



# Planning Inspectorate

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The applicants

Your Ref:

Our Ref: DCO: BC0410001  
MCO: TR0510002

Date: 02 June 2026

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Dear Sir/ Madam

**The Infrastructure Planning (Examination Procedure) Rules 2010 – rule 17  
Application by SEGRO Properties Limited, for an order granting development  
consent for a scheme comprising the East Midlands Gateway Phase 2 (EMG2)**

**The Infrastructure Planning (Changes to, and Revocation of, Development Consent  
Orders) Regulations 2011 – regulation 44  
Application by SEGRO (EMG) Limited, for an order making material changes to the  
previously approved East Midlands Gateway Rail Freight Interchange and Highway  
Order 2016**

We are writing as the Examining Panel appointed under the Planning Act 2008 to seek additional information to assist us in writing our report to the Secretary of State for Transport relating to the above two applications.

We are writing under rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 and regulation 44 of The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011.

## **Background to the request**

During Compulsory Acquisition Hearing 2 (CAH2) the Examining Panel explored whether the Environmental Statement for the DCO application sufficiently assessed the likely significant effects arising from the DCO scheme. This was particularly in relation to the contended displacement and sterilisation of the environmental effects associated with development proposed by the “joint application” that is being promoted by Prologis UK Limited and Prologis UK 121 Limited (Prologis) and East Midlands International Airport Limited and East Midlands Airport Property Investments (Industrial) Limited (EMIA) on the northern part of the EMG2 site.

Based on the submissions provided during CAH2, and other written and oral submissions to date, the Examining Panel has concluded that the contended displacement and sterilisation of the environmental effects associated with the development proposed by the

joint application would be likely significant effects of the project and should be assessed as such in the Environmental Statement pursuant to regulation 14 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations). The detailed reasons for this conclusion are set out in this letter.

### Likely evolution of the baseline

Regulation 14(2)(f) of the EIA Regulations states that an environmental statement includes any additional information specified in schedule 4 relevant to the specific characteristics of the particular development or type of development and to the environmental features likely to be significantly affected.

Paragraph 3 of schedule 4 of the EIA Regulations establishes that environmental statements should include a description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the development as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.

The Planning Inspectorate's [guidance](#) on cumulative effects assessment sets out that development subject to planning applications (even those yet to be determined) carry the highest level of certainty as tier 1 development. Whilst the Examining Panel acknowledges that the issue in question is not one of cumulative effects to which the guidance strictly relates, the core logic of the guidance and the sliding scale of certainty applied to development at different stages of existence is an important and relevant proxy indicator in this particular case.

Consequently, the Examining Panel is satisfied that the development proposed by the joint application enjoys a sufficient degree of certainty in accordance with the guidance that it would represent the likely evolution of the baseline in accordance with paragraph 3 of schedule 4 of the EIA Regulations. Furthermore, the Examining Panel is satisfied that the joint application provides sufficient environmental information that enables the applicants to outline the likely evolution of the baseline with reasonable effort, also in accordance with paragraph 3 of schedule 4 of the EIA Regulations.

In light of this, the Examining Panel has determined that the development proposed by the joint application should be accounted for as part of the future baseline in the Environmental Statement.

The Examining Panel also received submissions during the examination about the "counterfactual baseline" advanced by Prologis. The contention was that the likely evolution of the baseline without the implementation of the DCO scheme should also include development proposed in a hypothetical planning application that would come forward on the "southern land" pursuant to the Freeport designation and forthcoming allocation within the draft local plan for North West Leicestershire District Council's area.

However, the Planning Inspectorate's [guidance](#) is clear that allocations within draft local plans carry the lowest level of certainty as tier 3 development where only limited information is available.

Even if the Examining Panel accepted that it could at least in theory represent the likely evolution of the baseline, the details associated with a hypothetical future planning

application are for all intents and purposes completely speculative at this stage. Consequently, the applicants would not be able to outline the likely evolution of the baseline with reasonable effort on the basis of the availability of environmental information in accordance with paragraph 3 of schedule 4 of the EIA Regulations.

In light of this, the Examining Panel does not accept Prologis's contention that the "counterfactual baseline" should be accounted for as part of the future baseline in the Environmental Statement.

#### Likely significant effects of the delivery scenario assessed against the future baseline

CAH2 considered the question of likely significant effects in the event the DCO scheme was granted consent and delivered (the "delivery scenario") and the subsequent displacement of environmental effects that would otherwise emerge in the future baseline as a result of development proposed by the joint application.

The deadline 2 submission made by Prologis [[REP2-050D](#)] sets out the relevant case law regarding the definition of "likely" under the EIA Regulations. In particular the Examining Panel notes that the case law establishes "likely" means a real risk or serious possibility.

If the Secretary of State were to grant consent for the DCO scheme, then they would have done so having satisfied themselves of the policy need in support of the development together with the availability of funding and land rights to deliver it as well as other matters.

