



## Event Transcript

<b>Project:</b>	East Midland Gateway Phase 2
<b>Event:</b>	Compulsory acquisition hearing 1 (CAH1) – Part 1
<b>Date:</b>	10 March 2026

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# Compulsory Acquisition 10\_3\_26 Hearing 1

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## SUMMARY KEYWORDS

Compulsory acquisition, East Midlands Gateway, Planning Act 2008, public interest, economic benefits, highways improvements, community benefits, access rights, funding statement, human rights considerations, statutory tests, policy requirements, development viability, private loss, public interest loss, compelling case.

## SPEAKERS

Eventurous AV Team

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 00:00

Okay, it's now two o'clock and it's time for this hearing to begin. I would like to welcome you all to this compulsory acquisition hearing for the East Midlands gateway phase two EMG two project. As there is no proposal for compulsory acquisition or temporary possession on land rights, on the material change order that proposal is not for consideration this afternoon. Can I just confirm that everybody can hear me clearly? Can I also confirm with the case team and that the live streaming and recording of this event is also occurring? Live stream has started and that recording has commenced? Thank you very much. My name is Robert Jackson, and I've been appointed by the Secretary of State to be the lead member of this panel to examine the application and to ask other panel members to introduce themselves.

 00:52

My name is Liam page, and I've also been appointed by the Secretary of State to be a member of the panel to examine these applications.

 01:00

Good afternoon. My name is Gaur AV Joshi. I have been appointed by the Secretary of State to be a member of the panel to examine this application. I'm also going to be keeping a list of action points, and we can run through these at the end of the hearing. Thank you. Together, we constitute the examining panel for these applications. I will now deal with a few housekeeping matters for those joining us in person who are not with us this morning or are just arriving for this hearing, I'll quickly run through the essentials. Can everybody please set all electronic devices, including phones and watches, on silent? Please. Those who were here this morning will be aware that there was only one fire alarm scheduled this morning, which was the only one for the week. So if the alarm goes off from

now on, we should treat it as a real thing and exit through the sign fire exits and follow the signage of the hotel to the fire point, which is exactly located outside the main hotel entrance. If you need to use the toilet. These are to be found on the corridor on my left and your right. Who is? Who? For those of you who is sitting facing us at the table, to accommodate comfort breaks and manage well being for all, we will add in for short breaks approximately every hour or so before concluding today's hearing at 5pm as was explained at the preliminary meeting this morning, the majority of planning inspectors are members of the prospect union and are currently participating in a period of industrial action Short of strike. This essentially means that we are not working over and above our contracted hours. This has been accounted for in our time tabling for this week. Thank you for understanding on this matter. This meeting will follow the agenda published on the national infrastructure planning website on 10th, February 2026, examination Library Reference Number, PD, test 010, it would be helpful if you had a copy of this in front of you. The applicants team is also displaying the agenda on screen, and will be displaying as and when necessary throughout this hearing. This agenda is for guidance only, and we may add other considerations or issues. As we progress, we will conclude the hearing as soon as all relevant contributions have been made and all questions asked and responded to. But if the discussions cannot be concluded, then it may be necessary for us to prioritise matters and defer other matters to written questions. Likewise, if you cannot answer the questions being asked or require time to get the information requested, then can you please indicate that you need to respond in writing for the record? I would like to highlight that the further compulsory acquisition hearing are scheduled for the week commencing 11, May 2026, and 17th, August 2026, should they be required and subject to rule it later today's hearing is being undertaken in a blended way, meaning some of us are present with us at the hearing venue, and Some of us, you are joining us virtually using Microsoft Teams. We will make sure that however you have decided to attend today, you will be given a fair opportunity to participate. A recording of today's hearing will be made available on the relevant project pages of the national infrastructure planning website as soon as practicable, after the hearing has finished, an AI generated transcript will also be made available with this. With this in mind, please ensure that you speak clearly into a microphone, stating your name and who you are representing each time you speak, for those with a microphone, you might already know that there is a push button to speak and there will be late light, which indicates that microphone is live. If you are not at a table with a microphone, there is a roving microphone, so please wait for one of the case team or AV member team to come to you a link to the planning inspectorates privacy notice was provided in our rule six letter. We assume that everybody here today has familiarised themselves with this document which establishes how the personal data of our customers is handled in accordance with the principles set out in data protection laws. Please speak to our case team if you have any questions about this. Next I'm going to ask those of you who are participating in today's meeting to introduce yourself. Some of you may already have been introduced yourselves during the preliminary meeting this morning, however, for the purpose of recording and to ensure the clarity for this afternoon hearing, I would ask you to introduce again. So when I state your organization's name, could you please introduce yourself, stating your name, who you represent and which is in the item you wish to speak on. If you are not representing an organisation, please confirm your name, summarise your interest in the application and confirm the agenda item upon which you wish to speak. Could you also state the title by which you would like to be addressed? So next, can we start with the applicant and their advisors?

 06:32

Please, Good afternoon, sir. My name is Alexander booth King's Council, and I appear on behalf of the applicant for compulsory purchase powers, SEGRO, properties limited. I am instructed by Ms Tony Weston of Gowling Wlg, and she is sat to my right. Sat to my left is Mr. Richard thuring, also of Gowling, who may assist me during the course of this compulsory acquisition hearing. I anticipate speaking to matters two, three and four in the agenda, and I'm content to be called Mr. Thank you.

 07:08

Thank you. Mr. Booth.

 07:10

Next we are going to go to statutory bodies, whether or not they are having land for which they are responsible being affected by the compulsory acquisition or temporary position. Request. Can I ask to start with the Leicestershire county council?

 07:25

Please. Good afternoon, sir. Mrs. Rebecca Henson, Leicestershire county council, available to answer any questions.

 07:33

Thank you. Can I move on to next Northwest Leicestershire District Council?

 07:39

Please? Good afternoon. I'm Jessica Allen. I'm Council instructed for North West Leicestershire District Council who will be attending this hearing in an observing capacity only. I am joined to my right by Charlotte Smith, who's a senior legal assistant for the Council. Thank you, and I'm content to be addressed by MERS where appropriate.

 08:05

Thank you. Can I ask the national highways please who I believe is joining us online.

