



Hearing Transcript

Project:	East Midlands Gateway Phase 2
Hearing:	Recording of Issue Specific Hearing 3 (ISH3) – Day 1 – Part 1
Date:	13 May 2026

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Issue Specific Hearing 3 - 13_5_26 - 10_00am

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SUMMARY KEYWORDS

East Midlands Gateway, environmental matters, material changes, EIA regulations, planning balance, NCIP, highway works, supplementary planning documents, infrastructure delivery plan, consultation responses, decision-making process, carbon impacts, mitigation measures, statutory presumption, project assessment.

SPEAKERS

Speaker 1, Speaker 6, Speaker 12, Speaker 10, Speaker 4, Speaker 8, Speaker 3, Speaker 9, Speaker 11, Speaker 13, Speaker 14, Speaker 5, Speaker 7, Speaker 2, Eventurous AV Team

 01:23

Good morning, everybody. It's now 10 o'clock, and it's time for the hearing to begin. I would like to welcome you all to this issue, specific hearing on various environmental matters for the East Midlands gateway and highway project, and an order seeking material changes to the previously approved East Midlands gateway rail, freight interchange and high we ordered 2016 which we will refer to as the draft material change order. Can I just confirm that everybody can hear me? I'm seeing lots of nods. Can I also confirm with the case team, which I'm getting again, thumbs up, but they can hear me, and the live stream is and recording is working. My name is Robert Jackson, and I've been appointed by the Secretary of State to be the lead member of the panel examining these examine applications. We are going to cast my fellow panel members to introduce themselves.

 02:09

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

 02:17

Good morning. My name is Gaurav Joshi. Likewise, I have been appointed by the Secretary of State to be a member of the panel to examine these applications. I am also going to be keeping a list of action points, same as yesterday, and we can run through these at the end of the hearing, most likely tomorrow. So together, we constitute the examining panel for these applications. And next, I will now deal with the few housekeeping matters for those attending in person, as we are now on the second day of the hearings, many of you will be familiar with these arrangements. However, for the benefit of

those joining us, I will run through them again. So can everybody please set all electronic devices, watches and phones to silent? Please. There is no fire alarm schedule for today. So if the fire alarm goes off, we should treat it as a real thing and exit through the sign fire exits and follow the signage to the hotel fire point, which is located directly opposite to the main hotel entrance. You can find the toilet just down the corridor on this side, which is my left at the end. And to accommodate the comfort breaks and manage well being. Of all, we will adjourn for short breaks approximately every hour or so, and the lunch around 1pm for about an hour before we adjourn at 5pm this meeting will follow the agenda published on the national infrastructure planning website on Fifth May 2026, examining, examination, Library Reference, AV, 8001, it would be helpful if you had a copy of this in front of you, and the applicant applicants team will display the agenda on screen at this point. Thank you very much. The agenda is for guidance only, and we may add other considerations or issues as we progress, we will conclude the hearing as soon as all relevant contributions have been made and all questions asked and responded to. But if the discussions cannot be concluded, then it may be necessary for us to prioritise matters and defer other matters to written questions. Likewise, if you cannot answer the questions being asked or require time to get the information requested, then can you please indicate that you need to respond in writing, as explained at the yesterday's hearing, the majority of planning inspectors are members of Prospect union and are currently participating in a period of industrial action short of a Strike. This essentially means that we are not working up over and above our contracted hours. This has been accounted for in our time tabling for this week's hearing, and we thank you for the understanding on this matter. We are continuing with our blended format today, same as yesterday, with participants joining both here in the room and remotely via Microsoft Teams, regardless of your chosen method of attendance, we will ensure everyone has a fair opportunity to participate in today's hearing, as with other previous hearings, a recording will be uploaded on the relevant pages of The project, pages of the national infrastructure planning website. Shortly after we close, we will also produce an AI generated transcript, and to assist with its accuracy, please speak clearly into the microphone and introduce yourself and your organisation each time before you speak for those at the table, please remember to slide or push the button to activate your microphone or red light will indicate that it is live. If you are not at the table, we have a roving microphone available, so please wait for it to reach you before you speak, and a link to the planning Inspectorate privacy policy notice was provided in our rule six later. So we assume that everybody here today has familiarised themselves with this document, which establishes how the personal data of our customers is handled in accordance with the principle set out in data protection laws. If you have any queries regarding this, please raise with a case team to move on. I will start with the attendance. I'm going to ask those of you who are participating in today's meeting to introduce yourself while many of you were with us yesterday. It is essential for today's specific recording that we establish the record clearly at the start, when I state your organization's name, could you please introduce yourself, stating your name and who you represent and under which agenda item you wish to speak on. If you are not representing an organisation, please confirm your name and summarise your interest in the application and confirm the agenda item upon which you wish to speak. Would you also state your title, which you would like to be addressed with? To start with, can I ask the applicant and their advisors please? And I guess I note that there are a number of experts or presence to address different topics today, so it might be appropriate and helpful to briefly introduce themselves as and when we come to the topic,

 07:15

thank you and good morning. My name is Miss Isabella Tafur Kings Council and I represent the applicants. Those with me at the table at the moment are Tony Westman and Richard Thurling from Gowling solicitors. To my left, to my right, Stephen Harley of oxalis planning, and to his right, Simon hilditch and Paul Wilson of BWB consulting, and as indicated, I'll introduce the others as and when their agenda item arises. Thank you.

 07:48

Thank you, Miss Tafur we move on to the north west Leicestershire District Council? Please

 07:57

Good morning. I'm Jessica Allen, a barrister instructed on behalf of North West Leicestershire District Council. Today, I am joined by to my left, Chris Elston, who's the head of Planning and Infrastructure, and to my right, Adam Mellor, who's the principal Planning Officer for major projects. We also have online subject to getting to these items today, Helen Johnson, who's an associate partner at Gillespies, who is the council's landscape consultant in relation to the applications, and Nicola Tupe, who is a heritage consultant at FAS heritage and is the council's heritage consultant in relation to the applications and in terms of the agenda items, the council is available to answer Any questions, but anticipate being asked questions and asked to comment on agendas, items, 3, 5, 6, 8, 10 and 11. Thank you.

