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

DEADLINE 3 SUBMISSION

ON BEHALF OF

PROLOGIS UK LIMITED AND PROLOGIS UK 121 LIMITED

CONTENTS

1 Introduction and Scope

1.1 This document is submitted on behalf of Prologis UK Limited and Prologis UK 121 Limited (together, "**Prologis**") in response to the documents submitted by SEGRO Properties Limited ("**SEGRO**") for a Development Consent Order ("**DCO**") for East Midlands Gateway Phase 2 ("**EMG2**") ("**DCO Application**") at Deadline 1 (7 April 2026).

1.2 This submission complements and should be read alongside Prologis' Relevant Representation dated 9 January 2026 ("**PRR**"), Prologis' Written Representation dated 7 April 2026 ("**WR**"), Prologis' Written Summary of Oral Submissions submitted at Deadline 1 (covering its oral submissions made at the Preliminary Meeting, ISH1, ISH2 and CAH1) ("**Oral Submissions Summary**"), Prologis' responses to the Examining Panel's First Written Questions ("**ExQ1**") submitted at Deadline 1 ("**ExQ1 Responses**"), and Prologis' Deadline 2 Submission dated 21 April 2026 ("**Deadline 2 Submission**"). Terms used in this submission have the same meaning as set out in the PRR and the WR unless otherwise defined.

1.3 As recorded in the Rule 8 Letter dated 18 March 2026 ("**Rule 8 Letter**"), the additional Deadline 3 of 28 April 2026 was introduced by the Examining Panel ("**ExP**") in response to representations made by Prologis at Procedural Deadline A and at the preliminary meeting, in which Prologis sought additional time within the examination timetable to review and respond to anticipated new evidence from the Applicant in relation to compulsory acquisition, traffic and transport, and socio-economic issues. The ExP's procedural decision was that the additional deadline would primarily function "*to provide additional time to comment on deadline 1 submissions that comprise new evidence from the applicants, such as that relating to compulsory acquisition, traffic and transport, and socio-economic issues*". The scope of this submission is accordingly confined to those topics.

1.4 Specifically, this submission addresses the following Deadline 1 documents submitted by SEGRO in so far as they constitute new evidence on compulsory acquisition, traffic and transport, and socio-economic matters:

(a) DCO 4.5: Viability Appraisal Deadline 1, prepared by Mr Colin Cottage of Ardent Management Limited dated 2 April 2026 (the "**Viability Appraisal**")

(b) DCO 4.6: Summary of Viability Appraisal;

(c) DCO 7.2: DCO Applicant's Response to Relevant Representations (in particular Appendix 6 and Annex 5 thereof, in so far as they bear on the comparison of socio-economic benefits and on the case for compulsory acquisition);

(d) DCO 7.5: Applicant's Response to ExQ1 (in so far as it bears on the same matters); and

(e) DCO 7.8: PRTM 2023 Sensitivity Test Technical Note and Local Road Network Impact Assessment Note.

1.5 At Deadline 2, Prologis expressly reserved its position in respect of compulsory acquisition, traffic and transport, and socio-economic issues, on the basis that those matters were reserved for Deadline 3 in accordance with the Rule 8 Letter. Where points made in this submission may be related to matters addressed in earlier Submissions, those Submissions are not rehearsed; the relevant section of the relevant document is signposted accordingly. Prologis reserves the right to supplement this submission at later deadlines, in particular at Deadline 4 (16 June 2026) and Deadline 5 (30 June 2026), to the extent that further evidence or material is provided by the Applicant or other Interested Parties bearing on these issues.

1.6 As Prologis has consistently submitted, the DCO Application proceeded to examination in circumstances in which significant evidence central to the Applicant's case for compulsory acquisition and the grant of development consent was outstanding, and remained outstanding when Prologis was obliged to submit the PRR and WR setting out its case in opposition to the proposed compulsory acquisition of its land. The belated provision of (inadequate) viability

material, transport material and further socio-economic material at Deadline 1 – whilst better than its continued absence – does not cure the procedural disadvantage that Prologis has suffered in preparing and presenting its case. The intended role and significance of the PRR and WR in ensuring an effective and fair examination for affected persons has been explained in Prologis's previous submissions and is not repeated here.

1.7 Prologis has worked at pace to digest and respond to the new material made available at Deadline 1, but the constrained period available between Deadline 1 (7 April 2026) and Deadline 3 (28 April 2026) – and the fact that a number of the Deadline 1 documents were not made available on the Planning Inspectorate's website until 14 April 2026 – has necessarily limited the extent to which a fully comprehensive expert critique can be presented at this deadline. Had this material been submitted with the application, as it plainly should have been, Prologis would have had two and five months in which to consider and fully respond to it in its PRR and WR respectively. That response would have informed the ExP's initial assessment of the issues, procedural decisions, first round written questions and the hearings which were undertaken in the first week of the examination.

1.8 Nothing in this submission should be taken as acceptance of any matter not expressly addressed herein, and Prologis reserves the right to supplement and develop its case at subsequent deadlines as the Applicant's late evidence is interrogated further.

1.9 Before turning to the substance, three overarching points should be flagged at the outset to assist the ExP in approaching the material that follows.

(a) First, as Prologis has previously emphasised at the Hearings, in the WR and at Deadline 2, the issues now before the ExP are not matters that can simply be deferred to a later stage of the regulatory process, or to the Upper Tribunal (Lands Chamber) once compulsory acquisition powers have been exercised. They go to the very heart of the Applicant's case for compulsory acquisition and to the lawful exercise by the Secretary of State of his powers under section 122(3) of the Planning Act 2008 ("**PA 2008**"). Notwithstanding SEGRO's mischaracterisation of the PRR[1], this is not a dispute as to compensation for the compulsory acquisition of land which would otherwise be excluded under section 104(e)(i) PA 2008[2]. It is a dispute as to viability, which is a matter directly relied upon by the Applicant in making its case for compulsory acquisition in the Statement of Reasons [3]. As the Applicant itself has acknowledged at paragraph 9 of the Viability Appraisal, viability is in those circumstances "*an extremely important issue*" for the determination of the EMG2 DCO application; it is a central issue for the purposes of decision-making on the application and must therefore be thoroughly examined and any material disputes addressed in the report and recommendation to the Secretary of State. Furthermore, the demonstrated viability (or otherwise) of the DCO Scheme also bears directly on the proper assessment of the realistic worst case under the Environmental Impact Assessment Regulations: where there is material doubt as to the viability of the DCO Scheme there must also be a real risk that, if compulsory acquisition powers are granted and exercised, the development to be authorised will not in fact be delivered in full, within the Freeport Window, or at all, with direct consequences for the assessment of the public interest harm associated with the simultaneous frustration of the Joint Application – the adverse socio-economic consequences of which, as Prologis has consistently maintained, have not been assessed in the Environmental Statement at all.

[1] Please see paragraph 8, Appendix 6 of DCO 7.2 Applicants Response to Relevant Representations

[2] The determination of which is reserved by statute to the Upper Tribunal (Lands Chamber) under section 1 of the Land Compensation Act 1961

[3] Please see paragraphs 9.5-9.12 of the PRR and 7.1-7.6 of the WR

(b) Second, what unites the three topics addressed in this submission – viability, traffic and transport, and socio-economic effects – is that each goes directly to the question of whether the Applicant has demonstrated, on robust and tested evidence, a "*compelling case in the public interest*" for the compulsory acquisition of the Prologis/MAG Land sufficient to satisfy section 122(3) PA 2008. As set out in Section 4 of the Deadline 2 Submission, the test is qualitatively different from a bare planning balance; the public interest must decisively demand the abrogation of Prologis' constitutional right to the peaceful enjoyment of its property. None of the new evidence submitted by the Applicant at Deadline 1 comes close to discharging that demanding evidential burden.

(c) Third, the ExP is invited to read this submission with the bigger picture in mind. The Applicant is a private commercial developer seeking to compulsorily acquire the land of another private commercial developer that is itself actively promoting essentially the same type of development on the same land. The Supreme Court in *R (Sainsbury's Supermarkets Ltd) v Wolverhampton City Council* [2010] UKSC 20 made clear that "private to private" acquisitions of this nature call for a "stricter approach" to the assessment of the public interest case (per Lord Walker). The new evidence submitted by the Applicant at Deadline 1 – examined in detail below – does not satisfy that heightened standard; on the contrary, the Viability Appraisal in particular further confirms the principal concerns articulated by Prologis throughout this examination.

1.10 The structure of this submission accordingly is as follows. Section 2 addresses viability. The principal expert evidence of Mr Peter Roberts FRICS CEnv of DWD ("**DWD**") is appended in full at Annex A; the main body of this submission summarises the case Prologis is making on viability and cross-refers to that expert evidence for the detailed underlying analysis. Section 3 addresses traffic and transport, having regard to the work currently being undertaken with National Highways and Leicestershire County Council ("LCC") on the PRTM modelling. Section 4 addresses socio-economic issues. Prologis' substantive case on socio-economic issues is summarised in the main body of this submission and is supported by a detailed note prepared by Spawforths appended at Annex B.

2 Viability

These submissions relate in particular to DCO 4.5 (Viability Appraisal Deadline 1), DCO 4.6 (Summary of Viability Appraisal), and the relevant elements of DCO 7.2 and DCO 7.5 in so far as they bear on viability.

Introduction and overarching position

2.1 At CAH1, the Applicant acknowledged that viability is a matter calling for evidential treatment and committed to providing viability evidence by Deadline 1.[4] That commitment has been reflected, in form at least, in the production of the Viability Appraisal. Prologis' substantive response to the Viability Appraisal is contained in the expert report of Mr Peter Roberts FRICS CEnv of DWD, appended in full at Annex A ("**DWD Report**"). This Section 2 summarises the case Prologis is making on viability; the ExP is invited to read the DWD Report in full for the detailed underlying analysis.

2.2 Before turning to the substance, Prologis emphasises the following four propositions which form the basis of Prologis' case on viability and which the ExP is invited to keep in mind when reading the more detailed material that follows:

(a) Viability is highly material to the section 122(3) PA 2008 test on the facts of this case. The Applicant itself, at paragraph 9 of the Viability Appraisal, has acknowledged that viability is "*an extremely important issue*" for that part of the EMG2 development

[4] See Oral Submissions Summary at the section addressing CAH1

being promoted through a DCO. That acknowledgment is correct as a matter of legal principle. Viability and deliverability are central to whether SEGRO can demonstrate the public interest benefit required to outweigh the certain and immediate harm of the loss of Prologis' constitutional right to the peaceful enjoyment of its land. It is also central to the consideration of alternatives, in that SEGRO seeks to rely on viability considerations to rule out the alternative of developing the Southern Land independently, thereby delivering the same or similar economic benefits without the need for compulsory acquisition. This is not a matter that can be deferred to the Upper Tribunal Lands Chamber's later assessment of compensation. It is not a dispute about compensation, but about the conceptually distinct and prior issue of viability. Whilst the assessment of viability for the purposes of development control decision-making necessarily requires consideration of land value as a key element (see e.g. PPG on Viability at paragraph 011), any conclusions on that matter reached by the Secretary of State for the purposes of making a judgment on viability here will not involve a determination of what the appropriate compensation would be for compulsory acquisition and would not in any event bind the Upper Tribunal. Viability is squarely a matter for the ExP's recommendation and for the Secretary of State's decision under section 122(3) PA 2008.

(b) The Applicant's own evidence shows that the DCO Scheme is only marginally viable. The Viability Appraisal records a profit on cost of only 15.91% – a mere 0.91 percentage points above the 15% hurdle rate which the Applicant itself identifies as the minimum level of return acceptable for a development of this nature and scale. The DCO Scheme is therefore, on the Viability Appraisal's own figures, only marginally viable even before any of the concerns and shortcomings identified in the DWD Report are factored in. Moreover, no sensitivity analysis has been provided (in breach of mandatory RICS Professional Standards applicable to such appraisals), meaning that neither the ExP nor the Secretary of State has any means of assessing how robust even that marginal figure actually is. Even if all other aspects of Mr Cottage's assessment were to be taken at face value, the scheme would not be viable because Mr Cottage has significantly underassessed the Market Value of the Prologis/MAG Land: once the cost of acquiring that land is properly assessed by reference to market value rather than the £225,000 per acre ceiling derived from the SEGRO/Aldridge Promotion and Option Agreement, the Applicant's own viability appraisal demonstrates that the DCO Scheme cannot achieve the 15% profit on cost that the Applicant itself has identified as the minimum acceptable hurdle rate. The Viability Appraisal amounts to no more than an illustration of how the scheme could be viable **if** the landowners were prepared to accept £225,000 per acre and were not to achieve the market value before the Upper Tribunal Lands Chamber; that does not constitute an appropriate, let alone robust, viability appraisal.

(c) The Applicant's own evidence does not show that development of the Southern Land in isolation is unviable. The "Aldridge Land only" appraisal at Mr Cottage's Appendix H is fundamentally flawed, proceeding as it does on the basis of an entirely artificial scenario that could never occur in reality and does not represent what a prudent developer would do in order to seek to develop that land independently in the absence of compulsory acquisition powers. As a result of that fundamental flaw in approach, it loads onto the appraisal of the Southern Land in isolation a series of costs which (i) would not be incurred at all under a Town and Country Planning Act 1990 route (most obviously, the £10.5 million cost of obtaining a DCO that would never need to be sought in the event of an independent development) and (ii) related to infrastructure (the spine road through the Prologis/MAG Land) which would already have been delivered by Prologis in any event as part of the Joint Application (which is assumed to have occurred in Mr Cottage's Aldridge Land only scenario). Once those costs are stripped out, the Southern Land plainly is capable of viable independent development. At the very least, the fundamental flaws in the approach to this issue in the Viability Appraisal mean that it is not properly capable of substantiating the assertion made (without evidence) in the Applicant's Statement of Reasons. However, SEGRO has elected to put itself in a position where it cannot achieve this because it has agreed to purchase the Aldridge Land at an inflated value and only if it

achieves a DCO. In this context, however, the issue of viability must be assessed on a market basis by reference to what a prudent developer would do in the absence of compulsory acquisition powers and not what SEGRO has chosen to do in the expectation of the grant of such powers.

(d) The Joint Application is, by reference to the Applicant's own inputs, manifestly viable. The DWD Report sets out an indicative appraisal of the Joint Application which is illustrative, theoretical and indicative only. It has been prepared by adopting SEGRO's own inputs and methodology as set out in the Viability Appraisal so far as practicable (save in respect of unit-specific rents and yields appropriate to the unit sizes that Prologis would deliver) for the express purpose of demonstrating that, even on the Applicant's own assumptions, the Joint Application is viable. It is not, and is not intended to be, an assessment of Market Value. On that basis, the Joint Application generates a residual land value of £31,250,000 at a 15% profit on cost – significantly in excess of the £22,902,329 land value that the Viability Appraisal has assumed for the Prologis/MAG Land in the Applicant's own DCO Scheme appraisal. Importantly, those figures make no allowance for any premium attributable to the Prologis/MAG Land's role in enabling development of the Aldridge Land; Prologis' case on viability is not, and does not need to be, predicated on any ransom or access-controlling premium. Far from being an unviable scheme as the Applicant has alleged (without any proper evidential support), the Joint Application is plainly viable and indeed, on the Viability Appraisal's own inputs, is substantially more viable than the DCO Scheme: as Mr Roberts confirms at paragraph 7.17 of the DWD Report, if the £22,902,329 assumption in the Viability Appraisal is adopted in respect of land value, the profit secured by the Joint Application would, on the balance of probabilities, significantly exceed the 15% hurdle rate (and the 15.91% calculated for the DCO Scheme on the same assumption).

(e) The cumulative effect of those four propositions is that the Viability Appraisal does not advance the Applicant's case for compulsory acquisition; it undermines it. The new evidence on viability now before the ExP demonstrates that the public interest benefits which the Applicant says will flow from the DCO Scheme are not, on the Applicant's own figures, deliverable; whereas the public interest benefits which would flow from the Joint Application – which Prologis is willing and capable of delivering on land it controls without recourse to compulsory acquisition – are plainly deliverable. Furthermore, the Viability Appraisal has failed to substantiate a critical part of the Applicant's case, namely that the benefits associated with the development of both the northern and southern land cannot viably be delivered in the absence of compulsory acquisition.

The Viability Appraisal: an outline of the principal deficiencies

2.3 Against that backdrop, the principal deficiencies in the Viability Appraisal – explained in detail in the DWD Report at sections 3 to 9 – may be summarised as follows.

<u>Failure to adopt a market-based approach to land value</u>

2.4 The Viability Appraisal proceeds on the assumption that the owners of both the Aldridge Land and the Prologis/MAG Land would each release their land for £225,000 per acre. That figure is derived not from a calculation of the residual value of each development site, or from an analysis of comparable market transactions, but instead from the terms of the Promotion and Option Agreement dated 31 March 2020 between SEGRO and Mr Aldridge in respect of the landlocked Aldridge Land. In simple terms, Mr Cottage's appraisal simply assumes (and thus invites the ExP and the Secretary of State to assume) that the price SEGRO has agreed to pay pursuant to that Agreement for the Aldridge Land is also the appropriate value to adopt for the land controlled by Prologis/MAG. No explanation is provided as to why that is considered a robust and realistic assumption, and no other evidence is provided to support it. There is also no consideration of the implications for the appraisal if that key input proves to be inaccurate, whether by means of a sensitivity analysis or otherwise. There is no evidential basis whatsoever for assuming that the owner of the Prologis/MAG Land – which is not

landlocked, abuts an adopted highway, and is the subject of the Joint Application – would similarly accept £225,000 per acre as adequate consideration to release that land for the Applicant's scheme.

2.5 As explained in the DWD Report at paragraphs 6.15 to 6.19, the assumption that the market would pay the same price per acre for two such fundamentally dissimilar parcels of land is not credible as a matter of basic valuation principles, and is simply not realistic, let alone robust, even if the Viability Appraisal's underlying assertion that the Prologis scheme is unviable were correct (which it is not). The Prologis/MAG Land would, as a matter of commercial reality, attract considerable interest from other developers in the market and, having regard to the prices paid in the market for opportunities of this scale and quality, the landowner would expect a price significantly in excess of £225,000 per acre.

2.6 Mr Cottage himself acknowledges at paragraph 28 of the Viability Appraisal that his adopted land purchase cost of circa £225,000 per acre "*assumes that planning permission exists for logistics/warehouse development and that a negotiated settlement is reached with Prologis/MAG*". That assumption underlines, rather than answers, the difficulty Mr Cottage faces. If, as he has assumed, planning permission for logistics/warehouse development is to be taken to exist over the Prologis/MAG Land, the value at which a willing landowner would release that land must logically be assessed by reference to what the market would pay for land with the benefit of that planning permission, not by reference to a contractual figure agreed in respect of a separate, landlocked parcel without planning permission. As explained in section 3 of the DWD Report, the Prologis/MAG Land would in those circumstances attract considerable interest from competing developers, and the price reasonably required to secure its release would be materially higher than £225,000 per acre.

2.7 The point goes deeper still. The Viability Appraisal's own appraisal of the Aldridge Land in isolation generates a profit of just 3.62% – well below the 15% hurdle rate identified in the Viability Appraisal (see DWD Report, paragraph 9.1 and Viability Appraisal, Appendix H). If the Viability Appraisal's own appraisal of the Aldridge Land in isolation does not generate enough headroom to support a £225,000 per acre payment, then it follows that no developer in the market would be prepared to pay £225,000 per acre for the Aldridge Land. The Market Value of the Aldridge Land must, on the figures set out in the Viability Appraisal, be significantly below £225,000 per acre. The figure reflects the price that the Applicant has agreed to pay because of its particular contractual position rather than the price the market would in fact pay. That price, in turn, is itself a product of the fact that the Promotion and Option Agreement was entered into on the basis of a DCO being promoted, with the prospect of compulsory acquisition powers being deployed to assemble the wider site. In the alternative scenario which Appraisal 2 purports to test – the development of the Southern Land independently in the absence of a DCO and powers of compulsory acquisition – that prospective uplift plainly would not be in play, and Mr Cottage's reliance on the £225,000 per acre figure as the relevant land value input is misconceived for that further reason. None of this assists SEGRO: SEGRO has contracted to acquire the Aldridge Land at £225,000 per acre on terms which are conditional on the grant of the DCO, and so remains bound to pay that price even though the Market Value of the Aldridge Land is, on the Viability Appraisal's own figures, significantly lower.

2.8 What that means, as explained in section 9 of the DWD Report, is that the Applicant's case on viability is not driven by any deficiency in the Prologis scheme or in the Southern Land – it is driven by the Applicant's own contractual commitment to overpay for the Aldridge Land. The Applicant has, in effect, rendered its own scheme unviable by virtue of the terms it has agreed with Mr Aldridge: standing back, because of the price that SEGRO has chosen to pay in respect of the Aldridge Land, it can only just make its scheme viable (and only then on the assumption that all other inputs adopted in the Viability Appraisal are correct) if Prologis/MAG agree a price for their land no higher than £225,000 per acre, or such a value emerges from the assessment of compensation in due course. There is no obligation on Prologis or MAG to accept anything other than Market Value for their land; and (at the very least) there is no proper evidential basis for the Secretary of State to assume that the figure of £225,000 per acre is the value that would so emerge. On the contrary, for the reasons explained in the DWD Report, the Market Value of the Prologis/MAG Land is likely to be significantly higher

than £225,000 per acre: Mr Roberts' indicative appraisal of the Prologis scheme, adopting the inputs and methodology in the Viability Appraisal (save in respect of unit-specific rents and yields), generates a residual land value of £31,250,000 (being approximately £306,000 per acre of the Prologis/MAG Land) at the 15% hurdle rate, and Mr Roberts considers that the Market Value that would in fact emerge from the market would be materially higher still, as he has confirmed at paragraph 7.21 of the DWD Report by reference to market evidence of comparable land transactions. It is important that the ExP appreciates that this is not an abstract point: the land value assumed in the Viability Appraisal is the price that SEGRO will ultimately need to pay in the real world if the DCO Scheme proceeds, whether through voluntary agreement or through determination by the Upper Tribunal (Lands Chamber). If the Upper Tribunal determines compensation at or near the market value identified in the DWD Report, the DCO Scheme would fall well below the 15% hurdle rate that the Applicant itself identifies as the minimum acceptable return, rendering the scheme unviable and undeliverable. By that stage, SEGRO would already be contractually committed to the Aldridge Land at £225,000 per acre and would have no realistic means of correcting the position. This goes to the heart of whether the DCO Scheme would ever in fact be implemented, even if consented.

Failure to provide a sensitivity analysis

2.9 The RICS Professional Standard "Financial viability in planning: conduct and reporting" – a mandatory requirement of RICS members – requires that all financial viability assessments and subsequent reviews provide a sensitivity analysis of the results, to allow the decision-maker to consider how changes in inputs to a financial appraisal affect viability and to apply a viability judgement to the outcome of a report.[5]

2.10 No sensitivity analysis has been provided in the Viability Appraisal, despite the fact that the software model used in the Viability Appraisal provides this facility (see DWD Report, paragraph 8.7). That omission is significant for at least three reasons:

(a) the Viability Appraisal records a profit of 15.91% – only 0.91 percentage points above the 15% hurdle rate which the Viability Appraisal itself accepts as the minimum return required to deliver the project.[6] For the reasons set out in the DWD Report, that calculated rate of 15.91% is neither realistic nor robust. The DCO Scheme is, on the Viability Appraisal's own figures, marginal in viability terms even before any of the criticisms made in the DWD Report have been factored in;

(b) modest increases in construction costs, modest decreases in rents, modest worsening of yields, or modest increases in the assumed land value, would each be more than sufficient to drive the appraisal below the 15% hurdle rate. In each case these are realistic risk factors that any prudent commercial developer would be required to consider; and

(c) the absence of any sensitivity analysis means that neither Prologis, nor the ExP, nor the Secretary of State has any means of assessing how robust the Applicant's own case for viability actually is. The correctness or otherwise of Mr Cottage's assertion at paragraph 41 of his report that he could drive an improved profit level by altering his assumed inputs cannot be tested and assessed, particularly as small changes in the inputs can be used to achieve disproportionate changes in the outcome. The professional standard requirement to "*stand back*"[7] (RICS Professional Standard, Financial viability in planning: conduct and reporting) cannot be properly performed without that analysis.

[5] As per paragraph 2.9 of RICS Professional Standard "Financial viability in planning: conduct and reporting" 1st edition. May 2019 available at Annex C to this submission.

[6] Paragraphs 39 and 40 of the Viability Appraisal.

[7] As per paragraph 2.9 of Annex C

2.11 In order for the ExP properly to examine and test the Applicant's case it will be necessary for the Applicant to disclose its electronic appraisal models and to provide a sensitivity analysis of the type which RICS standards require, which Prologis and the ExP can then assess and respond to. Until that information is provided, the Viability Appraisal can only be afforded very limited weight and it is not properly capable of substantiating the Applicant's case.

Disclosure of underlying cashflows

2.12 Despite requests from DWD to Mr Cottage and further separate requests from Prologis' solicitors to the Applicant's solicitors, the Applicant has not provided copies of the underlying cashflows or programme breakdown for the Viability Appraisal (see DWD Report, paragraphs 3.32 to 3.34). Without those materials, it is not possible for Mr Roberts, or the Examining Panel, or the Secretary of State to ascertain the extent to which the cashflow timings adopted in the Viability Appraisal are reasonable, or to assess the impact on finance costs of differing assumptions about the timing of receipts and payments. As the DWD Report explains, these are critical issues in any viability exercise; differences in cashflow assumptions can produce significant differences in finance costs and, in turn, in the calculated rate of return. In the absence of this information, the Viability Appraisal is of limited assistance in enabling informed conclusions to be reached on this extremely important issue.

2.13 Prologis renews its request that the Applicant disclose its electronic models and cashflows to enable proper scrutiny of its viability case. If the Applicant is willing, as it should be, to put its viability evidence into the public domain to support the case for the draconian power of compulsory acquisition, it must equally be prepared to allow that evidence to be properly tested. Until such disclosure occurs, Prologis reserves its position to develop its critique of the Viability Appraisal in further detail at later deadlines.

The "Aldridge Land only" appraisal: development of the Southern Land in isolation

2.14 The Applicant's case for the compulsory acquisition of the Prologis/MAG Land rests in part on the assertion that the Southern Land cannot viably be developed on its own, and that compulsory acquisition of the Prologis/MAG Land is therefore necessary in order to secure viable delivery of the development of the Southern Land. The Viability Appraisal's "Aldridge Land only" scenario at Appendix H is the only evidence that has (belatedly) advanced in support of that central proposition. That evidence is incapable of substantiating the Applicant's case.