 08:17

Good afternoon, sir. My name is Rahul hat, solicitor at TLT. We are solicitors on behalf of national highways. I am proposing to speak very briefly at item number three statutory undertakers. Mr. Is fine. And I'm also joined here by Mr. Jeremy bloom, who you may have met earlier today at the primary meeting. Thank you.

 08:37

Thank you, Mr. Hope I was just going to introduce myself again. Jeremy bloom. National Highways can be referred to as Mr. Thank you.

 08:49

Thank you. Next, we have Parish Council who have notified us they are observing long Waterton and diceworth. Paris Council, unless you wish to speak, you don't need to introduce yourselves, but to acknowledge you are observing here next other other affected persons, that is those who would have their land interest affected if the application were granted in its current form. We have two group of companies, that is Prologis UK Limited and Prologis UK one to one limited, who I hope will be okay if we refer to as Prologis throughout this examination. Thank you. Can I ask Prologis to introduce yourself?

 09:33

Please. Good afternoon, sir. My name is Harry Wood Philpott King's Council. I'm instructed by Howard Basford, partner at DLA Piper UK LLP, set to my right, and I appear on behalf of both of the Prologis companies.

 09:51

Thank you, Mr. Philpott,

 09:52

sir, I intend to speak to item two, and I'm content to be referred to as Mr. Philpott. Thank AV, thank you.

 10:05

Next East Midland International Airport, limited and East Midland airport property investment limited, who we would like to call East Midland airports? Could you please introduce yourself?

 10:18

Good afternoon. My name is Mark Westman Smith King's Council, and I appear on behalf of East Midlands Airport. I'm instructed in this matter by John Riley, a partner at Pinson Mason's and who sits to my left, and Mr. Alistair Andrew, who's the strategic planning director at Manchester Airport Group, sits to my right. We propose to speak with your leave to items two and three on the agenda, and I'm content to be referred to as Mr.

 10:55

Thank you. We also have various other people who are here to observe the hearing. I won't get you to introduce yourselves right now. Now, can I ask if there is anyone else in the room today who wish to speak today? If they can let me know now, please raise your hand. Yes. Please. Can we have the microphone please?

 11:28

Ray Sutton, resident

 11:30

member of Kegworth parish council, and incidentally, but not speaking for North West Leicestershire District Council, a member of and I reserve the right to speak,

 11:41

but not necessarily. Thank you.

 11:43

Okay, thank you.

 11:51

Now, can I move on to virtual attendees? Is there anyone on the Microsoft Teams today? Can you please raise your hand? No. Thank you. I'll now hand over to Mr. Pace to briefly explain the purpose of this hearing.

 12:11

Thank you, Dr Joshi, so the purpose of the hearing is to consider the issues on the detailed agenda, which was published on the second of March, 2026, and can be found in the examination library under reference av 4001, the aim of covering these issues is to develop our understanding of the applicant's general case for compulsory acquisition and temporary possession. We note that affected persons have indicated that they wish to speak, and we will hear from them. However, please note that any plot specific matters will be heard at subsequent compulsory acquisition hearings later in the examination, and dates for this are reserved in the draft examination timetable set out in Annex D of the rule six, letter affected persons who wish to be heard in this context should make such requests by deadline one on the seventh of April 2026, if someone speaks Before you and puts point that you agree with at the hearing. There is no need to repeat it, and it is sufficient to say that you agree with them. In this regard, we will move things on if we feel you're being repetitious. Speakers who interrupt or otherwise disruptive will be warned in such circumstances, it is important to be aware that an award of costs can be applied for and made against a person who is behaving unreasonably. So. Turning now to technical matters, the tests for whether the Secretary of State should include provision authorising the compulsory acquisition of land are set out in section one to two of the plan act 2008 in this case, the relevant tests are whether the land is required for the development to which development sent relates or is required to facilitate or was incidental to that development, and whether there is a compelling case in the public interest for the land to be acquired. Compulsorily, guidance helps the understanding and application of these tests. In September 2013 the then department for Communities and Local Government published a document entitled Planning Act 2008 guidance related to procedures for the compulsory acquisition of land. In addition in October, in October 2024 the Ministry of Housing Communities and Local Government updated its guidance on the compulsory purchase process under Section 106 of the Planning Act 2008 the Secretary of State may disregard representations if they consider that they relate to compensation for compulsory acquisition. It's our intention to take a similar approach. The 2024 guidance document includes a section on compensation, and we will use that to identify representations that relate to compensation. Consequently, we do not wish to hear direct or indirect arguments about compensation. We shall ask you to move on, and repeated failures to do so will be considered unreasonable behaviour. We are hopeful we will be able to complete all of the agenda items for this hearing this afternoon. However, should this not prove possible, there is an option to make further submissions in writing. We are intending to issue written questions about compulsory acquisition and as already set out, there is potential for further compulsory acquisition hearings to be requested later in the examination to deal with specific plots of land. Everyone will likely have seen the agendas for the issue, specific hearing scheduled for tomorrow and Thursday, and there may be matters in those agendas which relate to what we talk about today. The problem we have is whatever order the hearings are held, some crossover will be inevitable, and we will deal with that if it occurs, and may defer some discussions accordingly. Does anybody have any comments about the purposes of today's hearing. Okay, I don't see any hands, so moving on. So we're going to keep a list of action points from today's hearing, which we will go through at the end and publish as soon as possible. And I ask that you also keep your own lists, so that when we go through them at the end we can check we will have the same understanding of what is required. In general terms, we would like action point responses at deadline, one which in the draft examination timetable, is the seventh of April, 2026 that said, maybe for specific actions we need a later deadline. If you indicate this to us, we can consider that and

 17:32

agree it on a case by case basis.

 17:37

So that concludes the opening item of the agenda. And I'll now hand back to Mr. Jackson to deal with agenda item two on the applicant's general case. Thank you.

 17:50

Thank you, Mr. Page. We will now lie to the applicant to present and justify its case for compulsory acquisition, CA and temporary position. TP, and will wish to address the following matters, to review the statutory and policy test relevant to CA and T and or TP under the Planning Act 2008 and DC LG guidance, to review human rights and equality considerations. To consider the structure and content of the book of reference. Consider the content and structure of the funding statement. Consider the structure and content of the statement of reasons and to consider any impending legislative changes. Thank you, Mr.

