entire area of Manor Farm. The Council's case on this now⁷⁸ is that they might have been, or might still be, in favour of that scale of logistics development at Manor Farm, but only for the 3R. However, (a) they have not considered properly whether the appeal site and/or the

⁷⁶ The other two points relate to planning policies that are covered extensively elsewhere in these submissions and were not the subject of tested evidence by HAL.

⁷⁷ See CD14.3 pt 4, pdf page 21.

⁷⁸ See the SCG CD8.7 paragraph 4.8 and also CD12.01 page 20/25

land behind it is suitable for data centre use because they erroneously believe that there is no need for such a use geographically specific to this location, and (b) whatever the reasoning, there is surely no escaping the conclusion that the Council do not consider this site so sacrosanct in Green Belt or Strategic Gap terms that it could not be filled with sheds if they felt the justification was right.

115. The Appellant has made it clear that it supports the ideas behind the 3R proposals. It is just that the HAL objection, whilst clearly a material consideration, is only reasonably capable of being accorded limited weight. This is for three reasons: (1) the 3R proposal and its ARD component has little or no status and is largely inchoate at present; (2) there is no evidence that the appeal proposals would prejudice 3R, including the achievement of ARD facilities; and (3) relatedly, there is by contrast reliable evidence that, even if the appeal site were to continue to be regarded favourably by HAL for 3R-related ARD, it has many other options through which to achieve that objective.

116. I deal with those points in turn. First, the 3R proposal's status. As things stand (24 October 2025), HAL's proposals have no formal status. The Government backs the idea of a 3R at Heathrow and specifically the north-western location for the runway, but there are two rival schemes at present submitted in relation to the Government's request for expressions of interest or intent. The other, made by Arora, has not generated an objection to the appeal scheme. As things stand, the Government has not selected HAL's scheme as the preferred version of the 3R, albeit that is HAL's hope and expectation.

117. The Government has indicated⁷⁹ that at this stage in the process, that it intends to revise the Airport National Policy Statement ("ANPS") of 2018 to bring it up to date in accordance with current issues; the ANPS is an important policy precursor to any 3R proposals, because its function is to fix national policy in a number of key areas (including such critical issues as the need for a 3R, its key components, and so on). The Government statement of 22 October 2025 says that the process has not yet started but it will take until the end of 2026 to complete. The ANPS logically comes before any proposals can begin to be worked up in more detail, for instance what is in the red line and what is not. Mr Brewis was familiar with the nearly two years of litigation (2018-2020) which froze the progress of the ANPS when it was first released; issues such as environmental impact assessment, climate change law and public health issues have all developed further since that time and, being realistic about it, there is at least a prospect of the starting-point ANPS being subject of stringent legal scrutiny and challenge before the scheme itself can really come forward.

⁷⁹ CD5.09 and the 22 October 2025 communication ID17.

118. Moreover, if HAL's scheme is indicated, or selected in due course, by the Government as the preferred scheme for 3R, Mr Brewis accepted that a very extensive body of work would have to be undertaken, consulted upon and then submitted as part of a Development Consent Order ("DCO") process. HAL's own estimated timeline for those stages stretches until 2028 before a DCO application is even submitted⁸⁰; that may be optimistic.
119. Mr Brewis acknowledged that HAL was not seeking to prejudge, or asking the Secretary of State to prejudge, any aspect of the DCO process. That includes what may or may not be included in the DCO by way of ARD. That must be right, given that there is not even an early draft consultation on the 3R proposals in the public domain.
120. As I come to in a moment, much is made by HAL and the Council of the work done in a lengthy and thorough (but incomplete) way in 2018-20. They say that work sought to identify ARD locations, and earmarked the appeal site as one such location that was needed for freight forwarding. However, that historic work simply cannot be relied upon with any certainty or attributed anything more than very limited weight, given the fact that an entire re-assessment of the project is currently underway.
121. Although Mr Brewis said that the appeal site was thought to be, and in his view still was, the best site for ARD (at least in this part of the airport periphery), that was in effect Mr Brewis engaging in precisely the kind of speculation and prejudgement which he agreed was not appropriate at this stage. I come below to the way that HAL puts this and other points in closing.
122. Much more importantly, even if HAL's proposals are those taken forward, and even if they contain, after consultation and further reflection, the appeal site as part of the ARD proposals, that does not signify that those proposals would necessarily be accepted by the panel of Inspectors appointed to conduct the Examination in Public into the DCO. There may well be objections, alternatives and other evidence submitted which will need to be properly considered and weighed before an overall conclusion is reached.
123. For all these reasons, the assertion that the appeal site should be treated as effectively a necessary part of a forthcoming HAL 3R proposal is not substantiated and cannot be given any more than minimal weight.

