

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 WRITTEN REPRESENTATION

ON BEHALF OF

PROLOGIS UK LIMITED AND PROLOGIS UK 121 LIMITED

- 1 Prologis does not oppose logistics and employment-led development at the relevant location in principle; its objection is narrower and concerns the necessity and proportionality of the compulsory acquisition ("CA") powers sought by SEGRO over the Prologis/MAG Land.
- 2 **Objection (Section 2)** – Prologis' core case is that it is a willing, capable and experienced developer already actively promoting at least equivalent development on the very land SEGRO wishes to acquire compulsorily, in partnership with MAG, through a live Joint Application for up to 135,000 sqm of Class B2/B8 floorspace plus a new all-movements junction on the A453. A recurring theme is that the DCO Application has proceeded with significant evidence gaps. Prologis identifies four key categories of missing material: (a) viability evidence demonstrating commercial deliverability; (b) an Environmental Statement assessing the adverse socio-economic effects of frustrating the Joint Application; (c) a complete and auditable highways package; and (d) evidence of meaningful negotiation regarding reasonable alternatives to CA. Whilst some omissions are to be rectified at Deadline 1 their consequence is that Prologis has been materially disadvantaged in its ability to participate effectively throughout the examination process.
- 3 **SEGRO's Application (Section 3)** – The DCO Application can only lawfully be determined under the PA 2008 pursuant to the relevant Section 35 direction, and it must correspond with the proposed project described in it. The direction described a "logistics and manufacturing hub" that included a headquarters facility, yet the DCO Application contains no headquarters element - a failure to revisit the direction that goes directly to vires. On the question of whether section 104 or section 105 applies, the commercial and business development falls to be determined under section 105 as no National Policy Statement has effect in relation to it. The highway works, whilst they might individually fall within section 22 PA 2008, are promoted as mitigation for the commercial development rather than as independent NSIPs, and it would be anomalous if they attracted the presumption in favour arising from the NN NPS when they serve development that does not itself benefit from that presumption.
- 4 **Joint Application (Section 4)** – the Joint Application is advancing towards determination, with remaining highways modelling expected to be completed in April 2026 and a planning committee report anticipated in June or July 2026. The Joint Application can deliver materially comparable benefits within the Freeport Window, on land already under Prologis and MAG's control, without any need for CA.
- 5 **Compulsory Acquisition (Section 5)** – the legal framework is under sections 122(2) and 122(3) of the Planning Act 2008, together with the CA Guidance. The "compelling case" test is described as all-embracing, incorporating the alternatives that were or ought to have been explored, the attempts made to avoid CA through negotiation, the balance of public interest benefits against public interest harms, and the proportionality of the interference with private rights. The CA Guidance at paragraph 10 requires that the interference be for a "legitimate purpose" and that it be both "necessary and proportionate" – three independent conditions, none of which is made out on the facts. The public interest is indifferent to developer identity where both are willing and capable; the true question is whether the net benefits of the DCO Scheme over the Joint Application are so substantial and certain as to justify permanent deprivation of Prologis' and MAG's land rights. The context is critical: SEGRO was an unsuccessful in its bid for MAG's land, and the Freeport model itself anticipates delivery by multiple developers through collaboration rather than compulsion. The public interest harms arising from the grant of CA powers are immediate and certain: a cloud over title and control of the Prologis/MAG Land, chilling investment, deterring prospective occupiers, and making it difficult for Prologis and MAG to let or sell interests in the land. By contrast, the public interest benefits relied upon by SEGRO are contingent on future steps – a final investment decision, the securing of occupiers, conclusion of highways agreements, and discharge of requirements – and there is nothing in the draft DCO that obliges SEGRO to implement the development. There is also a broader precedential concern: if a developer can obtain CA powers over a rival's land not because the landowner is unable or unwilling to develop it but simply because the acquiring developer prefers to do so, the security of title underpinning commercial development investment in the United Kingdom would be materially undermined. The loss of the Joint Application benefits – up to 135,000 sqm of floorspace, approximately 1,919 FTE operational jobs, £109 million per annum in gross GVA, and a

community park – must similarly be placed in the CA balance, yet the Environmental Statement does not assess their loss as an adverse consequence of the proposed

- 6 **Reasonable Alternatives (Section 6)** – SEGRO has failed to exhaust the five alternatives identified in the Relevant Representation, which include exclusion of CA powers, access-only arrangements, amending the DCO to substitute the Joint Application, making the DCO without CA powers over the Prologis/MAG Land, or a joint venture arrangement. Despite repeated requests for engagement, SEGRO's involvement has consisted largely of nominal correspondence and delayed disclosure. The Representation draws on the Thames Tideway Tunnel examination as a precedent for rigorous scrutiny of an applicant's internal decision-making on alternatives, and calls for equivalent transparency from SEGRO.
- 7 **Viability and Funding (Section 7)** – this is a central issue because SEGRO's CA case depends on two viability assertions: that the Southern Land alone is not viable without the Prologis/MAG Land, and that the overall scheme is viable even after paying full open market compensation. No viability evidence was submitted with the DCO Application. The present case can be distinguished from the Morpeth Decision. Morpeth concerned a publicly funded national road infrastructure scheme with a confirmed Treasury spending commitment; the question there was whether adequate public funds were available to meet compensation liabilities. The present case involves a private commercial development where the relevant question is whether the scheme generates a sufficient commercial return to justify a positive final investment decision. A wealthy developer may have ample corporate resources to fund a loss-making scheme but is unlikely to do so; the existence of those resources does not make the scheme commercially viable. the CA Guidance at paragraph 17 explicitly distinguishes between funding adequacy and commercial viability. SEGRO's Funding Statement, which relies on general balance sheet capacity, does not provide the project-specific analysis of implementation costs that paragraph 17 requires. There is also an internal contradiction in SEGRO's position: it asserts that the Southern Land is not viable without the Prologis/MAG Land, whilst simultaneously asserting that the overall scheme – which includes the cost of acquiring that very land at full market value – is viable. These two propositions have not been reconciled.
- 8 **Highways (Section 8)** – the highway works must be proportionate to the development they mitigate and cannot be treated as standalone public benefits justifying CA. The deliverability of the highways package is questioned in light of dependencies on National Highways' processes and local authority approvals. Because the harm to Prologis arises immediately on authorisation of CA powers, whereas the claimed benefits depend on subsequent delivery including highways delivery, any material uncertainty on highways deliverability reinforces the case against the grant of CA powers.
- 9 The DCO Application was not ready for examination, the material remains incomplete, and Prologis has suffered continuing prejudice. There is no compelling case in the public interest for CA, and SEGRO has failed to exhaust reasonable alternatives.

DLA Piper UK LLP

7 April 2026