

PLANNING ACT 2008

**THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)
RULES 2010**

**APPLICATION BY SEGRO PROPERTIES LIMITED FOR A
DEVELOPMENT CONSENT ORDER IN RESPECT OF EAST MIDLANDS
GATEWAY PHASE 2**

**SUMMARY OF SUMMARY OF ORAL SUBMISSIONS AND RESPONSES
TO ACTION POINTS**

ON BEHALF OF

PROLOGIS UK LIMITED AND PROLOGIS UK 121 LIMITED

- 1 **CAH1** – the following key issues were identified: (1) need for development does not translate to a need for compulsory acquisition; (2) there is an evidential deficit on viability; (3) the Applicant has failed to acknowledge the access value of the northern part of the site; (4) highway mitigation is mitigation, not a benefit justifying CA; (5) reasonable alternatives under paragraph 8 of the CA Guidance have not been exhausted; (6) there has been no real assessment of private loss; and (7) the CA Guidance requires clear evidence that public benefit outweighs private loss. The "compelling case" test was described as all-embracing, requiring consideration of alternatives, attempts to avoid CA through negotiation, the balance of benefits and harms, and human rights implications. The public interest harms extend beyond the frustration of the Joint Application to the wider question of land being taken, by authorisation of the state, from one private enterprise for the commercial benefit of another. On the Funding Statement, the absence of any parent company funding agreement and the failure to account for the access value of the Prologis/MAG Land were highlighted. The CA Guidance at paragraph 17 requires "as much information as possible" because realistic doubt as to whether a project will proceed at the pace promoted would undermine the case for interference with private rights. On the £420 million development cost figure in the Funding Statement, Prologis indicated it had not yet interrogated that figure and anticipated doing so once viability evidence was received at Deadline 1. The Examining Panel formalised this as Action Point 1.
- 2 **ISH1** –
- 2.1 the commercial and business development falls to be determined under section 105, as both Prologis and the Applicant agree. On the highway works, the question is whether it would be appropriate for a presumption in favour to apply (as would flow from the NN NPS under section 104) when those works are only required as mitigation for development that does not itself benefit from that presumption. The response to Action Point 8 provides detailed submissions on the section 104/105 question;
- 2.2 On the relationship between the DCO and the MCO, it was noted that there is not yet a separate assessment of a scenario in which the MCO works proceed but the DCO works do not, and what the implications would be in those circumstances for the highway works; Prologis reserved its position to respond once further material was provided by the Applicant.
- 2.3 On the highway works need case, the Applicant confirmed the works were primarily mitigation but that a "side benefit" was their contribution to the wider integrated programme of works around Junction 24; Prologis was not in a position to comment in detail on proportionality and justification at that stage, as the relevant material had not yet been provided.
- 2.4 On alternatives, the Applicant's Counsel conceded that a grant of planning permission on the Joint Application would not constitute a legal bar to the granting of the DCO. Five reasonable alternatives were reiterated, including a specific proposal to amend Article 7 of the DCO to remove the displacement of section 156 PA 2008. The Freeport concept does not include or imply any expectation that development will come forward through a single developer; the Freeport Board fosters collaboration and co-operation, and compulsory acquisition is neither a necessary nor an appropriate part of the Freeport model where experienced and capable developers are promoting suitable development on their own land.
- 2.5 Three further points were emphasised
- (a) first, there is no certainty that the development authorised by the DCO would be delivered in full, at all, or within the Freeport Window;
 - (b) second, there is reasonable certainty that the grant of CA powers would frustrate the Joint Application; and
 - (c) the adverse public interest consequences of that effect have not been assessed in the application material.

- 3 **ISH2** – the key submission was that Prologis would need adequate time to review the highways and viability evidence due from the Applicant at Deadline 1. An additional deadline was proposed in advance of the May hearings to allow Prologis to provide its initial response to the new material.
- 4 **Action Point 1** – the response identifies a number of concerns about the stated development cost figure, including the absence of any breakdown, the lack of information on land acquisition costs, and the uncertainty as to whether the figure includes or excludes compensation for the Prologis/MAG Land.
- 5 **Action Point 2** – the short answer to the question posed by the Examining Panel – whether the presence of secure funding renders a scheme viable – is no. There is a clear difference between the availability of funding for a publicly funded road scheme and commercial viability for a private development. The Morpeth DCO was promoted by National Highways with a confirmed Government spending commitment; the present case involves a private developer which must go to its board for a final investment decision, and whose Funding Statement records general corporate capacity rather than scheme-specific funding.
- 6 **Action Point 5** – Prologis reserves its right to make further submissions following receipt of SEGRO's response to this question.
- 7 **Action Point 8** – The DCO Application comprises three sets of works: the business and commercial development, strategic highway works, and associated development. The principal element is the commercial development, which only falls within the PA 2008 regime by virtue of the Section 35 Direction. The highway works are promoted as mitigation for that commercial development, not as independent NSIPs. Under the EFW approach, a split may be appropriate, with the highway works determined under section 104 and the commercial development under section 105, but neither the project as a whole nor the principal commercial element can benefit from a statutory presumption in favour.
- 8 **Action Point 21** – An illustrative design prepared for the Joint Application demonstrates compatibility with the proposed dualling, with sufficient land under Prologis/MAG control to accommodate the scheme without requiring any third-party land. If the Applicant is proposing to acquire Prologis/MAG Land through CA and then set it aside for future dualling, that necessarily engages the question of whether such land is genuinely necessary for the DCO development within the meaning of section 122 PA 2008.

DLA Piper UK LLP

7 April 2026