⁸⁰ CD14.5

124. The second reason that the HAL objection lacks force is the complete absence of evidence that the use of the appeal site for a data centre would actually cause harm to the 3R proposals. Mr Brewis rightly conceded that it could not be said that the data centre proposal would prevent the 3R project from coming forward – such a suggestion is obviously disproportionate and unrealistic just as a matter of common sense.
125. Nor, however, is there any evidence that the use of the site for a data centre would prevent the 3R achieving its aims in terms of ARD freight forwarding. The inquiry had the evidence of Mr Murphy, who, as part of a previous instruction, gained detailed knowledge of the range of sites considered for freight forwarding around the airport; his clear evidence was that there were other alternative sites for the use. Although much emphasis was placed on the careful consideration of the ARD provision in 2018-20, nothing was put to Mr Murphy to unsettle that view.
126. If the data centre proposal would not prevent 3R or suitable alternative ARD for freight forwarding, then even on its own terms the Heathrow objection is without substance.
127. That brings me to the third point: it is matter of very little importance that HAL and its advisers thought the appeal site was a very good, or perhaps even the best, freight forwarding site at the pre-DCO stage in 2018-20 (and perhaps now, through Mr Brewis, though I come to important caveats as to what can be made of his evidence on this point in a moment). There was not even an application for a DCO made in 2020, let alone any critical examination of whether that judgement was sound. The latest documents in time from that period still say that reviews are being carried out⁸¹.
128. Of course one should give due weight to the depth and quality of the work carried out by HAL at that time and, to some extent, to the complementary view reached by the Council in its 2020 emerging plan document⁸²; but it would not be appropriate to assume that any 2020 or 2021 DCO application would have succeeded in this respect. Things have now considerably moved on in relation to the appeal site – if in due course the data centre is granted permission, it is not said by HAL that the 3R proposals it would bring forward would not be capable of being approved, including in relation to the ARD provision.
129. As Mr Murphy said, the height of the point in 2018-20 was the *preferred* masterplan. It was HAL's preference, not a collection of non-negotiable ideas, the removal of one of which would vitiate the whole. Without the appeal site for ARD, there would have been, and will be

⁸¹ CD12.7.2 and 12.7.3

⁸² CD10A 4a.

(if permission is granted on this appeal) the need for another site to be selected. HAL and the Council did not and could not of course say that there were no such sites. The height of the case built on the unstable ground of the 2018-20 work is the reference to the site being “essential”⁸³ but as Mr Murphy said, that expressed the possible case for including uses in a DCO but there were other sites that had been assessed during a process that was far from complete; one has to be doubly careful not to make that work carry more weight than it reasonably can.

130. Some even more tendentious suggestions were made that the use of the site for a data centre would harm the 3R proposals because they would either prohibitively increase the potential costs for HAL of compulsorily acquiring the appeal site or cause the 3R proposals to be significantly less sustainable. Mr Brewis brought no evidence to substantiate those allegations; Mr Ray was plainly unable to. The cross examination of Mr Murphy on this point sought to argue that the data centre use – if CPO powers were exercised – would not accord with the Government’s wish for the 3R to be cost effective and value for money⁸⁴. However, there is no evidence that HAL would seek to acquire the site if a data centre were on it; and indeed the presence of alternative options would prove a real stumbling block to meeting the high tests for justifying an expropriation of that kind. Nor was any evidence given to support the idea that alternative sites for ARD would be more, or less, sustainable in terms of traffic movements, than the appeal site. The vagueness of these two points rather underlined the very provisional nature of the objections.

131. Drawing these three points together, very limited weight ought to be given to the Heathrow objection – it is founded on work which was never fully completed, done for a DCO application that was never made; and now re-asserted notwithstanding the need for a full review in the light of today’s circumstances as a precursor to an application which is still literally years away from being made, let alone tested and accepted.

132. As a result of these three points, there would no breach of any policy, at any level, were permission to be granted for the appeal proposals. The ANPS, Written Ministerial Statement and the NPPF are all far too high-level to dictate, or even indicate (given the limited weight to the proposals) that this site is necessary for the 3R proposals. There is no safeguarding restriction affecting the site and there is no adopted policy which seeks to direct its use to freight forwarding and to restrict any other use.

⁸³ CD14.3 at 4.9.9-13

⁸⁴ CD11.2 June 2025 Gvt statement at p.26 of the Appendix was put to Mr Murphy.