 08:57

Thank you. Miss Allen. Next, Can I request the Leicestershire county council please to introduce themselves?

 09:06

Good morning, sir, Mrs. Rebecca Henson, head of growth at Leicestershire county council. I'm joined this morning by Miss Claire Sinnott, to my left, who is a planning and highway lawyer, and to my right by Mr. Harry Horsley, strategic development lead, and I'm content to be referred to as Mrs. We wish to speak on all matters today, with the exception of design. Thank you.

 09:30

Thank you. Mrs. Henson, next, Can I request the national highways? Please

 09:37

Good morning, sir. My name is Rahul Hack. I am a solicitor at TLT solicitors appearing on behalf of National Highways. I'm joined here today to my right by Mr. Jeremy Bloom, a consultant to national highways. And to his right Miss Fiona Ahmed of Jacobs, as for the agenda items, Miss Ahmed will be taking the lead on traffic and transport. That's item four, and otherwise we're here to assist with any questions you may have. Thank you.

 10:07

Thank you, Mr. Hack. We are we also have the long water and Diseworth Parish Council, who have indicated that they are wish to observe. So I am not going to ask to introduce yourself, but to just acknowledge that you are here and now. Moving on to the other interested parties, could I ask the Prologis to introduce herself? Please,

 10:29

Good morning, sir. I appear on behalf of Prologis. My name is Mr. Henry wood, Philpot kings Council. I'm instructed by Mr. Howard Basford to my right partner at DLA Piper, UK LLP, will be speaking to items three, four and 10. I'm also joined on my left by Mr. Mark Taylor, principal transport planner of Mark McDonald, who will speak to item four. And so just in terms of the procedure, you will recall there were various matters left over from yesterday's hearing about highway issues and mitigation issues, sustainable transport issues in respect of the joint application. And I indicated that Mr. Taylor would be able to assist with those. He can do that at any point during the hearing, when it's convenient, I anticipate probably item four would be the most obvious place to do it.

 11:27

Thank you very much. Mr. Philpot, next, could I ask the East Midland airports to introduce yourself? Please

 11:36

Good morning. My name is Mr. John Riley. I'm a solicitor and a partner at Pinsent Masons. I'm instructed by Alistair Andrew from Manchester airports group, who is sat behind me today. We'll be speaking potentially to items three, four and 10. On items three and 10, we'll try to reduce duplication between us and Prologis as normal on Item four, the airport has interests as the airport operator, as opposed to its interests as property developer. And we will be speaking, but potentially more extensively on that item, I'm joined at the table by two representatives of SCP consultants, to my left, Mr. Steven Carmody and to my right, Mr. Simon Pratt, both of whom will be able to assist with Agenda Item four, thank you.

 12:27

Thank you for that. Next Can I request Protect Diseworth , could you please introduce yourself?

 12:38

Good morning, sir. My name is Piers Riley Smith. I'm a barrister instructed on behalf of protect Diseworth to introduce the team. Sitting immediately to my right is Simon Betts, a director at Seb planning, and sitting to his right is Mr. Bruce Bamber, a director of Railton TPC limited, a transport planner, and we intend to be speaking on all the items on the agenda.

 13:12

Thank you. Mr. Riley Smith, is there anyone else who is here in the room today who would like to speak on the issue specific hearing three, no, I don't see any hands. Is there anyone else? Virtually? Yes, just wait for the microphone. Please.

 13:42

Ray Sutton, resident member of Kegworth parish council, a member of North West Leicestershire District Council, not speaking for any of those. I reserve the right to speak at the end of the particularly the highways item. If Are there any questions remaining? Thank you.

 13:58

Thank you, Mr. Sutton, is there anyone else once more time? No, I don't see any hands virtually or in the room. So thank you. That concludes the first item on the agenda, and I will now hand over to Mr. Page to deal with the agenda item two.

 14:16

Thank you, Dr Joshi, so the purpose of the hearing is to consider the issues on the detailed agenda, which was published on the fifth of May 2026, and can be found in the examination library under reference av 8001, and that's, can you hear me now? Apologies. And the agenda is up on screen as previously requested. So these issues include the legal basis of determination of the DCO application, a range of environmental issues and issues relating to the draft DCO and draft MCO. We will take these in running order, and whether they fall to be discussed today or tomorrow will depend on how we progress through each item. Please note that this is an issue specific hearing dealing with the particular matters set out in the detailed agenda, and not an opportunity to make general submissions about the wider topics being discussed. Any general submissions that interested parties wish to make that fall outside the scope of the detailed agenda should be made in writing, and we will consider whether further oral questioning of such submissions is required at the final set of hearings in August. So in relation to the draft orders, in particular, these need to be examined in detail. So even if your position is that development consent or a material change should not be granted and therefore the order should not be made by the Secretary of State, you can still make representations in this hearing on how the orders should be drafted without conceding your wider position that they should not be made. Can everybody still hear me? Okay, I'm getting the sense that the volume is this up and down. I don't know whether we can try and sort the volume issues before I carry on. So I'm just going to take a few minutes to see if we can resolve it, because it's not really helping the clarity. So we'll just take a few minutes It's a button there. The light doesn't seem

 17:28

mike test, 1212

 17:34

Thank you. That's great. Thanks.

 17:37

Okay.

 17:42

Hopefully, the issue is resolved. It sounds better to me, so I'll carry on. So the examining panel are under a duty to provide the Secretary of State with the best drafted orders that we can even if we end up recommending that the Secretary of State should not make them, this is because we do not decide these applications. We make recommendations to the secretary of state, and they make the final decision. As before, we are going to keep a list of action points from today's hearing, which we will go through at the end and publish as soon as possible. And I also ask that you keep your own lists so that we can cross check them at the end, if required. In general terms, we would like action point responses at deadline four, which in the examination timetable is the 16th of June, 2026 however, there is flexibility to agree a different deadline for individual action points where necessary. With that in mind, does anyone have any questions about the purpose of today's hearing before I move on? Yes, protect Diseworth.