 18:27

Booth. Thank you, sir. Alexander booth, for the applicant, sir, I'm obviously going to take matters pursuant to item two at a relatively high level, but just before I begin to check, would you wish me to move through items, a, through F, or effectively, to pause after each item to allow input from others. I mean, on the one hand, I think we might move more swiftly if I ran through all six items, but on the other hand, that may feel incredibly monotonous for everyone else in the room,

 19:01

my general feeling is to go through or go through them all, unless either the two barristers at the far end of the room saying otherwise, and Westmoreland Smith shaking notes. In other words, I go through all of them.

 19:15

Mr. Philpott, I'm tiny relaxed, whichever way is most helpful, I

 19:18

think, in which case, just run through them, and we'll then go from

 19:22

Thank you very much, sir. To begin then firstly, as regards the statutory and policy tests, as Mr. Page has helpfully set out, the relevant provision is section 122, of the 2008 act subsections two and three, taking subsection two first that is concerned with provisions requiring an applicant to demonstrate need for the land interest on one of three bases, it's right to say that in this case, there is no compulsory acquisition of replacement land to be given in exchange for the purposes of subsection 2c so we are only concerned with subsections two, A and B, that is where land is required for the development, or else is required to facilitate or is incidental to that development. And we say here that the scheme identified rather the statement of reasons identifies at section three, and in particular in appendices one and two, the purposes to which the various plots of land. There are 46 particular plots that we can spend with in terms of compulsory acquisition, those 46 plots of land are going to be put to, and we say that the scheme can only be delivered if that land, those interests are acquired without the land scheme simply cannot be delivered. As regards subsection three, that essentially formalises in statutory form the long established policy requirement relating to compulsory acquisition that a party seeking acquisition powers must demonstrate a compelling case in the public interest to justify confirmation. As regards that test, we say a compelling case is indeed made out and made out substantially. The position is summarised perhaps most helpfully in the statement to reasons, paragraphs five point 12 through to 5.66 though it's also addressed in the planning statement. I'm not going to read those

 21:29

paragraphs out of course, but I'll summarise them very briefly.

 21:33

Essentially, there are multiple elements to the compelling case. First of all, a substantial part of proposed development is a freight logistics development that being a key sector in the economy, and it is a development proposed in a prime location for the purposes of that sector. And we say In consequence, the scheme will deliver local, regional and indeed national economic growth in those circumstances, the text at paragraphs 5.16 and following and 5.23 and following aimed the reasons, perhaps most helpfully, sets out those economic benefits

 22:17

in terms of

 22:20

the compelling case,

 22:23

we will also substantial highways improvement, most notably enabling the network to accommodate the scheme traffic that is necessary. Those improvements are necessary because of the existing congestion position at junction 24 which is widely acknowledged and indeed has been the subject of national comment. The works will also deliver infrastructure improvement, which in and of themselves are appropriate and proportionate to mitigate impact, but which will also integrate with, albeit independently, of other junction 24 improvements, the compelling case is also supported by the multiple benefits to the community that will be delivered, such as we say, the community park In this instance, there is the benefits are not limited to that. In terms of those, local community benefits might be helpful for the examination to look at paragraph 5.51 and following of the statement of reasons. And as regards the highways position, have said it's paragraph 5.46 and following of the statements reasons. Ultimately we say that the compelling case also turns on the fact that this scheme represents an opportunity to deliver the optimal form of development by planning and delivering it on a comprehensive basis, maximising opportunities across the board, for example, in terms of landscaping and in enabling comprehensive development, will ensure the fullest, best, most efficient use of free port land should be not this site is the it's the lion's share of the E magic Free Port site, and it will secure its delivery within the relevant period. I'm going to move away from the statutory tests now, if the panel is content that I've spoken to that in sufficient detail and some of policy considerations identified in the September 2013 guidance referred to taking those in no particular order. The guidance directs that the applicant for compulsory purchase powers must have a clear idea of how they intend to use the land which it is proposed to acquire. I have already touched on that matter. Section three of a statement to reason, together with appendices one and two in particular identifies clearly the purposes to which the land is going to be put. Another policy requirement is that regard must be the provisions of Article One of the first protocol to the ECHR and in the case of acquisition of a dwelling, Article eight, the statement of reasons that section seven deals with that to come back to human rights subsequently, because that's a later point in the agenda. But just to flag it's dealt with at section seven. Another policy requirement, any application for authorising compulsory acquisition must be accompanied by a statement explaining how it will be funded. IE, a moment and there must be a prospect of funding again, we're going to come back to that in a later agenda. Item. To be clear, the funding statement is at DCO document 4.2 and we say that is a full and substantive response to that question. Policy direct that all alternatives to compulsory acquisition, including modifications to the scheme, should have been explored in this context. It's chapter four of the environmental statement that we say set out the applicant's case, noting, given that there is some disagreement on this point, that the policy requirement is as regards all reasonable alternatives, and we may need to come back to that point subsequently, legitimate policy directs that compulsory acquisition must be for a legitimate purpose and that it must be necessary and proportionate to acquire the interests. We say here that it is indeed necessary to acquire all the interests to deliver the scheme. This is a scheme which is manifestly in the public interest in terms of the growth, economic and otherwise and the benefits that it will be deliver the land is needed, and in particular, the minimum interests necessary to deliver the scheme are sought.

 27:18

Lastly, I come to the policy requirement the applicant should seek to acquire and by negotiation wherever practicable. In that context, I can confirm that the applicant has indeed discharged the policy requirement. The panel will have seen the land rights tracker at 4.4 which we will keep updated, save for two notable exceptions, and those are sat to my right, significant progress has been made with all other parties from whom it is proposed to acquire interest or rights. We are in discussion. That is to say, the applicant is discussed, is in discussion with all those parties. Those discussions are well advanced, and we are indeed on the cusp of legals with a number of them. And it's notable that but two exceptions I refer ready that there are no relevant representations made by any party seeking to resist compulsory acquisition powers. We say that is notable and unusual in these circumstances. As regards those two exceptions, those of course, being the airport and Prologis, we are continuing to engage with both parties. In context, we are engaged airport regarding the active travel route, the land required for that which sits to the east of the runway. I must note that we are, although we are seeking engagement, we are not really getting much engagement back from the airport at that at this point, though, I'm sure that will change as regards the main site of the EMG to development to the south of the airport, discussions are very much in the main, being held with Prologis, which body is obviously representing itself as having authority, negotiations only for itself, but also for the airport. But we note that the airport are being copied into correspondence and understand that they are content with matters to progress on that basis.