133. HAL have submitted a closing statement and it is convenient to respond in a short discrete section of these submissions, albeit there will be some repetition of what I have just said:

- (1) In a couple of places⁸⁵, the HAL closing uses the expression “required” or “requirement” in relation to the site. This is misleading. There is no published document which says that the site has been finally regarded as “required” – certainly not in 2025, when HAL are reviewing the entire project, or even in 2018-20, when any suggestions about the site were provisional, subject to further review, and had not been tested. It has not been established (even by HAL) that the site is “required”. Similarly, claims like that in paragraph 11(c) of the HAL closing, that the site is “very important and likely to remain so” does exactly what Mr Brewis accepted one could not do, and prejudices the outcome of the current review of the project that HAL are undertaking, let alone the testing of HAL’s eventual case.
- (2) It is not doubted that the 2018 ANPS, which we now know is to be revised over the next year⁸⁶ supported the 3R project in general terms. Its focus as far as facilities are concerned is on-airport facilities and there is insufficient detail in such a high level document to bear precisely on off airport ARD.
- (3) Nor is it true that the last set of 2018-20 HAL preferences sought to meet all the need for ARD. As Mr Murphy said, it actually only provided for about 40% of what was estimated at the time, leaving the rest to the market. That was because there was confidence that sufficient sites would come forward to service that need and land did not need to be ring fenced within the DCO with potential CPO powers in order safely to have enough land for that purpose.
- (4) As I have said already, much is being made of the detailed process, etc, undertaken in 2018-20. It tells one little about what the current situation may be some five to seven years later – which sites are available now, what changes have occurred in the market, what the needs are now assessed to be. It is no objection to an otherwise acceptable scheme that some unfinished work five years ago indicated the site as a preference. As the HAL closing says⁸⁷, the site was “part of a long list before being shortlisted”. Mr Murphy is right to say that there were and are alternatives.

⁸⁵ HAL closing paragraphs 5, 15(a).

⁸⁶ Gvt Statement 22 October 2025, ID17

⁸⁷ HAL Closing, paragraph 9(b).

(5) HAL assert that to develop the appeal site for a data centre would cause harm to the 3R project – they even go so far as to suggest that permission should be refused, without any consideration of any other relevant point. Obviously that is unfounded and a little high-handed. The harm which is asserted, but not specified, cannot be made out.

(6) Particularly objectionable is the suggestion⁸⁸ – not made in the HAL evidence – that the preference for the site has been confirmed by work undertaken “since” 2020. That was not said by Mr Brewis. There is no evidential basis for it and the Inspector and the Secretary of State should ignore it.

134. In summary, the HAL objection remains entirely provisional. Little weight would normally be given to a third-party commercial objector saying that the site is needed for a different use when they have no control over the site, no published up to date plans and have given no proper evidence that there would be no alternative to the appeal site. Just because it is HAL does not make the points any more cogent. The Council’s case here is of little assistance when thinking about the weight to be given to these points; they have no Council resolved position on 3R, let alone whether the 3R justifies the use of this site, because there are no plans about which a lawful resolution could be reached by a committee or the full Council. Really, one wonders what proper basis exists for the Council’s position on this point.

135. No doubt the Inspector and the Secretary of State will weigh up what seems in the end most critical here: (1) there is no suggestion that 3R won’t go ahead if the appeal scheme is granted permission, as per Mr Brewis; and (2) there are alternative sites which need to be fully assessed in 2025-28 before the DCO is made. Since both 3R and data centre development in the SAZ are of equal importance as far as the Government is concerned⁸⁹ the clear conclusion is that *both can go ahead here*.

OTHER ISSUES

136. No other technical issues have been raised. A response to the Reg 25 request by the Inspectorate has been submitted, but it relates to a detailed referencing point in the Air Quality

⁸⁸ Ibid paragraph 15(d).

⁸⁹ See Mr Brewis’ and Mr Ray’s answers on this topic – there is no policy status for 3R or ARD here and no policy preference for 3R development over critical national infrastructure – see for instance the Chancellor’s Statement quoted on 29 January 2025 (in Appendix D of Mr Ray’s proof) where reference is made to having made decisions on multiple significant projects spanning “airports, data centres ...”.

assessment which is not a live issue between the parties. It is not considered to be a relevant material consideration for this inquiry.

