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Dear Sirs

East Midlands Gateway Phase 2 – Further Correspondence on behalf of Prologis UK Limited and Prologis UK 121 Limited ('Prologis')

This letter is written further to the Relevant Representation submitted on 9 January 2026 by DLA Piper UK LLP on behalf of Prologis in connection with the application by SEGRO Properties Limited ("**SEGRO**") for a Development Consent Order for East Midlands Gateway Phase 2 ("**EMG2**") ("**Prologis Representation**"). This letter does not seek to rehearse the points made in the Prologis Representation. Instead, it draws the Examining Authority's attention to the extent to which the Relevant Representations made by other Interested Parties lend further weight to Prologis' submission that the DCO Application is presently not fit to proceed to examination.

The shortcomings that Prologis has identified in the Prologis Representation are also reflected in the Relevant Representations made by:

- North West Leicestershire District Council ("**NWLDC**"), the local planning authority;
- Leicestershire County Council ("**LCC**"), the local highway authority;
- National Highways; and
- Manchester Airports Group ("**MAG**").

This letter draws together the relevant concerns of those parties, which underline the importance of addressing these matters before the examination of SEGRO's application should proceed.

Terms used in this letter have the same meaning as set out in the Prologis Representation unless otherwise defined.

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1 Failure to assess the consequences of frustrating the Joint Application

In the Prologis Representation at paragraphs 9.13 – 9.20 it is pointed out that key, socio-economic consequences of frustrating the Joint Application have not been assessed. This is also addressed at paragraph 8.20 in MAG's Relevant Representations ("**MAG Representations**") and by NWLDC in their Relevant Representation.

NWLDC is the host authority for both DCO applications, and the local planning authority for the Joint Application. In its Relevant Representation it specifically draws the Examining Authority's attention to the Joint Application and its physical relationship to the development proposed in the DCO Application. It points out that "*the applicant's documents includ[e] no reference to the [Joint Application]*" and notes the complete absence of any consideration by the Applicant of the issue of how "*any positive decision on the [Joint Application] would impact on the delivery of EMG2*".

NWLDC's Relevant Representation therefore echoes the concerns set out in the Prologis Representation as to the significant lacuna in SEGRO's Environmental Statement ("**ES**"), which does not assess the adverse land-use and socio-economic effects of granting a DCO which is intended to prevent delivery of the development proposed in the Joint Application. As we have explained in the Prologis Representation, that adverse outcome arises on the making of an order conferring compulsory acquisition powers, not at build-out. It therefore falls to be assessed now so that the Examining Authority can examine the consequences of the making of the DCO, undertake a lawful planning balance exercise and undertake the distinct compulsory acquisition balance.

Similarly, NWLDC's concern about the absence of any consideration of how approval of the Joint Application would "*impact on the delivery of EMG2*" reflects and reinforces Prologis' concern as to the absence of any evidence on viability. More specifically it highlights the viability implications of using powers of compulsory acquisition to take land whose valuation will reflect its development prospects in the absence of the scheme. As the Prologis Representation and the MAG Representation explain, this issue arises whether or not the Joint Application is approved, but NWLDC's point is nevertheless directed to the same essential flaw in the application. We return to this issue further below.

The ES neither acknowledges the intended effect of the DCO on the delivery of policy-compliant employment generating development, nor evaluates it on a realistic worst-case basis; the Examining Authority is therefore left without the information required to examine the application at all and to weigh the certain loss of near-term benefits against the contingent advantages SEGRO claims for its proposal.

2 Absence of viability and funding evidence

Prologis (at paragraphs 9.2-9.12 of the Prologis Representation) and MAG (at paragraphs 8.9-8.10 and section 10 of the MAG Representations) have shown that the key information required by those subject to the threat of compulsory acquisition is lacking, so that they cannot properly understand and answer the case made or properly participate in the examination. This puts them at a material disadvantage. Importantly, it also means the Examining Authority does not have the material that it needs properly to examine the application. As the MAG Representation clearly explains at paragraph 8.10.4, in the absence of evidence on viability the examination process would be "*deeply unfair*" and SEGRO's case for seeking powers of compulsory acquisition simply cannot be made out.