 29:32

That takes me to the end of what I was proposing to say in relation a that is to say, the statutory and policy test, just pausing there to see if the panel wish to raise any issue or concern and to give my finger a little rest, because I'm cramping up at the moment, holding on to the

 29:49

button. No, but I'm afraid it might be an idea to get your colleague next door to Mr. To take hold down the button.

 29:57

He's done that all morning. I'm going to have to, I'm going to have to have to bring him back in in a moment. But for present, I'm going to do my own dirty

 30:10

work on then, sir, to matter B, which is human rights and equality considerations. So as you'll be aware, the panel will be aware human rights considerations have been addressed and had regard to in the statement of reasons, and we asked the panel to look at Section seven of that document. The reasoning there set out will be familiar to the panel, but it is no less substantive for that specifically, the applicant is mindful that if made the DCO interfere with human rights persons with an interest in land. Of course, whether or not that is justifiable is determined by reference to whether the interference is proportionate and whether there is a compelling case in the public interest. So I've already spoken to the compelling case. We say the interference is proportionate, and we say this is particularly the case in circumstances where compulsory acquisition powers are not sought in respect of any residential properties, the land and the interest sought to be acquired are very largely agricultural in nature and in the ownership of commercial entities. In terms of that commercial ownership position, that is not true across the board by any means. But as I've said, there are no relevant representations by any parties, say, for the airport and pro lodgers who resist the principle of compulsory acquisition, and we are making good progress, unless there was anything further. I was then going to move on to the book of reference.

 31:43

AV so that is set out in the normal way, and we say its format is consistent with guidance.

 31:58

Trying to do all this one handed is proving quite challenging, but yes, so in section two of the book of reference, we set out effectively how the system works and effectively sign post those reading it through the document. The substantive sections are five in number, part one dealing with the names and addresses for those parties who fall into category one and two for the purposes of the 2008 act, part two, dealing with category three persons and part three, dealing with the names and addresses of those entitled to enjoy easements or other rights which would be extinguished, suspended or interfered with. Parts four and five deal with Crown land and special category land respectively. Though, of course, there is no Crown land in the current instance, I'll come on to special category land when we deal with that. At a later agenda item,

 32:59

I'm going to ask Mr. Denning to take over

 33:06

on then please to the fourth item, item D, and that is the funding statement. Again, we say that complies with guidance section one of that document essentially breaks down the project into its three constituent elements, the first two comprising of the DCO and the EMG one works comprising the MCO as the third element. Regulations, of course, require a funding statement in relation to any DCO where compulsory acquisition powers are sought, as Mr. Page has already noted, the DCO seeks these powers, the MCO does not and of course, the funding statement no circumstances relates only to the DCO. Section two of the document then provides the substantive content in relation to who the applicant actually is, and in particular at paragraph 2.3 it identifies the applicant as being a wholly owned subsidiary of the FTSE 100 listed REIT SEGRO PLC. And indeed, what paragraph 2.3 also does is set out the assets under management, and refers to the profit obtained by that parent company in the 2024 financial year. In short order, relatively short order, we're going to have 2025 accounts. And if the panel would wish, we're very happy to update the funding statement in order to provide the most up to date position.

 34:41

There's an exam question coming up next week asking you to do just that.

We'll, of course, do that. So thank you very much. What section two also does is that it addresses the position in terms of funds available to deliver. And we can see that as of end of December 2024 the position was that there were some 2.3 billion available to the parent company in order to bring forward the scheme, over 500 million pounds in cash, and then one 10 billion in terms of undrawn credit facilities. So we point to those provisions within the funding statement as justifying the funding position. Section four of the document, well, section three, I suppose, deals with the land rights and acquisition powers that are sought, and we've touched on those already. Section four, funding and costs, and it explains how it is that the project total costs are anticipated at some 420 million pounds. Clearly, delivery of the of the project can be undertaken by the applicant for powers and its parent company behind it on the basis of its own available funds. But it's right to note that at paragraph 4.2, the applicant notes that other forms of delivery are possible because other investors can be brought on board or not, depending on the commercial position at the time. So we just leave that door open. But there's no funding sought, and if, insofar as it wishes to do so the company is able to deliver the project itself, unless there's anything further in relation to the funding statement, I suppose the only further point that I would note is paragraph 4.9, references article 21 which, of course, provides particular comfort for parties whose interests are going to be acquired insofar as There has to be a guarantee acceptable to the local authority before compulsory purchase powers can be exercised on then to item E, which is the structure and content of the statement of reasons. Statement of reasons. Document 4.1, again, section one of that document essentially breaks down the project into its three distinct elements, consenting strategies for each section two sets out the structure of the document and the sections that follow. And in particular, I direct the panel to paragraph. I think it's 2.4 which says in terms what to expect in the remainder of the document. Section three sets out the scope of compulsory purchase powers sought. Describes identifies the land subject to outright acquisition. Article 22 land in respect of which right to sought. Article 23 temporary possession powers at I think, 32 and 33 and also describes the power to extinguish private rights pursuant to Article 24 and it references the land plans, and the panel will be familiar with the 2.2 series, which sets out in the four land plans what we're really dealing with here. Section four of the document assesses category one and two interests and also category three interests by reference to the book of reference. We've touched on that already, and it reasserts the position that the applicant has sought to acquire land and interest by negotiation, and indeed is going to continue to do so. Section five sets out, if you like, the substantive case for compulsory acquisition. Now we've already addressed this. That's the statutory provisions, the guidance, the need for the land and need for the development and the compelling case in the public interest. And we've also there got references and analysis of funding, as per the funding statement, alternatives, as per es chapter four, and indeed, beyond. And again, the reference to having sought acquisition by agreement Section six, the document deals with special category land, confirms that we're not looking at any Crown land in this instance, and also no national trust land. We're really there dealing only with a very limited area of open space. We'll come on to that in the context of a later agenda. Item section seven deals with human rights considerations, and again, we've addressed that already. So I think if you're happy, I'll move on from item E to Item F. Thank you, and that seeks that the applicant address any impending legislative changes. Here, there are some changes which are potentially applicable in the context of the Planning and Infrastructure act 2025