 18:49

Sorry, sir. Good morning. Piers Riley Smith for protect Diseworth. So I don't know if it's an appropriate point to raise now. We just had a very brief timetabling point. I appreciate that's not about well, it touches on the purpose we appreciate. There's an awful lot to get through today and tomorrow in terms of the agenda, and what we don't want to do is inconvenience any of the other parties. Our landscape witness is not available today, and we try to move heaven and earth to get her here, physically or virtually, she is available tomorrow. We just wondered whether there's any way within the timetable. It may become moot, because we may not get to it anyway today, but if there's any way to facilitate hearing landscape issues tomorrow, or at least there being ability for landscape to as it were, be carried over, even if just a brief discussion tomorrow. Again, I highlight we don't want to inconvenience, certainly the other parties or the wider examination, but I've been asked to raise that point.

 19:53

Thank you. I think we'll see how we go this morning, and then we can discuss it in the break, and then potentially see where we are. So hopefully that's helpful. Is there any sir,

 20:05

if I may, Isabelle at AV four for the applicants, I hope you will be aware that we notified you in advance that our landscape consultant, I'm afraid, is not available tomorrow and is only available today.

 20:21

Part of the problem is would, as you these two comments are precisely identified, one with the other. You set up a timetable, and you just have to go with the best efforts. It will see how it goes. It may be that we do, but if we there were rather requests as well to Could we move this round? And we came conclusion, if we started moving some round, then it would, if we just said we'd move to that one, then the applicant would have said, Sorry, and it would another topic entirely. So it which we weren't aware of. So we, I think we've said, Go as we'll see how it comes.

 20:55

Okay. If there's no further points, I'll move on to agenda item three. So given the fundamental nature of this issue, we provided more information than we otherwise might have done in the detailed agenda to help parties prepare. We trust you've seen that, and I'm not going to repeat the detail in full, but I will provide a short pricey to set up the answers. So given the environmental statement aggregates the assessment of NCIP and non NCIP highways works. Can the split approach under sections 104 and 105 be lawfully applied without risking distortion of the planning balance. Further, would making the decision in the alternative, as in net zero Teesside, lead to a similar distortion, given we are dealing with two ncips in this case, and does the EFW group case law inform where the disaggregation of the assessment in the environmental statement is ultimately required to lawfully apply, sections 104 and sections 105 if it is ultimately required, what are the consequences for the DCO application in this case, and is it even feasible to Split the assessment in the environmental statement at this stage. So I'll start by going to the applicants for their response first. Then I'll move on to Prologis and East Midlands Airport, and then any other interested parties thereafter. So over to the applicants first. Please.

 22:37

Isabella Tafur for the applicants. Thank you, sir. Our representations to date on the legal basis for determination are set out in our written summary of issue specific hearing one and in response to the action points arising from that hearing, the applicant's position is that there are two separate matters to consider here. The first relates to the obligations arising under the infrastructure planning EIA regs, and the second is the consenting mechanism for the various parts of the DCO. So turning to the first of those matters, EIA the first step in the process outlined in regulation five of the EIA regs is an obligation on the applicant to prepare an environmental statement and that must identify, describe and assess the likely significant effects of the project. The courts have been astute to detect the device of salami slicing, where the project is split into smaller applications to avoid the need for EIA. And as a result, case law emphasises the importance of identifying and assessing the project as a whole. In light of the interrelationship between the various parts of the DCO scheme, the applicant has assessed all elements as a single project in the ES the second stage of the EIA process is consultation and publicity. And the third is the is governed by regulation 21 of the regs, and requires the Secretary of State to take account of the environmental information, reach a reason conclusion, and integrate that conclusion into his decision on whether to grant consent. So those obligations under the EIA regs apply, irrespective of whether the application is determined under Section 104, and five, and require an assessment of the project as a whole. And it's important to remember, as the courts have repeatedly emphasised, that EIA is not supposed to be an obstacle for decision makers to trip over. It's meant to facilitate decision making, rather than hamper or impede it. So the second of the matters I identified at the outset is the consenting mechanism under the Planning Act. So section 104 sets out the matters that the Secretary of State must have regard to where MPs has effect, and that provision requires the Secretary of State to determine the application in accordance with the MPs, except to the extent provided in subsections four to eight. And that means that under Section 104 when you come to the overall planning balance need is taken to be established by national policy, and there's a presumption in favour of granting consent for a scheme that accords with the NPS, and the highway works and work 16, as described in the DCO, benefit from that presumption where no NPS has effect, and so the decision is made under 105 there is no benefit of a policy presumption. We say the different consenting routes for the discrete aspects of development don't affect the EIA process in practice. What that means for your recommendation report is that it will need to consider all the benefits and adverse impacts of the project as a whole. When it comes to the overall planning balance section for the highway works and work 16, your report will acknowledge that need is established and there's the benefit of a presumption if it accords with the NPS and for the business and commercial development and its associated development, there will not be the benefit of a policy presumption and your agenda specifically asks about the net zero Teesside and the Wheelabrator. Sorry,

 26:34

can I just jump in? When you say the highway works, are you referring to the highway works as generally assessed in the environmental statement, or you're referring to the highways works in relation to the highways NCIP.