SEGRO has not provided any evidence properly capable of demonstrating overall scheme viability, and in particular there is a complete absence of any consideration of the impact of market value compensation for the Prologis/MAG Land and option obligations for the Southern Land, south of Hyam's Lane. As the Prologis Representation explains, SEGRO's case that the Southern Land is not viable as a standalone phase if the Joint Application proceeds is asserted, not evidenced; equally,

there is no clear basis for a final investment decision or deployment of funding within the Freeport window.

Those deficiencies go to the heart of the statutory test in section 122 of the Planning Act 2008 and the Department for Communities and Local Government's guidance on compulsory acquisition of land ("**Guidance**"). The asserted public benefits depend on land being fully developed as proposed and within a particular timescale, but the scheme may well not be delivered in full or on time. Conversely, the grant of the DCO with powers of compulsory acquisition will have immediate and very substantial adverse consequences both for those with an interest in the order land and for the public interest in the rapid delivery of important and beneficial development on that land as proposed in the Joint Application. In those circumstances the public interest cannot be shown to outweigh the certain private loss. The evidence needed for affected persons properly to assess, understand and respond to SEGRO's case for compulsory acquisition and for the Examining Authority to probe and test it in light of those responses cannot fairly be deferred. To do so would undermine the purpose of the Relevant Representations stage and the overall fairness of the process for affected persons – Prologis and MAG, in particular.

3 Inadequate highways evidence

At section 12 of the Prologis Representation, Prologis addresses the shortcomings of SEGRO's application in relation to the assessment of impacts on the highway network. The extent, significance and consequential nature of these shortcomings are amplified in the Relevant Representations made on behalf of the highway authorities.

National Highways' Relevant Representation makes various important points which corroborate Prologis' Representation:

- The assessments provided in support of the DCO Application do not allow for independent consideration of the development proposed in the two conjoined applications (paragraph 1.3). In short, either SEGRO must confirm its acceptance that the two applications stand or fall together, or it must submit replacement assessments which address this lacuna.
- There are "*several concerns*" with the Transport Assessment and the related chapters of the ES (paragraph 1.4), including in particular:
 - the findings of the 2023 PRTM must be incorporated into these assessments, which will therefore all need to be updated (see also paragraph 4.1.3);
 - there has been no assessment of compliance of the proposed road infrastructure with the requirements of the DMRB; and
 - no Stage 1 RSA has been completed for the proposed mitigation on the strategic road network.
- The assessment of compliance with the DMRB and the Stage 1 RSAs must be completed as soon as possible and "*ideally before the start of the examination*".
- The shortcomings in the Transportation assessments also have knock-on implications for the Air Quality assessments within the ES (see paragraphs 4.2.2 and following).

As Prologis has noted, however, it is important for the fairness and effectiveness of the examination process that Interested Parties should be able to review and respond to these basic and fundamental

pieces of supporting evidence in their Relevant Representations. If that is not possible the Relevant Representation stage is unable to fulfil its intended role in setting out parties' cases and thereby informing the Examining Authority in its decisions about how the applications should be examined and what are the key issues on which it should focus.

It is clear from the National Highways Relevant Representation that SEGRO's highways case is not examination-ready and the DCO Application rests on an incomplete and unreliable evidence base. This mirrors Prologis' concern that impacts and proportionate mitigation simply cannot be tested yet and section 51 advice should be issued that the highways evidence presented by SEGRO should be revisited as they have not produced an examination-ready highways package; the present information accompanying the DCO Application will not facilitate fair scrutiny or lawful decision-making.

Finally, the implications of what is said on behalf of National Highways at paragraph 4.1.1 about the proposed use of a requirement to seek to address the shortcomings in the Applicant's assessment of highway impacts are significant.