137. No documents are outstanding.

CONDITIONS AND SECTION 106 OBLIGATION

Conditions

138. The set of draft conditions⁹⁰ was discussed at the round table session on 23 October 2025. The vast majority of the points went to the wording of the conditions rather than matters of principle.
139. These closing submissions may be taken to represent the Appellant's written acceptance of the Pre Commencement Conditions in the draft conditions list.
140. The one exception was the Council's suggestion that the permission be made subject to a stipulation that if development had not reached a certain point by the end of 2029, then whatever was on the site would be torn down and the area 'restored' to a state which would be materially less developed than the site is today (bearing in mind in particular the lawful development on the site).
141. After the round table session, the parties agreed that this was a matter that could be dealt with, or at least debated, in the context of conditions rather than preventing the signing of a bilateral s.106 agreement. That bilateral agreement is now heading towards its signing by the Appellant today and then by the Council on its next sealing day.
142. As to the issue itself: the Appellant remains wholly opposed to the imposition of a condition in any form which has hitherto been suggested by the Council. The justification for the condition, as I understand it, is that the Council is concerned that the scheme may be started and then not completed, leaving the site in a state either worse than now or which would prevent putative enforcement of the re-grassing they have in mind under existing enforcement routes.

⁹⁰ ID13.

143. It is not fully explained what is assumed to have happened to bring about the scenario that the Council is concerned with. Developments, even in the Green Belt, are not usually subject to conditions requiring them to be completed or be pulled down regardless of what state they have reached by a certain point. There was some reference to the Appellant considering HAL's position but the evidence should be clear: the HAL objection is not a matter of more than limited weight for the reasons I've set out, and the Appellant will not be pausing the data centre scheme because of it.
144. Regardless, the Appellant considers the idea of such a condition unacceptable essentially for the reasons set out in my oral response at the round table session, which I now summarise.
145. First, there is no evidence to show that it is necessary. Indeed, the transparent and *bona fide* evidence from the Appellant is the opposite: there is an exclusivity arrangement with an operator and if permission is granted the scheme is programmed to start in mid 2026 with powered shell reaching completion in late 2027 (allowing the operator early access) and then data hall fit out coinciding with the energisation of the Laleham connection in May 2028. Mr O'Reilly dealt with questions about all the potential delays – they are not likely and all the risks are normal. Against that factual background, it would not be necessary to impose a condition posited on a 'technical' implementation or some halted works.
146. Second, the condition would breach a key tenet of planning conditions – it would effectively negate the very development it was attached to. This is because a condition which said that the data centre might be pulled down in 2029 even if very significant sums had been spent by both the Appellant and the operator getting part way towards completion, would render the data centre commercially unfundable and unlettable. The condition would therefore be unreasonable and unlawful.
147. Third, the condition would be unnecessary if permission has been granted on the basis of the site being grey belt as it stands and the scheme being not inappropriate development. On that hypothesis, the condition would purport to require demolition and removal of development which is not deemed to cause any harm to the Green Belt, ditto the Strategic Gap or CVRP. That would obviously be unreasonable.
148. Fourth, the condition is unnecessary and not required to make the development acceptable for another reason, *viz.*, because it would require the land to be returned to a different lawful state to that which it is in now. As I submitted earlier, having the power to enforce is not the same thing as it being expedient in all the circumstances actually to enforce; the Council

has not resolved to take any further enforcement action on the site as things stand – and if they did, it could not legally bring the site to the state which the mooted condition would require.

149. Fifth, the condition has nothing to do with mitigating the effects of the scheme, which if they are accepted in principle by the grant of permission, should simply be allowed to occur rather than being viewed as somehow provisional. The Council appear to have arrangements like those in conditions 28 and 29 of the 2009 permission in mind but the circumstances were very different (notably, of course, it was pre-2024 NPPF) and quite inapposite for a situation where the entire site is being comprehensively re-developed.

150. The Appellant is content for the commencement condition (number 1) to require commencement of the development within 2 years, as opposed to 3 years, although for the avoidance of doubt, it does not consider it necessary to make that change and the evidence does not show it to be merited.

Section 106

151. The parties are intending to sign a bilateral agreement. The only point of contention within it is which of the two footpath options is considered to be necessary as a result of the scheme. This is covered in detail in the note submitted by the Appellant⁹¹, but I make a few observations now on the point.

152. The pink route cannot be delivered and is not sought. The yellow route (option B) is unnecessarily long and would not achieve the ends which the Council seeks in any event:

- (1) I start by recalling the view of the Council at the round table session that it is only because of the proposed development that they claim the longer footpath/cycleway is needed.
- (2) That is consistent with the observations of Mr Bancroft that the Council has not identified Poyle Road in the LCWIP for such improvements and there is no accident record or other indication that it is necessary, given that cyclists and pedestrians often use the route.