2.15 As Prologis explained at paragraph 3.18 of the Deadline 2 Submission, that proposition exposes a fundamental inconsistency in the Applicant's position: the scenario which the Applicant has dismissed elsewhere in its Deadline 1 evidence as one that "could not happen"[8] is nevertheless precisely the scenario it has adopted in Appraisal 2 of the Viability Appraisal to seek to demonstrate that the Southern Land cannot viably be developed on its own. The Applicant cannot credibly have it both ways. It is simply not tenable for the Applicant to claim that its Appraisal 2 represents a fair and robust assessment of how a developer would approach the development of the Southern Land independently in the absence of a DCO and thus powers of compulsory acquisition.

2.16 In any event, as set out at section 9 of the DWD Report, the "Aldridge Land only" appraisal is fundamentally flawed by reference to its own internal logic. There are four key issues:

(a) **DCO Costs.** The "Aldridge Land only" appraisal includes £10,532,951 of costs in respect of obtaining a DCO (see DWD Report, paragraph 9.6). There is no proper basis for including those costs in an assessment of whether development of the Aldridge Land could come forward independently. The underlying purpose of Mr Cottage's Appraisal 2 is to substantiate the assertion made in SEGRO's Statement of Reasons at paragraph 5.57 that even if the development of the Prologis/MAG land did make provision for a deliverable vehicular access, "*development of the southern*

[8] DCO 7.2, Appendix 6, paragraph 3.62

part of the EMG2 Main Site would not be viable or deliverable as standalone development". An appraisal of viability to address that counterfactual scenario must consider what would be likely to happen in circumstances where there was no DCO and no access to compulsory powers. An alternative developer of the Aldridge Land in that scenario could not pursue a DCO: it is only possible to seek a DCO for development as described in the section 35 direction, and a materially smaller scheme confined to the Aldridge Land would fall outside its scope. Such a developer would instead pursue planning permission under the Town and Country Planning Act 1990. The cost of securing such a planning permission would be significantly less than the cost of securing the DCO (see DWD Report, paragraph 9.10). This factor alone, combined with the belated provision of the Viability Appraisal, demonstrates that SEGRO did not give any proper consideration to this alternative either before deciding to seek compulsory acquisition or before making the unevidenced assertion in its Statement of Reasons.

(b) **Road Costs.** The "Aldridge Land only" appraisal includes the cost of providing the spine road through the Prologis/MAG Land. That makes no commercial sense in the realistic counterfactual, in which Prologis would (in the absence of a DCO) be implementing the Joint Application on the Prologis/MAG Land and providing the spine road at its own cost as part of its own development. Any alternative developer of the Aldridge Land would simply tie into that spine road. Assigning that cost to the Aldridge Land is double-counting that materially distorts the appraisal.

(c) **Site Costs.** The Viability Appraisal has effectively started with the costs that would be incurred for the whole DCO Scheme and then stripped out elements that are bespoke to the development of the Prologis/MAG Land. As the DWD Report notes at paragraphs 9.20 to 9.24, that is the wrong methodology. The proper approach is to consider what the costs would be of developing the Aldridge Land in isolation, having regard to what a market-based developer would do; not to start with the DCO Scheme for a substantially larger development across a much bigger site and crudely strip out parts of it. The costs adopted in the Viability Appraisal are therefore significantly higher than the market would assume.

(d) **Land Value.** The Viability Appraisal has assumed a fixed land value of £225,000 per acre in accordance with the terms of the SEGRO/Aldridge Promotion and Option Agreement; but its own appraisal of the Aldridge Land in isolation generates a profit of only 3.62%, which is well below the 15% hurdle rate that it identifies (see DWD Report, paragraph 9.30). As already noted, it follows that no party in the market would be prepared to offer £225,000 per acre for the Aldridge Land in the scenario Appraisal 2 is intended to assess, and the Market Value of that land in that scenario must be significantly below £225,000 per acre. Moreover, the use of £225,000 per acre in Appraisal 2 is simply inappropriate in the counterfactual that appraisal is intended to test: if the premise of Appraisal 2 is that the Aldridge Land would be developed independently of the DCO, then neither SEGRO nor any other developer would be bound by the Promotion and Option Agreement (the exercise of which is, as noted in the DWD Report, conditional upon the grant of the DCO). The land value input for Appraisal 2 should reflect what a developer would actually need to pay in the market for the Aldridge Land in a no-DCO scenario, rather than a price agreed in the entirely different context of the DCO and compulsory acquisition powers being available.

2.17 The cumulative effect of these four issues is that the Viability Appraisal has overstated, dramatically, the costs of developing the Aldridge Land in isolation, and depressed, artificially, the calculated profit on cost. As demonstrated at paragraphs 9.35 to 9.37 of the DWD Report, even on a high-level recalibration of the figures in the Viability Appraisal – replacing the DCO cost with a planning application cost of £1,000,000, removing the assumed land value, and applying the gross development value of £303,339,387 used in the Viability Appraisal – the residual land value available for the Aldridge Land is approximately £17 million, equating to circa £116,000 per acre. That figure would increase further once the spine road costs are properly excluded and finance costs recalibrated to reflect the reduced cost exposure.

2.18 Separately, the very existence of Appraisal 2 raises a further concern about the adequacy of the Applicant's consideration of alternatives to compulsory acquisition. The approach taken in Appraisal 2 – in which the costs of independent development have been derived by crudely stripping elements out of the DCO Scheme rather than by a ground-up assessment of what independent development would cost – is consistent with the appraisal having been prepared after the decision to seek compulsory acquisition powers, rather than as part of a conscientious prior consideration of whether such powers were necessary. If SEGRO had seriously considered independent development of the Aldridge Land as a genuine alternative before deciding to seek compulsory acquisition, it would have been expected to generate reasonable assumptions about likely costs at that stage. Instead, the claim made in the Statement of Reasons at paragraph 5.57 – that the Southern Land cannot viably be developed independently – appears to have preceded rather than followed any rigorous testing of that proposition. That is a matter which goes directly to the adequacy of the Applicant's compliance with its obligation to demonstrate that it has given conscientious consideration to alternatives to compulsory acquisition, as required by the CA Guidance.

2.19 What that demonstrates, as the DWD Report explains at paragraphs 9.39 to 9.41, is three things:

(a) even at the conservative figure of £116,000 per acre, there is a clear uplift in value associated with the Aldridge Land that is predicated solely on the availability of access that can only be provided from the Prologis/MAG Land. The assertion that there is no ransom position in the market is therefore not correct;

(b) the development of the Southern Land is, on a market-based assessment, able to deliver the 15% hurdle rate of profit, such that a developer would in fact implement that development; and

(c) the only reason that the Applicant cannot itself viably deliver the Southern Land is that it has agreed to pay Mr Aldridge a price (£225,000 per acre) which is significantly in excess of Market Value and reflects the assumption it will be able to use powers of compulsory acquisition. That is a problem of the Applicant's own making, arising from its own private contractual arrangements and development strategy; it is not a public interest justification that could legitimately be relied on by the Secretary of State to authorise the compulsory acquisition of Prologis' land.

<u>The viability of the Joint Application: the Prologis indicative appraisal</u>

2.20 Prologis has prepared an indicative appraisal of the Joint Application, which is appended to the DWD Report. As explained in the DWD Report at paragraphs 7.5 to 7.11, the appraisal has been prepared on the basis of the inputs and methodology adopted in the Viability Appraisal, save in respect of unit-specific rents and yields where (as is appropriate) the unit sizes that would be delivered under the Joint Application differ from those assessed in the Viability Appraisal. The exercise is illustrative only: its purpose is to show that, by adopting SEGRO's own assumptions to the greatest extent possible, the Joint Application remains viable on those inputs. Mr Roberts has also provided sensitivity analyses at paragraphs 7.14 to 7.17 of the DWD Report (which the Applicant has notably failed to provide for its own appraisal), confirming that the indicative outputs are robust across a realistic range of construction cost and rental value assumptions.

2.21 The principal results of the Prologis indicative appraisal are as follows[9]:

(a) at a 15% profit on cost, the Joint Application generates a residual land value of £31,250,000. That figure is well in line with values achieved in actual market

[9] As set out in Section 7 of the DWD Report

transactions for opportunities of this scale and quality, and is therefore considered to be achievable;

(b) by contrast, the Viability Appraisal assumes a land value of £22,902,329 for the Prologis/MAG Land in its appraisal of the DCO Scheme. The Joint Application generates a residual land value materially in excess of that assumption on a 15% return basis; and

(c) if the £22,902,329 land value adopted in the Viability Appraisal is applied in the Prologis indicative appraisal, the profit secured by the Joint Application would, as Mr Roberts confirms at paragraph 7.17 of the DWD Report, on the balance of probabilities significantly exceed the 15% hurdle rate – and would do so by a margin that compares favourably with the 15.91% calculated in the Viability Appraisal for the DCO Scheme on the same land assumption. The sensitivity analysis at paragraphs 7.14 to 7.17 of the DWD Report confirms that, across the range of rents and construction costs tested, the Joint Application generates a profit on cost comfortably in excess of 15% on Mr Cottage's land assumption.

2.22 Three significant points arise from those results:

(a) the Joint Application generates significantly more value than the DCO Scheme. It is comfortably more viable than the scheme that the Applicant is seeking to justify by reference to compulsory acquisition powers;

(b) on the assumption of land value adopted in the Viability Appraisal, the profit secured by the Joint Application would, on the balance of probabilities, significantly exceed the 15% hurdle rate. It is therefore clear that, in the words of the DWD Report at paragraph 7.17, the Prologis scheme is "*not only more viable than the SEGRO scheme but substantially so*"; and

(c) these results have been calculated without taking into account any controlling-access premium associated with the Prologis/MAG Land's position in enabling development of the Aldridge Land. Any assertion that development of the Prologis/MAG Land is dependent upon the receipt of a ransom is therefore without basis.

2.23 The contrast between the two schemes' viability is stark. The DCO Scheme is, on the Applicant's own evidence and even before the criticisms in the DWD Report are factored in, marginal at 15.91% – a figure which, for the reasons set out in the DWD Report, is neither realistic nor robust. The Joint Application, on the same set of inputs, generates a profit on costs which renders the Prologis scheme substantially more viable than the DCO Scheme. That contrast must be borne in mind by the ExP and the Secretary of State when assessing the section 122(3) PA 2008 case.

Implications for the section 122(3) PA 2008 case

2.24 As noted at paragraphs 5.32 to 5.40 of the WR, the new viability evidence must be assessed by reference to the three elements of the case in which viability has a role to play:

(a) The viability of the DCO Scheme as a whole. If the DCO Scheme is not viable, there can be no confidence that the scheme will in fact come forward or that the benefits the Applicant claims will flow from it will materialise. That is the primary concern: the ExP cannot recommend, and the Secretary of State cannot grant, compulsory acquisition powers to facilitate a scheme which the Applicant cannot demonstrate is likely to be delivered. Even if the DCO Scheme is of only marginal or uncertain viability (i.e. taking the outputs from the Viability Appraisal at face value), that significantly weakens the case for compulsory acquisition because there is a real risk that the scheme will not in fact come forward. That risk also has direct consequences for the Environmental Impact Assessment, which, as Prologis has consistently pointed out, has not assessed the realistic possibility that the DCO Scheme will not come forward but will nevertheless sterilise the development proposed in the Joint

Application. A secondary but related concern is whether, if the Viability Appraisal has materially underestimated the cost of land assembly, the Applicant will be able to meet its compensation obligations – a matter which should have been addressed in the Funding Statement but was not – it therefore needs to be addressed through the examination process;

(b) The viability of the Southern Land in isolation. The Applicant's case for compulsory acquisition rests in part on the assertion that the Southern Land cannot viably be developed without the addition of the Prologis/MAG Land. The Viability Appraisal does not substantiate that proposition; for the reasons set out above and in the DWD Report, it is simply not capable of doing so. The "Aldridge Land only" appraisal is fundamentally flawed and cannot bear the weight that the Applicant seeks to place upon it; and

(c) The viability of the Joint Application. The Applicant's case also relies in part on the inherently improbable proposition that Prologis' scheme is unviable, such that the public interest harm associated with frustrating the Joint Application can be discounted in the planning balance. The Prologis indicative appraisal at the DWD Report demonstrates that the Joint Application is not only viable, but is materially more viable than the DCO Scheme on the Applicant's own assumptions.

2.25 Each of those three elements goes directly to the section 122(3) PA 2008 case and to the public interest balance which the Secretary of State must strike. The new evidence on viability – properly understood – strengthens Prologis' case that there is no compelling case in the public interest for the compulsory acquisition of the Prologis/MAG Land.

2.26 Viability is a central component of the case that Prologis wishes to present orally and which it has consistently advanced (see Oral Submissions Summary, in particular at the section addressing CAH1, and the ExQ1 Responses). Further submissions on this point are made in the Joint Letter to the ExP from Prologis and EMA also submitted at Deadline 3 in relation to the agenda for the compulsory acquisition hearing.

Conclusion on viability

2.27 For the reasons set out above and developed in detail in the DWD Report at Annex A, the new evidence on viability submitted by the Applicant at Deadline 1 fails to demonstrate the viability and deliverability of the DCO Scheme; on the contrary, properly understood it confirms and strengthens the principal concerns articulated by Prologis throughout this examination. The Viability Appraisal is incomplete and unrealistic; it adopts an artificially compressed land value that the market would not pay; it assumes that the landowner would be compelled to accept a price determined by SEGRO to suit the unattractive commercial position it has created for itself rather than the price that would be determined by the market; it does not include the sensitivity analysis required by RICS standards; it is not supported by the underlying cashflows necessary to enable proper scrutiny; and its "Aldridge Land only" appraisal is fundamentally flawed in that it makes the crude and unrealistic assumption that independent development of the Aldridge Land would be no different from what is proposed within the draft DCO scheme. By contrast, the Prologis indicative appraisal of the Joint Application appended to the DWD Report, prepared on the inputs adopted in the Viability Appraisal save where appropriate adjustment is required, demonstrates that the Joint Application is materially more viable than the DCO Scheme.

2.28 The new evidence on viability does not assist the Applicant's case for compulsory acquisition. It confirms that there is no compelling case in the public interest, and that the public benefits relied upon by the Applicant are speculative at best, and in fact unlikely to be delivered, whilst the harm to Prologis would be certain and immediate.

3 Traffic and Transport

These submissions relate in particular to DCO 7.8 (PRTM 2023 Sensitivity Test Technical Note and Local Road Network Impact Assessment Note) and the relevant elements of DCO 7.5 (Applicant's Response to ExQ1) in so far as they bear on traffic and transport.

Necessity and scale of the proposed mitigation

3.1 In its responses to ISH1 Action Points 7 and 16, the Applicant maintains that the scale of mitigation proposed at M1 Junction 24 is necessary, having been derived through iterative testing in which lesser-scale schemes were said only to provide additional stacking capacity without fully mitigating the impact of EMG2 traffic. The Applicant further relies on the existence of a developer consortium, the East Midlands Growth Point, which has identified a combination of highway upgrades (the "green package") said to provide a wider strategic solution to long-standing capacity issues at Junction 24, of which the works proposed in the DCO are said to form a constituent part. Prologis does not, on the present evidence, take issue with the broad consistency of the proposed mitigation with that wider emerging strategic programme. Consistency with that programme does not, however, equate to necessity arising from EMG2 impacts alone. The mitigation package which Prologis proposes in connection with the Joint Application – focused on improvements at the Finger Farm roundabout and provision for dualling on the A453 – is itself consistent with that wider strategic programme (and in particular with the so-called "Purple" package, Package 2) and represents an alternative, equally valid, contribution to the same package of long-term needs. The Applicant cannot demonstrate that its scheme is the only means by which those wider needs can appropriately be progressed.

3.2 That point is reinforced by the Applicant's own acknowledgement, in response to ISH1 Action Point 7, that the highway works it proposes – and in particular the new free-flow link from the M1 northbound to the A50 westbound – would be required to allow for growth within the area and to mitigate the impact of forthcoming developments "*whether that included EMG2 or not*". On the Applicant's own case, therefore, those works are not solely a function of mitigating EMG2 impacts and cannot properly be characterised as benefits attributable to, or only deliverable through, the DCO Scheme. They are, on the contrary, components of a wider strategic programme being progressed independently of EMG2 by a consortium of developers. It follows that the highway works relied upon by the Applicant to an extent fall to be assessed as benefits of a wider strategic regional programme, not wholly as benefits attributable to the DCO Scheme.

Traffic effects of the MCO Application

3.3 The Applicant's responses to ISH1 Action Point 11 and ExQ1.2.3 do not introduce any new evidence; rather, they refer back to the Environmental Statement. The brief 'manual assessment' undertaken at section 6.9 of ES Chapter 6 concludes that the MCO traffic in isolation would not trigger the need for detailed environmental assessment in accordance with the IEMA Guidelines. That said, the assessment of the MCO and DCO impacts as currently presented remains interlinked, and it is not clear from the Deadline 1 material how the discrete traffic and transport effects of the MCO Application have been assessed independently of the cumulative analysis. Further explanation on that point is required from the Applicant. Until that explanation is provided, the ExP and the Secretary of State are not in a position properly to satisfy themselves as to the proportion of the cumulative transport impacts (and accordingly the proportion of the proposed mitigation package) that is genuinely attributable to the DCO Scheme. Nor whether it would be possible to grant the MCO Application alone, or in terms that would allow it to be implemented in isolation.

Cumulative construction-phase transport effects

3.4 More substantively, the Deadline 1 evidence does not address what Prologis considers to be a clear gap in the assessment of cumulative construction-phase transport effects. National Highways, in its response to the original consultation, advised that a cap on construction traffic would be required, on the basis that overall construction traffic impacts would be

significant[10]. The Transport Assessment does not, however, appear to have assessed the cumulative impacts of (i) construction traffic generated by the on-site development works under the DCO Scheme, together with (ii) construction traffic and temporary capacity reductions arising from the delivery of the off-site highway works at and around Junction 24 – notwithstanding that, on the construction programme provided in response to ISH1 Action Point 13, the on-site works and the off-site highway works are assumed to be progressed concurrently.

3.5 This raises a serious question as to whether the cumulative construction-phase transport effects have been fully and explicitly assessed, notwithstanding National Highways' specific request for a cap on construction traffic in respect of the on-site works.

Conclusion on traffic and transport issues

3.6 Each of these matters represents either a benefit which falls properly to be characterised as additive rather than attributable, or a material deficiency in the evidence base supporting the DCO Application; and in each case the consequence is the same – the new transport evidence in places materially weakens, the public interest case said by the Applicant to justify the compulsory acquisition of the Prologis/MAG Land.

4 Socio-Economic Issues

Introduction and overarching position

4.1 Prologis' substantive submissions on socio-economic issues are supported by, and should be read alongside, the detailed Spawforths note appended at Annex B, which contains a full point-by-point response to Annex 5 of Appendix 6 to the Applicant's DCO 7.2 (Comparison of Benefits Note). In so far as the Spawforths note responds in detail to particular benefit claims advanced by the Applicant, those detailed responses are not rehearsed here but are incorporated by reference. These submissions should also be read alongside Prologis' submissions on socio-economic issues in the PRR (in particular section 8 and section 13), the WR (in particular paragraphs 5.24 to 5.30), the Oral Submissions Summary, the ExQ1 Responses, and section 5 of the Deadline 2 Submission.

4.2 The overarching question on socio-economic issues – and the question by reference to which the new socio-economic evidence advanced by the Applicant at Deadline 1 must be assessed – is the question identified at paragraph 5.4 of the Deadline 2 Submission. It is not whether the DCO Scheme delivers (or claims to deliver) greater socio-economic benefits than the Joint Application. It is whether those benefits that have been demonstrated only to be achievable through the exercise of compulsory acquisition powers are so compelling as to justify the draconian interference with Prologis' property rights that is proposed.

4.3 That question requires consideration of the distinction, identified at paragraph 5.3 of the Deadline 2 Submission, between:

(a) **attributable benefits** – those benefits which would not arise but for compulsory acquisition; and

(b) **additive benefits** – those benefits which result simply from more land being developed, regardless of whether that development is only able to be secured through compulsory acquisition or could also be secured through conventional planning and commercial mechanisms.

4.4 As Prologis has consistently submitted, the additive/attributable distinction is fundamental to the proper application of the section 122(3) PA 2008 test. It is not enough for the Applicant to point to a list of socio-economic benefits and to assert that the DCO Scheme will deliver more

[10] Please see paragraph 1.4(e) and 4.1.9 of RR-022 National Highways' Relevant Representation

of them than the Joint Application; the Applicant must demonstrate that the additional benefits can be delivered only through the exercise of compulsory acquisition. Nowhere in the Annex 5 Comparison does the Applicant engage with that distinction. The new evidence at Deadline 1 does not cure that defect.

The Annex 5 Comparison of Benefits: the central deficiency

4.5 The principal new socio-economic evidence in the Applicant's Deadline 1 material is contained in Annex 5 of Appendix 6 to DCO 7.2 (the "**Annex 5 Comparison**"). The Annex 5 Comparison is a side-by-side comparison of certain features of the Joint Application and the DCO Scheme, structured under three headings: economic, social, and environmental benefits, together with a list of "Additional Benefits" said to flow from the DCO Scheme.

4.6 The Annex 5 Comparison suffers from a single, central deficiency that runs through every line of the table: it proceeds as if the relevant question were simply whether the DCO Scheme delivers greater benefits than the Joint Application. It does not engage with – and accordingly does not even attempt to demonstrate – that the additional benefits claimed for the DCO Scheme can only be delivered through the exercise of compulsory acquisition powers.

4.7 That central deficiency cannot be remedied by adding further numerical detail or further descriptive material. It is a structural deficiency in the way the Applicant has approached the question and has sought to make its case for compulsory acquisition. As long as the Applicant's case proceeds on the assumption that simply showing greater scale or more floorspace is sufficient to satisfy section 122(3) PA 2008, it will not engage with the test that Parliament has prescribed.

4.8 In the paragraphs that follow, Prologis addresses each of the categories of asserted benefit in turn, drawing on and incorporating by reference the detailed analysis at the Spawforths note appended at Annex B.

Economic benefits

4.9 The Annex 5 Comparison advances four points under the heading of economic benefits:

(a) up to 300,000 sq.m of floorspace across 102 hectares (compared with up to 135,000 sqm in the Joint Application), said to represent the loss (if the DCO Application does not proceed in its current form) of approximately £5.7 million per annum in retained business rates, £188 million over the lifetime of the Freeport, 3,800 on- and off-site operational jobs, and £91 million per annum in GVA;

(b) addressing the critical shortage of industrial units in a high-growth region;

(c) construction and operational job creation (up to 365 construction jobs and at least 3,160 operational jobs); and

(d) attracting forward-thinking industries and supporting regional economic growth through the East Midlands Freeport designation.

4.10 As to each of these points, Prologis makes the following observations.

(a) First, as Prologis submitted at paragraphs 5.24 to 5.30 of the WR and at paragraphs 5.4 to 5.6 of the Deadline 2 Submission, the absolute floorspace, business rates, jobs and GVA figures relied upon by the Applicant are misleading because they assume a binary counterfactual in which, if the DCO is not granted, no development at all comes forward. That is not a realistic counterfactual. In a no-DCO world, the most likely (and at least a likely) scenario is that the Joint Application is delivered on the Prologis/MAG Land and a Town and Country Planning Act 1990 application is brought forward in respect of the Southern Land.

The true comparator is therefore not the DCO Scheme versus an absence of beneficial economic development, but the DCO Scheme versus the realistic two-developer, two-consent alternative scenario. On that comparison, the incremental difference in floorspace, jobs, business rates and GVA is materially less than the figures relied upon by the Applicant.

(b) Second, as the Spawforths note explains at Annex B, even within the Applicant's own framing of the comparison, the Annex 5 Comparison fails to provide the underlying methodology or assumptions necessary to enable independent verification of the economic benefit claims. In particular, further information is required from the Applicant in respect of:

(i) the detailed assumptions and justification underpinning the additionality assessment, including the rationale for the approach taken to leakage, multiplier effects and displacement;

(ii) the source and baseline year for the statement that 82,000 residents of the Study Area are employed in the construction sector, including confirmation of the dataset used;

(iii) the supporting calculations for Table 5.21 (Additionality of Construction Employment), ideally as a detailed spreadsheet showing inputs, assumptions and step-by-step workings;

(iv) the rationale and evidence base for the projected increase in construction jobs referenced at paragraph 5.5.83 of the Planning Statement, including any trend data or comparators used;

(v) the methodology for on-site operational employment (Table 5.22 of the Planning Statement), specifically: (i) why off-site multiplier effects have not been applied or considered; and (ii) the rationale for each on-site operational employment scenario and the assumptions informing them;

(vi) clarification on leakage assumptions, particularly why leakage has been treated as zero despite being described as 'low' due to the size of the Study Area; and

(vii) the phasing and delivery timeline for the stated provision of approximately 3,700 on-site operational jobs at PC, including when these jobs are expected to materialise.

Without that information, the economic benefit case advanced in the Annex 5 Comparison cannot properly be scrutinised or tested by Prologis or by the ExP. As Prologis submitted at paragraph 5.25(a) of the WR, in the absence of transparency as to the inputs, multipliers and assumptions used, and in the absence of any independent verification, the ExP is invited to treat the Applicant's economic benefit figures with considerable caution.

(c) Third – and most significantly – the economic benefit case fails to engage with the additive/attributable distinction. Even on the figures relied upon by the Applicant, the additional floorspace, jobs and GVA that the DCO Scheme would deliver over and above the Joint Application are properly characterised as additive, not attributable. They flow simply from the additional land being developed, not from the use of compulsory acquisition powers; that additional land could equally be brought forward through a Town and Country Planning Act 1990 application by the Applicant in respect of the Southern Land, with appropriate access and infrastructure co-ordination secured through standard planning mechanisms.

(d) Fourth, the £188 million figure for retained business rates over the lifetime of the Freeport deserves particular scrutiny, for the reasons given at paragraph 5.25(d) of

the WR. That figure assumes (a) that the entirety of the development proposed under the DCO would be delivered, and (b) that absent the DCO no development would subsequently come forward on the Southern Land despite the existence of need and demand for such development and the allowance made for access to the Southern Land in the Joint Application. Neither assumption is sound. In a realistic no-DCO scenario, the Prologis/MAG Land would be developed under the Joint Application, not left undeveloped, and it is highly likely given the significant commercial incentives and benign planning context that the Southern Land would be brought forward through a Town and Country Planning Act 1990 application. The substantive Freeport benefits would in large measure be delivered, but through different legal instruments.

Social benefits

4.11 The Annex 5 Comparison advances three points under the heading of social benefits, addressed in detail at the Spawforths note appended at Annex B.