 26:50

the highways NCIP, yes, thank you. So you've asked specifically about Net Zero, Teesside and the Wheelabrator at Kemsley DCO. There's a further example which we also think is instructive, which is

the Gatwick Airport to Northern runway. So if I could just briefly deal with those first net zero Teesside. Now, I see that you're in your question and help for elaboration, you've you've queried the relevance of that project, because here we're dealing with two ncips. And in your question, you point out that they were dealing with alternatives. But just to be clear, the net zero Teesside DCO included a generating station, which was a de facto NCIP that fell within sections 14 and 15 of the Planning Act, as well as certain specified elements which didn't fall within the act and benefited from a section 35 direction and associated development for both the generating station and the specified elements. And it was agreed and accepted that the generating station should be determined under Section 104 during the course of that examination, the high court judgement in AWF group was handed down, and so that gave rise to some uncertainty as to whether the specified elements, those captured in the direction should be determined under sections 104 or five. And in that particular case, the section 35 direction specifically said that it should be determined in accordance with the MPs. And ultimately, the examining authority felt that that was a distinguishing feature from the EWF group. But because of the uncertainty, the generating station was determined under 104 and the specified elements were considered under both sections 104 and five by both the Secretary of State and the examining authority, and both were able to determine one part of the project exclusively under 104 and the others under 104 and five, despite the fact that the ES didn't separate out the environmental impacts arising from the generating station from those arising from the specified elements. And that's clear, we say, when you look at the environmental statement itself, its non technical summary, all the topic chapters and neither the examining authority's report nor the Secretary of State's decision letter contain discrete element, discrete assessments of the benefits and impact of The 104 project and the 105 project, the wheelabrator, Kemsley, DCO again, that included an onshore Generating Station, which fell within the Planning Act thresholds that was the k3 project, and separately works to construct and operate A waste facility that was known as the wnk project, which fell below the NCIP thresholds and were subject to a section 35 direction. So the examining authority recommended the generating station be determined under 104 and the waste energy under 105 and ultimately, the Secretary of State took a different view, and that aspect of the Secretary of State's decision was found to have been erroneous, but the decision was upheld nonetheless, because it would have been the outcome would have been the same. So in that case, the ES for that project did split out the impact of the generating station and the Waste to Energy Facility, but they were not considered and assessed separately in the examining authority's report, and the fact that the environmental impacts have been assessed or split out in that way in the ES played no part in the high court's determination that the discrete part should have been determined under The separate provisions and the words environmental statement and EIA don't appear at all in the high court judgement. And it seems that in that case, the effects were separated out because the applicant in that case had had emphasised the fact that the WKD project was an entirely standalone facility, and the two projects were separate and distinct. The third example I mentioned very briefly is the Gatwick northern runway DCO, which was determined last year that comprised alterations to a ray up to the runway, which fell within the Planning Act thresholds but weren't covered by the airport's MPs, and also highway works to mitigate the runway extension which were covered by the NPS. So the airport works were determined under Section 105 and the highway works under Section 104 and the environmental statement did not separate out the environmental impacts of the airport works and the highway works. So in summary, the applicant's position is it's not necessary to separately identify and assess the environmental effects of those parts of the project falling within 104 and those within 105 in order to comply with the EIA regulations or to enable the reporting and decision making under the relevant provisions of the Planning Act, provided all environmental impacts of the project as a whole are assessed and your recommendation reports makes it clear that it's only for the works covered by the NPS, only For those work should need be assumed to be established and the presumption should apply, then that will suffice.

 32:50

Thank you for that. I guess I'm struggling with the concept of you know you have section 104 and we're required to assess the benefits and adverse impacts of section 104 development, so the highways NCIP and yet we can't do that because the assessment is mixed in With the non highways works. So we would be importing, effectively, non s, 104 development into that balance, by virtue of using the combined assessment in that Yes. So it feels like I appreciate all the cases you've outlined, and look forward to reviewing those in detail in the post hearing submissions, but it's difficult to understand how you can discharge 104 with a mixed assessment of 104 and 105 development and vice versa, really, because hypothetically you could, you could have a situation where the highways ends up on a fine balance is acceptable in and of itself, and then perhaps the non highways NCIP works are unacceptable, and you import those effects into that balance, and it changes the outcome of the s, 104, part of the decision making process. So that's where I'm struggling, really, is how we could, you know, we've sort of established that the split approach is probably, you know, the one to look at. But how can you do the split approach when you don't have the split effects? Do you want to come back on that?

 34:52

Isabella Tafur for the applicant? Well, as you know, sir, the DCO project is promoted as a single project, and I appreciate that there are separate consenting routes. But if it helps, obviously we will provide this in our post hearing submissions. But if it helps, that the way it was structured, for example, in the net zero Teesside examination report, where this same issue arose was that in the section of the report dealing with the statutory provisions and consenting route, so that was section 3.2 net zero Teesside there, there was a discussion of sections 104 and five, and in Section 3.6 there was a recognition that, for example, climate change legislation and policy is relevant and important under both sections 104, and five, and plainly, sir, even where an NPS doesn't have effect for the purpose of development, it may still be important and relevant. And then in the planning balance, there was a finding that the benefits outweighed any adverse impacts, regardless of whether it was determined under sections 104 and five. So it was in the planning balance, and the same is true in the in the other decisions that I've referred to, it's in the planning balance that these matters are drawn together without a necessity for a separate, discrete assessment in in the environmental statement, And our strong position, supported, we say, by the precedents of Secretary of State decisions, is that there is no need to separate out the benefits and impacts of the two in order to comply with the different consenting routes for the different aspects of the project.

 37:00

Thank you. So focusing on the test in the alternative, as we'll call it, and that being a remedy for the difficulties, is your position. Essentially, it doesn't matter to the outcome. Is that correct?

 37:16

Isabella Tafur for the applicants, that's correct, whether, whether, whether, there's the benefit of the presumption in policy or need established through policy, our position is it will make no difference to the outcome, because with or without the benefit of that presumption, the benefits significantly outweigh the adverse impacts. And essentially that that was plainly different facts, but that was ultimately the conclusion reached by the Secretary. of state By the Secretary of State in both net zero Teesside and the Wheelabrator DCO, and by the High Court, ultimately in the E WF challenge, EFW challenge, where the decision was found to have been unlawful, but nonetheless not quashed, because it would have made no difference to the

 37:59

outcome.

 38:02

So accepting that proposition is it actually the case in every scenario, that it would make no difference, because if you assessed everything under Section 105 and it was a fine balance to refuse consent, and then you assessed everything under Section 104 which then engaged the presumption, and tip the balance the other way. Clearly, there's two different outcomes on the basis that the one involves the presumption and the other doesn't. Do you want to come back on that scenario?