⁹¹ ID15.

- (3) Moreover, the degree of change that the appeal proposals would cause is pretty modest in transport terms – there is expected to be some car and bus use as well as some pedestrian/cycle use for those living within striking distance of the site.
- (4) The key point about pedestrians is that the first option (ie Option A) makes good provision for accessing the bus stops on either side of the road. It may involve the pedestrian coming from the site to the southbound bus stop going very slightly past the bus stop before crossing but the stop is in plain sight and it is only a few metres. Putting the crossing further south is not possible because of the accesses that come out onto Poyle Road.
- (5) The wider pedestrian connections are not necessary. The number of pedestrians coming under the M25 from Stanwell Moor or from Horton is unlikely to be very high – partly because of the distance, partly because of the unattractive nature of both of those routes. We are told that pedestrians do make their way through this area as things stand and it seems disproportionate to require the full length of the yellow route to cater for the additional pedestrians that the scheme may generate.
- (6) Cycle use is quite possible as the road network has not been shown to be unsafe. A safety audit would tell one little more than can be gleaned by a site visit, which the Inspector has undertaken. The yellow route is in any event less than desirable for cyclists due to the need to swap on and off carriageway multiple times; even though the Summerlease Quarry might have put in some provision north of the bridge, that does not mean it is needed in this section of the Poyle Road. Mr Bancroft was of the view that such swapping about might be less safe.

153. For those reasons, the Inspector is asked to indicate (and obviously the same goes for the Secretary of State) that Option A is required under the s.106.

BALANCING AND CONCLUSIONS

154. To work through the various balancing exercises by way of overall summary (noting that balancing exercise or proper consideration of the statutory or policy balances were not carried out by Mr Stimpson, whose proof simply ends after the CVRP section):

- (1) It is agreed that the benefits of the scheme would outweigh the less than substantial harm to the setting of the Listed Buildings.
- (2) The development accords with the NPPF: very strongly with the economic chapter due to the support in paragraphs 85-87 for data centres, jobs and economic growth; and fully with the Green Belt chapter due to the grey belt nature of the site and the consequent absence of harm due to the scheme being not inappropriate. The most important policies for deciding the appeal are out of date and the tilted balance is engaged. The harms would not significantly and demonstrably outweigh the benefits. Therefore the NPPF is fully satisfied.
- (3) The same would be true in NPPF terms even if there was a need to show VSC. The circumstances here are extremely unusual: such a tremendously large unmet need, without alternative sites, in the SAZ; not just a scheme without alternatives but one which also has a BESS and private wire transmission connections deliverable in 2027/8 (thereby circumventing the intractable power supply issues bedevilling the most important data centre location in Europe). The benefits to the local and national economy are very significant and would clearly outweigh, as Mr Murphy says, the harms that would be caused.
- (4) In relation to Green Belt harm (if VSC is needed), the appropriate approach is not to load onto every separate component of Green Belt harm a weighting of “substantial weight”, as the Council argues. That is a misreading of paragraph 153, as can be seen for instance in the Secretary of State’s own decision on the solar farm appeal, where he applied a single finding of substantial harm to the aggregate Green Belt effects he accepted the scheme would cause⁹².
- (5) The appeal proposals would comply overall with the development plan (VSC, essential location in the Gap and CVRP); however, under s.38(6) even if that was not accepted, material considerations would more than outweigh the non-compliance because (a) the weight to be given to non-compliance with the out of date policies of the plan should be very much reduced and (b) the benefits of meeting the need, etc, would indicate that permission should nonetheless be granted.

155. The appeal in a sense is a good example of how nothing stands still and everything changes – the planning system is flexible enough to cater for this. The approach to Green Belt is very different to how it was even 12 months ago (and as it had been for many years); the

⁹² CD7.05, DL21.

unmet need for data centres in the SAZ is unrecognisably larger than it was a few years ago. The statutory scheme and the NPPF require all these changes to be addressed and the decision taken on the policies and the facts as they are today.

156. This rare opportunity to consent a deliverable, fully-powered hyperscale data centre in the SAZ against the rising tide of need is one that should be grasped. It is so important to the digital economy and economic growth that it outweighs objections even if VSC are needed to be shown; it certainly outweighs the provisional and longer-term preferences of HAL for ARD to be sited here; both of these needs can in the end be met.

157. For those reasons, and subject to the conditions and s.106 to be completed shortly, the Inspector is respectfully requested to recommend, and the Secretary of State to grant, permission for this proposal.

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