4.12 As to the proposed Skills, Employment and Supply Chain Task Force, the DCO Scheme and the Joint Application would each deliver social benefits in this regard. However, as Spawforths explain in detail at Annex B, the Prologis Training Hub offers a more direct, tangible and deliverable benefit than the Task Force approach advanced through the DCO Scheme. Rather than relying on a strategic, multi-party governance structure to design and coordinate skills initiatives over time, the Training Hub provides a dedicated, on-site, multi-functional facility delivering fully funded training opportunities for school leavers, unemployed individuals (including care leavers, ex-military and ex-offenders), alongside partnerships with schools (including SEND) and direct links to employers and job opportunities. Importantly, its multi-functional nature means it is not solely a training space, but a wider community asset supporting engagement, outreach and partnership working. Prologis has successfully delivered, and continues to evolve, its training hub model at DIRFT, which has proven highly effective in responding to occupier needs and supporting local employment outcomes. In any event, the Prologis Training Hub will itself be secured through the Joint Application and does not require compulsory acquisition for its delivery – anything provided by SEGRO would be an additive, not an attributable, benefit of the DCO Scheme.

4.13 As to cycle and pedestrian connectivity, the Spawforths note at Annex B sets out in detail why the DCO Scheme's claimed advantages on active travel are overstated. Hyam's Lane sits on the periphery of the Joint Application and one of the design principles has been to maintain Hyam's Lane in its current form, in response to representations from local residents, the Parish Council and Officers at NWLDC during consultation meetings, who stressed the importance of maintaining this as a rural route. Ecology and lighting concerns were also raised. The site boundary with Hyam's Lane will have a minimum 15m width landscape buffer with a focus on reinforcement of the existing boundary hedge; Hyam's Lane will retain its status as an adopted highway and will therefore permit cycle use. In addition, the Joint Application will provide enhanced access from the A453 for those walking, cycling and wheeling via Grimes Gate from the south, and includes an additional crossing of the A453 (which is not included in the DCO Application) to tie in with facilities at East Midlands Airport including key public transport infrastructure and the Airport Circular trail.

4.14 As to the Community Park, the Spawforths note demonstrates that the Joint Application Community Park (of 9.76 ha gross, compared with the 14.3 ha proposed under the DCO Scheme) is fit for purpose and that, through the PARKlife initiative, it can create appropriate public access alongside its buffer and landscaping role. Prologis' Deadline 2 Submission (in particular at Annex A and Annex B) explained why the DCO Community Park does not provide a suitable or reliable mechanism for mitigating the loss of skylark breeding habitat, given the anticipated multifunctional nature of the Country Park, including public access, landscape planting and attenuation features. Crucially, in circumstances such as these, where an acceptable level of landscaping to mitigate the effects of development and ensure a successful relationship with surrounding land uses can be achieved on a smaller area of land, paragraph 11 of the CA Guidance makes clear that there can be no compelling case to acquire a greater area for that purpose. That submission is an important one for the section 122(3) PA 2008 test. The DCO Scheme cannot justify the compulsory acquisition of additional

land for the Community Park if the relevant landscape and amenity functions can be performed satisfactorily on a smaller footprint. Prologis notes that, further to the submission made in its response to SEGRO's response to ExQ1.4.3[11], an updated Community Park plan has been provided by the Applicant at Deadline 2. Prologis wishes to reserve its right to supplement the arguments made in this paragraph at Deadline 4 after it has had the proper chance to review the updated material.

Environmental benefits

4.15 The Annex 5 Comparison advances three points under the heading of environmental benefits, addressed in detail at the Spawforths note appended at Annex B.

4.16 As to net zero carbon[12], EPC ratings and renewable energy integration, there is no material distinction between the general sustainability approaches of Prologis and the Applicant. Both parties are targeting net zero carbon outcomes, high EPC ratings, and the integration of on-site renewable energy to support occupiers in reducing operational emissions. The suggestion of any substantive difference in approach is misplaced and cannot be substantiated on the evidence.

4.17 As to BREEAM Outstanding for building design, both parties are targeting BREEAM Outstanding. There is no difference in approach.

4.18 As to the Public Transport Hub, the Spawforths note explains in detail that the public transport strategy for the Joint Application has been developed based on regular engagement with Trent Barton, a major bus operator who provide both local and regional bus services across Nottinghamshire, Derbyshire, and Leicestershire and who have operated since 1913. Substantial weight should be attached to their views. Throughout discussions, Trent Barton have stressed their preference for key Skylink services not to divert away from the A453, thereby compromising journey times on their Express routes to the Airport. As a result, Prologis' public transport strategy provides connectivity with the existing stops on Beverley Road, as well as providing a new Public Transport Interchange within the site to accommodate other diverted services and lay-over facilities. Discussions with National Highways and key stakeholders about the existing routing and timing of the shuttle bus are ongoing.

"**Prologis (Para 8.4 RR-24D)"**

4.19 For completeness, the Annex 5 Comparison also contains a section addressing points raised by SEGRO in relation to paragraph 8.4 of the PRR. Items (a) to (d) of paragraph 8.4 (the Joint Application's Transport Hub, Community Park/PARKlife initiative, Training Hub and sustainability commitments) are addressed in the economic, social and environmental sections above and are not rehearsed here. As to point (e), the Applicant's assertion that the greater floorspace proposed under the Joint Application is to the detriment of an acceptable buffer with Diseworth is unevidenced: the masterplan was specifically amended, following engagement with Diseworth representatives, the Parish Council and NWLDC, to pull built floorspace back from the land closest to the village, and the boundary treatment provides an appropriate buffer. There is accordingly no proper basis upon which the Applicant can rely on the asserted inadequacy of the Joint Application's Diseworth buffer to support the case for compulsory acquisition.

"Additional Benefits"

4.20 The "Additional Benefits" section of the Annex 5 Comparison advances four further points: highway mitigation at Junction 24; HGV parking; drainage; and integrated power provision across EMG1 and EMG2, together with claimed synergies in respect of sustainable transport

[11] As per Annex B of Prologis' Deadline 2 Submission

[12] Without prejudice to the separate submissions made in Section 2 of Prologis' Deadline 2 Submissions regarding the Section 35 Direction requirement for a carbon neutral campus/headquarters

and skills, and training. The Spawforths note addresses each of these in detail at Annex B and the principal points are summarised here.

4.21 As to highway mitigation at Junction 24, the Joint Application Transport Assessment is itself evaluating the traffic impact of the Joint Application proposals and has proposed a package of highways works including improvements to the Finger Farm Roundabout to mitigate the traffic generated by the Joint Application development. That approach of mitigating traffic impact such that it does not result in an unacceptable impact on highway safety, and that the residual cumulative impacts on the road network following mitigation would not be severe (in terms of paragraph 116 of the National Planning Policy Framework), is appropriate and enables the Joint Application to comply with relevant development plan and NPPF policies and thereby secure planning permission. Off-site highway improvements will be delivered through the Joint Application and as part of the East Midlands Freeport Strategic Infrastructure and Contributions Supplementary Planning Document (currently a draft) which is being brought forward by the Council and which sets out a framework for contributions towards off-site highways improvements and site-specific infrastructure delivery.

4.22 As to HGV parking, the Joint Application HGV parking strategy utilises on-plot HGV parking which will include early arrival waiting areas and welfare facilities; the precise details of the HGV parking strategy will be determined at the reserved matters stage. The provision of HGV parking is not, in any event, a benefit unique to and is not solely capable of being provided by the DCO Scheme.

4.23 As to drainage, the DCO Scheme and the Joint Application are using the same drainage design and mitigation criteria as required by LCC as Lead Local Flood Authority – namely Qbar (Green field run off). As such, both schemes will be limited to a surface water discharge rate that is equal to or less than the green field run off rate of their respective developments (as if no site development existed). In the context of the Joint Application and the northern part of the DCO Application, the allowable run off will be proportionally the same. There is no evidenced basis for treating the DCO Scheme's drainage approach as a benefit attributable to compulsory acquisition.

4.24 As to integrated power provision and synergies with EMG1, further information is required from the Applicant in order properly to understand, assess and test the assertion that the benefits described in relation to power, sustainable transport, and skills and training can only be achieved through the exercise of compulsory acquisition powers. On the material so far submitted to the examination, the basis for these assertions is not clear. Without further explanation and elaboration of the basis for these claims, it is simply not possible properly to scrutinise and test the case being put forward by the Applicants. Furthermore, these are in any event at best fairly characterised as minor and/or peripheral benefits, and do not approach the level of significance that would properly lead to them being given significant weight as factors justifying compulsory acquisition.

4.25 As Spawforths note at Annex B, the "net zero carbon" or "carbon neutral" campus and headquarters relied upon by the Applicant is not a general feature of its development model, but a scheme-specific concept that it has linked to a potential Maersk headquarters. As set out in the Section 35 Direction, this campus forms part of the description of the project that was advanced to justify national significance. The DCO Application itself does not make any specific provision for such a development, it does not attempt to define what is meant by "carbon neutral", "campus" or "headquarters" in this context, nor how such a development would be secured or delivered through the DCO. The carbon benefits associated with the inland port and existing rail infrastructure already exist and are not contingent on the delivery of this DCO Scheme; the potential co-location of a Maersk headquarters, or the use of electric HGVs, does not materially alter that position and could equally occur elsewhere. Critically, there is no mechanism within the DCO to secure the delivery of this campus, nor any binding commitment from Maersk. This matter is addressed in full at paragraphs 2.9 to 2.38 of the Deadline 2 Submission.

The public interest harm of frustrating the Joint Application: socio-economic dimensions

4.26 As Prologis submitted at paragraphs 5.6 and 5.7 of the Deadline 2 Submission, it is not only private loss that must be weighed on the negative side of the balance under section 122(3) PA 2008. The grant of compulsory acquisition powers would cause public interest harm: the loss of the opportunity to deliver the public interest benefits of the Joint Application. Those benefits – addressed in section 8 of the PRR – would be lost to the public irrespective of whether the DCO Scheme is ultimately delivered if compulsory acquisition powers are granted.

4.27 As Prologis has consistently submitted, the Environmental Statement submitted with the DCO Application does not contain the necessary assessment to enable that public interest harm properly to be examined and factored in to the Secretary of State's decision-making. The Applicant's analysis proceeds as if the only consequence of granting compulsory acquisition powers is private loss to Prologis and MAG. That is a fundamental deficiency in the evidence before the ExP which the Applicant's Deadline 1 evidence has not seen fit to rectify.

4.28 The new socio-economic evidence at Deadline 1, properly understood, reinforces this point. The Applicant's case is structured as a comparison of the asserted benefits of the DCO Scheme against a baseline of nothing being delivered at all. The realistic counterfactual – under which the Joint Application is delivered on the Prologis/MAG Land and a Town and Country Planning Act 1990 application is brought forward in respect of the Southern Land – has not been assessed, and accordingly the public interest harm of frustrating the Joint Application has not been quantified at all in the new socio-economic evidence advanced by the Applicant.

Conclusion on socio-economic issues

4.29 For the reasons set out above and developed in detail at the Spawforths note at Annex B, the new socio-economic evidence submitted by the Applicant at Deadline 1 fails to discharge the evidential burden on the Applicant in respect of the section 122(3) PA 2008 case. The Annex 5 Comparison proceeds on the wrong premise (that simply showing greater scale of benefit is sufficient); does not engage with the additive/attributable distinction that lies at the heart of the section 122(3) PA 2008 test; and does not address the public interest harm associated with the frustration of the Joint Application. The new socio-economic evidence accordingly does not, and cannot, justify the draconian interference with Prologis' constitutional property rights that the DCO Application seeks.

DLA Piper UK LLP

28 April 2026

ANNEX A – DWD Expert Financial Viability Assessment of Mr Peter Roberts FRICS CEnv

DWD

EAST MIDLANDS GATEWAY PHASE 2

EXAMINATION DEADLINE 3

ON BEHALF OF

PROLOGIS UK LIMITED

AND

PROLOGIS UK 121 LIMITED

EXPERT FINANCIAL VIABILITY ASSESSMENT

EVIDENCE OF

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CONTENTS

APPENDICES

GLOSSARY

Aldridge Land:	Plots 1/1 and 1/2 as detailed on the DCO Land Plan Sheet 1 of 4 Document ref: 2.2A.
Aldridge Option Agreement:	Promotion and Option Agreement dated 31 March 2020 between SEGRO and Mr Aldridge
Applicant:	SEGRO Properties Limited
Compensation Code:	The body of statute and case law and the established practices for the assessment, payment and determination of compensation for compulsory acquisition of land and rights, including the Land Compensation Acts of 1961 and 1973, the Compulsory Purchase Act 1965, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, the Planning Act 2008, the Housing and Planning Act 2016 and the Neighbourhood Planning Act 2017, in each case as amended from time to time.
dDCO:	The draft East Midlands Gateway Phase 2
MAG:	Manchester Airports Group
Market Value:	*… the estimated amount for which an asset and/or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's-length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion."*
Prologis:	Prologis UK Limited and Prologis 121 UK Limited
Prologis (Joint) Application:	Planning Application ref: 24/00727/OUTM
Prologis/MAG Land:	Plots 1/3, 1/4, 1/5 and 1/7 as detailed on the DCO Land Plan Sheet 1 of 4 Document ref: 2.2A.
Prologis/MAG Option Agreement:	Promotion, Planning and Option Agreement between Prologis and MAG
SEGRO:	SEGRO Properties Limited (the Applicant)
SEGRO Option:	Promotion and Option Agreement dated 31 March 2020 with Mr Aldridge in respect of Plots 1/1 and 1/2
Viability:	A viability appraisal deducts all the costs of delivering the development from the value that would be released on completion thereof and assesses whether there is a sufficient residual amount left to provide the developer with sufficient profit to incentivise them to accept the risk of incurring those costs and the landowner with a price for their land that

provides sufficient incentive for them to transfer their ownership to the developer having regard to the potential for competing offers in the market.

1.0 QUALIFICATIONS AND EXPERIENCE

1.1 My name is Peter Roberts.

I hold the following relevant professional designations:

- Fellow of the Royal Institution of Chartered Surveyors
- RICS and Society of the Environment Chartered Environmentalist
- RICS Registered Valuer
- RICS Registered Expert Witness

1.2 I joined the Valuation Office of the Inland Revenue in 1989 and qualified as a Chartered Surveyor in 1995 before joining Rapleys LLP in 2000 where I was appointed a partner in 2010. I joined Dalton Warner Davis LLP as a partner in January 2018 and am now a director following their acquisition by RSK Group. I have in excess of 35 years' experience dealing with contentious and complex property matters.

1.3 I am also a fee paid Valuer Chairman of the First -tier Tribunal (Property Chamber).

1.4 My current responsibilities at DWD include:

- Strategy and valuation advice in respect of compulsory purchase compensation, rights of light profit assessments, viability matters, covenant restrictions, section 18 (1) diminution, wayleaves, easements, overage and option agreements.
- Provision of Expert evidence in respect of diminution, negligence and valuation dispute issues, compulsory purchase proceedings and viability matters to the High Court, County Courts, Parliamentary Select Committee, Planning and CPO Public Inquiries, DCO examinations, adjudications, arbitrations and the Upper Tribunal (Lands Chamber). I have also provided Expert Valuation Evidence to the Supreme Court of Gibraltar and the Supreme Court of the Turks and Caicos Islands.
- Formal “Red Book” commercial, residential and development valuation advice.
- Project management and agency advice in respect of land development opportunities.

1.5 I advise a wide range of clients including Sahaviriya Steel Industries PLC, Chichester District Council, Countryside Properties/Vistry, Taylor Wimpey, McCarthy & Stone Retirement Lifestyles Ltd, the Cooperative Group, SSE plc/Keadby Generation Limited, Big Yellow Self Storage Company, Phillips 66, North Hertfordshire District Council, Huntingdonshire District Council, Fenland District Council,

Blackpool District Council, IJM Land Berhad, Network Rail, Wm Morrison Supermarkets plc, Welcome Break, Rontec Limited, Redcar Bulk Terminal Limited, Matalan Ltd, Accor Hotels, CEMEX, Cambridge University Press and Assessment, Hallmark BY Development Limited and Frontier Estates.

1.6 I also provide advice to private individuals and accept instructions from solicitors to act as an expert witness, joint expert witness or independent expert.

1.7 I am appointed by the RICS Dispute Resolution Service to the Independent Expert valuer panel in respect of “non rent” development and valuation disputes. These typically comprise development disputes between developers and/or landowners concerning matters such as overage or option agreements.

1.8 I have previously provided confidential Expert evidence on behalf of the Royal Institution of Chartered Surveyors in respect of matters before the RICS Disciplinary and Regulatory Panel.

2.0 INSTRUCTIONS

2.1 I was instructed by Prologis UK Limited and Prologis UK 121 Limited ("Prologis") 22 January 2025 to assist the Examination by reviewing the Viability Appraisal Report of Mr Cottage dated 2 April 2026 as relied upon by the Applicant and setting out my position in respect of the following matters:

- The viability of the scheme as proposed by the Applicant pursuant to the draft DCO;
- The viability of independent development of the land located south of Hyams Lane know as Plot 1/1 and 1/2[1] as currently owned by Richard Charles Aldridge (the "**Aldridge Land**") which is subject to a Promotion and Option Agreement dated 31 March 2020 in favour of SEGRO Properties Limited; and
- The viability of independent development of the land located north of Hyams Lane know as Plots 1/3, 1/4, 1/5 and 1/7 (the "**Prologis/MAG Land**") as controlled by Prologis and MAG collectively.

2.2 Mr Cottage concludes that:

- The Applicant's scheme is viable on the assumption that the Prologis/MAG Land could be acquired for a price of £225,000 per acre[2] or less.
- Development of the Aldridge Land in isolation is unviable.
- Development of the Prologis/MAG Land in isolation is unviable.

2.3 However, having had regard to the expectations of the market rather than the desires of SEGRO it is apparent that:

- The Applicant's scheme is not viable, on the basis of the evidence provided by Mr Cottage, and there is limited prospect of it becoming viable having regard to the need to pay Market Value to Prologis/MAG, and the apparent concerns of Gardiner & Theobald in respect of costs.
- SEGRO cannot implement viable independent development of the Aldridge Land. However, a developer other than SEGRO (e.g. Prologis or any other) can deliver viable development as, unlike SEGRO, they would not be bound by the terms of the Aldridge Option Agreement.

[1] As detailed on Land Plan Sheet 1 of 4 document DCO 2.2A
[2] See paragraph 28 of Mr Cottage's Viability Appraisal Document DCO 4.5

- Development of the Prologis/MAG Land is not only viable but generates a land value significantly in excess of that which SEGRO can achieve as evidenced by Mr Cottage's evidence.
- The confirmation of the dDCO would make it less rather than more likely that development of land within the Freeport for the provision of industrial units would come forward.

2.4 It is important to stress that this Report does not seek to determine the compensation entitlement that would arise if SEGRO were to be granted compulsory acquisition powers in order to implement the proposed scheme. Nor does it invite the ExP or the Secretary of State to determine that matter. Assessment of compensation for the compulsory acquisition of land is a matter to be determined by the Upper Tribunal Lands Chamber.

2.5 Land values are nevertheless a vital element when assessing viability of any scheme as development will only ever come forward if the proposed development is able to generate both a sufficient profit to incentivise the developer to implement development and the landowner to sell their land so that it is available for development. If SEGRO exercise powers of compulsory acquisition to acquire the Prologis/MAG land, the price that they will pay for that land will reflect the application of the Compensation Code. Any realistic viability appraisal must therefore use a land value input for land which is consistent with the application of that Code.

2.6 If the developer is unable to generate a residual land value from their scheme that at the very least matches bids in the market made by other prospective purchasers, they will not be able to purchase the land necessary to deliver that development and any prospect of implementation thereof will be lost. It is therefore irrelevant what the developer considers the land value should be if that assessment does not meet the aspirations of the landowner who, in turn will decide whether or not to accept the developer's bid by reference to other offers in the market.

2.7 In this regard, the compensation to a landowner:

*"…must be determined, therefore, by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser… ….**in the case of land, its value in general can also be measured by a consideration of the prices that have been obtained in the past for land of similar***

quality and in similar positions, and this is what must be meant in general by the "market value"…"[3]

2.8 In addition:

"*the theme which runs through the authorities is that one assumes that the hypothetical vendor and purchaser did whatever reasonable people buying and selling such property would be likely to have done in real life. The hypothetical vendor is an anonymous but reasonable vendor, who goes about the sale as a prudent man of business, negotiating seriously without giving the impression of being either over-anxious or unduly reluctant. The hypothetical buyer is slightly less anonymous. He too is assumed to have behaved reasonably, making proper inquiries about the property and not appearing too eager to buy. But he also reflects reality in that he embodies whatever was actually the demand for that property at the relevant time.* ***It cannot be too strongly emphasised that although the sale is hypothetical, there is nothing hypothetical about the open market in which it is supposed to have taken place****. The concept of the open market involves assuming that the whole world was free to bid and then forming a view about what in those circumstances would in real life have been the best price reasonably obtainable. The practical nature of this exercise will usually mean that although in principle no one is excluded from consideration, most of the world will usually play no part in the calculation. The inquiry will often focus upon what a relatively small number of people would be likely to have paid. It may have to arrive at a figure within a range of prices which the evidence shows that various people would have been likely to pay, reflecting, for example, the fact that one person had a particular reason for paying a higher price than others, but taking into account, if appropriate, the possibility that through accident or whim he might not actually have bought. The valuation is thus a retrospective exercise in probabilities, wholly derived from the real world but rarely committed to the proposition that a sale to a particular purchaser would definitely have happened*."[4]

2.9 There is therefore no ability for the Upper Tribunal Lands Chamber to determine compensation on anything other than a market value basis and there is no compulsion on anyone to accept an offer that does not maximise Market Value. That Market Value, irrespective of the profitability of SEGRO's scheme or the financial commitments they have entered into with other parties, will be more than £225,000 per acre.

[3] Vyricherla Narayana Gajapatiraju v Revenue Divisional Officer Vizagapatam [1939] AC 302 at 311
[4] Hoffman LJ in Inland Revenue Commissioners v Gray [1994] STC 360

2.10 The assumption by Mr Cottage of £225,000 per acre in respect of the Prologis/MAG Land is so far removed from the reality of the market place that, on the basis that he has demonstrated that SEGRO cannot afford to increase their offer and therefore cannot compete with the market, their scheme is self-evidentially not commercially viable on that basis alone even before any of his other assumptions and inputs are reviewed.

2.11 The Compensation Code, which SEGRO themselves reference at paragraph 4.6 of the Funding Statement (Document DCO 4.2) means that SEGRO will, at some point, have to face up to their responsibilities under the code if they secure a confirmed DCO. At present, it is clear that they will be unable to do so.

2.12 My analysis could conclude at this point but, as Mr Cottage also erroneously states that independent development of the Aldridge Land is not viable and implies that development of the Prologis/MAG land is also not viable, it is necessary for me to continue to address these issues.

2.13 I have, in drafting this Report had regard to the following documents:

- Paragraph 59 of the National Planning Policy Framework
- Planning Policy Guidance "Standardised inputs to Viability Assessment"
- RICS Professional Standard-Valuation of Development Property 1st Edition (October 2019)
- RICS Valuation -Global Standards[5]
- RICS Professional Standard "Financial viability in planning: conduct and reporting"
- RICS Professional Standard "Assessing viability in planning under the National Planning Policy Framework
- Northwest Leicestershire District Council Planning Portal
- Mr Cottage's Viability Appraisal (Document DCO 4.5)
- Draft Development Consent Order (Document DCO 3.1)
- Funding Statement (Document DCO 4.2)
- Book of Reference (Document DCO 4.3)

[5] See paragraph 17 of Mr Cottage's Viability Appraisal Document DCO 4.5

- Land Plan Sheet 1 of 4 (Document 2.2A)
- Land Registry Website

2.14 I am aware that further information may come to light during the course of this Examination, including the provision of Mr Cottage's cashflows and electronic files that may have a material impact on my conclusions. I will, in accordance with my duty to assist the Examining Authority, update my advice in light of such information.

3.0 INTRODUCTION

3.1 Mr Cottage, on behalf of SEGRO (the "Applicant") asserts that:

"*Only a comprehensive, single developer approach produces a viable and deliverable scheme. Any alternative scenario relying on fragmented delivery, separate phases, or third-party land control carries a substantial risk that the development and associated infrastructure will not be brought forward at all within any reasonably foreseeable timescale*.[6]"

3.2 Having reviewed the evidence upon which Mr Cottage relies, as supplemented by real-world market evidence, I am of the opinion that these assertions are not supported by that evidence and are not credible. In reality, as I set out below, the most probable outcome, if SEGRO are granted a confirmed DCO, would be that no development would come forward. However, if the dDCO was refused and the market was free of the threat of any compulsory acquisition powers being exercised, development would come forward on a viable basis.

3.3 When Mr Cottage's evidence is properly understood in that context, it is apparent that the SEGRO scheme is unlikely to be able to provide a developer's profit of "circa 15%" which Mr Cottage considers is the minimum requirement and therefore, by Mr Cottage's own metrics, is not viable. It therefore follows that if the dDCO was to be confirmed, implementation thereof would be unlikely to come forward.

3.4 Conversely, I am also of the opinion that, once real-world evidence is taken into account, as required by both national and RICS standards, the ExP may be confident that development of both the Prologis/MAG Land and the Aldridge Land will come forward if the dDCO is refused and the threat of compulsory acquisition removed.

3.5 This Report sets out the basis for these conclusions to assist the ExP in examining and testing the proposition being put forward by SEGRO that only they can deliver development, and the lack of credible supporting evidence in the face of market reality.

The Role of Viability

3.6 I agree with Mr Cottage that viability is particularly important in this matter and wholeheartedly endorse his comment that:

[6] Paragraph 69 of Mr Cottage's Viability Appraisal Document DCO 4.5

"While the nature of many Nationally Significant Infrastructure Projects ("NSIPs") means that financial viability (as opposed to the availability of funding) is not often a central focus in the consenting process, ***it is an extremely important issue for that part of the East Midland Gateway 2 development being promoted through a Development Consent Order*** *("The EMG2 DCO Scheme"). This is because to justify undertaking the development the promotor, whether SEGRO or any other commercial developer, will need to ensure it achieves a target rate of return (a "hurdle rate") consistent with that it would expect from any other, similar, project into which it could invest its time and capital.[7]"*

3.7 However, Mr Cottage concludes that:

"My ultimate conclusion is that, in order to ensure that development takes place within the EMG2 DCO Scheme application area, and to provide certainty that the Highway Works are delivered, development consent should be granted for the EMG2 DCO Scheme in its entirety, including compulsory acquisition powers over all of the land required for its delivery.

Only a comprehensive, single developer approach produces a viable and deliverable scheme. Any alternative scenario relying on fragmented delivery, separate phases, or third-party land control carries a substantial risk that the development and associated infrastructure will not be brought forward at all within any reasonably foreseeable timescale."[8]

3.8 I disagree with this conclusion which is predicated off an incorrect understanding of viability matters and a disregard of market value which is a vital component of any viability appraisal. In reality, the SEGRO scheme will stymie development which is more than capable of coming forward in the non dDCO world. As such, the confirmation of the dDCO would have the opposite effect to that intended by planning policy.