 39:39

firstly, we've got section 108

 39:44

and that essentially provides for an expedited procedure in relation to general vesting degradation. I'm not really sure that's going to be relevant in this context, but it's because that relates to circumstances where land, for example, is in unknown ownership or unfit for ordinary use. I don't think that's going to arise in this context. Section 109, deals with early vesting by agreement. And I think that's really the only relevant provision that I would draw to your attention. Of course, we're happy to discuss others, should you wish to do so. The only

 40:19

other one was thinking of the neighbourhood Planning Act question left over from 2017 although I do understand there was an announcement, I think it was last week that the government was probably, was almost certainly not going to pursue that any for any notwithstanding it being on the statute book, is that the

 40:39

temporary possession power? Yeah, yeah. Well, it's certainly been waiting for a long time. I mean, section 112, of the 2025, act also addresses that. I didn't flag that it's because I don't see that. It's relevant in a DCO context. So, but of course, if there's a question from the panel, we're more than happy to answer it. It was

 41:01

just my understanding was the government essentially announced it was going away. That's my understanding, and maybe incorrect, just whether or not that had any implications.

 41:10

I don't believe it does, sir. Thank you, because there are quite

 41:13

often provisions in development consent orders worry about essentially removing that those powers from needs. It should they come in during the life of a DCO? It's maybe worth doing some whilst it's more for Thursday, Morton digging around as to whether or not those provisions could be exercised. Because now, if they're not going to happen, but he could well, they will probably still be sitting on the statute book, just in case.

 41:42

We'll give that some thought. Thank you very much.

 41:47

Right? We're going to move on to those who've asked to speak.

 41:52

There's one I'm going to ask.

 41:53

I'm going to ask the East Midlands airport first, but there's to come today. Say they're thirsty, that's happy. The one thing I do want to clarify with is whether any of the land of which the plots were rights are being sought is operational, land of the airport. Obviously, we can discuss that in the second, in the next item, as it were, of the agenda. But I just wanted to clarify whether or not there are any that you consider to be statutory, to be relational land, as opposed to other land, which is just held

 42:31

Mark Westman Smith for East Midlands Airport, we're aware that you would ask that question, and in particular in relation to plot two six, which is the active Travel Link proposal we are, I think it's fair to say, still in the process of bottoming out how we hold the land, so I'm going to resist guessing the outcome of that exercise and giving you an answer today, but we are aware you need an answer for that, and when it comes to the next agenda item, I will I've said that so I don't need to repeat that. But there are also comments in relation to the need to acquire that land, or justification to acquire that land compulsorily, but that's a distinct point which you've just raised.

 43:28

But the rest of the land is not held operationally. No, that's fine. There was just it was a clarification before we move into the points, which I'm sure you

 43:38

and I said, No, but there is also two four and two five, which are adjacent to two six that fall in that same category. So we're just bottoming it out.

 43:52

So Mr. Westman Smith

 43:55

appreciate inviting representations for eight from affected persons of general application, rather than the specific. That was a slight odd scene because of the address,

 44:05

and with your leave, I'll just very briefly address you at a high level on this agenda item, just to give a flavour of where we're going, but not necessarily the specifics which come later down the process, we've also addressed you in writing through our relevant representations. That's our o1, 3d and a one, 5d section eight on compulsory acquisition. And we said there and repeat now that the starting point is these are draconian powers sanctioning the appropriation of property against the landowner's will. And for that reason, the test that Mr. Booth has already set out in Section 122 of the Planning Act present high hurdles to those seeking to benefit from compulsory acquisition powers, and we do say that particular caution is required here, where the powers are sought to be granted to a private developer, and where it is to acquire the land of another private developer, to develop The land for the same purpose as the landowner intends, that does not fall squarely within the arena the government, I think, had in mind for this form of power. So we say the key issues that you're going to have to grapple with in the context of compulsory acquisition is firstly need, and that's because compulsory acquisition isn't required here to deliver the benefits of industrial and logistics development to the north of lane and The public interest, which is at the heart of the compulsory acquisition test, is entirely blind as to who delivers public benefits, and there's no benefit to the public interest in SEGRO, in particular, delivering the benefits to the north of Hyams lane, as opposed to EMA or prologis which could justify the grant of the compulsory acquisition power. So whilst there might be a need for industrial and logistics development, which we do not contest, that doesn't simply translate, in this case, to a need for compulsory acquisition powers. The second point in this context is viability, and we heard this morning that the applicant is going to seek to address the evidential deficit on that point, and clearly we'll comment on that later. But in that context, the assertion, and that's all we've heard so far in oral submissions, that the EMA prelogis development isn't viable, has neither been explained and is, of course, not accepted, but it's also contrary to reason and what has been said by the applicant in the statement of reasons at paragraph 5.57 which says that without the EMA pro Logis application, the development of the southern part of the EMG to main site would not be viable or deliverable as a standalone development. The third point is there's been a persistent and continuing failure to acknowledge the value of access across the northern part of the main site, without which the southern part can't be developed, and that's important in the context of the assertion that the SEGRO scheme is viable, and with regards to the funding statement, the fourth point relates to the highways package. And I know how my learned friend put it a few minutes ago. He was very careful in so far as it is suggested, it is a benefit justifying the whole

 48:27

and compulsory acquisition powers.

 48:32

We'll need to look at the detail of that in further hearings. But in principle, it's wrong, because the mitigation package is to do precisely that it is to wipe the development's own impacts and consume its own smoke.