 38:38

Isabella Tafur for for the applicants, it's not inevitable that it would always make no difference. Once you've been through all the adverse impacts in the body of the recommendation report, and you come to your planning balance, you may conclude that it's finally balanced. And for those aspects of the project, or for those aspects of the project covered by an MPS, the presumption tilts the balance in favour that that's a conceivable scenario. I'm not saying that's the scenario in this case. And you might consider, when you come to look at the section 105 elements, that without the benefit of that presumption, the balance tips the other way, and indeed in the Wheelabrator DCO, the examining authority recommended development consent for the k3 project, but didn't consider that the applicant had established the need for The WKm project, and so recommended refusal of that aspect.

 39:43

Thank you for those submissions. So I'd like to move on and ask Prologis if they have any comments Next please. Thank you.

 39:51

Thank you, sir. Henry Wood, Philpot Kings Council on behalf of Prologis, and try and be brief, so as I understand it, as a matter of fact, neither the environmental statement, nor as I understand it, the other supporting documents disaggregate their analysis in a way that is intended to allow, and would allow you and your colleagues and the Secretary of State to apply the different statutory tests to the relevant parts of the DCO scheme. So as a matter of fact, that's my understanding of where we are. The next step is not in my submission about compliance with the requirement to ensure that all elements of the project have been assessed. It's more to do with the framework of decision making, what that requires in practical terms, and also what that then means as to the adequacy of the ES not just as a tool to inform the environmental impact assessment that the Secretary of State must undertake under the regulations, but also as a means of informing interested parties, affected persons and the public as to the proposal, its impacts and its merits. And one of the characteristics of the Planning Act regime is that the determination process under Section 104 in particular is highly structured. And you may recall that in the Aquinn case, Mrs. Justice Latham described and emphasised the highly structured nature of the section 104 route to determination and one of the particular requirements, and a key requirement in Section 104 is that in subsection three, which requires an assessment and clear conclusions about the development to which it applies against the various requirements and tests set by the relevant national policy statement. And in this case, as I suspect, with all national policy statements that includes requirements as to the assessment of effects and tests as to the acceptability of the effects themselves and as a matter of practicality, if that exercise cannot be undertaken relying on the reporting in the environmental statement, then that is plainly not fit for purpose and not adequate to inform practical decision making, and therefore it would either need to be reworked so that it does allow that to be done, or supplemented by further information in the form of additional assessments. Now, as I understand, the submissions that have been made on behalf of the applicant, it's not said that it is inevitable that a disaggregated or an aggregated approach would make no difference to decision making. That does not seem to be the way it is put. But in any event, the act is what Parliament requires the decision maker to go through the process prescribed by the act in order to arrive at the decision. So even if that submission could be proved to be correct, one would still need to go through the process. Now, the precedent that has been referred to, I'm not going to repeat points, just make a couple of brief points in terms of the EFW group case, it's right to say that the judgement didn't touch upon the environmental statement because it wasn't germane to the particular ground. So one doesn't get any assistance from the judgement. But as I as I understand the position, and I believe this is reflected in what Mr. First said. Whilst the environmental statement was a single document, it was structured so as to disaggregate the effects of each proposal, so each topic chapter separately assessed the effects of the K3 proposed development and the W, K N proposed development, and that was supplemented by a cumulative development looking at the two together, so it allowed that to be done. And the point that is made by the applicant in relation to the decision in that case, and also in relation to the net zero Teesside decision, is that the decision making and the way it's reported did not follow the route that is implicitly raised by this panel's questions. But my submission is this what one would need to check, and we will do this as part of our post hearing work and will report on what we find is whether or not, in either case, the examining authority and the Secretary of State grappled with the specific issue that this panel has raised. If they did, then one might find some learning in there that can be drawn upon and relied on as a precedent. If they didn't, then their utility as a precedent is relatively limited. It may just mean the point wasn't appreciated, it wasn't grappled with. So we'll look at that. I don't want to make further submissions without having checked the position, but if, if the point is right, that something more is needed to enable the panel and the Secretary of State to work through the highly structured approach under Section 104 where that is appropriate, and to work through the approach under Section 105 where that is appropriate, the reworked environmental statement, if that is what it is, or the additional assessments, we say would constitute further information as defined in the EIA regulations, because it is information that the decision maker will clearly need in order to reach an

informed decision on the likely significant effects of each element and is essential to the decision under the two statutory provisions. So that's what we say would flow from it if ultimately the panel decides that it does need this further information, and that's why the best set mems.

 46:52

Thank you. I'll go around all the IPS and circle back to the applicant for a final word. So East Midlands Airport. Next

 47:01

please. John Riley from Pinsent Masons for the airport. We have nothing to add to what Mr. Philpott said he would glad to hear.

 47:09

Thank you. Are there any other interested parties who would like to make comment protect Diseworth?