Mr Cottage's Conclusions in Summary

3.9 Mr Cottage's Report can be summarised as follows:

3.10 **Reliance on a land value of £225,000 per acre**: Mr Cottage concludes that, **if**[9] the Prologis/MAG Land **was** secured for a price of £225,000 per acre, the SEGRO scheme would be viable. He does not consider the alternative scenario if a) the Prologis/MAG Land could not be secured for £225,000

[7] Paragraph 9 of Mr Cottage's Viability Appraisal Document DCO 4.5
[8] Paragraphs 68 and 69 of Mr Cottage's Viability Appraisal Document DCO 4.5
[9] I say this as his appraisals are all predicted off the assumption that the Prologis/MAG Land is only worth £225,000 per acre

per acre and/or b) his cost and/or value assumptions were incorrect taking into account the red "RAG" rating provided by Gardiner & Theobold in respect of £18,000,000 of cost[10]. In my opinion the true Market Value of the Prologis/Mag Land is significantly in excess of £225,000 per acre such that there will be insufficient value left over to enable SEGRO to meet the 15% threshold referred to by Mr Cottage.

1) **Assumption that Development of Aldridge Land is not viable:** He also concludes that independent development of the Aldridge Land is not viable but fails to acknowledge or address the fact that the reason his assessment reaches this conclusion is, in large part, because of the terms that SEGRO have agreed with Mr Aldridge. That agreement obliges them to pay £225,000 per acre for the Aldridge Land, and, I understand, was entered into on the assumption that there would be a DCO with compulsory acquisition powers.

   Whilst Mr Cottage references that agreement he fails to grapple with the point that the confirmed DCO would oblige SEGRO to pay compensation in respect of the Prologis/MAG Land on a Market Value basis irrespective of what SEGRO can afford to pay having discharged their financial obligations to Mr Aldridge. It is clear that in circumstances where DCO powers are not available (which must be the appropriate counter-factual scenario for these purposes) the market would not pay £225,000 per acre for the Aldridge Land as it is landlocked and undevelopable without the provision of access through the Prologis/MAG Land. Once Market Value is applied to that land which accounts for the lack of existing access rights, independent development of that land is viable.

   The fact that SEGRO have voluntarily entered into terms that means that they cannot deliver viable independent development of the Aldridge Land is irrelevant as to whether the market, free of such an agreement, could deliver such development.

2) **Viability of the Prologis Development**: Mr Cottage has asserted that he is unable to assess the viability of the development of the Prologis/MAG Land in isolation but, despite this, then suggests that development is not viable. It is not credible for him to assert that he cannot assess viability bearing in mind the information contained within the appendices to his Report and I fail to understand how it is possible for him to opine on the viability of the Prologis scheme

[10] See page 6 of Appendix E and page 6 of Appendix G as attached to Mr Cottage's Report Document DCO 4.5

having not done so. In reality, the Prologis development is not only viable but significantly more so than the SEGRO scheme.

In this context, I have carried out my own appraisal adopting the same values and costs as assumed by Mr Cottage to assess what Mr Cottage would have provided by way of an appraisal had he been willing to do so and have calculated a theoretical residual value of £31,25,000 which compares to the figure of £22,902,329 which Mr Cottage assumes Prologis/MAG would accept. This is a difference of £8,347671 additional to that accounted for in Mr Cottage's appraisal of the SEGRO scheme which would further undermine the viability of the SEGRO scheme even before the true Market Value of that land is taken into account. For clarity, this is not my assessment of Market Value, and I have relied upon Mr Cottage's figures.

Again, the price that SEGRO considers that it should pay is irrelevant in assessing viability which rests on a realistic real-world assessment of what the landowners would agree in the market free of any compulsion which is also the basis adopted by the Compensation Code[11].

The Role of Land Value in Viability

3.11 Having reviewed Mr Cottage's Report it is clear that it rests on the key foundational assumption that Prologis/MAG will accept (or somehow be obliged to accept) whatever SEGRO can afford to offer them having regard to the commercial constraints SEGRO has accepted by entering into the Aldridge Option Agreement, which I understand prevents SEGRO from being able to exercise compulsory acquisition powers over the Aldridge Land and thereby pay Mr Aldridge compensation in accordance with the Compensation Code. It therefore relies on the landowners being compelled to accept SEGRO's offer. As I have set out throughout this Report, that foundational assumption is incorrect and contrary to all guidance and principles, such that, although I have further concerns with his assumed inputs and lack of market consideration, this on its own fatally undermines his entire Report.

3.12 Whilst I appreciate that compensation would be assessed pursuant to the Compensation Code, the principles, with the exception of "special value"[12] follow those set out in the International Valuation Standards which are far more succinct. In this regard, paragraph A10.01 of section IVS 102 states:

[11] As defined in the Glossary

[12] Special Value comprises the premium that would be paid by a particular identifiable purchaser because they can derive benefits or value personal to them from acquiring the land or interest that no one else would receive. The IVA Standards prohibit regard being had to such value when providing valuation advice for the purposes of, inter

"Market value is the estimated amount for which an asset and/or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's-length transaction, after proper marketing and where ***the parties had each acted knowledgeably, prudently and without compulsion.***"

3.13 There is therefore no compulsion on Prologis/MAG to accept £225,000 per acre.

3.14 Paragraph A10.02 of Section IVS 102[13] expands on the meaning of "willing seller" and states:

"The definition of market value must be applied in accordance with the following conceptual framework:

…. (e) ***And a willing seller****" is neither an over-eager nor a forced seller prepared to sell at any price, nor one prepared to hold out for a price not considered reasonable in the current market. The willing seller* ***is motivated to sell the asset at market terms for the best price attainable in the open market after proper marketing, whatever that price may be. The factual circumstances of the actual owner are not part of this consideration because the willing seller is a hypothetical owner."***

3.15 There is no room for a valuer to impute an assumption that the landowner is restricted to accepting a particular price and, where an assumption is to be made as to the price that a landowner might accept, regard should be had to the realities of the marketplace including reference to transactions.

3.16 By relying on an assumed price of £225,000 per acre without carrying out any market testing whatsoever, Mr Cottage has disregarded a key requirement of the viability exercise in failing to ground it in the reality of the market. His appraisals are therefore entirely artificial as they rely on assumptions in respect of the expectations of the landowners that have no basis in reality.

3.17 Furthermore, it is a requirement of such appraisals that the valuer "stands back" and considers whether the calculated outputs (i.e. profit and/or residual land value) are reasonable having regard to the market. Bearing in mind that there are no known adverse costs impacting the Prologis/MAG Land relative to other similar developments, Mr Cottage has not stood back and asked himself what factors exist that he considers would render development of the Prologis/MAG Land unviable in

alia, accounting and lending. However, such value is permitted by the Compensation Code and other statutory valuations such as Inheritance and Capital Gains Tax valuations because it exists in the real world.

[13] Page 202 of https://www.rics.org/content/dam/ricsglobal/documents/standards/Red-Book-Global-Standards-incorporating-IVS.pdf

comparison to other schemes which, as I set out below, have consistently generated land values significantly in excess of £225,000 per acre.

3.18 At the very least, Mr Cottage should have compared his assumptions on viability and land value in respect of the Prologis/MAG Land with developer activity and land transaction evidence in the market. His implied suggestion that development of the Prologis/MAG Land is not viable requires a comparison against other schemes in the market to explain what it is about this scheme that he considers differentiates it from those other schemes such that they can come forward but this scheme cannot. Similarly, he should have considered why it might be the case that, as I set out later in this Report, the market has consistently paid significantly more than £225,000 per acre in respect of other land.

3.19 I have carried out this exercise and can see no credible reason to conclude that there is anything unique to the Prologis scheme that would give reasonable cause for concern as to its viability. Similarly, I have every confidence that the market would pay significantly more than £225,000 per acre for the Prologis/MAG Land in light of actual transaction evidence.

3.20 It is therefore the case that I have "stood back" and had regard to the feedback of the market in considering both viability and land values whereas Mr Cottage has not. As such, I have followed the market whereas Mr Cottage has sought to mould the market to the specific circumstances of his client. These approaches are not compatible.

3.21 Once regard is had to the correct approach to assessing land value on the assumption of willing parties prepared to accept the best price in the market, it is clear that the SEGRO scheme is not viable and if the dDCO was to be confirmed, SEGRO would not, therefore implement their scheme. This would have the added consequence that the market would not implement development either due to SEGRO retaining powers of compulsory acquisition in accordance with Part 5 of the dDCO.

Viability and the Funding Statement (Document DCO 4.2)

3.22 It is important to stress that these issues do not just impact upon the viability of the SEGRO scheme but also have ramifications for the funding of their scheme and SEGRO's ability to pay compensation.

3.23 In this regard, paragraph 4.2 of the Funding Statement[14] states that *"The total development costs for the DCO Scheme are anticipated to be in the region of £420 million.* ***This includes… … All***

[14] Document DCO 4.2

compensation payable where the land interests are acquired pursuant to compulsory acquisition powers;"

3.24 Paragraph 4.6 of the Funding Statement then explains that:

*"The land acquisition costs have been estimated based on the experience of the DCO Applicant at EMG1 and other projects. It assumes values paid for acquisition of land / rights are similar to the values paid in respect of land / interests already secured voluntarily**. If the value were to be based on principles of compulsory acquisition compensation, then the amount payable could be substantially less.** It is the DCO Applicant's intention to proceed by agreement wherever possible. Due to the commercial sensitivity of the negotiations, it is not proposed to break the development funding figure down further."*

3.25 SEGRO are contractually committed to acquiring the Aldridge Land at a price of £225,000 per acre plus annual RPI inflation. SEGRO will, I anticipate, have undertaken not to exercise compulsory acquisition powers over the Aldridge Land as a condition of entering into that contract and will not therefore be able to avoid paying £225,000 per acre. It is therefore incorrect to conclude from the Funding Statement that a) SEGRO would be able to rely upon compulsory acquisition powers to acquire the Aldridge Land and b) they could pay "substantially less" for the land.

3.26 It is open to SEGRO to provide me with a copy of the Aldridge Agreement if I have misunderstood the position whereupon I can review the document and consider any implications it may have.

3.27 SEGRO have assigned the same value as agreed with Mr Aldridge to the Prologis/MAG Land. However, if SEGRO successfully secure a confirmed DCO, the principles of compulsory acquisition compensation, as cited by SEGRO, are such that the compensation in respect of the value of the Prologis/MAG Land would reasonably be expected to be determined by the Upper Tribunal Lands Chamber at a value substantially higher than £225,000 per acre. As such, it is, again, incorrect for SEGRO to assert that the exercise of compulsory acquisition powers would reduce their cost exposure.

3.28 In reality, the converse to paragraph 4.6 of the Funding Statement is true in that, if compulsory acquisition powers are exercised by SEGRO, the cost of land assembly will significantly increase, rather than decrease.

3.29 It is therefore the case that the overall amount payable by SEGRO pursuant to the Agreement with Mr Aldridge and, in respect of the Prologis/MAG Land in accordance with the Compensation Code will, on the balance of probabilities, be **substantially more NOT substantially less** than they have

allowed for in their estimate of £420 million as the Compensation Code would apply such that paragraph 4.6 is not correct and the ExP cannot rely upon the Funding Statement.

3.30 Overall, both the Funding Statement and the Viability Appraisal relied upon by SEGRO misstate the true position and rely upon assumptions, including that of land value, which are unreliable and contrary to the realities of the marketplace.

3.31 It is clear that development will only come forward if the dDCO is refused and the market is allowed to bring development forward in accordance with the Joint Application which will in turn facilitate development of the land to the south.

The Relationship between Appraisals and Market Land Transactions

3.32 Whilst Mr Cottage has provided two page summaries of his appraisals at Appendices F and H of his Report and brief explanations of his various inputs within the body of his Report together with limited commentary in respect of phasing[15], he omitted, and has subsequently declined requests, to provide copies of his cashflows and programme breakdown such that it is impossible to be certain as to what assumptions he has made in respect of the timings and amounts of receipts/payments made.

3.33 It is also impossible, in the absence of the provision of this information, to test the impact on his assessment of profit if his land value of £225,000 per acre was replaced with a realistic market value. However, whilst I consequentially cannot calculate the precise figure, it is not unreasonable for me to make the observation that it only requires a small increase from £225,000 per acre for the profit to fall below 15% such that, applying Mr Cottage's own measures and tests, the SEGRO scheme is unviable.

3.34 These factors are critical to the viability exercise, and changes in the cashflow assumptions will result in significant differences regarding the costs of finance that would be incurred. It is therefore not possible for me, or the ExP or Secretary of State, to properly test his appraisals. Until this information is released, Mr Cottage's appraisals are of limited assistance in enabling informed conclusions to be reached on this extremely important issue.

3.35 In these circumstances, where there is common ground that commercial viability is an extremely important consideration in determining whether, and to what extent, the powers sought by SEGRO pursuant to the dDCO should be granted, it is imperative that affected persons and the ExP are

[15] See paragraph 26 of Mr Cottage's Viability Appraisal Document DCO 4.5

presented with clear, robust and reliable evidence from SEGRO with the ability to properly scrutinise and test the models being relied on.

3.36 All of this information should have been submitted with the application so that it could have been properly scrutinised well before the examination commenced. There is no good reason for SEGRO to continue withholding this information and the lack of provision thereof further hampers Prologis's ability to understand, scrutinise and respond to the case being made for compulsory acquisition of its land.

3.37 This is important because the timing of costs and receipts can have dramatic impacts on viability due to the impact of that timing on the financing of the scheme. This is why developers will seek to negotiate the trigger dates for payments due under agreements pursuant to section 106 of the Town and Country Planning Act 1990 such that they can reduce the costs of financing outstanding debt prior to being able to discharge such debt following the receipt of revenue and thereby improve both viability and their ability to meet their planning obligations.

3.38 As had been acknowledged by the Upper Tribunal Lands Chamber, small changes in the inputs, which include the timing of payments and receipts, can have a disproportionate impact on the results generated by the appraisal model.

3.39 The Tribunal President and P R Francis FRICS (valuer member of the Tribunal) commented, in the matter of Corton Caravans and Chalets Limited and Anglian Water Services Limited [2004] ACQ/19/2001, as follows:

"*But, in seeking to reproduce the sort of calculations that a developer would carry out as an aid to his judgment as to how much he ought to be prepared to pay for the land, the valuer must proceed with caution. A relatively small alteration in one or more of the parameters can make a large difference to the end result. For this reason, it is important in our view in a case such as this to consider a range of variations in the assumptions and to make a judgment in the light of the different outcomes."*

3.40 In that case the appraisals started with an assumed developer's profit and calculated the amount that would be available to purchase the land whereas Mr Cottage has input assumed land values to calculate the level of profit generated. However, the fundamental principles are the same subject to having regard to the approach of the market rather than restricting the analysis to a single developer such as, in Mr Cottage's case, SEGRO.

3.41 An extremely helpful commentary on this point is provided in The Law of Compulsory Purchase 5th Edition as published by Bloomsbury from which the following extract is taken:

"*…Generally, evidence of open market transactions of comparable property at a comparable date, if available, is likely to be afforded the greatest weight. This is often referred to as the "comparables method" or the "comparison method" of valuation… …Where land has development potential, an alternative to the comparables method is the residual method of valuation. The Upper Tribunal is normally reluctant to attach much weight to a residual valuation as evidence of open market value…"*

3.42 The footnote to this extract states:

"*Unlike comparables, the residual method does not provide evidence of open market value. However, if the nature of the proposed development is relatively certain and all the inputs are derived from reliable evidence, this method may provide evidence of the amount which a developer would be willing and able to pay for the land and so indirectly provide evidence of the amount which would be achieved in the open market…"*

3.43 The footnote then goes on to list three cases as *"Examples of cases in which the Tribunal has been reluctant to attach weight to a residual valuation*."

3.44 I have emphasised these points for two reasons.

3.45 Firstly, a viability appraisal is only of any evidential value to the extent that the inputs are reliable, and the outputs stack up against market evidence. If, as Mr Cottage has done, the valuer adopts an assumption of land value that is not in accordance with the market, the appraisal will be misleading and of no evidential value even before any of the other inputs are considered.

3.46 The second point is that the valuer carrying out the appraisal must always stand back and consider whether the outcomes are realistic and not blindly assume that the answer must be correct because it adds up from a mathematical perspective. Mr Cottage has not done this. Had he done so, he would not have adopted a land value of only £225,000 per acre and would not have put forward his appraisal in its current form.

3.47 It is imperative that I am provided with the software (Argus) files at the earliest opportunity by Mr Cottage whereupon I will be able to update my analysis and conclusions to assist the ExP and Secretary of State.

4.0 BACKGROUND

4.1 Segro Properties Limited ("**SEGRO**") is promoting the East Midlands Gateway Phase 2 draft Development Consent Order (the "**dDCO**"). Part 5 of the dDCO would, if granted, provide SEGRO with powers of compulsory acquisition in order to achieve site assembly. Those powers would include the rights of acquisition of circa 102 acres of land controlled by Prologis either in their own right or as the beneficiary of a Promotion, Planning and Option Agreement (the "**Prologis/MAG Option Agreement**") with the Manchester Airports Group ("**MAG**").

4.2 The land owned by Prologis comprises Plots 1/3 and 1/5. In addition, Prologis controls land currently owned by Manchester Airports Group comprising Plots 1/4 and 1/7 as detailed on the DCO Land Plan Sheet 1 of 4 Document ref: 2.2A.

4.3 Prologis has submitted planning application ref: 24/00727/OUTM and I am informed that there is every expectation that planning permission will be granted and implemented during the Freeport window. This application provides for:

"Outline planning permission (means of access from A453 fixed; all other matters reserved for future determination) for the construction of employment floorspace (use classes B2/B8) with ancillary (integral) uses (use class E(g)(i)(ii)(iii)); a training hub (use class F1); a transport hub (sui generis); and associated infrastructure including earthworks and creation of bunds, internal estate road, parking, pedestrian and cycle circulation; and landscaping (all)."

4.4 Subject to the agreement of appropriate terms in respect of access and obtaining of planning permission, this development would allow for a developer of the adjoining land owned, located to the south and identified as Plots 1/1 and 1/2, to construct a highway link and implement development. This land is owned by Mr Aldridge subject to an option to SEGRO and extends to circa 147.64 acres.

4.5 SEGRO has entered into a Promotion and Option Agreement dated 31 March 2020 with Mr Aldridge in respect of this land and now wishes to acquire the Prologis/MAG Land to provide an alternative scheme and deprive Prologis/MAG of the opportunity to implement their development.

4.6 It is argued on behalf of SEGRO that its proposal is viable and considerable doubt is cast by Mr Cottage on the likelihood of development being delivered by Prologis/MAG on the Prologis/MAG

Land together with or as a separate phase of the development of the Aldridge Land.[16] However, in reality, SEGRO's scheme is **not** viable when assessed against reasonable market expectations and having taken full account of the liabilities under the Promotion and Option Agreement with Mr Aldridge. It is therefore the case that, if the dDCO was to be granted, implementation of the Prologis/MAG scheme would be prevented, and no development would come forward thereby frustrating the Freeport designation.

4.7 As I have already pointed out it is common ground between the Applicant ("**SEGRO**") and Prologis that, as stated by Mr Cottage[17], viability:

*"…is **an extremely important issue** for that part of the East Midland Gateway 2 development being promoted through a Development Consent Order ("The EMG2 DCO Scheme"). This is because to **justify undertaking the development the promotor,** whether SEGRO or any other commercial developer, **will need to ensure it achieves a target rate of return** (a "hurdle rate") consistent with that it would expect from any other, similar, project into which it could invest its time and capital*"

4.8 In large part that is because the proposed development that is intended to be facilitated by the powers of compulsory acquisition is a commercial scheme promoted by a commercial operator and will only be implemented if it proves to be commercially viable. Furthermore, if the DCO is made with such powers, this would prevent another commercial scheme by a different commercial operator coming forward. On the basis of the current evidence, SEGRO's scheme is unlikely to prove to be commercially viable so the viability test is not met.

4.9 Moreover, the Applicant's case in support of such powers is not only that the SEGRO scheme is commercially viable, but also that it comprises the only viable scheme available to deliver the aspirations of the Freeport designation, and that development of the Prologis/MAG Land and the Aldridge Land apart from SEGRO's intervention would not be commercially viable. However, based on the Viability Appraisal Report of Mr Cottage, as submitted by the Applicant, this argument does not withstand scrutiny.

4.10 In reality, based on Mr Cottage's own figures, the Applicant's scheme is clearly not viable and the separate scheme being promoted by Prologis and MAG represents the only realistic prospect of development coming forward on the land currently under their control within the Freeport

[16] See paragraphs 66, 68 and 69 of
[17] See paragraph 9 Of Mr Cottage's Report Document DCO 4.5

timetable and the land immediately to the south of Hyams Lane which is currently owned by Mr Aldridge. The evidence thus directly contradicts Mr Cottage's conclusions.[18]

4.11 Prologis would be willing to agree terms to enable development of the Aldridge Land without the need for a DCO. It is only fair, in accordance with market and Compensation Code principles, that such terms recognise that, in the absence of such access, the Aldridge Land has no development potential whatsoever and would only be purchased by the market on the basis of agricultural value. However, if access was available from the Prologis/MAG Land, Mr Aldridge's Land would attract offers in the market based on its development potential with the benefit of that access. By agreeing terms with Prologis, Mr Aldridge would receive value that would not otherwise be achievable and the development could proceed.

4.12 The principle of the provision of access giving rise to an increase in value of the benefitting land should not be controversial. In this regard, paragraph 425 of Division E of The Law of Compulsory Purchase 5th Edition explains the principle as follows:

"*Another potentiality of land may be the possibility of using or developing it conjunction with other land. In Stokes v Cambridge, land which had been compulsorily acquired was calculated on the assumption that planning permission would be granted for industrial development, but the acquiring authority already owned the only land which could provide satisfactory access. The Lands Tribunal held that, in the absence of the compulsory purchase, the owner of the development land would have negotiated with the owner of the access land in order to unlock the development, potential that a figure would have been agreed at one third of the development value…"*

4.13 The split of one third in the Stokes case was derived from a starting point of 50% but reduced because other land owned by the Claimant increased in value as a result of the provision of access such that betterment arose. Subsequent case law has upheld both the valuation principle of sharing in value and the application of 50% as a starting point[19].

4.14 For the purposes of illustration only, if SEGRO was correct to value the Aldridge Land on the assumption of access and planning permission being secured at £225,000 per acre and I assumed that agricultural land values were in the region of £12,000 per acre, the uplift in value would be

[18] As set out at paragraph 69 of Mr Cottage's Report (Document 4.5)
[19] For a selection of cases dealing with ransom see Stokes v Cambridge, Railtrack PLC v Guiness Limited, Persimmon Homes (Wales) Ltd v Rhondda Cynon Taff CBC, Snooks v Somerset Council, Ward Construction Ltd v Barclays Bank, Batchelor v Kent County Council and Ozanne v Hertfordshire County Council

£213,000 per acre, If I further assumed a share of 50% this would mean that SEGRO would have to pay £213,000 per acre x 50% 147.64 acres = £15,723,660 to Prologis/MAG for the securing of the access rights on top of the market value of that land in isolation.

4.15 SEGRO claim that there is no ransom value because, on their calculations they consider that independent development of the Aldridge Land is unviable such that they cannot deliver independent development. This is simply because they have overpaid but that is not relevant to the market and, therefore, the assessment of viability. In this context, Mr Cottage's assessment only considers whether it is viable making the assumption that the value that SEGRO have agreed to pay Mr Aldridge in a DCO scenario where compulsory acquisition powers are available is the correct input to use in a counterfactual assessment where that is not the case.

4.16 That is not an appropriate assumption to make. Nor is it relevant to the calculation of any ransom payment that may be due to Prologis/MAG in accordance with the Compensation Code. Mr Cottage has had no regard to Market Value per the Compensation Code in deciding what input to use for the value of the Prologis/MAG Land for the purposes of viability appraisal. Once regard is had to market value this on its own renders the SEGRO scheme unviable. Furthermore, once the entitlement to a ransom payment, in accordance with case law, is taken into account the SEGRO scheme is plunged even further underwater.

4.17 For the avoidance of doubt, the viability and implementation of the Prologis scheme is not dependent in any way upon the receipt of any ransom payment and would proceed irrespective thereof. If would therefore be completely inaccurate and misleading to suggest that the entirely proper and reasonable desire of Prologis and MAG to receive an access payment where it exists in the real-world market means that such payment holds the key to the development of the Prologis/MAG Land. These two matters are not linked to any extent and SEGRO's attempts to suggest otherwise are incorrect.

4.18 In essence, SEGRO have negotiated terms with Mr Aldridge that oblige them to pay significantly in excess of what their scheme can afford and as a result they are now reliant on Prologis and MAG to accept below market terms in order to balance their books. This is a situation entirely of SEGRO's own making and it is not credible to expect Prologis and/or MAG to accept anything less than they are properly due applying normal valuation principles, simply to subsidise SEGRO.

4.19 If SEGRO were to step aside, there would be other developers in the market who would be content to negotiate different terms direct with Mr Aldridge so that Mr Aldridge receives an uplift in value

that would not otherwise be achievable, development comes forward and the aspirations of the Freeport are achieved.

4.20 There is therefore a real prospect that, if the DCO was to be confirmed, Prologis despite having secured planning permission for their scheme **which is viable** and free of any impediments to delivery other than the threat of the DCO, would be prevented from implementing development by the grant of compulsory acquisition powers for the Applicant's scheme which is **demonstrably not viable**.

4.21 The confirmation of the DCO would therefore be to the detriment of the Freeport as SEGRO would control the land but be unable to deliver commercially unviable development as they would be unable to achieve the desired level of profit.

5.0 DEFINITION OF VIABILITY

5.1 In view of the errors in Mr Cottage's approach to the question of viability generally and land value in particular, it is necessary for me to return to "first principles" to set his Report in context. In this regard, it is clear from all the various requirements and guidance that ascertaining the correct price that is required to be paid by the developer to the landowner(s) in order to achieve full site assembly is a key component of viability.

5.2 Whilst Mr Cottage refers to having had regard to the RICS Professional Standard-Valuation of Development Property 1st Edition (October 2019) and the RICS Valuation -Global Standards[20] he does not make any reference to the RICS Professional Standard "Financial viability in planning: conduct and reporting" or the RICS Professional Standard "Assessing viability in planning under the National Planning Policy Framework".

5.3 The explanatory note to the RICS Professional Standard "Financial viability in planning: conduct and reporting" states:

*"This professional standard sets out **mandatory requirements** that inform the practitioner on what must be included within financial viability assessments and how the process must be conducted. This is to demonstrate how a **reasonable, objective and impartial outcome, without interference**, should be arrived at, and so **support the statutory planning decision process**. It also aims to support and complement the government's reforms to the planning process announced in July 2018 and subsequent updates, which include an overhaul of the National Planning Policy Framework and Planning Practice Guidance on viability and related matters.*

Questions about objectivity, conflicts of interest, transparency and contingency fees among others have been raised about those working for both the private and public sectors. While not all viability assessments are undertaken by chartered surveyors, in response RICS has strengthened our advice on these areas, the professional conduct of chartered surveyors and regulated firms undertaking viability assessments and the essential information which should be reported so that informed decisions may be taken transparently."