 48:49

The fifth point, yes, please,

 48:53

thank you. The fifth point is that reasonable alternatives do exist. The CPA guidance, paragraph eight requires demonstration that all reasonable alternatives have been explored, and we do say here there are reasonable alternative ways of delivering the public benefits, and that's being explored in the discussions between the parties. But the important point for you at the moment is reasonable alternative ways of delivering the benefits exist. And then, Sixthly, we say there's been no real assessment of private loss to either the airport or pro lodges the compulsory purchase guidance requires that paragraph 13 needs there needs to be to show a compelling case that the public benefits outweigh the private loss. And Parliament has always taken the view that lands should only be taken compulsorily where there is clear evidence that the public benefit will outweigh that private loss, and the same points apply. In the context of human rights, paragraph 10, there needs to be sufficient justification for interference with those rights. So those are the sort of six high level points we say you'll have to grapple with, and just very briefly, on the structure and content of the statement of reasons. We say first, the first concern is that there's a focus on generalised statements of needs and benefits, rather than explanation of why compulsory acquisition is justified over the land being promoted for the same form of development. Secondly, there's a failure to properly address the alternatives I've just mentioned in terms of cooperation and coordination with brew lodges and the airport. Thirdly, the lack of analysis in relation to private loss I've mentioned, and fourthly, the failure to grapple with the public interest detriment in the frustration of the prairie lodge EMA application. And then finally, just with regards, very briefly, the funding statement, we do know that paragraph 17 of the guidance says that it should provide as much information as possible about the resource implications of both acquiring the land and implementing the project. So the policy is not to set a threshold you've got to achieve, but rather to set a maximalist approach of providing as much information as possible, and the key concerns in which section 10 of our relevant rep are the failure to recognise the value of access, which I've mentioned. And secondly, the reliance on the parent company, whilst on the face of it is understandable, but it stops short of showing any between separate legal entities to provide that funding, or any agreements that would show alternative mechanisms of funding. And we say that actually leaves uncertainty. And as Mr. Booth acknowledged this morning, that uncertainty over delivery would undermine the case for compulsory acquisition, in the context of saying he was certain it would be delivered, but uncertainty would undermine that case, uncertainty over funding to that point. Thank you. So that's all I propose to say at this stage,

 53:13

thank you. Probably will have some questions but at the end, but I'm just going to move on and ask perologist to say they're sort of high level, as I say. And in so far as whereby you have to agree with Mr Westman Smith, please just pray see it very quickly, rather than having to rip the same Thank you.

 53:37

Thank you, sir Harry wood Philpot King's Council, on behalf of Prologis, can I say so at the start, that we have noted that site specific submissions should be reserved for later in the examination, and therefore, in accordance with your agenda, we had always intended in what we said to keep our observations today to general matters of approach. We do adopt and respectfully endorse the matters that have been said by Mr. Westman Smith, and I don't propose to repeat those, nor do I propose to repeat the things that have been said in my relevant representations. I'm also going to seek to avoid, unless it's necessary, taking time to respond to each individual point that is to be with is made what I'm going to do so with your leave is just make some general observations on each of the items, sub items in this agenda where I think it might be helpful. So first of all, under the statutory and policy tests, I want to say a little bit more about section 1223, and the compelling case, what it requires. So whilst the compulsory acquisition guidance refers to the balance of public benefits and private loss. That is a necessarily simplified way of expressing what is of necessity, a multi faceted assessment, and the compelling case test is effectively all embracing. It includes, for example, consideration of alternatives, attempts to avoid compulsory acquisition through changes to the scheme and negotiation and the overall balance of benefits and harms arising from the proposed order. And just pausing there, that is why the courts have recognised that the compelling case test effectively embraces those matters which arise under Human Rights Act considerations because of its all embracing nature. And so to take a particular example, which has resonance, in this case, the consideration of public benefits in that balance needs to be undertaken in a way that includes accounting for Public Interest harms associated with granting compulsory acquisition powers, and whether that is done by discounting the weight that attaches to the public benefits so that they're considered on a net basis, or adding the negative public interest effects into the other side of the balance, doesn't particularly What matters is that those public interest harms are properly reflected in the decision. Now, in our relevant representations, we've made the point in particular about the public interest harms associated with frustrating the development in the joint application, which Mr. Westman Smith has referred to. But I'd just like to broaden that out, because in this case, the examination is going to have to consider the wider context of what is proposed here, so it goes beyond simply what might be regarded as a site specific question and the immediate effects on the ability to deliver that development, but also the wider question, the wider public interest harms that are associated with setting a precedent of this sort, where the land of a commercial rival actively involved in promoting that land for development is taken state, effectively by state, and handed to

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and the effect that that might have In terms of the wider public interest, disincentives, for example, to foreign direct investment. Those matters will need very careful consideration in this examination, so that the public interest balance is undertaken on a properly informed basis. The Yes, also in this context, you will have noted that the applicant emphasises and chooses to emphasise, in this summary of its case today, a reliance, not just on delivery per se, but also delivery within what we might call the Freeport window, as an important part of its case for compulsory acquisition.

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Not only does that touch on the question

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of viability, but it also touches on the question of the likely pace and programme of implementation, even if the scheme goes ahead, and that is something that the examination will need to carefully scrutinise to examine the robustness of that part of the applicant's case. It's also important in this examination to give careful and detailed consideration to the application of the following related parts of the compulsory acquisition guidance. The first is the need for the applicant to demonstrate the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition, including modifications to the scheme, have been explored. And secondly, in paragraph 16, the recognition in the guidance that there may be circumstances that justify granting development consent but not compulsory acquisition powers, and they include a decision by the secretary of state that the scheme should be modified in a way that affects the requirement for land which would otherwise be subject to compulsory acquisition. Now you'll have seen in our relevant representations an explanation of how the scheme could be modified to avoid, or at least very substantially reduce the need for compulsory acquisition, while still delivering a comprehensive development of the land in the order limits. And if the Secretary of State concludes that should have been pursued instead of the DCO scheme, it could lead to that sort of split. It wouldn't be a barrier to the grant of development consent, but it would be a barrier to the grant of compulsory acquisition powers. Finally, in relation to this matter, I don't want to take time in an exchange as to how one would characterise a state of negotiations, but there were eyebrows raised on this side of the room at the description of progress as good. Suffice to say that we think that our concerns over the pace and the form and progress of negotiations, but we'll leave it there for the moment under human rights and equality considerations, I don't have anything to add for the reasons that I've explained similarly, structure and content of the book of reference. Nothing to add there on the structure, content and up to date position of the funding statement, just picking up the point that Mr. Westman and Smith made about the implications of guidance at paragraph 17, and the policy test not being of sufficiency or bare adequacy, but rather requiring a richness in the provision of information. Of course, that the rationale for that, the reason why that approach is taken is that if on the evidence, there are realistic doubts as to whether the project will, in fact go ahead or go ahead at the pace promoted for the purposes of compulsory acquisition, that would tend to undermine the case for the proposed interference with the rights of affected persons. And we've heard what the applicant has said they're going to produce in terms of further evidence on this at deadline one, and we will, of course, seek to respond to that when we have the opportunity to do so.