 47:17

Yes. Thank you, sir. Piers Riley Smith for protect Diseworth Sir, if I may, we've got a few points on this, and I want to try and ensure that I'm not repeating any of the points made on behalf of Prologis, which which we endorse, but approach it in our own way. The starting point so is to answer the implicit question behind your detailed concerns set out in the agenda, which is, do you currently have sufficient information to, as it were, do your job, to discharge your responsibilities in writing a report and recommending to the Secretary of State? And the clear answer to that question is, no, you don't. Let me expand on why. The first observation is that the manner in which this point has been highlighted, we appreciate concerns the disparity between the environmental statement, and in fact, also I should raise the planning statement defines highway works and the CCO defines highway works. But it would be remiss of me not to highlight that. In fact, while that is a very relevant concern in terms of non NCIP highway works and NCIP highway works. It is actually illustrative of a wider problem, we say, which is the inability to distinguish between the commercial and business. NSIP ie part one and the highway. NCIP ie part two, and I will give an illustration of that a little later. The starting point for this, as I think, has been recognised, is that there are going to have to be separate determinations in relation to part one and part two. I think, in fairness, part three, one element of it goes to part two, one, most of it goes to part one. That's because there's a different statutory context. It's accepted that 105 applies to part one, the business and commercial 104 applies to the highway element. And there's a different planning context. And that is not a distinction without a difference. It is a highly relevant difference, given the statutory presumption that applies under Section 104 we just highlight Mr. Justice doves observations as to the relevance of the of section 104 and its separateness in the EFW case, think is a useful illustration of that. So there needs to be in the eventual report, separate considerations under these two elements, just at this point in time to briefly address the questions asked. Oh no, perhaps before I do given the text is on the screen, is the simple solution? Simply in the alternative to consider everything under 104 or everything under 105 we're not entirely sure that's what the applicant is proposing. It seemed like there was acceptance that 105 for the part 1104, for part two. But if it is a very clear stance, exactly for the concerns expressed in that in the agenda is no that can't be done, because if you assess everything under 104 you are elevating the 105 elements and giving them the benefit of a statutory presumption they don't have. And if you're assessing everything under 105 well you're robbing and so we would simply endorse that concern. That's there. That's correct. So that's not a solution. Turning then to the other examples of cases where this issue has had to be tackled, and whether it's of any assistance to you, I can endorse most of what Mr. Fore said in terms of EFW and net zero. It is right to say, with the EFW the environmental statement was disaggregated with net zero, it wasn't But respectfully, the one area I disagree, and I simply ask that when reading this decision, this disagreement is borne in mind, the EFW report did separate out the I think k3 which was the 104 element, W, k n, which was the 105 element. The easiest way to see that, just for your note, is a judgement paragraph 23 of the EFW case extracts of the report are quoted, and it makes it quite clear that 6.2 need I'm

 52:31

sorry, was that paragraph? Paragraph 23 Did you

 52:35

paragraph 23 within the judgement, the EFW judgement, I appreciate you will get the whole report, and you'll read the whole report, and you'll read the whole report, but that's a quick way to as it were,

sense check this point so that quotes from Section six of the report, and it separates out, for example, need for and benefits of the proposed development. Subheading in bold, project k3, consideration. Subheading in bold, Project W, K, N. It then comes to overall conclusions separately, and that's of course, why, in fact, I think the examining authority recommended it be confirmed for one and not for the other. Now it's right to say that with the net zero report, it isn't dealt with in that same manner, where, effectively, you get the report considers mostly it from a 104 perspective. And then, with respect to the authors of that report, there's a slight throwaway line, a couple of lines that say, well, and if it's under 105, we think it'd be okay too. The reference for that is 7.3.12 of the examiner's report. Protect Diseworth position is that of those two, as it were, potential precedents, or precedents is not the right word illustrations. It is the EFW approach that is the appropriate one, rather than net zero. I think it's already been reflected net zero. There was an odd circumstance, including that the section 35 direction applied the national policy statement to the non NSIP elements. So the starting point, as I said, was that a separate determination needs to be reached on both of these points. And the question therefore is, can you, as examiners, do that and what you have? And the clear answer to that, we say is no, because of the manner in which not just the environmental statement, but also the planning statement, doesn't separate it out at all in that manner, one perhaps illustration of that, and to illustrate the concerns, if I may, sometimes, I hope is helpful to as it were, put, an example to that chapter 19 of the environmental statement, and the reference For that is DCO 6.19 concerning climate change, examines, assesses the DCO application as a whole. So this is picking up not just on the concern of the definition of highway works, but the failure to distinguish between the highway NCIP and the business and commercial NCIP, and it provides the potential impact. I'll just choose construction I'll choose a narrow example, but there were lots of examples of this through the environmental statement, it chooses for construction effects, it gives us the potential impact of the whole DCO. That's table 19.7 concludes its significant, moderate adverse then looks at mitigation, and it examines paragraph 19.5.72 to 76 mitigation as a whole, noting that it's harder to assess the mitigation for the highway works because of national highways road design, so it recognises it problems with that, but it doesn't separate it out. And what you get as an outcome of that is the entire DCO, the residual effect. This is table 19.9 is found to be not significant, minor adverse because of the mitigation. Now it's entirely right. I want to ensure that I'm fair at points with an environmental statement. There is some discussion of highway works, and some examination of effects to do with them. But what you don't have anywhere within the environmental statement is these are the climate change effects from the highways and sip. This is the mitigation and this is the residual effect of the highways ends it, and that perhaps, is just one illustration of the concern expressed in the note about whether by mixing them together, you're having uplifting or downgrading. Can the reader? Can the decision maker understand the environmental effects from as it were these separate works, the level of the effects, the mitigation. No, they can't again, just for time. It's the same issue when you cross refer to the planning statement. Why does that matter in law, as it were? Well, it matters in law because, for example, as you'll be well aware, of course, under Section 105 and the NPS on national networks, there's a particular section about carbon impacts and the need to assess them. And have they been assessed at every stage, and what are the reasonable steps to reduce that's going to be relevant for terms of the statutory presumption in the context of the highways and set relevant, but less so for the business and commercial ends. So have you got enough information to be able to apply that element of the MPs under 104? No, you don't. I don't necessarily. I think the Mr. Ford's separation of the EIA regs and the consulting at the start of her representations is I don't necessarily disagree with that, but there is significant crossover, perhaps best illustrated by regulation 21 and regulation 30 of the EIA regulations, which require, as I think has been touched upon, where decisions are taken, A reasoned conclusion is provided in relation to the effects of that development, and then under regulation 30, it also requires measures to avoid, prevent, reduce. Well, I think I disagree with Mr. Four is I agree EIA, generally, you look at a project and they've defined a project in a certain way, but those reporting requirements will have to apply to the separate balances you are carrying out, and you can't currently do that on the information that's

there. That's also then a case for the more general, for the more general determination you need to make in terms of the consenting route. So that is, it's a correct concern to raise. It is a fundamental concern, we say. And while I think Mr. Philpott has already made this point, but can I reiterate it? It is not a solution to say, well, in fact, there probably won't be a difference. And it's right to say it wasn't a difference that mattered in the previous two cases, for the reason that you need to work through the structured process first before you can reach the conclusion that may be that there's not a difference. So I hope that wasn't too long. I hope that was set out in a helpful way. But we fully endorse, if it is a concern, the concern that's raised there, and we do view it, especially if the applicant is not going to seemingly budge and amend any of these documentations, it is a fundamental issue. Thank you very much.