5.4 Paragraph 2.1 of the same Professional Standards state that:

[20] See paragraph 17 of Mr Cottage's Viability Appraisal Document DCO 4.5

"A collaborative approach involving the LPA, business community, developers, landowners and other interested parties will improve understanding of the viability and deliverability for everyone involved in the process. The report must include a statement that, when carrying out FVAs [(Financial Viability Assessments i.e. viability assessment)] *and reviews, RICS members have acted:*

- *with objectivity*
- *impartially*
- *without interference and*
- *with reference to all appropriate available sources of information.*

This applies both to those acting on behalf of applicants as well as those acting on behalf of the decision-makers.

5.5 Paragraph 2.9 of the same Professional Standards states that:

"All FVAs and subsequent reviews ***must provide a sensitivity analysis of the results and an accompanying explanation and interpretation of respective calculations on viability, having regard to risks and an appropriate return(s).*** *This is to:*

- allow the applicant, decision- and plan-maker to consider how changes in inputs to a financial appraisal affect viability and
- understand the extent of these results to arrive at an appropriate conclusion on the viability of the application scheme (or of an area-wide assessment).

This also forms part of an exercise to 'stand back' and apply a viability judgement to the outcome of a report."

5.6 Mr Cottage does not reference these requirements nor provide any sensitivity analysis.

5.7 He also does not define viability or refer to the NPPF[21] or NPPG[22] to assist the reader. In this regard, Paragraph 59 of the NPPF states:

"*The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into*

[21] National Planning Policy Framework
[22] National Planning Policy Guidance

force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning practice guidance, including standardised inputs, and should be made publicly available."

5.8 The NPPG states:

"Viability assessment is a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it. This includes looking at the key elements of gross development value, costs, ***land value,*** *landowner premium, and developer return."*

5.9 I would draw attention to the NPPG identification of "land value" as a "key element" of the viability appraisal. As I set out throughout this Report, Mr Cottage has not given any consideration to the question of land value and has clearly only adopted £225,000 per acre because that is the maximum that SEGRO can afford to offer according to his assessment. However, without wishing to repeat the point ad nauseum, this assumption of value has nothing to do with Market Value, is inappropriate as a matter of principle and falls well short of the true value of the Prologis/MAG land in the market such that his conclusion is, at best unproven and contradicted by reality.

5.10 The NPPG also states that:

"*The decision maker should consider whether the assessment and its conclusions are* ***objective, reasonable and realisti****c… …. Complexity and variance is inherent in viability assessment – in this context, it is imperative that practitioners clearly and reasonably justify their inputs and assumptions, recognising the public interest. Practitioners should act with* ***objectivity and impartiality (without interference) and make explicit all sources of information used****. They should ensure and confirm that no conflict of interest, or risk of such conflict, exists."*

5.11 In my opinion, the assumption by Mr Cottage that the value of the Prologis/MAG Land is only £225,000 per acre is not "objective, reasonable or realistic". A compliant viability assessment **must** have regard to the price that the landowner(s) could reasonably anticipate receiving from competing bidders in the market and not restrict the land value to that which can be offered by SEGRO.

5.12 It is my understanding that, in summary, a viability appraisal deducts all the costs of delivering the development from the value that would be released on completion thereof and assesses whether there is a sufficient residual amount left to provide the developer with sufficient profit to incentivise them to accept the risk of incurring those costs and the landowner with a price for their land that

provides sufficient incentive for them to transfer their ownership to the developer having regard to the potential for competing offers in the market.

5.13 The landowner may have alternatives in mind for their land. In this regard, the landowner will clearly want a price in excess of the value of their land for its existing use if they are to release it for development. However, where there is more than one potential development opportunity available, the landowner will have regard to the value they may secure through enabling an alternative development when deciding upon the price that they would accept for a different development.

5.14 In practical terms, this means that the owner of the Prologis/MAG Land would have regard to the prospect of alternative development as proposed by Prologis and/or the wider market and would only release their land to SEGRO if it offered a price that at the very least matched but preferably bettered that available from other developers for other schemes.

5.15 This is an important point as Mr Cottage and SEGRO have consistently assumed that the Prologis scheme is unviable in isolation from the SEGRO scheme. This is an entirely false assumption.

5.16 This is why it is essential that, to be credible, a viability appraisal must have regard to the attitude of all prospective purchasers in the market and not restrict the valuation assessment to a particular scheme(s) that can only be delivered by a particular party.

5.17 There are therefore two key parties whose attitudes and motivations are key to the issue of assessing the viability of a particular scheme. These are:

- **The developer** wishing to secure sufficient profit as a reward for the risk of implementing development having discharged all their costs and secured value.
- **The landowner** wanting to maximise the price they achieve by reference to all potential uses to which the land could lawfully be put including but not restricted to the developer's scheme.

5.18 Mr Cottage has solely had regard to the expectations of SEGRO as the developer but has ignored the expectations of the landowners.

5.19 Each developer will have their own expectations of cost and value whilst each landowner will have different motivations for releasing their land for development. These variances in assumptions will result in a range of outcomes dependent upon whose approach is adopted. This is the main reason

why it is important to have regard to the expectations of the market as a whole rather than personalise the exercise to a particular landowner and developer[23].

5.20 In this regard, it is a feature of the market that there may be a range of potential offers from a variety of different bidders, but it is not necessary to assume a sale to a particular bidder. This was the position in the case of IRC v Gray [1994] where Hoffman LJ concluded that "***The valuation is*** *thus a retrospective exercise in probabilities, wholly derived from the real world but* ***rarely committed to the proposition that a sale to a particular person would definitely have happened"***

5.21 There is therefore no basis for Mr Cottage to assume that SEGRO would be the only purchaser in the market such that only the offer that they could afford to make comprises the land value. This does not accord with the real world where the landowner would be free to accept superior offers.

[23] See Corton Caravans and Chalets Limited and Anglian Water Services Limited [2004] ACQ/19/2001

6.0 THE ASSESSMENT OF LAND VALUE FOR VIABILITY

6.1 Having established that land value is a key component of the viability exercise I have considered Mr Cottage's approach in further detail. However, it is important for me to stress that my concerns with his appraisal are not restricted to land value and, subject to receipt of his electronic files and cashflows, it is almost certain that I will need to update this Report to address further concerns.

6.2 Mr Cottage's appraisal assumes that Prologis/MAG would release their land for a price of £225,000 per acre stating:

*"**On the basis of the option agreement SEGRO has reached with landowners to the south of Hyams Lane** (and reflecting the RPI increases that agreement provides for), I have adopted a land purchase cost of circa £225,000 per acre for all of the land required to develop the EMG2 Main Site; both the 147.64 acres of land controlled by SEGRO to the south of Hyams Lane and the 102 acres comprising the Prologis Land. This level of value assumes that planning permission exists for logistics/warehouse development and that a negotiated settlement is reached with Prologis MAG[24]"*

6.3 I assume that Mr Cottage's reference to "landowners" and "option agreement" relates to the Promotion and Option Agreement dated 31 March 2020 between SEGRO and Mr Aldridge in respect of the Aldridge Land.

6.4 There is therefore only one landowner i.e. Mr Aldridge, with whom terms were agreed in March 2020 so it is inappropriate for Mr Cottage to refer to "landowners" and it is apparent that he has not formed his own view as to the likely value of the Prologis/MAG Land in the open market nor reviewed market transactions of similar land and opportunities. In my view his approach does not accord with market practice and departs from the requirements of the NPPF, NPPG and RICS for the appraisal of viability in a planning context.

6.5 In simple terms, Mr Cottage's appraisal assumes the following points:

1) Irrespective of market evidence, the value of the Prologis/MAG Land and the Aldridge Land is the same.

2) That value would be £225,000 per acre.

[24] See paragraph 28 of Mr Cottage's Viability Appraisal Document DCO 4.5

3) Prologis/MAG will accept a land value of £225,000 per acre regardless as to whether that has any relationship with the market value.

6.6 Planning permission exists for logistics/warehouse development.

6.7 Dealing with these points in reverse order, it is not clear what Mr Cottage means in referring to planning permission for logistics/warehouse development. This is a point I return to below, but my position is that planning permission can be assumed for any scheme that accords with the relevant planning policy and is not restricted to the Prologis/MAG scheme or the SEGRO scheme.[25]

6.8 Whilst it is primarily a matter for planning rather than valuation evidence, I understand that there is no reason to assume that the Prologis Application will not be granted permission nor that a different permission that accords with policy could not be secured. In essence, the land value has regard to all prospective development and not just the SEGRO scheme (assuming for indicative purposes that development consent is forthcoming).

6.9 In this regard, Mr Cottage also states that "*I note that the Prologis Land does not currently benefit from planning permission…"*[26] It is not easy to understand the intended relationship of this comment to his earlier comment in respect of his assumption in respect of planning permission when assessing value. It may imply that his stated assumption "*that planning permission exists for logistics/warehouse development"* relates only to the SEGRO scheme, but that would not be consistent with the fact that only development consent and not planning permission is being sought for that development.

6.10 Nevertheless, he does appear to have assumed that only SEGRO would be in the market such that they can "name their price" presumably as, if he was correct, no one else would be in a position to implement development. If that is the correct interpretation of this part of Mr Cottage's appraisal, then I would have to disagree with it as that approach would completely disregard planning policy which is not developer or scheme specific. This would also be contrary to the Compensation Code[27].

6.11 With regard to Point 3 it is self-evident that Prologis and MAG will not agree a land value of £225,000 per acre, not least as it significantly underassesses the true market value of their land. Mr Cottage's assumption is therefore demonstrably false thereby further undermining his approach.

[25] See Secretary of State for Transport and John Lewis Partnership Pensions Trust [2026] UKUT 78 (LC)
[26] See paragraph 66 of Mr Cottage's Viability Appraisal Document DCO 4.5
[27] See Secretary of State for Transport and John Lewis Partnership Pensions Trust [2026] UKUT 78 (LC)

6.12 I do not understand his assumption that the Prologis/MAG Land, which is capable of independent development without land or rights being required from Third Parties, would be valued by the market at the same rate as the Aldridge Land which is landlocked and therefore not capable of development without the acquisition of access rights. The only possible circumstances where this might arise would be if the SEGRO scheme was the only scheme capable of obtaining planning permission and the Prologis/MAG Land could not be developed separate from the Aldridge Land.

6.13 I suspect, based on my comments in respect of his planning assumptions above and his incorrect assumption that the development of the Prologis/MAG land in isolation would not be viable, that this is in fact his approach. In essence, his proposition appears to be that the SEGRO scheme is the only scheme capable of implementation and that all the land required for that scheme, other than land already controlled by SEGRO should be valued at the same rate.

6.14 That assumption is entirely false because the Prologis/MAG Land is eminently capable of development in its own right and such development would release significantly higher value than that which the SEGRO scheme can bear.

6.15 I suspect that it may be this misunderstanding of the market that has led SEGRO to agree terms with Mr Aldridge that, as demonstrated by Mr Cottage's appraisal, means that they cannot afford to pay Market Value to Prologis/MAG and are dependent upon Prologis/MAG agreeing terms at below Market Value in order to release funds for SEGRO to meet their obligations under the Aldridge Agreement.

6.16 However, the Aldridge Land is completely landlocked, and any development thereof is therefore entirely dependent upon suitable access rights being obtained across the land controlled by Prologis/MAG. It is therefore self-evident that any purchaser of that land would price in the risk of Prologis/MAG requiring an access payment to reflect the benefit of being able to link into the Prologis/MAG Land infrastructure. The starting point for agreeing the payment in this instance would be 50% of the difference between agricultural land value and development value.

6.17 In contrast, the Prologis/MAG land is not landlocked and directly abuts a suitable and adopted highway. The purchaser would not, therefore, have to negotiate with any key holders in respect of access or impediments to development. The purchaser would also recognise that, in purchasing the Prologis/MAG Land they would be gaining control of the access to the Aldridge Land. They would therefore bid on the basis of full development value plus a premium in recognition that they would either expect to receive a ransom payment from a developer of the Aldridge Land or be in a position

to acquire the Aldridge Land for an extension to their development at a discount by benefitting from their key position.

6.18 It is therefore clear that, even before market evidence it is entirely logical to assume, in the lack of any evidence to the contrary, that the Prologis/MAG Land must be worth significantly more on value per acre than the Aldridge Land because it can be independently developed in isolation whereas the Aldridge Lane can only be developed together with the Prologis/MAG Land.

6.19 It cannot therefore be credible to assume, as a matter of basic valuation principles, that the Prologis/MAG Land is worth the same amount as the Aldridge Land and an assumption that they are worth the same amount per acre is simply not realistic, let alone robust.

7.0 VIABILITY OF DEVELOPMENT OF THE PROLOGIS/MAG LAND

7.1 Mr Cottage states that:

"I note that the Prologis Land does not currently benefit from planning permission and that no development appraisal for the Prologis Scheme has been submitted to the Examination. In the absence of such evidence, it is not possible to conclude that development of the Prologis Land in isolation would itself be viable, deliverable, or capable of contributing to, or underwriting, the strategic infrastructure costs associated with the EMG2 DCO Scheme. Any assertion that development on that land would come forward independently is therefore, currently, unsubstantiated."

7.2 There is no reason to assume that planning permission will not be granted, either for the scheme subject to the Joint Application or some other similar scheme that could come forward in the absence of the dDCO. SEGRO's own case for the grant of development consent for very similar development on the Prologis/MAG land requires the Secretary of State to conclude that substantial B2/B8 development on this land is acceptable in land use planning terms. Furthermore, the principles in respect of the assumptions to be made in assessing land value are well established as set out in the case of Secretary of State for Transport and John Lewis Partnership Pensions Trust [2026] UKUT 78 (LC). If Mr Cottage is suggesting that planning permission would not be granted for the development of the Prologis/MAG Land in the absence of the SEGRO scheme he needs to set out his case and/or the advice he is relying on.

7.3 In this regard I note that he states that:

"In the absence of such evidence [of viability]*, it is not possible to conclude that development of the Prologis Land in isolation would itself be viable, deliverable, or capable of contributing to, or underwriting, the strategic infrastructure costs associated with the EMG2 DCO Scheme. Any assertion that development on that land would come forward independently is therefore, currently, unsubstantiated.*[28]*"*

7.4 It is not credible for Mr Cottage to claim that he cannot assess the viability of the Prologis/MAG scheme given all the information set out in his appendices. It is particularly surprising that he does

[28] Paragraph 66 of Mr Cottage's Viability Appraisal Document DCO 4.5

not even make an attempt to do so, when his entire approach rests upon the assertion that development of the Prologis/MAG Land in isolation is not viable.

7.5 It may be that he has not done so as this would require him to revisit his approach in respect of the costs to be applied to the development of the Prologis/MAG Land and the Aldridge Land as separate schemes.

7.6 In this regard, his appraisal overburdens the Aldridge Land with development costs including the delivery of the access road through the Prologis/MAG Land. If therefore follows that, unless he intended to double count costs, the cost of that road, for example, would be one of the costs that he could not then also assign to the Prologis scheme.

7.7 In order to assist the ExP and address this gap in Mr Cottage's Report I have recreated the appraisal that I would have expected him to have produced had he been willing to do so using his inputs and assumptions as set out in the appendices to his Report. For clarity, neither Prologis or I agree with the information set out in Mr Cottage's appendices but, as I am filling a gap in Mr Cottage's analysis, I am relying on the advice provided to him in those appendices to ascertain what he would have concluded had he carried out the exercise for himself.

7.8 With regard to assumed rents and yields I have noted that CBRE advise as follows:

Size Band	Quoting Rent (psf)	Achieving Rent (psf)
100,000 sq ft	£11.00	£10.75
200,000 – 350,000 sq ft	£10.50	£10.25
350,000 – 600,000 sq ft	£10.25	£10.00
700,000 sq ft plus	£10.75	£10.50

* Based upon the market rents as of Q1 2026

We advise appraising the scheme on the following below basis:

Size Band	Cap rate
(Units 2&3b) c. 200,000 sq ft	5.25%
(Units 3a, 4, 5a&b, 6) 300,000 – 400,000 sq ft	5.50% (300k sq ft perhaps inside this level if strong credit secured)
(Unit 1) 800,000 sq ft	5.75%

7.9 I have reviewed the construction costs adopted by Mr Cottage and have set out below, my assumed costs alongside his adopted costs:

Unit	Size ft²	£ ft²
Prologis Unit DC91	91,497	£68.00
Prologis Unit DC110	110,263	£68.00
SEGRO Unit 3B	192,600	£67.82
SEGRO Unit 2	205,800	£68.27
Prologis Unit DC220	220,178	£67.00
Prologis Unit DC307	307,441	£62.50
SEGRO Unit 4	310,700	£61.28
SEGRO Unit 5B	330,100	£62.36
SEGRO Unit 6	333,900	£58.83
SEGRO Unit 5A	371,300	£59.32
SEGRO Unit 3A	390,800	£60.32
Prologis Unit DC578	578,802	£59.00
SEGRO Unit 1	802,000	£57.62

7.10 Solely for the purposes of this exercise, in addition to adopting Mr Cottage's rent and investment yields (including purchaser's costs) I have also relied upon Mr Cottage's figures and approach in respect of purchaser's costs, project manager costs, marketing, leasing and letting fees, sales agent and legal fees, contingencies, and finance. However, I have taken advice from Prologis in respect of infrastructure and servicing costs. In this regard, I have noted that Mr Cottage has assumed that an investor purchaser would have to pay SDLT which implies that he has assumed that such purchases would occur after the closure of the Freeport window.

7.11 I do not agree with this assumption as it would be more reasonable to assume that investment purchases would take place during the Freeport Window. Nevertheless, whilst I consider his assumption to be incorrect, I have followed the same approach in the interests of taking a "like with like" comparison, to assess what his appraisal would have concluded.

7.12 I calculate, on this basis, a residual land value of **£31,246,315 say £31,250,000** on the assumption that the developer would require a profit of 15%. The figure of £31,250,000 (which equates to £306,336 per acre) compares to Mr Cottage's untested assumption that Prologis/MAG would be prepared to accept £22,902,329. It is therefore clear that if Mr Cottage had carried out an appraisal

using the information provided to him by his client, he could not have maintained that £225,000 per acre is an appropriate value to be applied to the Prologis/MAG Land even before considering land transaction evidence.

7.13 I have attached a copy of this appraisal at **Appendix 1.**

7.14 I have set out a sensitivity analysis below which assumes a fixed 15% profit with a range of average rents from £10.25 ft² to £11.25 ft² and a range of construction costs from an average of £64 ft² to £72 ft².

	Construction: Rate /ft²				
Rent: Rate /ft²	£64.00 /ft²	£66.00 /ft²	£68.00 /ft²	£70.00 /ft²	£72.00 /ft²
£10.25/ft²	£28,388,385	£25,996,072	£23,603,842	£21,211,599	£18,819,351
£10.50 /ft²	£32,209,605	£29,817,350	£27,425,094	£25,032,799	£22,640,560
£ 10.75 /ft²	£36,030,824	£33,638,570	£31,246,315	£28,854,059	£26,461,754
£11.00 /ft²	£39,852,040	£37,459,788	£35,067,534	£32,675,279	£30,283,024
£ 11.25 /ft²	£43,673,252	£41,281,004	£38,888,752	£36,496,499	£34,104,244

7.15 It is clear that, even on Mr Cottage's numbers, the likelihood of the Prologis/MAG scheme generating a land value at or below his assumption of £22,902,329 is remote.

7.16 I have also run a sensitivity analysis on the same basis but assuming that the land value is fixed at Mr Cottage's assumption of £22,902,329 to calculate the resultant profit. The results are set out below.

	Construction: Rate /ft²				
Rent: Rate /ft²	£64.00 /ft²	£66.00 /ft²	£68.00 /ft²	£70.00 /ft²	£72.00 /ft²
£10.25 /ft²	19.52%	17.51%	15.56%	13.67%	11.85%
£10.50 /ft²	22.65%	20.61%	18.61%	16.67%	14.80%
£10.75 /ft²	25.76%	23.67%	21.65%	19.67%	17.75%
£11.00 /ft²	28.87%	26.73%	24.66%	22.65%	20.70%
£11.25 /ft²	32.00%	29.79%	27.67%	25.61%	23.62%

7.17 It is clear from this exercise that, if Mr Cottage was correct to assume that Prologis/MAG would accept a price of £22,903,329 for their land, the profit that would be secured by Prologis/MAG would, on the balance of probabilities, significantly exceed 15%. Bearing in mind that Mr Cottage has calculated a profit for the SEGRO scheme of only 15.91% on the same assumption that Prologis/MAG would accept £22,903,329, it is clear that the Prologis scheme is not only more viable than the SEGRO scheme but substantially so.

7.18 Whilst the SEGRO scheme can be described as marginal at best on the entirely false assumption that Prologis/MAG should be forced to accept £22,903,329, and significantly unviable once market assumptions in respect of land value are applied, the Prologis scheme not only delivers market levels of value but exceeds the required profit to incentivise the developer. On these figures, as derived from Mr Cottage's assumptions, the only scheme that the ExP can confidently conclude to be commercially viable is that being promoted by Prologis.

7.19 That may help to explain why Mr Cottage has declined to produce an appraisal of the Prologis/MAG Land as it would show that SEGRO, on their own numbers, would have to pay a price for the Prologis/MAG Land that their scheme cannot viably bear and that the Prologis/MAG scheme is not only viable, but significantly more viable than SEGRO's scheme.

7.20 However, an appraisal is only a means to calculate what value a particular developer would be able to offer in the market. It does not, in or of itself, represent what other developers would be able to generate by way of land value and offer in the market. In this regard, an assessment of value pursuant to the Compensation Code will have regard to the evidence of land transactions in the market in determining what the value of the land is.

7.21 I have considered market evidence of land transactions with and without the benefit of planning permission relating to sites proposed for similar development to test my understanding of the market. It is plain from this exercise that, even before the location and proximity of the Prologis/MAG Land next to the UK's leading dedicated logistics focussed freight Airport, with a rail connection in close proximity and benefitting from Freeport designation is taken into account, the likely Market Value, and therefore value for the purposes of the Compensation Code of that land is significantly in excess of Mr Cottage's assumption of £225,000 per acre. Furthermore, once the Prologis Planning Application is granted consent, the Market Value will, as illustrated above, increase still further

7.22 Mr Cottage does not offer any evidence or opinion of Market Value and has seemingly not considered this point. I am unclear as to the basis upon which Mr Cottage takes this approach which is a departure from correct methodology. It is therefore apparent that his appraisal is unsound because it relies on the terms of the Aldridge Agreement in a way that is plainly inappropriate and does so to the exclusion of all other evidence. Furthermore, as I have evidenced above, if he had carried out an appraisal using the information set out in his own Report, he would have realised that, even on that basis the value of the Prologis/MAG Land would significantly exceed £225,000 per acre. It is this lack of recognition as to the reality of the market that has led him to put forward

an unsustainable position that cannot withstand even the relatively limited level of scrutiny, I have been able to undertake in this Report.

7.23 I recognise that the actual figure that would be paid as compensation in the event of the compulsory purchase of the Prologis/MAG Land will be determined by a separate process in due course. In that context my opinion as to the true Market Value of the Prologis/Land is that it is likely to be significantly higher than that set out here consistent with the market. However, notwithstanding this point, the assessment of viability for the purposes of decision-making at this stage still requires robust and realistic assumptions to be made about land value if the ExP is to have any confidence therein.

7.24 In my view Mr Cottage has not made robust or realistic assumptions because he has disregarded the fundamental principle that the landowner is a willing seller able to secure the best and highest price in the market regardless as to who offers that price.

7.25 Furthermore, he has not carried out any testing of his conclusions by way of sensitivity analysis to test the impact of Market Value expectations on his appraisals nor stood back to consider why, on his analysis, the Prologis/MAG scheme is not deliverable in comparison to other schemes nor why the land value would be less than that evidenced by the market. In essence, he has not considered or set out what it is about the Prologis/MAG Land that leads him to believe that the market would apply the significant discount that would be required to reduce the value down to £225,000 per acre.

7.26 There are therefore five important points that arise from this:

1. The Prologis scheme generates significantly more value per acre than the Applicant's scheme.
1. The Prologis scheme is comfortably viable.
2. These calculations completely disregard the potential for an increase in the value of the Prologis/MAG Land due to its key position in enabling development of the Aldridge Land. Any assertion that development of the Prologis/MAG Land is dependent upon the receipt of a ransom is therefore without basis.
3. Once it is recognised that the development of the Aldridge Land can only be implemented through the securing of an access through the Prologis/MAG Land and that such development would result in a significant uplift in the value of that land it is credible to take the view that, from a market and Compensation Code perspective, the need to access the Prologis/MAG Land would result in a value uplift.

4. Once that value uplift is taken into account it is clear that the development of the Prologis/MAG Land is not only viable in its own right but would enable the developer to anticipate the receipt of an access payment in the future and/or enable them to acquire the Aldridge Land at a more favourable price. Notwithstanding that the development of the Aldridge Land is, in any event, viable, this would result in even more profit being achievable which would be reflected in the overall land value.

7.27 It is therefore clear that, there is no basis for suggesting that the Prologis development is not viable nor any impediment that would prevent it from being implemented. Furthermore, the Prologis scheme can, even on SEGRO's inputs, generate land value significantly in excess of that accounted for by Mr Cottage whilst remaining comfortably viable.

7.28 In effect, Mr Cottage has merely demonstrated that the SEGRO scheme would be marginally viable **if** Prologis/MAG accepted £225,000 per acre. However, this is all he does and, even without considering any of his other assumptions and inputs, it is clear that his appraisal has little regard to the reality of the market. His Report and conclusions therein are therefore of no assistance to the ExP and the Secretary of State in determining this extremely important matter.

8.0 THE SEGRO SCHEME

8.1 As set out above, Mr Cottage has put forward an appraisal that purports to demonstrate that the SEGRO scheme is viable. However, even if I was to accept that all the inputs to his appraisal were justified and correct, which for the avoidance of doubt I do not, his entire proposition relies upon the foundational assumption that Prologis/MAG would accept £22,902,329 which equates to £225,000 per acre.

8.2 He then concludes that the scheme proposed by SEGRO pursuant to the draft DCO would realise a profit of 15.91% of total development cost. This is only 0.91% above that which he considers would be required as a minimum by SEGRO to deliver the project.[29] It is therefore apparent that, even on his assumption of land value, the SEGRO scheme is marginal.

8.3 As I have set out above, his reliance on a land value of £225,000 per acre is flawed and, once assumptions in line with planning policy, RICS requirements and market realities are applied, it is clear that the SEGRO scheme is significantly unviable.