- It is apparent that a requirement has been discussed between SEGRO, National Highways and LCC as a possible solution to acknowledged inadequacies in the transport modelling. National Highways Relevant Representation explains that Requirement 27 as drafted in the draft DCO [APP-012D] does not reflect what had been agreed.
- This proposed solution (even using National Highways' preferred form of requirement) is fundamentally flawed and unworkable. The requirement set out in National Highways Relevant Representation and said to have been agreed (but not reflected in the draft DCO) is unclear, imprecise and unworkable. For example, how would the local planning authority, or anyone else, be able to check whether the use of the mezzanine floorspace in any individual unit is having the effect of increasing the distribution capacity and vehicular trip generation of the development as a whole? Furthermore, would *any* increase in either distribution capacity or vehicular trip generation as a result of the use of this floorspace constitute a breach of the requirement and therefore a criminal offence? If not, what level of increase would constitute a breach and how would this be assessed?
- These obvious flaws in the draft Requirement said to have been agreed go to the heart of the intended purpose of the requirement.
- The version of Requirement 27 in the draft DCO provides instead that "*Such floorspace shall be used solely for the purposes of storage and distribution*" (emphasis added), and would therefore allow the floorspace to both increase distribution capacity and vehicular trip generation. In other words, it does not serve the purpose considered necessary by the highway authorities.
- It can be seen from the Explanatory Memorandum [APP-013D] that the justification for the proposed Requirement 27 is said to be that it has been provided "following discussion with National Highways in order to control the use of mezzanine floorspace provided within the authorised development". Notably, it does not say *why* the floorspace needs to be controlled in this way. It is apparent from National Highways' Relevant Representation that when the underlying need for the Requirement is considered, neither version of the requirement is capable of dealing adequately with the issue and it is not something that can be addressed using different wording.

- The fact that such a manifestly inappropriate requirement is being contemplated only underlines the inadequacy of the assessment of traffic and transportation effects.

LCC's Relevant Representation presents a similar picture. It notes that the acceptability and suitability of the highway infrastructure proposals included in the DCO Application "*may not fully be known during the lifetime of the examination*" and explains that insufficient information has been made available to enable LCC as local highway authority to understand the residual impact of the proposed development on the local roads network.

It too points out that key components of SEGRO's highways case remain substantially incomplete at this stage. Methodologically, LCC explains, a significant proportion of the assessment still relies on the pre-COVID 2019 PRTM 2019 model. Moreover, instead of revising trip rates to reflect the enlarged mezzanine floorspace, SEGRO have adopted an "*unconventional*" approach seeking to cap highway impacts via a DCO requirement "*to seek to limit the highway impact of the additional floorspace pursued*". That approach is fundamentally flawed for the reasons set out above.

LCC also flag that the impacts on the network from constructing the highway mitigation measures themselves do not appear to have been assessed, in LCC's view such impacts could be significant over a prolonged period. Prologis notes that NWLDC state in their own Representation that they are "*fully supportive*" of the comments provided in LCC's Representation in respect of such traffic and transportation matters.

Having identified the substantial problems associated with the modelling that has been submitted with the DCO Application and its relationship to the proposed transport infrastructure and mitigation measures, LCC notes that "*[t]he Applicant team has acknowledged the risks associated with the submission of a DCO application and fixing of an application boundary in advance of this work being undertaken*". It cannot be fair or right that Interested Parties and Affected Persons are placed in a position where they are obliged to respond to an application which has clearly been submitted before it is ready for examination.

This position is directly analogous to the DCO application for the Hinckley National Rail Freight Interchange, where the Examining Authority concluded that the applicant's highways case was not adequately evidenced and recommended withholding consent; the Secretary of State then issued a 'minded to refuse' letter seeking further highways material and ultimately refused development consent on highways grounds. Following that precedent, given that SEGRO is determined to make its application notwithstanding the immaturity of its assessments, the examination should be deferred pending provision of the outstanding information.

4 Conclusion

For the reasons set out in the Prologis Representation, as supported by the representations from other parties that it has seen, Prologis invites the Examining Authority to defer examination of SEGRO's application and to issue section 51 advice requiring the Applicant to remedy the identified deficiencies. It is suggested that the Examining Authority should defer the start of the examination until:

- (i) a transparent viability/funding case is provided (including explicit treatment of compensation liabilities);
- (ii) the ES is supplemented to assess the adverse socio-economic and land-use effects of frustrating the Joint Application; and

- (iii) the identified gaps in the highways case are filled, including rebuilding the assessments using the 2023 PRTM with core assumptions, modelling methodology and outcomes provided, and written confirmation of agreement in principle with LCC and National Highways.

If the examination were to commence without that information having been provided, and without a proper opportunity for Interested Parties and Affected Persons to respond in writing to that information, its fairness and effectiveness would be undermined. As such, Prologis submits that the examination should not proceed until that has happened.

Yours faithfully

DLA PIPER UK LLP