 1:01:11

Thank you very much. Are there any other interested parties? Leicestershire District Council, please.

 1:01:17

Thank you. Jessica Allen North West Leicestershire District Council. I don't want to repeat anything that has been said, but I just think in rather than stay silent and appear to not have a sort of perspective on the matters that have been discussed, if I could just say that from the council's perspective and considering things as a matter of principle, and not sort of expressing views on inevitabilities of outcome, what the outcomes of the application of that would be, I would, on behalf of the council, endorse many of the comments that have been made by Mr. Philpott and Mr. Riley Smith, in terms of the the the fact that there is, of course, this distinction between the requirements of the EIA regulations the requirements for the decision making process, and it does appear to be really a matter of practicality for the panel and its decision making process as to whether and how it accesses the information it will need to take a split approach, as I believe all parties broadly say, is the right way that this ought to be proceeding. Thank

 1:02:20

you.

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Thank you. Any other interested parties? Can't see any hands? I'll come back to the applicants.

 1:02:31


Isabella Tafur for the applicants, so I'll just respond to a number of points that have been made. First by Prologis, it was said by Mr. Philpott that we had not said that it was inevitable, that determination under 104 or five would make no difference in this case. And I just want to be clear about that. So you asked me a question, which was whether it could never make a difference whether an application was determined under 104 and 105 in light of the submissions I'd made to you, and I said, No, it's not the case that it could never make a difference, but in this case, our position is that the outcome will inevitably be the same whether you determine under Section 104 and 105 because the benefits of both aspects of the of the project, whether under 104 or 105 decisively outweigh the adverse impacts. I mean, as a matter of practical reality, it's also the case that the highway works are inevitably bound up with the business and commercial development and will not be brought forward without the business and commercial development. I do say that there is has been some conflation of the EIA requirements and the decision making requirements in the representations that you've heard, for example, I don't, I don't accept the point raised on behalf of Prologis that you will need to reach a reasoned conclusion on The likely significant effects of each discrete aspect of development, the requirement under the EIA regs is to reach a reason conclusion on the impact of the project as a whole, and you are able to do that on the basis of the information that you have Before you in risk in response to protect Diseworth, there was a point of difference between us on the approach taken in the examining authority's report, and you were referred to paragraph 23 of the high court judgement In that case. It was 23 Yes, the position I had outlined to you, sir was that the environmental impacts of the two discrete and separate projects in that case, were not considered separately in the examining authorities report. And I stand by that the paragraphs that you've been taken to come in the overall planning balance, where, as I said to you at the outset, it will be necessary to look at those aspects of the development that benefit from an established need and a policy presumption and those that don't. And you will be required to undertake that process in this case as well, in the overall planning balance. The other point was a specific point about, for example, carbon impacts and the need to reduce them, and how there's policy in the national networks NPS that would be applicable to the highways NPS. I mean plainly the importance of reducing carbon impact is going to be an important and relevant consideration, even if the NPS doesn't have effect for the purpose of those aspects of the decision making. So we say that the information you have fully enables you to comply with the and Secretary of State the obligations under the EIA regulations, and to make a sound determination under sections 104 and five and that nothing further is required, certainly not further information that would require a discrete assessment of each part. And then, no doubt it would be suggested the pausing of the examination process to allow the period of consultation. We've given you the information on the whole project, and that's sufficient, and we will, of course, provide you with the relevant extracts of the decisions I've referred to in our post hearing submissions.

 1:07:00


Thank you. So I think we'll wait for the submissions post hearing and then discuss, and then if we have any further questions, we'll ask them. If we need to have any further oral sessions, we'll look to have those. So thank you everyone. I think we're going to move on now, because we've spent quite a bit of time on this agenda item. So next up is gender item, 3.2 and I'm going to pass back to Mr. Jackson to deal with this. Thank you very much.

 1:07:34

Thank you, Mr. Page on this third item we have on this section, as my script keeps on leaping around without without movement, is to rates to the section of the legislative changes and the effect of supplementary planning documents which are going to refer to as SPDs. And this is going principally for the District Council, as you guess. Effectively, there are two sets of SPDs, those which have been adopted and those which are still in gestation. My understanding is that under the new plan system being brought in under the levelling up and regeneration act 2023 is that new SPDs will no longer be permissible from this summer precise date. I'm still not quite sure what that is, and that existing SPDs will cease to exist when the underlying policy in the current local plan is superseded by the adoption of the new local plan, given the timeframes we have for the Prologis of the emerging local plan which we've been given the later the latter changes. Are you relating to existing, adopted SPDs need not, unless anybody else wishes to say something different. Concerns, because they're going to be still the extent of either time the decision is made. However, those relating to the emerging SPD do, as everyone will know, we've received a copy of the east at the draft East Midlands Freeport strategic infrastructure and contribution supplementary planning document, and a few questions about that. Firstly, can you advise us of any updates on the progress towards adoption given beyond that which was set out in submissions to date?

 1:09:21

Jessica Allen, North West Leicester District Council. I have to, if I could just note, so that question you just asked me, that's about the local plan, not about the SPD. Is that right?