8.4 I note that Mr Cottage comments:

"I would also note that the development profit derived from my residual appraisal has been achieved despite the fact that I have arguably been cautious in both the rents and yields I have adopted when calculating the development's GDV and the finance rate I have used. If I adopted slightly more aggressive yields and a tighter finance rate this would increase the profit on cost."[30]

8.5 However, Mr Cottage has not provided the software files that would allow me to test this statement and has failed to provide any sensitivity analysis in his Report to demonstrate how realistic or otherwise his statement is and whether there is any prospect that by amending his inputs the SEGRO scheme could be recalculated to generate a realistic Market Value for the Prologis/MAG Land.

8.6 In this context, the RICS Practice Statement Financial Viability in planning: conduct and reporting, which is a mandatory requirement of RICS members, states:

[29] See paragraphs 39 and 40 of Mr Cottage's Viability Appraisal Document DCO 4.5.
[30] See paragraph 41 of Mr Cottage's Viability Appraisal Document DCO 4.5

*"**All FVAs** and subsequent reviews **must provide a sensitivity analysis** of the results and an accompanying explanation and interpretation of respective calculations on viability, having regard to risks and an appropriate return(s). This is to:*

- *allow the applicant, decision- and plan-maker to consider how changes in inputs to a financial appraisal affect viability and*
- *understand the extent of these results to arrive at an appropriate conclusion on the viability of the application scheme (or of an area-wide assessment)."*

*This also forms part of an exercise **to 'stand back' and apply a viability judgement to the outcome of a report**."*

8.7 Mr Cottage has not provided any sensitivity analysis although this would be a simple exercise to undertake as the software model he has used provides this facility. There is therefore no means by which I can test his assertion that if he made alterations to his assumed inputs, he could drive an improved profit level[31] not least as the converse is equally true. In the absence of any analysis, the correctness or otherwise of this assertion cannot be tested and assessed, particularly as small changes in the inputs can be used to achieve disproportionate changes in the outcome. This is why the RICS Practice Statement requires the valuer to "stand back."

8.8 I would also make the point that, whilst Mr Cottage may consider that he could take a more optimistic approach in respect of revenue, it also works the other way around in that construction costs may increase disproportionally to values.

8.9 In this regard, I have noted that, at both Appendix E and G of Mr Cottage's Report, Gardiner & Theobold provide a cost estimate of £18,000,000 in respect of "J24 M1 Green Package" and make the comment that "*Assume correct at high level allowance. Cost Risk until greater scope definition, as significant sum"* and assign a RAG (Red, Amber, Green) rating of Red.

8.10 Neither they nor Mr Cottage explain the intended significance of the RAG rating, but I understand that, by assigning the cost of £18,000,000 with a red RAG rating, Gardiner & Theobold are advising that there is a real and significant risk that the stated cost of £18,000,000 may increase to a material degree. On Mr Cottage's numbers, the SEGRO scheme cannot accommodate a material increase in such cost even if his assumption in respect of land value was correct.

[31] Financial Viability Assessment

8.11 It is therefore the case that Gardiner & Theobold have identified a significant cost concern both in respect of amount and risk such that, even if SEGRO could acquire the Prologis/MAG Land for an artificially discounted price of £225,000 per acre, there is a significant likelihood of the development profit falling from Mr Cottage's calculation of 15.91% to below the target level of 15% even before the Compensation Code approach to land value is taken into account.

8.12 In this regard, I agree with Mr Cottage that *"…a profit on cost in the order of circa 15% would be regarded as the minimum level of return (hurdle rate)* [(i.e. profit)] *acceptable for a development of the nature and scale of the EMG2 DCO scheme."* However, for the reasons set out above I do not agree that his calculated rate of 15.91% is either realistic or robust.

8.13 In the absence of Mr Cottage providing me with his software files I have been forced to take a high-level approach to considering the level of profit that would be generated if a more realistic land value was to be assumed. For the purposes of this exercise, I have adopted the figure of £31,250,000 as calculated in Section 4 above although I am of the opinion that this understates the true value of the land.

8.14 Notwithstanding this point, I have noted that Mr Cottage has set out his appraisal of the SEGRO scheme at Appendix F of his Report. This demonstrates that, on the basis of his assumed costs of construction and revenue there is a total land value of £56,245,979 and a profit of £64,311,561. There is therefore a total of £120,577,540 to be shared between the landowners and the developer.

8.15 If I accept Mr Cottage's value in respect of the Aldridge and SEGRO land of £33,150,000 and £193,650 respectively and add in £31,250,00 for the Prologis/MAG Land as calculated by my estimate as to what Mr Cottage would have calculated had he carried out an appraisal, the amount due to the combined landowners becomes £64,593,650. If I then deduct this amount from the total amount to be shared of £120,5775,540 there would remain a balance of £55,983,890 by way of profit.

8.16 Bearing in mind that Mr Cottage has calculated total costs of £404,132,091 the available profit would equate to 13.85%, materially below that which Mr Cottage has characterised as "*…the minimum level of return (hurdle rate) acceptable*…"[32]

[32] See paragraph 40 of Mr Cottage's Viability Appraisal Document DCO 4.5

8.17 If a more realistic land value is applied in respect of the Prologis/MAG Land in line with market evidence, it is reasonable to conclude that the profit would further reduce.

8.18 The ExP cannot therefore have any confidence that the Applicant will be able and likely to implement their proposed scheme given that the SEGRO scheme cannot generate the minimum acceptable profit of 15%.

8.19 Furthermore, I have major concerns as to the ability of SEGRO, as the Applicant in this matter, to meet their obligations in respect of the payment of compensation should the draft DCO be confirmed irrespective of Article 21 of the dDCO.

9.0 DEVELOPMENT OF THE ALDRIDGE LAND

9.1 Mr Cottage has provided an appraisal, as replicated at Appendix H of his Report, in respect of the development of the Aldridge Land in isolation which purports to show that a developer could only secure a profit of 3.62% if that land was developed independently, such that development of that land would be unviable except as part of the Applicant's scheme as promoted pursuant to the dDCO.

9.2 Consistent with his approach in respect of the SEGRO appraisal, Mr Cottage has ignored market reality. In doing so he has not actually assessed the extent to which independent development of the Aldridge Land would be viable in the absence of the DCO but has, instead, simply apportioned the costs and revenues of the SEGRO DCO scheme thereby loading up cost onto the development of the Aldridge Land that would not be applicable in those circumstances. In addition, he has assessed land value not by reference to what the market would pay in this counterfactual scenario but in accordance with the terms of the Aldridge Option Agreement despite the fact that Agreement would have no applicability in the absence of the DCO.

9.3 I also note that, whilst Mr Cottage has run an appraisal to calculate the level of developer's profit on the assumption the land price is fixed at £225,000 per acre, he has notably not re-run his appraisal at an assumed developer's profit of 15% to calculate what a developer could afford to offer. This exercise simply involves three key presses as all the information will have been loaded into his Argus software to produce his appraisal hence is not time-consuming or difficult to do. Had he carried out this exercise, it would have been clear that development **is** viable once a market approach is taken to the land value.

9.4 In essence, there are at least five key flaws in his approach such that his comments and conclusions are of no assistance:

1. He appears to have assumed that independent development of the Aldridge land could only be brought forward as proposed in the DCO being pursued by SEGRO (or at least he has artificially constrained himself to considering that scenario). This is incorrect.

2. He has included a cost of £10,532,951 which is described as "DCO Application." A developer of the Aldridge Lane in isolation would not require a DCO hence he is assessing viability by reference to SEGRO's delivery of the DCO scheme rather than the cost of delivering independent development of the Aldridge Land. This is incorrect.

3. He has costed the development of the Aldridge Land on the assumption that it is part of the wider DCO scheme and thereby carries costs that are either not related to the independent development of the Aldridge Land or are incurred in mitigating matters that are not directly related to that development. His appraisal is therefore based on a false premise.

4. He has included, as a cost associated with independent development of the Aldridge/MAG Land, the cost of delivery of a road through the Prologis/MAG land although this would be provided by Prologis as part of their separate development, which he has also assumed to be undertaken in this scenario[33]. His inclusion of this cost is therefore incorrect.

5. He has assumed that any developer seeking to bring forward the Aldridge land independently would pay £225,000 per acre to Mr Aldridge although the contract from which this figure is derived only binds SEGRO. In the first instance, whilst I do not have a copy of the Agreement, I fully anticipate that the exercise of the Agreement would be dependent upon the confirmation of the DCO[34] hence the exercise of that Agreement is not only personal to SEGRO but dependent upon obtaining of the DCO.

   That Agreement would not, therefore, be applicable in a scenario where the Aldridge Land was being brought forward independently and would not apply to anyone other than SEGRO. As such, whilst it is, to a certain degree, understandable that SEGRO might overpay to acquire this land for the purposes of securing a position from which they could then seek a DCO, it is irrelevant to the viability exercise which assumes independent development of the Aldridge Land in the absence of powers of compulsory acquisition.

   Mr Cottage is therefore incorrect to rely on the terms of this Agreement in assessing viability and the exercise should have regard to the real world and market expectations in respect of value which would recognise that the Aldridge Land is landlocked and dependent upon the securing of access rights into the Aldridge/MAG Land

[33] See paragraph 42 of Mr Cottage's Viability Appraisal Document DCO 4.5
[34] I will review my conclusions on production of the Agreement

9.5 The cumulative impact of these issues is to grossly exaggerate the costs of independently developing the Aldridge Land by making the crude and unrealistic assumption that independent development of this land would be no different from what is proposed within the DCO scheme, rather than having regard to what the market would do in the absence of the DCO scheme (and thus any potentially available powers of compulsory acquisition) if they were approaching development of this land together with the development of the Prologis/MAG Land, which Mr Cottage assumes, or as an extension thereof. I have addressed each of these issues below.

DCO Costs

9.6 Mr Cottage has included a cost of £10,532,951 in respect of the costs of obtaining a confirmed DCO within both the full "SEGRO DCO scheme" and the reduced "Aldridge Land only" scheme.

9.7 I do not understand why he has included the costs of obtaining a DCO in respect of the "Aldridge Land Only" scheme as I am informed that anyone intending to implement an independent development of that land could equally and potentially at rather lower cost rely upon seeking planning permission under the Town and Country Planning Act 1990 rather than seek a DCO. My understanding is that in this case it is only possible to seek a DCO for development as described in the section 35 direction, and therefore, it may very well not be possible in respect of a materially smaller scheme that was confined to the Aldridge land.

9.8 The underlying purpose of Mr Cottage's Appraisal 2 is meant to be to substantiate the assertion made in SEGRO's Statement of Reasons at paragraph 5.57 that even if the development of the Prologis/MAG land did make provision for a deliverable vehicular access "*development of the southern part of the EMG2 Main Site would not be viable or deliverable as standalone development*". The purpose of that assertion is to seek to support SEGRO's case that powers of compulsory acquisition are needed to facilitate development of that land.

9.9 An appraisal of viability to address that counterfactual scenario must therefore consider what would be likely to happen in circumstances where there was no DCO and no access to compulsory powers. In such a scenario it would be necessary to consider what approach would be taken in the market. The inputs used for such an appraisal should be consistent with that context.

9.10 I am further advised that the costs of securing a planning permission would be significantly cheaper than the costs of securing a DCO. As such, whilst the Applicant is free to make whatever choices they wish as to the route they wish to follow, a viability appraisal which, by its very nature, is intended to assess the viability of independent development of the Aldridge land in the market

absent the DCO, should have regard to the approach that would be taken in the market in those circumstances.

9.11 In this regard, as I have already set out, neither I nor the Examination have been provided with a copy of the Aldridge Option Agreement. However, in my experience, and I have been given no reason to believe that the position is different here, I would anticipate that SEGRO could only rely upon the Aldridge Option Agreement to acquire the Aldridge Land if they secured a confirmed DCO. However, that Agreement, if exercised, obliges SEGRO to pay a price of £225,000 per acre, which taken together with the price that SEGRO would have to pay Prologis/MAG would mean that no development at all could come forward for all the reasons I have set out above.

9.12 I would assume, in the absence of the Examination being provided with a copy of the Aldridge Agreement, that SEGRO cannot now rescind that Agreement and could only renegotiate with the agreement of Mr Aldridge to lower the agreed price to a more sustainable level whilst recognising the entitlement of Prologis/MAG to a ransom payment in return for the provision of access rights.

9.13 It is therefore clear that, due to the agreed terms that they have chosen to enter into, SEGRO cannot deliver viable development of either the Aldridge Land or the wider scheme. However, this is not relevant to a viability appraisal which has regard to the expectations of the market and developers who are not subject to such terms. It would therefore be incorrect to imply that, just because SEGRO have put themselves in a position where they are unable to deliver viable independent development of the Aldridge Land, no one else can either. On the evidence currently available, it is entirely reasonable to conclude that another developer, free from the burden of the Aldridge Agreement that SEGRO voluntarily entered into, and without needing to rely upon a DCO, could deliver viable development.

9.14 I am therefore of the opinion that it is entirely inappropriate to include any costs within the viability appraisal in respect of the obtaining the DCO and the viability exercise should only have regard to what the market, as opposed to SEGRO, would do.

9.15 The viability appraisal should therefore follow the approach of the market in that counterfactual scenario to assess whether in the absence of a DCO granting powers of compulsory acquisition development of the southern part of the EMG2 Main Site would not be viable or deliverable as standalone development.

9.16 The market would be free to negotiate with Mr Aldridge and seek planning permission pursuant to the Town and Country Planning Act 1990. I am advised that there is no reason in principle to prevent planning permission from being granted and a DCO would not be required in this scenario.

Road Costs

9.17 Mr Cottage has attached a Gardiner & Theobold Feasibility Estimate Review at Appendix G which he states "*…includes an allowance for the cost of providing an access estate road over the Prologis Land*[35]" However, I cannot ascertain from this Report what Mr Cottage has been advised to assume in respect of that estate road and he does not set this out.

9.18 I do not understand why any viability appraisal in respect of the independent development of the Aldridge Land would include the costs of providing infrastructure over the Prologis/MAG Land bearing in mind that, in the absence of the DCO, Prologis would be implementing development of that land pursuant to the Joint Application and would therefore be providing the highway at their own cost to service their own development.

9.19 Again, this illustrates the fundamentally flawed approach taken by Mr Cottage whereby he mixes market assumptions with SEGRO's assumptions.

Site Costs

9.20 Having discussed the approach taken by Mr Cottage with Prologis, I understand that he has effectively started on the basis of the costs that would be incurred for the whole scheme as promoted pursuant to the Applicant's DCO and then stripped out elements that are bespoke to the development of the Prologis/MAG Land.

9.21 In this regard, I have compared the costs adopted by Mr Cottage in respect of the full SEGRO scheme and compared them to the costs he has assumed in respect of the stand-alone development of the Aldridge Land as extracted from his appraisals at Appendices F and H of his Report. I have tabulated this below.

Item	Full SEGRO Scheme Site Costs	Aldridge Land Site Costs
Discharge of conditions	£1,445,000	£1,445,000
S106	£2,500,000	£2,500,000
S278	£5,232,000	£5,232,000
Earthworks and utilities	£52,800,000	£44,300,000
New utilities	£28,491,249	£28,491,249
Utility Diversions	£4,985,000	£4,985,000
Other infra- Enabling Works	£5,260,000	£4,820,000
Construction Phase Consultants	£4,661,000	£4,127,400

[35] Paragraph 54 of Mr Cottage's Viability Appraisal Document DCO 4.5

Other Land Costs	£783,235	£783,235
Total Costs	£106,157,484	£96,683,884
Buildings	2,937,200 ft²	1,901,900 ft²
Cost £ft²	£36	£51

9.22 It is apparent from this table that Mr Cottage has assumed costs of £106,157,484 (equating to £36 ft²) in respect of development in incorporating the Prologis/MAG Land but has adopted £96,683,884 (equating to £51 ft²) in respect of the independent development of the Aldridge Land. This means that the development of the Prologis/MAG Land would only lead to a cost additional to that incurred in respect of the development of the Aldridge Land of £9,473,600 which equates to £7.24 ft²[36].

9.23 Mr Cottage has therefore assigned 91% of the total SEGRO scheme costs to the Aldridge Land development in this scenario although that land only comprises 56.55% of the total land area. The mathematical outcome of this exercise is that this leaves 9% of the cost to be assigned to the Prologis/MAG Land development which comprises 39% of the land area.

9.24 I cannot think of any circumstances in which it would be credible to argue that the delivery of 1,308,721 ft² on the Prologis/MAG Land would only cost £7.24 ft2 whilst the delivery of 1,901,900 ft² on the Aldridge Land would cost £51 ft² and it is concerning that Mr Cottage has seemingly not noticed this nor seen fit to explain this clear and obvious disparity.

9.25 If I was completely in error to question this apportionment, the outcome of this would be that development of the Prologis/MAG land would become super profitable as it would only be bearing 9% of the overall cost thus explaining why SEGRO might want to combine the landownerships so that the Prologis/MAG Land development could subsidise the development of the Aldridge Land.

9.26 However, if this explanation was to be preferred, Mr Cottage and SEGRO would then need to explain why they consider that the Prologis/MAG Land should be valued by the market at exactly the same amount (i.e. £225,000 per acre) as the Aldridge Land. Absent any explanation this would appear not just counter-intuitive but also illogical. Furthermore, this still doesn't address the central issue of the SEGRO scheme being unviable.

9.27 It is entirely reasonable to assume that these points and the clear unviability of development of the Aldridge Land at the price agreed between SEGRO and Mr Aldridge would all have been known and

[36] £9,473,600/1,308,721 ft²

considered by SEGRO prior to entering into the Aldridge Option Agreement which begs the question as to why that decision was made. The implication of Mr Cottage's Report is that SEGRO must have known all along that the development of the Aldridge Land was unviable on the basis of the terms that SEGRO had willingly entered into but were reliant on securing the more valuable Prologis/MAG Land at a discount in order to subsidise both the development of the Aldridge Land and the price that they are contractually bound to pay.

9.28 In effect, SEGRO need to acquire the Prologis/MAG Land, and they need to acquire it at a significant discount to Market Value in order to fulfil their obligations pursuant to the Aldridge Option Agreement. However, this ambition would be frustrated by the application of the Compensation Code. Furthermore, whilst SEGRO are the only developer fettered by the Aldridge Option Agreement, they are not the only developer in the market, and others would be willing and able to viably develop the Aldridge Land.

Land Value

9.29 Mr Cottage has disregarded the market and assumed a fixed land value of £225,000 per acre in accordance with the terms of the Aldridge Option Agreement although that Agreement would not be exercisable in the absence of the dDCO. He has therefore started from entirely the wrong basis.

9.30 On this basis his appraisal generates a profit of only 3.62%. It therefore follows that, if Mr Cottage's appraisal was assumed to be correct, no one would be prepared or able to offer £225,000 per acre for the Aldridge Land for the purposes of bringing it forward as an independent development.

9.31 If, as Mr Cottage claims, development is not viable at a land value in excess of £225,000 per acre it is reasonable to assume that there would be no one in the market prepared or able to offer £225,000 per acre in the scenario Alternative 2 as set out in Mr Cottage's Report is intended to assess. If there is no one in the market prepared to pay £225,000 per acre, that value cannot be stated to comprise Market Value which, by definition, comprises an estimate of the price that would be achieved in the market.

9.32 It is therefore clear that the Market Value of the Aldridge Land in that scenario must be significantly below £225,000 per acre.

9.33 In this regard, Mr Cottage should have run his appraisal of the Aldridge Land assuming a developer's profit of 15% to determine what value the developer would have available to bid for the land. Unless there was a reasonable expectation that someone else in the market could pay a different price, that assessment would comprise the realistic Market Value of the Aldridge Land.

9.34 As set out above, I have not been provided with electronic versions of Mr Cottage's appraisals and am therefore unable to assess the impact of making different assumptions on his assessment of finance costs. I can therefore only approach this matter from a high level.

9.35 However, I have noted that Mr Cottage has calculated, inclusive of the purchase price, a total cost prior to the assessment of profit at £292,747,541. If I replace the DCO cost of £10,532,951 with an assumed planning application cost of £1,000,000 the total cost drops to £282,214,590. If I then assume a land value, solely for the purposes of this exercise, of £1, the total cost drops to £248,214,590.

9.36 The profit on a 15% of cost approach would therefore increase to £37,330,641 resulting in a total cost of circa £286,201,528. This cost would then be deducted from Mr Cottage's assessment of Gross Development Value of £303,339,387 to leave a residual amount of circa £17,137,805 available for the purchase of the Aldridge Land. This is before stripping out the construction costs relating to the road running across the Prologis/MAG Land.

9.37 This equates to circa £116,078 per acre which is significantly in excess of agricultural land values such that development is clearly viable. This amount would increase significantly once the costs are reduced such that they only relate to the development of the Aldridge Land, the costs relating to the delivery of the access road through the Prologis/MAG Land are removed and the finance costs recalculated to relate to the reduced cost exposure.

9.38 I fully accept that this exercise is very high level and I intend to update my calculations as and when Mr Cottage has provided full disclosure of his electronic files and I have received clarification on the assumed construction/delivery costs. However, this exercise is still considered to be helpful to the ExP ahead of receiving full disclosure as it illustrates three key points.

9.39 The first point is that, even at a land value of £116,078 per acre, which I fully expect to increase significantly when I update my calculations, there is a clear uplift in value that is predicated solely off the availability of access that can only be provided from the Prologis/MAG Land. As such, the assertion that there is no ransom position in the market is clearly not correct.

9.40 The second point is that the development of the Aldridge Land can deliver the target level of 15% profit such that a developer would implement development in accordance with market assumptions.

9.41 The final point is that SEGRO have, by agreeing to pay Mr Aldridge a price of £225,000 per acre subjected themselves to paying well in excess of Market Value on the basis of independent

development for that land and it is this rather than the scheme itself that underlies SEGRO's claim that it could not viably deliver independent development of the Aldridge land. However, this does not mean that another developer, such as Prologis, could not deliver such development by agreeing terms with Aldridge that, whilst still delivering a significant increase in value over and above the current agricultural use, would be viable.

9.42 Standing back, it is apparent from this exercise that, because of the price that SEGRO has chosen to agree to pay in respect of the Aldridge Land, it can only just make its overall scheme viable (assuming all other assumptions are correct) if Prologis/MAG were to agree a price no higher than £225,000 per acre or such a value emerges from the assessment of compensation in due course. However, there is no requirement on Prologis or MAG to accept anything other than Market Value for their land and (at the very least) there is no proper evidential basis for the Secretary of State to assume that £225,000 per acre is the value that would emerge from the assessment of compensation.

9.43 For the reasons I have given, I think the evidence demonstrates it is likely to be significantly higher than that. This takes me back to my previous conclusion that the Applicant's scheme is unviable because they have fundamentally underestimated the cost of site assembly and have committed to an agreement with Mr Aldridge that they cannot now extricate themselves from.

9.44 In contrast, neither Prologis or MAG are subject to such restrictions and Prologis has both the means and financial ability to deliver development.

10.0 CONCLUSIONS

10.1 Having reviewed the available evidence, the following points emerge:

1) It is agreed between Mr Cottage and me that: "*While the nature of many Nationally Significant Infrastructure Projects ("NSIPs") means that financial viability (as opposed to the availability of funding) is not often a central focus in the consenting process, it is an extremely important issue for that part of the East Midland Gateway 2 development being promoted through a Development Consent Order ("The EMG2 DCO Scheme"). This is because to justify undertaking the development the promotor, whether SEGRO or any other commercial developer, will need to ensure it achieves a target rate of return (a "hurdle rate") consistent with that it would expect from any other, similar, project into which it could invest its time and capital."*

2) Even on the completely artificial assumption that Prologis/MAG would accept payment/compensation less than the Market Value of their land, the SEGRO scheme has only marginal viability. This viability is under significant threat from the potential for an increase from £18,000,000 for the "J24 M1 Green Package" as costed by Gardiner & Theobold for SEGRO which has been assigned a red RAG rating.

3) Once regard is had to market evidence and the Compensation Code in respect of SEGRO's liabilities to Prologis and MAG, it is clear that the SEGRO scheme is not viable and is unlikely to proceed as it will be unable to bear the cost of land assembly.

4) It therefore follows that, if the DCO is confirmed, development will be unlikely to come forward as there would be no commercial justification for SEGRO to proceed and no one else would be able to develop their land either due to the blighting effect of the threat of compulsory purchase for the life of the DCO. This would mean that no development would come forward.

5) SEGRO cannot viably develop the Aldridge Land independently due, to a large part, to the terms of the Aldridge Option Agreement. However, independent development of that land could come forward in the absence of the DCO via other developers who are not subject to the terms of the Aldridge Option Agreement

6) None of the appraisals provided by Mr Cottage are credible or could properly be regarded as robust as they depart from national planning policy and RICS requirements in respect of the expectations of viability appraisals and lack any consideration of the real-world market. They are entirely artificial in approach and assumptions.

7) It is apparent from the evidence before the Examination that the SEGRO scheme is not viable.

8) If the DCO is confirmed it is unlikely that the SEGRO scheme would be implemented.

9) If the DCO is refused, Prologis will be able to implement viable development. Furthermore, the market will be free to negotiate the provision of an access to the Aldridge Land and development thereof.

10) The argument that the Prologis scheme is any way dependent upon the receipt of a ransom payment from Mr Aldridge is entirely without basis. The scheme is viable irrespective of such ransom potential.

10.2 **Overall, it is not realistic for Mr Cottage to conclude that the SEGRO scheme is viable, and it is clear that the reverse is true. As things stand, the ExP cannot have any confidence that SEGRO can viably implement their proposed scheme.**

10.3 **In contrast, the Prologis scheme, which does not carry the financial burdens that SEGRO have taken upon themselves, is not only viable in its own right but will also enable viable development of the Aldridge Land to come forward.**

11.0 STATEMENTS

11.1 I have set out below the statements required of me by the RICS and Civil Procedure Rules.

11.2 In accordance with the requirements set out at PS 5.4 (P) (i) RICS Practice Statement and Guidance Notice entitled "Surveyors acting as expert witnesses 4th edition" and paragraph 3.3 of Practice Direction 35, I confirm that:

- I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true.
- The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.
- I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

11.3 In accordance with the requirements set out at PS 5.4 (P) (ii) RICS Practice Statement and Guidance Notice entitled "Surveyors acting as expert witnesses 4th edition" I confirm as follows:

- I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.
- I confirm that I understand and have complied with my duty to the Examination as an expert witness which overrides any duty to those instructing or paying me, that I have given my evidence impartially and objectively, and that I will continue to comply with that duty as required.
- I confirm that I am not instructed under any conditional or other success-based fee arrangement.
- I confirm that I have no conflicts of interest.
- I confirm that I am aware of and have complied with the requirements of the rules, protocols, and directions of the Tribunal.
- I confirm that my report complies with the requirements of RICS – Royal Institution of Chartered Surveyors, as set down in the RICS practice statement Surveyors acting as expert witnesses.'

11.4 In accordance with rules 35.10 (1) and (2) of the Civil Procedure Rules I can confirm that I understand and have complied with my duty to the Examination and also confirm that I am aware of the requirements of CPR Part 35, the Practice Direction 35 and the Guidance for the Instruction of Experts in Civil Claims 2014.