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And then on, finally, on the structure and content of the statement of reasons, we provided a detailed rebuttal of the content of the statement of reasons, both throughout the main body of our relevant representations and also in Appendix three, I don't propose to relate, but echoing the point Mr. Westman Smith, has made sense of consideration of prologue's Private loss, there is also the absence of any consideration of the public interest loss, of frustrating the joint application. And I want to emphasise here that that harm, both in terms of private interest loss, but also public interest loss occurs at the point of grant,

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doesn't depend on implementation.

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So the harm is and it may or may not be offset by what happens next. And there's no certainty about that. And one of the things I've said this examination will need to look at is, are there real risks that it won't proceed, the harm will arise without the benefits, and then I don't have anything to say on impending legislative changes you'll be pleased to hear. So those are the only points I was proposing to make at this stage. So unless there's anything else

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I can help with, thank you. Just run through my notes, just various things which I wanted, which I thought might be likely to be coming out, and when I think I want to make sure They've been covered before I come back to you, I

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uh, yeah, there's one question related to

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the funding statement, and I'm just wondering whether either East Midlands Airport or prologis had any different view as To the sum for the development costs of around 420 million, whether they thought that was a fair figure or not, and obviously any evidence that they would need to support that, I was wondering whether, how far we needed to go in the examination into seeing whether that was a reasonable figure for implementation, because clearly, if you're, if you have, take that, if you have, if you're ambivalent on it, or have no view or anything like that, it's if you're it's more if you're queer, if you're querying it. I haven't seen anything to date.

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Harry wood philpot Casey on behalf of the the Prologis companies. So at this stage, we have not interrogated that we can activate getting into those matters in more detail with the benefit of the viability evidence that we are going to see, and therefore we may need to respond to that in due course, we can give consideration to what more we might say on it in our written representations, if that would help. We haven't specifically gone into the numbers yet because of the paucity of information.

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But equally well as particularly for Prologis, as experienced developers, you would may well have certain ideas at the back of your head which allowed you to make certain decisions beside before you purchase the land.

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Harry Philpot on behalf of Prologis, so we will now we know that that is something you're particularly interested in. We'll deal with that in our written representations. And in other words, don't take the absence of comment particular figure as being of necessary significance when we, at the moment, haven't got any broader figures to place that into context, to make any meaningful submissions about it.

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I'm sure the applicant's going to address us on benefits in due course. I'm sort of hope. It's probably a bit

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Mark Westman Smith for the airport, and I adopt what Mr. Philpott has said, I just add additionally, and it's something we mentioned earlier on, there has been a theme in our discussions with the applicant whereby they haven't sought to recognise the value of access across the northern part of the main site, and that does and will feed into our answer to you as to whether the overall figure is

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correct, because clearly questions of ransom strips and marriage values become less of an issue to us, because clearly they're not their compensation matters.

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Mark Westman Smith for the airport, yes to a degree, save in so far as they feed into issues of viability, which goes to deliverability, which are matters for you. So you need to be cited on these issues. You don't need to have to determine absolute quantum.

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If we, yeah, I'm sure you're going to set out what you consider at some point during the things that, what are the benefits that this project uniquely could deliver. I'm sure you're going to do that in due course, and some of what we're going to have a discussion over about that tomorrow, inevitably. So I just put that on there. Pom Pom.

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Okay, Mr. Booth, if you could now sort of respond on behalf of the applicant.

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I'm grateful, and what I'm going to do is you'll be glad to hear is not seek to hark back to each and every point made by I'm learning friends, but to address the main themes of what they've said and where they've both spoken to the same topic, albeit from different angles. I can draw those strands together and deal with them once. The first point is one that was addressed firstly by Mr. Westman Smith, but also then, I think, touched on by learning from Mr. Philpott. And that is this, what was said by Mr. Westman Smith, was that, look, here, you have a situation where a it's not a public authority with compulsory acquisition powers. It is a private developer, and it is seeking to bring forward, seeking to compulsorily acquire the land of a rival private developer and bring forward a development which that self, same private developer is also themselves seeking to bring forward. And what was said was, Well, that can't be the basis on which the powers were formulated in the act. That can't have been Government's intention. To be clear, we do not accept that for a second. And indeed, going firstly, back to the section 35 direction, which is document co 6.1 B, and also MCO 6.1 B. It's notable that in that direction, one of the reasons expressly given for the Secretary of State's decision is and albeit there is some reading between the lines, but it's clear that compulsory purchase powers are in focus, because what's said is that it should be treated as a project of national significance for the following reasons, the last of which is that the Secretary of state also considers that the proposed project would benefit from the application being determined through a single, unified consenting process provided by the Planning Act, and removing the need to apply and the uncertainty of applying for separate powers and consent. So we see there that Secretary of State clearly had in scope that compulsory acquisition powers would be sought by this applicant in relation to the general and this land. That's point 1.2. Is this, the panel will be well aware that in any number of situations, an applicant for compulsory compulsory acquisition powers through the DCO process has sought to acquire rights or interests in the land over another player in the same commercial market. The one that immediately springs to mind for me, because it was such a scarring DCO examination, is the energy Park case that DCO was a situation where able Marine, the applicant was seeking powers over my client, Associated British ports, they were seeking to acquire its land. And indeed, those compulsory purchase powers were confirmed as part of the order. This is in no way we say unusual. That's point 1.2.

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What is said

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is that this is a scenario where, of course, you don't need you the panel and the Secretary of State do not need to authorise compulsory purchase powers in order to bring forward development on the land north of Hyams lane. To be clear, the applicant disputes that proposition. I flagged that this morning, and I flag it again now, and I flag it because the applicant is in no way convinced that or satisfied that the pro lodges development on the land north of heims lane is viable. We say it is not viable, and in those circumstances it is wrong. We say to submit, as Mr. Westman and Smith did, that compulsory acquisition powers are not necessary in order to bring forward development on that land. And we say, absent information viability. Information from Pro Logis demonstrating that that northern land development is viable, the panel can in no way be confident either that it is viable, that matter is in dispute before this examination, and insofar as learned friends, Mr. Philpott, Mr. Westman Smith, say, Leave it to us. We'll bring that forward. We say that is not right. We say it's not right because they don't yet have planning permission, and we say it's not right because it's not viable.