 1:09:30


No, it's to do with the SPD, or it's to do with when it what the current progress obviously appreciated, involves three different councils to add to. We add to the even, more complication. But I was wondering whether there was any further updates on whether it was going to either it had been adopted already or it was still going to be scheduled for the end of next going through for the end of next

 1:09:56

month. Sorry, yes, I was just making sure. So yes, exactly in terms of the SPD the state is that it is at the moment, is there was a, I believe there are minutes of the local plan committee meeting of 18th of March, 26 which have been provided by the applicants and which can be separately provided. But you'll have, you'll have seen those within that document. There was a, at that time, anticipated programme for adoption of the SPD, and it indicated April 2026 would be a month for consultation that did take place in April. The consultation ended on the 27th of April 2026 that consultation was facilitated by rushcliffe, but was conducted on behalf of the three councils as an As anticipated, again, in that programme may then would be required to consider the actual consultation responses. And that is the process that is ongoing at the moment. So the councils are currently in the process of considering the various consultation responses and and so that is so. So in so far as that programme in the minutes is concerned, matters are on track with that. But of course, what we can't say today is, well, firstly, to answer your question, the SPD has not been adopted. Secondly, we can't say, obviously, with that process of considering consultation responses ongoing, what the outcome of of that consideration will be, and whether that will, you know, introduce issues or considerations which will delay things then for adoption. So at the moment, the programme is currently being followed, is on track, but it really is. We're at that stage now where, of course it is. It really depends on what, what the consideration of the responses will be as to whether or not the SPD is in a position for adoption. The anticipation had been that that would be around the 23rd or 20/25, of June. And just to give you for your reference, the date of significance for SPDs. That date is the 30th of June. So it's it really is a case that if things, if the consultation responses are such that that matters proceed in light of the programme, then the SPD would be adopted in time. But otherwise it may delay, and it would be afterwards.

 1:12:21

I'm sure that once we get to D5 which I think is the first one in July, obviously in d4 it's clearly not either happened, which is not unlikely, given the dates you've given, or it's been abandoned then, which is obviously a possibility. And we might know by then that you then completes, let's know at d3 plus evidence at d4 there, but otherwise I'm assuming an update at d5 however, what I'm going to we'll go second point on it in that there's the following quote is in that document, there will be quote, infrastructure, delivery plan, IDP, in due course, the EMF, IDP will supplement this SPD and provide greater detail on the strategic transport infrastructure required and apportionment, which in turn will inform the contributions and obligations to be included in the framework 106 agreement, unquote, which, unless I pop something out, can't this isn't going To be an SPD, because it because of the time frames. So with we do respect, and I'm going to use a bit of planning slag, it's going to be a bottom draw plan, correct,

 1:13:27

Jessica Allen North West Leicestershire District Council. You're correct that the time frames for the adoption of that IDP, there is no expectation it would be in the 30th of June,

 1:13:45

and it's just going to be a document that's been adopted by the three councils. Is probably about as far as you can go.

 1:13:50

Yes, it won't have gone through the formal SPD process.

 1:13:55

Thank you. Does anybody else have any wish to have any comments about that particular document? Is the applicant? Does anybody else before the applicant? No, okay.

 1:14:04


Isabella Tafur, for the applicant, sir, simply to note, for my part, that the applicants have responded to the consultation on the SPD, we understand that a number of other members of the growth consortium have also responded objecting to the SPD, and I wonder if I picking up on your point that you just raised about the infrastructure delivery plan, for example, I wonder if I might just hand over to Mr. Harley from planning to explain the nature of our concerns with that draft document.

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Do

 1:14:45

Steve, thank you, sir. Steve Harley, for the applicant. Yes, as you've heard, we the applicant, made representations to the draft SPD and have objected to it. And if it helps, just to briefly identify some of our main concerns. I mean, if you've seen it, so you'll appreciate it's it's what's likely a skeleton document, and it lacks a number of things that one might normally expect to find in a pooled contribution. SPD, specifically, things like the infrastructure works to which it relates the estimated costs of those works, the basis on which contributions would be calculated, when contributions would be paid, and importantly, from our point of view, certainly, who is actually going to deliver the required infrastructure? There are key issues around delivery. So, for example, the works of junction 24 in composite themselves constitute an NCIP, and it's entirely unclear who would secure consent for those works? We understand there's no, there's no funding allocated to either delivering the consent or securing the consent rather or delivering the works in the in the road investment strategy, for example. So we have, we have a number of fundamental concerns. And as you've heard, there is no IDP yet, and that's a fundamental part of that whole picture. And I think hopefully the council can confirm there is no, there is no apparent timetable or programme for that. So we will remain quite unclear quite as to its status, or or, or, or, you see, even if adopted actually by the 30th of June, it's going to be some time, I think before, there'll be a framework in place that would actually enable infrastructure to be delivered or funded through that route. Is there

 1:16:41

anything the District Council wishes to say, in response to that, not only you will have to I'm skipping because essentially it's a critique of your of one of your documents, to give you a right to reply.

 1:16:45

Thank you, Jessica Allen North West Leicestershire District Council first, if I could just pick up on to the extent it's helpful this time frame point, as a matter of fact, I understand that the expectation for an IDP to be produced that isn't expected until November of this year, and then there would need to be consultation and processes following that, in terms of the status then of the SPD have adopted, or what weight It would have certainly the council accepts that upon adoption, if it is adopted in in time for as expected, it would have limited weight in the absence of an IDP. And the the publication or not of an IDP subsequently would would bear on on that. But as the panel has noted, of course, it would be a document also adopted outside the SPD process, and that would also bear on that too,

 1:17:53

that deals with that item, which also needs, I think, to have an excellent time, to have a short break. It's now just gone quarter past 11. So I think yes, Jessica

 1:18:04

Allen North West Leicestershire Council. Sorry, I should also say so this is not to do with this. SPD, obviously the item relates to the to that particular SPD, it is just to flag. Now, if it's a good time, we do have the design item on the agenda, and we can come back to it. But it's just to say, just to say that the new good design guide for North West Leicestershire SPD was adopted by the local plan committee on the 22nd of April 2026 and that that document and the various decision making documents around that can also, of course, be provided, but that's just an update on the status of that of that document as well.

 1:18:44

Okay, super, in which case I think we will now have an adjournment until half past 11, when we will start on traffic and transport. Thank you.

 1:20:01

 1:22:39

Okay.