11.5 I can also confirm that I have acted with objectivity, impartially, without interference and with reference to all appropriate available sources of information.

PETER ROBERTS FRICS CENV

28 April 2026

APPENDIX 1: PROLOGIS/MAG LAND APPRAISAL

Prologis Park East Midlands Interchange

Illustrative Viability Appraisal testing viability on the following assumptions:

1) SEGRO 15% developer's profit
2) SEGRO rents
3) SEGRO yields
4) SEGRO application of SDLT to investment income
5) SEGRO construction costs
6) SEGRO fees (%s)
7) Prologis estimate of infrastructure costs

The calculated residual land value is £31,246,315 (say £31,250,000) which equates to £306,336 per Acre. This compares to Mr Cottage's assumption of land value at £22,902,329 which equates to £225,000 per acre.

Prologis Park East Midlands Interchange

REVENUE

Rental Area Summary	**Units**	**ft²**	**Rent Rate ft²**	**Initial MRV/Unit**	**Net Rent at Sale**
DC91	1	91,497	10.75	983,593	983,593
DC110	1	110,263	10.75	1,185,327	1,185,327
DC220	1	220,718	10.25	2,262,360	2,262,360
DC307	1	307,441	10.25	3,151,270	3,151,270
DC578	1	578,802	10.00	5,788,020	5,788,020
Train Hub	1	2,025		0	0
Bus Interchange	1	2,025		0	0
Totals	**7**	**1,312,771**			**13,370,570**

Investment Valuation

DC91					
Market Rent	983,593	YP @	5.2500%	19.0476	
(1yr Rent Free)		PV 1yr @	5.2500%	0.9501	17,800,570
DC110					
Market Rent	1,185,327	YP @	5.2500%	19.0476	
(1yr Rent Free)		PV 1yr @	5.2500%	0.9501	21,451,460
DC220					
Market Rent	2,262,360	YP @	5.2500%	19.0476	
(1yr Rent Free)		PV 1yr @	5.2500%	0.9501	40,943,052
DC307					
Market Rent	3,151,270	YP @	5.2500%	19.0476	
(1yr 3mths Rent Free)		PV 1yr 3mths @	5.2500%	0.9380	56,305,227
DC578					
Market Rent	5,788,020	YP @	5.5000%	18.1818	
(2yrs Rent Free)		PV 2yrs @	5.5000%	0.8985	94,550,192
Total Investment Valuation					**231,050,501**

GROSS DEVELOPMENT VALUE			**231,050,501**
Purchaser's Costs		(15,711,434)	
Effective Purchaser's Costs Rate	6.80%		
			(15,711,434)
NET DEVELOPMENT VALUE			
215,339,067			
TOTAL PROJECT REVENUE			**£215,339,067**

DEVELOPMENT COSTS

ACQUISITION COSTS

Residual Land Value (102.00 Acres @ £306,336 Acre)				**£31,246,315**
Effective Land Transfer Tax Rate		0.00%		
Agent Fee		1.00%	312,463	
Legal Fee		0.25%	78,116	
				390,580

CONSTRUCTION COSTS

Construction	**ft²**	**Build Rate ft²**	**Cost**	
DC91	91,497	68.00	6,221,796	
DC110	110,263	68.00	7,497,884	
DC220	220,718	67.00	14,788,106	
DC307	307,441	62.50	19,215,062	
DC578	578,802	59.00	34,149,318	
Train Hub	2,025	209.00	423,225	
Bus Interchange	2,025	112.00	226,800	
Totals	**1,312,771 ft²**		**82,522,191**	
Contingency		5.00%	1,728,834	
Contingency		2.00%	1,650,444	
Onsite Infrastructure Works			34,576,681	
Finger Farm Roundabout			6,979,690	
New Access RBT			4,062,680	
Beverly Road RBT			3,013,009	
Planning Costs			2,000,000	
				136,533,529
MARKETING & LEASING				
Marketing			300,000	
Leasing Agent Fee		15.00%	2,005,585	
Leasing Legal Fee		5.00%	668,528	
				2,974,114
DISPOSAL FEES				
Sales Agent Fee		1.00%	2,153,391	
Sales Legal Fee		0.50%	1,076,695	
				3,230,086
Additional Costs				
Dev. Management Fee		1.00%	62,218	
Dev. Management Fee		1.00%	74,979	
Dev. Management Fee		1.00%	147,881	
Dev. Management Fee		1.00%	192,151	
Dev. Management Fee		1.00%	341,493	

818,722

TOTAL COSTS BEFORE FINANCE **175,193,346**

FINANCE

Debit Rate 6.000%, Credit Rate 0.000% (Nominal)	
Total Finance Cost	12,058,014
TOTAL COSTS	**187,251,360**
PROFIT (15% on cost)	**£28,087,707**

ANNEX B – Spawforths Note on Socio-Economic Benefits

DCO 7.2 Applicant's Response to Relevant Representations

Annex 5 of Appendix 6 Comparison of Benefits Note

The first two columns of the Table below comprises SEGRO's Annex 5 of Appendix 6. The additional column is Prologis response to Annex 5.

Overarching response: The benefits claimed by SEGRO in its response (including Freeport business rates, operational jobs, GVA, the community park, sustainable transport, and BREEAM Outstanding standards) are not exclusive to the DCO route. As noted in Section 13 of the Prologis Relevant Representation, these do not provide any material benefit which would justify CA powers. Nowhere in SEGRO's Annex 5 comparison does it engage with the distinction between benefits that are genuinely attributable to compulsory acquisition and benefits that are merely additive. Instead, SEGRO's analysis proceeds as if the relevant question were simply whether the DCO Scheme delivers greater benefits than the Joint Application. That is not the question. The question is whether the benefits that can only be achieved through the exercise of compulsory acquisition powers are so substantial and compelling as to justify the draconian interference with Prologis' property rights. That requires consideration not only of relative scale, but also whether and if so to what extent those benefits could reasonably be achieved without the need for compulsory acquisition. The benefits could be brought forward through a planning application or DCO, without compulsory acquisition. SEGRO has not identified any such benefits, still less demonstrated that they meet the demanding threshold of section 122(3).

Prologis (Para 8.3 RR-24D)	**DCO Application**	**Prologis Response**
(a) Economic Benefits		
(i) Up to 135,000 sqm of floorspace across 41 hectares / 102 acres, accommodating diverse businesses including high-growth sectors (life sciences, advanced manufacturing) and logistics	Up to 300,000 sq.m floorspace across 102 hectares sq m of floorspace plus 200,000 sq.m mezzanine allowance for logistics and manufacturing and headquarters office space. The loss of floorspace from the land south of Hyam's Lane represents:1	Further information is required from the Applicant, to explain how the benefits have been calculated. In the absence of this information it is not possible properly to scrutinise and the test the case being put forward by the Applicants. The additional information required relates to the following points:

	-the loss of circa £5.7m of retained business rates per annum -the loss in business rates income receivable by the Freeport of £188m over the life of the Freeport -the loss of circa 3,800 on and off site operational jobs -the loss of at least £91m per annum in GVA which could be generated through on site employment.	• Detailed assumptions and justification underpinning the additionality assessment, including clear rationale for the approach taken to: o Leakage o Multiplier effects o Displacement • Source and baseline year for the statement that 82,000 residents of the Study Area are employed in the construction sector, including confirmation of the dataset used. • Supporting calculations for Table 5.21 (Additionality of Construction Employment), ideally as a detailed spreadsheet showing inputs, assumptions and step by step workings. • Rationale and evidence base for the projected increase in construction jobs referenced at paragraph 5.5.83 of the Planning Statement, including any trend data or comparators used. • Explanation of methodology for on-site operational employment (Table 5.22 of the Planning Statement), specifically: o Why off-site multiplier effects have not been applied or considered o The rationale for each on-site operational employment scenario

		and the assumptions informing them • Clarification on leakage assumptions, particularly why leakage has been treated as zero despite being described as 'low' due to the size of the Study Area. • Phasing and delivery timeline for the stated provision of approximately 3,700 on site operational jobs at PC, including when these jobs are expected to materialise.
(ii)Addresses critical shortage of industrial units in a high-growth region, ensuring availability of modern, suitable premises for occupiers.	DCO Application makes significantly greater contribution to addressing the shortage.	The DCO Application makes a greater contribution to addressing the shortage of employment units than the Joint Application in absolute terms but the Joint Application can deliver more employment floorspace on the Prologis/MAG Land and it facilitates and does not impede the employment development of the Southern Land.
(iii)Up to 186 construction jobs and 1919 occupational jobs.	Up to 365 construction jobs (plus highway works construction jobs) and at least 3,160 occupational jobs	The DCO Application makes a greater contribution to job creation than the Joint Application in absolute terms but the Joint Application can deliver more job creation on the Prologis/MAG Land and it facilitates and does not impede the employment development of the Southern Land.
(iv)Enhances benefits through East Midlands Freeport designation, attracting forward thinking industries and	DCO application has more floorspace available to attract such industries and economic growth	The DCO Application makes a greater contribution to delivering employment floorspace than the Joint Application in absolute terms

supporting regional economic growth.		but the Joint Application can deliver more employment floorspace on the Prologis/MAG Land and it facilitates and does not impede the employment development of the Southern Land.
(b)Social		
(i)Dedicated Training Hub offering fully funded courses for school leavers, unemployed individuals, and career changers, linked directly to employers.	The creation of a Skills, Employment and Supply Chain Task Force bringing together representatives of the Freeport, EMCCA, local authorities and existing key employers with the aim of: -designing and delivering an inclusive Skills & Employment Plan for EMG2 -supporting the growth and competitiveness of existing operators at EMG1; and -building skills capacity across North West Leicestershire and the wider East Midlands Labour force	The DCO scheme and the Joint Application scheme deliver similar social benefits in this regard, however the Prologis' proposed Training Hub offers a more direct, tangible and deliverable benefit than the Task Force approach advanced through the DCO scheme. Rather than relying on a strategic, multi-party governance structure to design and coordinate skills initiatives over time, the Training Hub provides a dedicated, on-site, multi-functional facility delivering fully funded training opportunities for school leavers, unemployed individuals (care leavers, ex military and ex-offenders) , alongside partnerships with schools (including SEND) and direct links to employers and job opportunities. Importantly, its multi-functional nature means it is not solely a training space, but a wider community asset supporting engagement, outreach and partnership working. This enables it to deliver both park-level benefits for occupiers and place-based benefits for the surrounding community.

		This approach is underpinned by a strong track record. Prologis has successfully delivered and continues to evolve its training hub model at DIRFT, which has proven highly effective in responding to occupier needs and supporting local employment outcomes. Alongside this, Prologis facilitates ongoing collaboration between local authorities, employment services and occupiers, demonstrating that it can deliver both the strategic coordination and the practical delivery of training and employment initiatives.
(ii)Enhances cycle and pedestrian networks within and around the Prologis/MAG Land, prioritising safe, segregated routes and connectivity to Hyam's (sic) Lane and Diseworth.	DCO Application provides for good standard cycle connectivity between EMG2 and Diseworth, EMG1, Castle Donington and Kegworth. The Joint Application includes no upgrade to Hyam's Lane, meaning that a utility cycle connection to Diseworth is not achieved. The Joint Application's reliance on the existing lower standard cycle track on the east side of the A453 between Finger Farm and EMG1 junction provides a lower standard of connection to EMG1 and Kegworth. The Joint Application does not provide cycle connectivity to Castle Donington.	Hyam's Lane sits on the periphery of the joint application and one of the design principles has been to maintain Hyam's Lane in its current form. This matter was raised by local residents, the Parish Council and Officers at NWLDC during consultation meetings, stressing the importance of maintaining this as a rural route. Ecology and lighting concerns were also raised. As noted in the updated Design and Access Statement (24/00727/OUTM), the site boundary with Hyam's Lane will have a minimum 15m width landscape buffer with the focus also on reinforcement of the existing boundary hedge. Hyam's Lane will retaining it's status as an adopted highway, therefore permitting cycle use. In

		addition, the joint application will provide enhanced access from the A453 for those walking, cycling and wheeling via Grimes Gate from the south. The site's active travel strategy has been developed in consultation with Active Travel England to connect with key destinations. Castle Donnington can be accessed via existing infrastructure. The joint application includes an additional crossing of the A453 (which is not included in the DCO application) to tie in with facilities at East Midlands airport including key public transport infrastructure and the Airport Circular trail which provides onward connections in all directions.
(iii)Community focused development (including a community park) delivered in line with Prologis' PARKlife scheme, creating amenity spaces and walking routes, reinforcing social and community benefits	The DCO provides a Community Park of 14.3 ha compared with 9.76 ha (gross) proposed in the Joint Application. The Joint Application buffer zone is mostly strategic landscape bunding and not amenity land. The DCO provides a far more appropriate buffer to Diseworth including community access, walking routes etc.	Prologis's Deadline 2 Submission (Annex A and Annex B) explains why the DCO Community Park does not provide a suitable or reliable mechanism for mitigating the loss of skylark breeding habitat. This is because of the anticipated multifunctional nature of the Country Park, including public access, landscape planting and attenuation features, which are unlikely to consistently provide the open and undisturbed conditions typically required by nesting skylark. Prologis consider that the Joint Application Community Park is fit for purpose and that through the

		PARKlife initiative it can create appropriate public access alongside its buffer and landscaping role. It does not seek to accommodate Skylark mitigation within it. In circumstances such as these where an acceptable level of landscaping to mitigate the effects of development and ensure a successful relationship with surrounding land uses can be achieved on a smaller area of land, paragraph 11 of the CA Guidance makes clear that there can be no compelling case to acquire a greater area for that purpose.
(c)Environmental		
(i)Net carbon zero targeted by 2040, targeting EPC A+ energy efficiency and integrating solar panels across all buildings.	Noted what the Joint Application is targeting by 2040. SEGRO is committed to delivering the DCO scheme in a way that enables occupiers to run net zero operations. In delivering one of its strategic priorities SEGRO is committed to reducing operational carbon emissions (including occupier emissions) by 42% of 2020 levels by 2030. See also Carbon Management Plan (APP-196)	There is no material distinction between the general sustainability approaches of Prologis and SEGRO. Both parties are targeting net zero carbon outcomes, high EPC ratings, and the integration of on-site renewable energy to support occupiers in reducing operational emissions. In that respect, the suggestion of any substantive difference in approach is misplaced and cannot be substantiated on the evidence.
(ii)Targeting BREEAM Outstanding for building design.	Targeting BREEAM Outstanding also.	There is no difference between the two Parties approaches.
(iii)Provision of onsite Public Transport Hub to support sustainable travel options for users and visitors.	Provision of bus interchange within the DCO Application which facilitates the use of a shuttle bus within the Main Site obviating the need for bus companies to travel further	The public transport strategy for the joint application has been developed based on regular engagement with Trent Barton, a major bus

	along the A453, and back, before entering Pegasus Business Park. Under the Joint Application there can be no bus penetration to the majority of the site without the buses travelling further along the A453 and then returning to the Hunter roundabout to enter Pegasus Business Park. This is not favoured by the relevant bus companies and not an approach which National Highways think is appropriate.	operator who provide both local and regional bus services across Nottinghamshire, Derbyshire, and Leicestershire, and have operated since 1913. Substantial weight should therefore be attached to their views. Throughout discussions, they have stressed their preference for key Skylink services to not divert away from the A453, thereby compromising journey times on their Express routes to the Airport. As a result, Prologis's public transport strategy provides connectivity with the existing stops on Beverley Road as well as providing a new Public Transport Interchange within the site to accommodate other diverted services and lay-over facilities. Discussions with National Highways and key stakeholders about the existing routing and timing of the shuttle bus are ongoing.
Prologis (Para 8.4 RR-24D)		
(a)The Joint Application delivers a dedicated Transport Hub with integrated bus facilities, EV charging, and enhanced walking and cycling links, ensuring at least equivalent sustainable travel benefits	See (c)(iii) above for comments on provision of bus interchange (Transport Hub). EV charging is standard. See above (b)(ii) for superior active travel provision provided by the DCO Application.	Addressed in (c) (iii) above
(b)The Joint Application provides a Community Park alongside a landscape led masterplan with	See (b)(iii) above	Addressed in (b) (iii) above

significant public green space, biodiversity net gain, and the proven benefits of the PARKlife initiative to promote community access and wellbeing;		
(c)The Joint Application offers dedicated training and upskilling via an on-site Training Hub directly linked to local employers and schools;	See (b)(i) above	Addressed in (b) (i) above
(d)In terms of sustainability, the Joint Application targets BREEAM Outstanding, EPC A+, and all-electric buildings with rooftop solar;	See (c)(i) and (ii)	Addressed in (c) (i) and (ii) above
(e)The Joint Application proposes a greater floorspace in respect of the Prologis/MAG Land as well as more units and a wider range of unit sizes than the DCO Application, this provides for a broader customer base from which it can secure investment.	This alleged benefit is to the detriment of an acceptable buffer with Diseworth. The Applicant early schemes included more floorspace on the land north of Hyams Lane closer to Diseworth than that now proposed. The scheme was changed to pull back that floorspace following engagement with representatives of Diseworth. The floorspace proposed by the Joint Application(of 135,000 sq.m. is of course to be compared to the floorspace which will be delivered under the DCO scheme being 300,000 sq.m. plus mezzanines.	SEGRO's assertion of the unsuitability of the Joint Application's proposed buffer to Diseworth is not evidenced or justified. The DCO Application makes a greater contribution to delivering employment floorspace than the Joint Application in absolute terms, but the Joint Application can deliver more employment floorspace on the Prologis/MAG Land and it facilitates and does not impeded the employment development of the Southern Land.
Additional Benefits		
	The wider benefits of highway mitigation required for the DCO Application assisting in the need to address capacity issues at Junction 24 to	The Joint Application Transport Assessment is evaluating the traffic impact of the Joint Application proposals and has proposed

	facilitate local planned, and regional, growth (Joint Position Statement Document DCO 8.1).	a package of highways works including improvements to the Finger Farm Roundabout to mitigate the traffic generated by the Joint Application development. In my opinion this approach of mitigating traffic impact such that it does not result in an unacceptable impact on highway safety and the residual cumulative impacts on the road network, following mitigation, would not be severe (in terms of the National Planning Policy Framework requirements, paragraph 116), is appropriate and enables the Joint Application to comply with relevant development plan and NPPF policies and thereby secure planning permission. Off-site highway improvements will be delivered through the Joint Application and as part of the East Midlands Freeport Strategic Infrastructure and Contributions Supplementary Planning Document (currently a draft) which is being brought forward by the Council and which sets out a framework for contributions towards off-site highways improvements and site-specific infrastructure delivery.
	The provision of HGV parking within the site for early arrivals to avoid exacerbating any local problems of HGV parking off site.	The Joint Application HGV parking strategy utilises on plot HGV parking which will include early arrival waiting areas and welfare facilities.

		The precise details of the HGV parking strategy will be determined at the reserved matters stage.
	The drainage strategy for the DCPO Application provides betterment in reducing existing localised flood risk issues See Paragraph 13.5.95 Chapter 13 ES (APP- 141)	The DCO scheme and the Joint Application are using the same drainage design and mitigation criteria as required by LCC Lead Local Flood Authority and that is Qbar (Green field run off). As such, both schemes will be limited to a surface water discharge rate that is equal or less than the green field run off rate of their respective developments (as if no site development existed). So, in the context of the Joint Application and the northern part of the DCO Application, the allowable run off will be proportionally the same.
	The integrated power provision across EMG1 and EMG2 afforded by the connectivity of the two primary power stations and other synergy with EMG 1 re sustainable transport and skills and training (Para 1.48 Response to EMA relevant representation Document DCO 7.2 Appendix 5).	Further information is required from the Applicant in order properly to understand, assess and test the assertion that the benefits described in relation to power, sustainable transport and skills and training can only be achieved through the exercise of compulsory acquisition powers. On the material so far submitted to the examination the basis for these assertions is not clear. Without further explanation and elaboration of the basis for these claims it is simply not possible properly to scrutinise and test the case being put forward by the Applicants.

The “net zero carbon” or “carbon neutral” campus and headquarters relied upon by SEGRO is not a general feature of its development model, but a scheme-specific concept that it has linked to a potential Maersk headquarters. As set out in the Section 35 Direction, this campus forms part of the description of the project that was advanced to justify national significance. The application itself does not make any specific provision for such a development, it does not attempt to define what is meant by “carbon neutral”, “campus” or “headquarters” in this context, nor how such a development would be secured or delivered through the DCO. Moreover, the carbon benefits associated with the inland port and existing rail infrastructure already exist and are not contingent on the delivery of this DCO scheme. The potential co-location of a Maersk headquarters, or the use of electric HGVs, does not materially alter that position and could equally occur elsewhere. Critically, there is no mechanism within the DCO to secure the delivery of this campus, nor any binding commitment from Maersk. This matter is addressed fully in paragraphs 2.9 to 2.38 of the Prologis Deadline 2 submission.

Spawforths

23 April 2026.

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ANNEX C – Financial viability in planning: conduct and reporting

RICS PROFESSIONAL STANDARD

Financial viability in planning: conduct and reporting

England

1st edition, May 2019

Effective from 1 September 2019

RICS®

Financial viability in planning: conduct and reporting

RICS professional standard, England

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RICS standards framework

RICS' standards setting is governed and overseen by the Standards and Regulation Board (SRB). The SRB's aims are to operate in the public interest, and to develop the technical and ethical competence of the profession and its ability to deliver ethical practice to high standards globally.

The RICS Rules of Conduct set high-level professional requirements for the global chartered surveying profession. These are supported by more detailed standards and information relating to professional conduct and technical competency.

The SRB focuses on the conduct and competence of RICS members, to set standards that are proportionate, in the public interest and based on risk. Its approach is to foster a supportive atmosphere that encourages a strong, diverse, inclusive, effective and sustainable surveying profession.

As well as developing its own standards, RICS works collaboratively with other bodies at a national and international level to develop documents relevant to professional practice, such as cross-sector guidance, codes and standards. The application of these collaborative documents by RICS members will be defined either within the document itself or in associated RICS-published documents.

Document definitions

Document type	Definition
RICS professional standards	**Set requirements or expectations for RICS members and regulated firms about how they provide services or the outcomes of their actions.** RICS professional standards are principles-based and focused on outcomes and good practice. Any requirements included set a baseline expectation for competent delivery or ethical behaviour. They include practices and behaviours intended to protect clients and other stakeholders, as well as ensuring their reasonable expectations of ethics, integrity, technical competence and diligence are met. Members must comply with an RICS professional standard. They may include: • mandatory requirements, which use the word 'must' and must be complied with, and/or • recommended best practice, which uses the word 'should'. It is recognised that there may be acceptable alternatives to best practice that achieve the same or a better outcome. In regulatory or disciplinary proceedings, RICS will take into account relevant professional standards when deciding whether an RICS member or regulated firm acted appropriately and with reasonable competence. It is also likely that during any legal proceedings a judge, adjudicator or equivalent will take RICS professional standards into account.
RICS practice information	**Information to support the practice, knowledge and performance of RICS members and regulated firms, and the demand for professional services.** Practice information includes definitions, processes, toolkits, checklists, insights, research and technical information or advice. It also includes documents that aim to provide common benchmarks or approaches across a sector to help build efficient and consistent practice. This information is not mandatory and does not set requirements for RICS members or make explicit recommendations.

Chair's statement

In 2012 RICS published *Financial viability in planning* (1st edition), which provided advice on applying the government's planning policy on viability, introduced through the National Planning Policy Framework (NPPF) 2012.

The 1st edition has been widely referred to in financial viability assessment (FVA) submissions, section 106 agreements, supplementary planning guidance (SPG), planning appeals and High Court decisions as a document that sets out accepted good practice for RICS members.

The emergence in 2014 of the national Planning Practice Guidance provided more detail about the application of the NPPF. In July 2018 a revised NPPF and Planning Practice Guidance (PPG) were issued. The NPPF was further updated in February 2019 and the PPG updated in May 2019. This followed the earlier decision in *Parkhurst Road Ltd v Secretary of State for Communities and Local Government & Anor* [2018] EWHC 991.

This professional standard has therefore been informed by the NPPF, PPG and a High Court decision, as well as practitioner experience. It aims to:

- provide consistency regarding the application of policy and guidance and
- assist the practitioner in individual cases.

Where planning obligations and other costs are introduced during the planning process, ascertaining the viability of a development involves a number of valuation judgements in both the inputs and outcomes of an appraisal of a scheme. In arriving at these judgements, it is a question of whether they are rational, realistic and reasonable in the circumstances. Parties may of course reasonably disagree. The 1st edition encouraged practitioners to seek to resolve these differences of opinion, where possible, in the context of viability being a matter of evidence, valuation and exercising judgement.

The PPG 2019 also emphasises the need for:

- evidence-based judgement
- collaboration
- transparency and
- a consistent, standardised approach.

All these themes were central to preparing this standard, which sets out mandatory requirements that inform the practitioner on what must be included within reports and how the process must be conducted. This is to demonstrate how a reasonable, objective and impartial outcome, without interference, should be arrived at, and so support the statutory planning decision process.

Given that planning applications involve a statutory process that is subject to public scrutiny, the requirements in this professional statement are important in providing public confidence in a process that is inevitably complex, but nevertheless must inform the planning decision-maker.

Since the publication of the NPPF 2018 and PPG 2018 (as updated in 2019) RICS has also been reviewing the 1st edition to align it with the changed emphasis in current government policy; a second edition is forthcoming.

I would like to thank all those who contributed to this professional statement with their comments and suggestions and, in particular, my fellow members of the working group.

Glossary

Term	Definition
Benchmark land value (BLV)	A term defined in the Planning Practice Guidance (PPG) and undertaken by a suitably qualified practitioner (see PPG paragraphs 013 (reference ID: 10-013-20190509); 014 (reference ID: 10-014-20190509); 015 (reference ID: 10-015-20190509); 016 (reference ID: 10-016-20190509); and 017 (reference ID: 10-017-20190509)). See also *Suitably qualified practitioner*.
Decision-maker	The local/regional (where applicable) planning authority, or an inspector(s) as appointed by the secretary of state.
Existing use value (EUV)	The *RICS Valuation – Global Standards 2017* (the 'Red Book') UK national supplement (2018) UK VPGA 6.1 states that: 'Existing use value (EUV) is to be used only for valuing property that is owner-occupied by an entity for inclusion in financial statements.' Using EUV in other circumstances is technically a departure from the Red Book (albeit an acceptable one in the context of the PPG). Where reference to EUV falls within 'authoritative requirements', for the purposes of the Red Book PS 1 section 4.2 and PS 1 section 6.3, it is not to be regarded as legislative or even regulatory in character, but nevertheless is a clear government policy requirement/ convention (with accompanying guidance). Therefore, it would not need to be formally declared as a departure provided the valuation purpose (financial viability in planning) is made clear, as other parts of PS 1 require.
Financial viability assessment (FVA)	See *Viability assessment*.
Local planning authority (LPA)	This includes both local and regional (where applicable) planning authorities, including metropolitan cities where a mayor presides in determining, or informing decisions on, planning applications.