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That leads on to the come

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to a third point,

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which is this both Well, I think my own friend Mr. Westman Smith raised this point in particular on more than one occasion, namely, value of the access. And what was said was, well, repeatedly, the applicant has failed to recognise, failed to grapple with the value of the access rights over the northern land. And in that context, reference was made to paragraph 5.57 of the statement of reasons. And it's right to say that that paragraph says in terms that development of the southern part of the EMG to main site would not be viable or deliverable as a standalone development. And we do say that is the position now. So in circumstances where that development, development of the standard is not viable. And we say it's not viable irrespective of any ransom. So forget ransom. It's not viable anyway. In circumstances where development of that southern land is not viable, then no ransom is payable to Prologis or the airport, as the owners of the northern land. And so that has a fundamental consequence for that development, because we say it is precisely because there will be no ransom paid by the southern land that the northern land development isn't viable because the northern land development, we say, depends on that ransom payment for its viability. You may think so. That's all the more reason why it's necessary for the panel to see viability evidence from Prologis and the airport as regards their own development in those but I leave that to one side.

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The next point I make is benefits. So the

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next point I make is benefits. And you rightly anticipated, sir. Sorry, Mr. Thirling is having to take over. I'm going to do wait. I'm back for the May hearings. I think

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what might be useful is, you know, there's the single weights you can wait for, weighing, for domestic, weighing, kitchen weighing, scales.

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So you rightly noted that we would come to benefits, and we do. The reason we do that is because what is said by Prologis and by the airport is that you needn't worry about delivery of the northern land, because that will come forward anyway. And don't worry about the southern land or the DCO development, because that's not necessary. What we say in terms is that there are numerous tangible benefits that will be delivered by the DCO scheme on the EMG, two main site which would not be delivered were northern land to come forward, even if it were viable, which, of course, it's not in particular. And by way of example, there is a proposed HGV park on the northern land in the context of the DCO scheme, HGV parking is important because you and you know it's important. So because local people and local authorities in their televisions refer to it long and loud that will come forward as part of the DCO scheme, it does not come forward on anything like the same scale in the context of the Prologis joint application, then there is the bus interchange. Then there is the community park. And you'll recall taking the community park as an example that there is substantial public interest, we say, in the provision of that, not only from a leisure perspective, but also from a landscaping perspective, because it finds a very significant and meaningful buffer as between this logistics development and the village of dysworth in circumstances where it's just northern land coming forward on its own, there is no such community park and there is no such landscape buffer. Landscape provision is far less substantial the AV, also Sir, in those circumstances, what we do not see, what is not delivered is the significant element of highways infrastructure which provides that road, provided the expressway, providing direct access from the m1 onto the A 50 that it forms no part of the northern land application, and it would not be delivered pursuant to that. Now we say that is necessary in order to address the quantum of additional traffic that will be generated by the DCO scheme. It is there in a proportionate form to mitigate the scheme, but at the same time, it will have a significant benefit in terms of addressing junction 24 considerations more broadly, so that, again, is an example of a benefit that will not be delivered in the absence of the DCO scheme. So we can provide, of course, chapter and verse on that, beyond the statement the reasons, to the extent you wish to, but those, I think, are the key points that I wish to come back to. The last point was essentially, and I've touched on the broad area already, but it's essentially the point raised by then from Mr. Philpott about loss and harm and interest loss and public interest loss, all of those submissions that were made to you sir, were predicated on the assumption that in the absence of the DCO, the Prologis scheme will come forward as yet, sir, no planning permission, and that may change, but no viability evidence, and we say it's not viable and so wrong to weigh, as Mr. Philpott seeks to do, the certainty of delivery of their development against the prospect of the delivery of our development. Because we say our development is a reality, and we say theirs is not. So that balancing exercise, we say, misrepresents the true position. So I think those are the only points that I wish to come back to you on, unless you wish me to address any particular consideration

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that had been raised. No, there isn't, but there is one thing which I would like to three of you,

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which is I was looking at the the

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opposite end of the scale entirely, the A one morph to Ellingham revocation decision recently, which you might want to go and have a way or have a look at this and noted in discussion as to whether there were exceptional circumstances to existed to revoke that order the following. Firstly, a fundamental change in deliverability, notably, and this is the bit that matters, the absence of the absence of gear funding, which renders the scheme no longer viable. Can I have your views as the proposition that reading that simply the converse would mean, if there's funding available and secure the find the scheme is viable. You may want to go and look that up and put it in written representations at the end, as part of your cases pursuant to today. But I read that. Does anybody have do any thoughts? I'll work with Ray around or do would you prefer to do that in writing? Following today,

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your finger looks

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more eager, although I'm always tempted to jump straight in, my instinct is it's probably better that we look at the specific circumstances, the nature of the scheme, the nature of the funding, compare them to the nature of the nature of the funding decisions here, and make properly informed representations at deadline. One tempting though it is to jump in and speculate, I think probably it wouldn't help you as much as a considered written response,

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Mr. Westman Smith, any thoughts,

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I'm going to resist giving you immediate thoughts and reflect on it, having read the decision you've kindly pointed us towards. So I'm going to follow what's lead on this

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exactly that

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must be right, because we both, all three of us, will want to have a look at the decision, see how comparable it is, and then provide you with something that we would hope would be meaningful assistance. Yeah, it

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was just an interesting I just noticed. I thought that was an interesting, interesting way of how you might consider a relationship between funding and viability.

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Okay, so if I may just one very brief further point, and it's actually entirely different point. It's just a footnote that I forgot to read out. The reason I've done that is, the reason I wish to raise it is because I understand, from what Mr. Philpott said, that I might have given the impression that I was asserting that there was good progress in discussions as between Prologis and the applicant, I apologise if that's what I what I said, it certainly wasn't what I was seeking to communicate. What I was seeking to communicate was that good progress had been made with all other interests, save for the airport and prologues. So I wasn't seeking to bounce prologues into a position where you understood that good progress was being made between the parties. I didn't make any representation to that effect, or certainly if I did, I didn't mean to.

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So apologies. Okay, thank you. Right now seems a good time to have a break So if it's now 25 past, so if we say until twenty to so 15 minutes

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and we adjourn till twenty to