Term	Definition
National Planning Policy Framework (NPPF)	Published by the government in July 2018 and updated in February 2019. It supersedes the policies in the previous version of the framework published in 2012.
Planning Practice Guidance (PPG)*	The PPG was introduced in paragraph 57 of the NPPF, which states that all viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in PPG as from July 2018. The PPG was updated in May 2019 and can be accessed at www.gov.uk/guidance/viability. The PPG supersedes the previous viability guidance (also known as Planning Practice Guidance), which was operative from 2014 to July 2018 (see www.gov.uk/government/collections/planning-practice-guidance). * Planning Practice Guidance is also referred to as National Planning Guidance elsewhere.
RICS member(s)	A member of RICS (see also *Suitably qualified practitioner*).
Section 106 agreement	An agreement (based on section 106 of the *Town and Country Planning Act* 1990) made between a local authority and an owner/developer, which can be attached to a planning permission concerning planning obligations that make a development acceptable. The section 106 agreement runs with the land to which the planning permission has been granted.
Stand back	Following a detailed component review of the inputs into an FVA and running the appraisal, to stand back is to consider the output(s) objectively, and with the benefit of experience, given the complexity of the proposed scheme. This may often be assisted by reviewing the sensitivity analysis.
Subpractitioners	All parties who may contribute to the carrying out or reviewing of the financial viability of a scheme.

Term	Definition
Suitably qualified practitioner	A term identified in the PPG, paragraph 020 (reference ID: 10-020-20180724): 'In order to improve clarity and accountability it is an expectation that any viability assessment is prepared with professional integrity by a suitably qualified practitioner and presented in accordance with this National Planning Guidance. Practitioners should ensure that the findings of a viability assessment are presented clearly.' An RICS member would be considered a 'suitably qualified practitioner' to give an objective, impartial and reasonable viability judgement if they: • are experienced in undertaking valuations of development land and/or advising on financial viability of development • understand the application of inputs into the residual appraisal model from other professional disciplines and • have appropriate and up-to-date knowledge of the planning system.
Viability assessment	This means: • an assessment originated on behalf of an applicant • an assessment produced by a reviewer (either on behalf of an LPA or by themselves) • an area-wide viability assessment (and representations made in respect of an area-wide viability evidence base before and during an examination in public) and • an assessment that is part of a proof of evidence/ expert's report before and during an appeal or High Court case.
Viability judgement	Similar to *stand back* in that an objective, rational and experienced opinion is formed, having regard to the complexities of the circumstances. A viability judgement may equally apply to individual elements of the appraisal, including the benchmark land value as well as the viability output, including interpretation of the resultant sensitivity analysis.

1 Introduction

1.1 Updating

In addition to this professional standard, RICS is producing a second edition of *Financial viability in planning* (1st edition published in 2012), to reflect the changes in the NPPF 2018, as updated in February 2019, and PPG 2018, as updated in May 2019.

1.2 Overview

This professional standard sets out mandatory requirements on conduct and reporting in relation to FVAs for planning in England, whether for area-wide or scheme-specific purposes. It recognises the importance of impartiality, objectivity and transparency when reporting on such matters. It also aims to support and complement the government's reforms to the planning process announced in July 2018 and subsequent updates, which include an overhaul of the NPPF and PPG on viability and related matters.

The new policy and practice advice prioritises the assessment of viability at the plan-making stage and identifies EUV as the starting point for assessing the uplift in value required to incentivise the release of land.

This standard does not reference individual appeal cases. This is because the issues relating to them are often specific to each case, which makes an objective analysis difficult and subject to caveats. Neither does this standard deal with specific local planning policy (see section 3). The assessment of viability **must** be carried out having proper regard to all material facts and circumstances, whether for area-wide or scheme-specific assessments.

The RICS member carrying out the FVA **must** be a suitably qualified practitioner. A list of defined terms can be found in the *Glossary*.

1.3 Background

This professional standard has been written against the background of the High Court decision in *Parkhurst Road Ltd v Secretary of State for Communities and Local Government & Anor* [2018] EWHC 991, which highlighted the need to deal with problems encountered in practice.

While this document focuses on reporting and process requirements, more explicit detail on development viability in planning and providing greater clarity on reporting will be dealt with in the forthcoming second edition of RICS' *Financial viability in planning*.

1.4 Application

The primary policy and guidance on assessing viability in a planning context is provided in the NPPF 2019 and the PPG 2019. These have sought to change the emphasis on how viability should be approached in the planning system and the weight that should be given to viability assessments at the plan-making and development management stages.

2 Reporting and process requirements

The requirements in sections 2.1 to 2.14 set out what **must** be included in all FVAs (scheme-specific and area-wide) and how they **must** be carried out. This concerns all FVAs, whether they are:

- on behalf of, or by, the applicant
- in respect of a review or otherwise of a submitted FVA or
- on behalf of, or by, the decision- or plan-maker.

The following requirements are mandatory in all cases.

2.1 Objectivity, impartiality and reasonableness statement

A collaborative approach involving the LPA, business community, developers, landowners and other interested parties will improve understanding of the viability and deliverability for everyone involved in the process. The report **must** include a statement that, when carrying out FVAs and reviews, RICS members have acted:

- with objectivity
- impartially
- without interference and
- with reference to all appropriate available sources of information.

This applies both to those acting on behalf of applicants as well as those acting on behalf of the decision-makers.

A similar statement **must** appear in area-wide studies and submissions. RICS members **must** also comply with the requirements of PS 2 *Ethics, competency, objectivity and disclosures* in *RICS Valuation – Global Standards* in connection with valuation reports.

2.2 Confirmation of instructions and absence of conflicts of interest

Terms of engagement **must** be set out clearly and should be included in all reports. RICS' *Conflicts of interest* applies, but with the additional requirement that RICS members acting on behalf of all those involved **must** confirm that no conflict or risk of conflict of interest exists (see *Conflicts of interest* paragraph 1.1). The standard allows 'informed consent' management, which, subject to the circumstances, can be both pragmatic and appropriate. This should take the form of a declaration statement.

Where either applicants or decision-makers specify requests of RICS members, either at the start or during the viability process, these **must** be explicitly set out in respective reports. This includes additional requests for testing the viability of the proposed scheme or counterfactual scenarios. RICS members **must**, at all times, satisfy themselves that these requests do not contradict the mandatory requirements of this professional standard.

2.3 A no contingent fee statement

A statement **must** be provided confirming that, in preparing a report, no performance-related or contingent fees have been agreed.

2.4 Transparency of information

Transparency and fairness are key to the effective operation of the planning process. The PPG (paragraph 021, reference ID 10-021-20190509) states that:

'Any viability assessment should be prepared on the basis that it will be made publicly available other than in exceptional circumstances.'

Although certain information may need to remain confidential, FVAs should in general be based around market- rather than client-specific information.

Where information may compromise delivery of the proposed application scheme or infringe other statutory and regulatory requirements, these exceptions **must** be discussed and agreed with the LPA and documented early in the process. Commercially sensitive information can be presented in aggregate form following these discussions. Any sensitive personal information should not be made public.

2.5 Confirmation where the RICS member is acting on area-wide and scheme-specific FVAs

Before accepting instructions, if RICS members are advising either the applicant or the LPA on a planning application and have previously provided advice, or where they are providing ongoing advice in area-wide FVAs to help formulate policy, this **must** be declared.

In these circumstances respective parties **must** also ensure that no conflicts of interest arise, particularly where advice in connection with policy is concurrent with carrying out or reviewing the financial viability of a specific scheme. When reporting, RICS members **must** declare whether they have advised an LPA that is considering the planning application that is subject to an FVA. This applies to individuals as well as the firm/company advising either the applicant or LPA, and includes subpractitioners. It applies both before accepting instructions and subsequently when reporting. Refer to the current edition of RICS' *Conflicts of interest* to ensure that you follow the correct process in all cases.

2.6 Justification of evidence and differences of opinion

All inputs into an appraisal **must** be reasonably justified. Where a reviewer disagrees with a submitted report and/or with elements in it, differences **must** be clearly set out with supporting and reasonable justification. Where inputs are agreed, this **must** also be clearly stated. Where possible, practitioners should always try to resolve differences of opinion.

2.7 Benchmark land value and supporting evidence

Stakeholders are often presented with a variety of valuation figures that are not always easy to understand. In particular they will wish to reconcile figures included in FVAs with figures reported in the market. In the interest of transparency, when providing benchmark land value in accordance with the PPG for an FVA, RICS members **must** report the:

- **current use value** – CUV, referred to as EUV or first component in the PPG (see paragraph 015 reference ID: 10-015-20190509). This equivalent use of terms – i.e. that CUV and EUV are often interchangeable – is dealt with in paragraph 150.1 of IVS 104 *Bases of Value* (2017)
- **premium** – second component as set out in the PPG (see paragraph 016 reference ID: 10-016-20190509)
- **market evidence** as adjusted in accordance with the PPG (see PPG paragraph 016 reference ID: 10-016-20190509)
- **all supporting considerations, assumptions and justifications adopted** including valuation reports, where available (see PPG paragraphs 014 reference ID: 10-014-20190509; 015 reference ID: 10-015-20190509; and 016 reference ID: 10-016-20190509)
- **alternative use value** as appropriate (market value on the special assumption of a specified alternative use; see PPG paragraph 017 reference ID: 10-017-20190509). It will not be appropriate to report an alternative use value where it does not exist.

A statement **must** be included in the FVA or review of the applicant's FVA or area-wide FVA that explains how market evidence and other supporting information has been analysed and, as appropriate, adjusted to reflect existing or emerging planning policy and other relevant considerations. If a market value report has recently been prepared, this should be stated with the:

- reason for the report
- assumptions adopted and
- reported valuation.

The onus is on RICS members to enquire about all of the above.

In addition, the price paid for the land (or the price expected to be paid through an option or conditional agreement), should be reported as appropriate (see PPG paragraph 016 reference ID: 10-016-20190509) to improve transparency. Price paid is not allowable evidence for the assessment of BLV and cannot be used to justify failing to comply with policy.

2.8 FVA origination, reviews and negotiations

During the viability process there **must** be a clear distinction between preparing and reviewing a viability report and subsequent negotiations. The negotiations, which take place later and separately, commonly relate to section 106 agreements. This distinction is to retain the objectivity and impartiality of the origination and review of an FVA and to clarify where respective parties, or their practitioners, are seeking to resolve differences of opinion by comparison with subsequent negotiations.

2.9 Sensitivity analysis (all reports)

All FVAs and subsequent reviews **must** provide a sensitivity analysis of the results and an accompanying explanation and interpretation of respective calculations on viability, having regard to risks and an appropriate return(s). This is to:

- allow the applicant, decision- and plan-maker to consider how changes in inputs to a financial appraisal affect viability and
- understand the extent of these results to arrive at an appropriate conclusion on the viability of the application scheme (or of an area-wide assessment).

This also forms part of an exercise to 'stand back' and apply a viability judgement to the outcome of a report.

2.10 Engagement

At all stages of the viability process, RICS members **must** advocate reasonable, transparent and appropriate engagement between the parties, having regard to the circumstances of each case. This **must** be agreed and documented between the parties.

2.11 Non-technical summaries (all reports)

For applicants, subsequent reviews and plan-making, FVAs **must** be accompanied by non-technical summaries of the report so that non-specialists can better understand them. The summary **must** include key figures and issues that support the conclusions drawn from the assessment and also be consistent with the PPG (see paragraph 021 reference ID: 10-021-20190509).

2.12 Author(s) sign-off (all reports)

Reports on behalf of both applicants and the authority **must** be formally signed off and dated by the individuals who have carried out the exercises. Their respective qualifications should also be included.

The authors of FVAs and subsequent reviews **must** come to a reasonable judgement on viability on the basis of objectivity, impartiality and without interference, taking into account

all inputs, including those supplied by other contributors. For more on inputs by other specialists in relation to valuation work, see PS 2 of Red Book Global Standards.

2.13 Inputs to reports supplied by other contributors

All contributions to reports relating to assessments of viability, on behalf of both the applicants and authorities, **must** comply with these mandatory requirements. Determining the competency of subcontractors is the responsibility of the RICS member or RICS-regulated firm.

2.14 Timeframes for carrying out assessments

RICS members **must** ensure that they have allowed adequate time to produce (and review) FVAs proportionate to the scale of the project, area-wide assessment and specific instruction. They **must** set out clear timeframes for completing work. If the timeframes need to be extended, the reasons **must** be clearly stated, both at the time and in the subsequent report.

Where RICS members believe that the timeframes have not been reasonable, they **must** state this and give a brief outline of the issues and consequential impacts.

3 Legislation, the development plan and professional guidance

3.1 Legislation

The *Town and Country Planning Act* 1990 and the *Planning and Compulsory Purchase Act* 2004 are the governing pieces of legislation that regulate development and set out the planning application process in England and Wales.

Policy principles relating to viability assessments are set out in the NPPF and are informed by the PPG. These two documents are the primary sources of guidance when carrying out FVAs. It is the RICS member's responsibility to have regard to all further relevant legislation, government policy and government guidance issued after the publication of this professional standard.

In England the plan-led system operates under the principle that the decisions on planning applications should be made in accordance with the adopted development plan, unless there are other material considerations that may indicate otherwise. In adopting and implementing the plan, national planning policies are a material consideration. Additionally, the government may produce national planning guidance on how the national policy is to be applied. It also is a material consideration in plan-making and decision-making.

In certain circumstances government policies and guidance may need further elaboration to enable practitioners to consistently apply local planning policy in compliance with national planning policy and associated guidance. RICS professional standards and guidance fall into this category. They expand on how government policy and practice advice may be consistently implemented in the context to which it applies (see Figure 1). This PS should be applied reflecting changes to government policies and guidance.

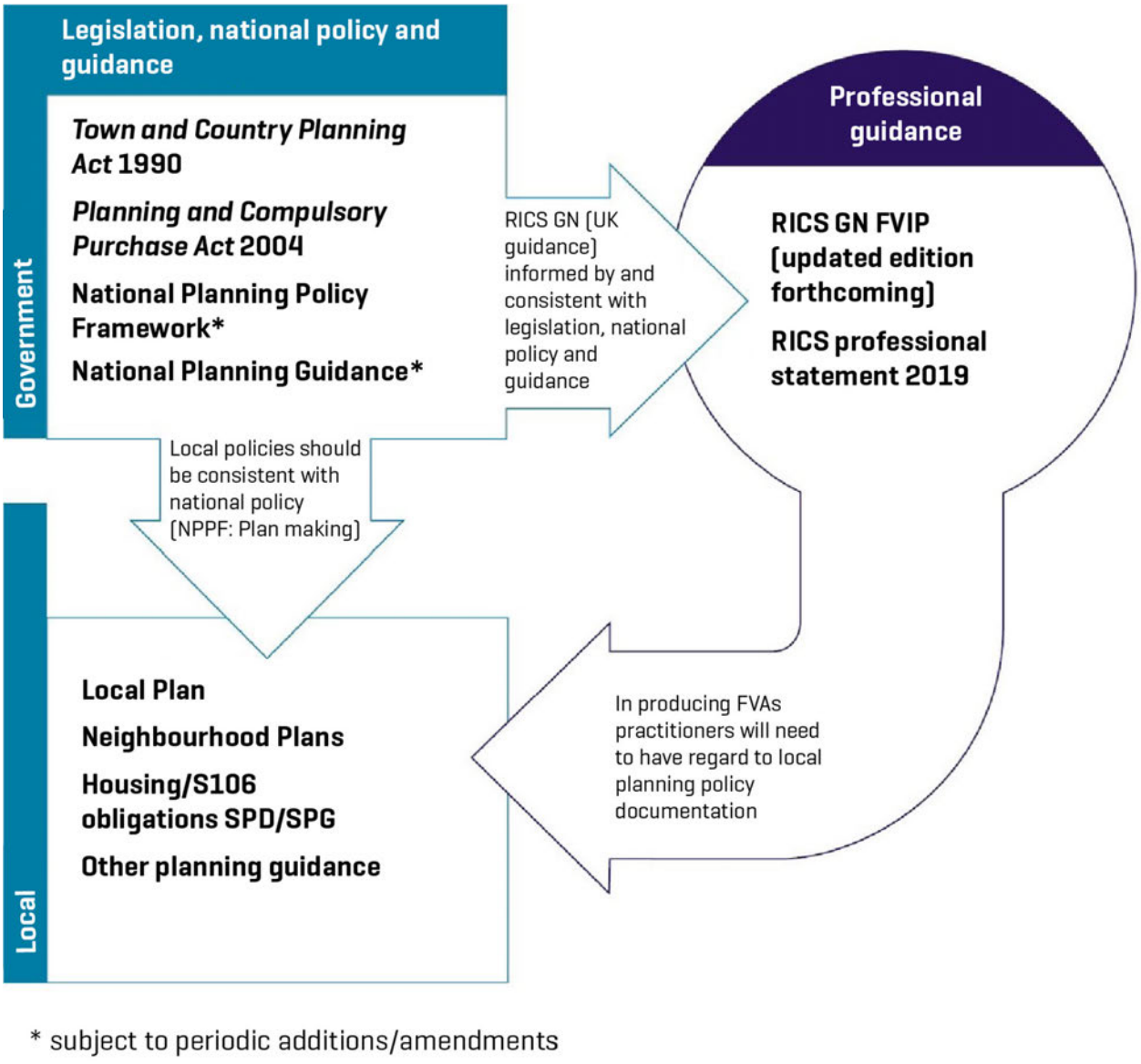

Figure 1: Legislation, policy and guidance

3.2 RICS professional guidance and information

The forthcoming second edition of RICS' *Financial viability in planning* (1st edition published 2012) will reflect the 2019 PPG and other related government guidance. Until this second edition is available, refer to section 1.4 of this professional standard.

3.3 Additional guidance

In addition to points of general relevance in judgments from the courts, consideration may also be given to outcomes expressed in decisions from the secretary of state and planning appeals. In considering these cases, it is important to ensure an understanding of the relevance and suitability of the assumptions adopted when applying them to an FVA.

Where the adopted principles and assumptions are considered to have wider application, practitioners should ensure they understand the context of the original decision.

Inputs into the viability appraisal should be objective and reasonable, having regard to the specific scheme being tested at the time of the assessment as well as comparable evidence. As a project progresses, inputs inevitably change. For example, when pricing residential units, the asking price at the time of marketing may differ, sometimes significantly, from those in the original FVA. This is because:

- time has passed since the original assessment
- agents will always seek to get the best price when marketing and
- costs may change through inflation or other causes.

When developers take on a development, they understand there are risks they have to bear in mind following the grant of planning permission.

4 Duty of care and due diligence

When carrying out or reviewing FVAs, members **must** be:

- reasonable
- transparent and
- fair and objective.

Objective means not being influenced by personal feelings, sentiment or by others in considering and representing facts (see section 2.1).

RICS members **must** act impartially. They should not be influenced by whether their role is to originate or to review the FVA. Neither should they bow to commercial or political pressures.

RICS members **must** comply with the principles of professional and ethical standards. These include:

- a duty of care that is particularly pertinent given the public interest and reliance that third parties may have on the content of the information provided and
- disclosure of any circumstances where the RICS member or the RICS-regulated firm will gain from the appointment beyond a normal fee or commission.

All RICS members acting on behalf of parties **must** confirm that no conflicts of interest exist. Figure 2 shows the relevant potential conflicts of interest.

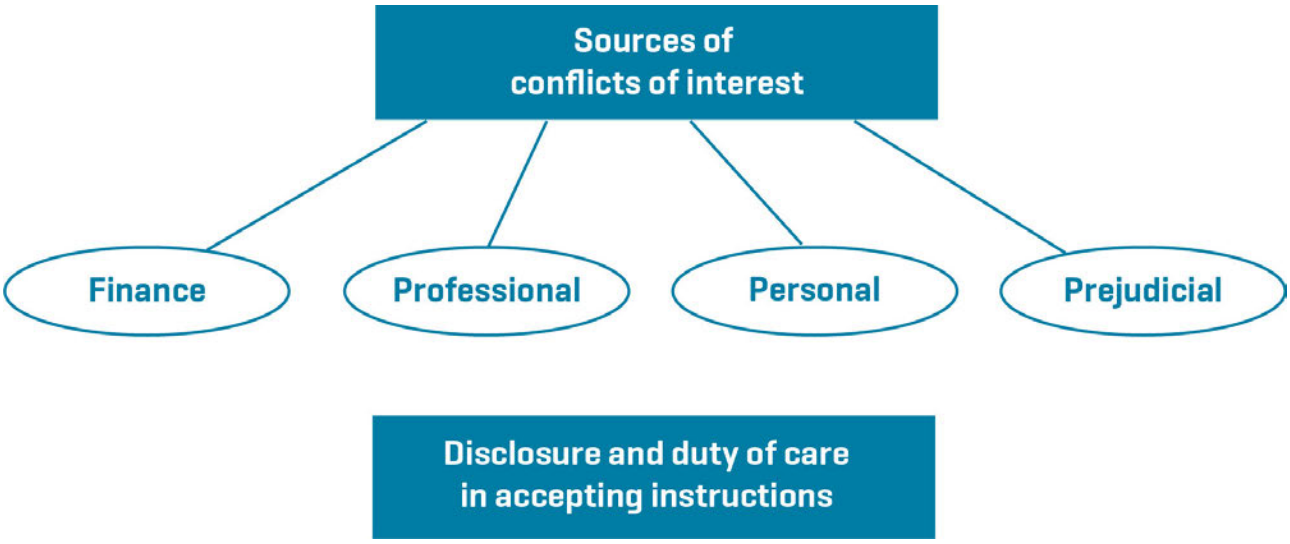

Figure 2: Conflicts of interest and duty of care

Establishing that there are no conflicts of interest includes providing statements from practitioners stating what other advice has been provided to the parties as appropriate and relevant in the circumstances. This may take the form of a declaration statement. Always refer to the current edition RICS' *Conflicts of interest* for the mandatory requirements and

accompanying guidance. This relates both to identifying and managing conflicts of interest and to maintaining confidentiality of information.

Acting with a reasonable standard of care contributes significantly to informed decision-making. RICS members should provide as much good-quality information as they can, whether submitting this on behalf of an applicant or responding on behalf of an LPA. This ensures that information is used to agree or to resolve any differences of opinion.

RICS members, whether on behalf of the applicant or LPA, **must** act as objective and impartial specialists to a professional standard when advising and providing information that can be relied on. In addition, they may be required to rely on highly specialist or technical inputs. This may include planning, legal and financial advice as well as technical development advice, such as build-cost estimates, ground condition surveys, engineering advice, etc. This information can help all parties involved to reach well-informed decisions quickly and without duplicating effort.

The onus is on the RICS members primarily responsible for the FVA, due diligence review or area-wide assessment to ensure that the information provided is balanced, reasonable and reflects an appropriate level of judgement in the circumstances. In practice, this requires all those inputting into the FVA to confirm that they have met those requirements in much the same way as if they were providing expert evidence. Where the originator of the FVA and the reviewer have different views, this should be supported; both should supply appropriate evidence or explanations of why they interpreted the evidence differently and reached an alternative opinion.

RICS members **must** also consider whether the advice they are giving represents the most effective and efficient way to deliver a reasonable development performance proportionate to the scheme being tested. This is sometimes referred to as 'value engineering' and involves quantity surveyors, agents and other professionals. LPAs and their advisers need to be confident that the FVA fully reflects the way the development would actually be carried out. If this is not the case, it should be stated and explained.

RICS members **must** include a statement that these matters have been given full consideration in the FVA. Corresponding statements **must**, where appropriate, be included in other professional and specialist inputs to the FVA.

When carrying out a due diligence review of an FVA on behalf of the LPA, RICS members **must** provide an assurance that the review has been carried out in accordance with this section.

Dependent on the terms of instruction from the LPA, which should be explicitly set out in any review or area-wide assessment, RICS members may be asked to provide additional advice on a range of aspects of viability assessment, such as counterfactual testing and alternative options for delivering the development proposed in the application. While this advice may not be intended for discussion with the applicant, the RICS member's role should be the same as if it were. The principles of due diligence set out in this section **must** be applied.

Case law has recognised that values and costs are not precise figures but may fall within a tolerance. Valuation and costing inputs would therefore not normally be at a level at either end of a possible range but **must** reflect a practitioner's professional viability judgement, having regard to such matters as the risks of development. The same consideration should be applied to resultant outputs to reach a rational, reasonable and realistic conclusion.

Sensitivity analyses (see section 2.9) help set such conclusions in their proper context and allow for adjustments to inputs within a possible range.

5 Transparency of information

The NPPF states that LPAs should publish a list of their information requirements for applications. These should be proportionate to the nature and scale of development proposals and should only request supporting information that is relevant and necessary to the application in question.

There is further guidance in the PPG. This identifies one of the key principles of FVAs as being a collaborative approach to improve understanding of viability and deliverability. Where possible there should be a presumption in favour of transparency of evidence. This is particularly important to reassure the wider community that viability testing has been fully assessed and all known facts have been considered.

An FVA should have enough detailed information to meet NPPF and PPG requirements. Sections 5.1 and 5.2 give further advice about providing confidential information.

5.1 Confidential information

An FVA is based on market information and is not specific to an applicant's circumstances. The PPG at paragraph 021 (reference ID: 10-021-20190509) states that FVAs will be made publicly available other than in exceptional circumstances. However, inputs may include commercially sensitive information, the public disclosure of which could have commercial consequences for the delivery of the application site.

Inputs that could be commercially sensitive typically relate to:

- current or future negotiations on land assembly (including obtaining vacant possession), option arrangements, third-party rights (e.g. rights of way, visibility, ransom, light, oversailing, etc.), disturbance, relocation, compulsory purchase and land compensation, etc.
- specific business information, such as funding details and marketing agreements and
- intellectual copyright, such as development toolkit and build-cost modelling. This can be kept confidential, but consideration should be given to presenting in a standard industry model.

Commercially sensitive information may need to be treated as confidential in pre-application discussions between the applicant and the LPA. This may relate to either market- and/or scheme-specific information. It may follow that such information could be exempt from disclosure to third parties under the provisions of the *Freedom of Information Act* 2000 or the *Environmental Information Regulations* 2004 (EIR).

5.2 Exceptions

The EIR set out exceptions that allow the LPA to refuse to provide requested information. Some exceptions relate to categories of information; for example, unfinished documents and internal communications. Others are based on the harm that would arise from disclosure; for example, if releasing the information would adversely affect intellectual property rights. There is also an exception for personal data if it would be contrary to the *Data Protection Act* 2018.

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We are RICS. Everything we do is designed to effect positive change in the built and natural environments. Through our respected global standards, leading professional progression and our trusted data and insight, we promote and enforce the highest professional standards in the development and management of land, real estate, construction and infrastructure. Our work with others provides a foundation for confident markets, pioneers better places to live and work and is a force for positive social impact.

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