Altogether, the Examining Panel is clear that if the DCO scheme was granted there would be a real risk or serious possibility that it would be delivered and thus would displace the environmental effects that would otherwise emerge in the future baseline as a result of development proposed by the joint application.

In light of this, the Examining Panel has determined that the likely significant effects of the "delivery scenario" should be assessed against the future baseline in the Environmental Statement.

#### Likely significant effects of the non-delivery scenario assessed against the future baseline

CAH2 also considered the question of likely significant effects in the event the DCO scheme was granted consent but not delivered (the "non-delivery scenario") and the subsequent sterilisation of environmental effects that would otherwise emerge in the future baseline as a result of development proposed by the joint application.

The non-delivery of other DCOs was considered as a proxy indicator as to whether such a scenario would be likely. The applicants' view was that they had a track record of delivering other strategic rail freight interchange DCOs, which were analogous to the DCO scheme being considered in this case, and this meant the non-delivery scenario was not likely.

However, Prologis and EMIA set out the complexities associated with DCO delivery across a range of different sectors. They also made the point that the delivery of DCOs relating to business and commercial development was inherently unproven.

Immingham Green Energy Terminal was cited by Prologis as one example of a DCO scheme being granted but not delivered. The Examining Panel is well aware of the lengths

to which the deliverability of Immingham Green Energy Terminal was tested during its examination.

The conclusions drawn by the Examining Authority's recommendation report, and adopted by the Secretary of State in their decision letter, were that a substantial policy position existed and created compelling market conditions incentivising the promoter to deliver the scheme and import and produce commodities in the green energy sector.

Even against this favourable backdrop, the promoter, as described by Prologis during CAH2, withdrew funding after it was granted consent. This is all to say that even if the Examining Panel accepts the applicants' position about their experience and track record, including favourable market conditions and policy support at this present time, there is still the potential for shifting market conditions and different investment decisions that could result in non-delivery.

CAH2 included discussion about whether the absence of physical works would mean the "non-delivery scenario" would still fall within the definition of a project and therefore whether the EIA Regulations would be engaged.

It is important to recognise that the EIA Regulations are intentionally wide in scope, and their purpose is very broad. Therefore, the Examining Panel has decided to treat this matter with precaution, determining that the "non-delivery scenario" should fall within the definition of a project for the purposes of applying the EIA Regulations.

In considering sterilisation, the Examining Panel agrees with Prologis's and EMIA's examination submissions to date that any land subject to a DCO would be sterilised because no commercial entity would reasonably seek to develop land covered by a DCO due to the inherent uncertainties that would create.

Altogether, the Examining Panel is clear that if the DCO scheme was granted there would be a real risk or serious possibility that it would not be delivered and thus would sterilise the environmental effects that would otherwise emerge in the future baseline as a result of development proposed by the joint application.

In light of this, the Examining Panel has determined that the likely significant effects of the "non-delivery scenario" should be assessed against the future baseline in the Environmental Statement.

### Probability

The Examining Panel is aware that it has determined that both the "delivery scenario" and the "non-delivery scenario" are likely and that on the face of it this could appear like an internal inconsistency in its reasoning, insofar as only one of the scenarios could actually happen in reality.

However, the question is not which scenario has the greatest probability in terms of prevailing over the other. The question is whether each scenario when taken individually gives rise to the real risk or serious possibility of significant effects on the environment. The Examining Panel is satisfied that both scenarios give rise to the real risk or serious possibility of significant effects on the environment, and both should be assessed for likely significant effects within the Environmental Statement and weighed in the planning balance.

Having established the question of likely significant effects and that each scenario should be assessed in the Environmental Statement, the question of probability could then be subsequently engaged to help understand the significance of effect. For instance, environmental statement chapter methodologies can use the probability of an impact as a component of the formula used to determine significance of effect, alongside the sensitivity of a receptor and the magnitude of an impact.

### Significance

During CAH2 the applicants questioned whether, irrespective of whether the effects were likely, the delivery and non-delivery scenarios would not need assessment within the Environmental Statement because the effects would not be significant. However, if the development proposed by the joint application is EIA development, any effects that are displaced or sterilised must rationally be significant. Consequently, this argument does not change the Examining Panel's earlier conclusions.

### Legal basis for the determination of the DCO application

During ISH3, the Examining Panel noted that the general consensus of the parties was that the business and commercial proposal under s35 of the Planning Act 2008 (PA2008) was development where no national policy statement had effect and should be determined under s105 of the PA2008. Furthermore, that the highways NSIP was development where a national policy statement had effect and should be determined under s104 of the PA2008.

The Examining Panel raised concerns that this split approach could not lawfully be undertaken because the Environmental Statement did not separately assess the business and commercial proposal (and its associated development), and the highways NSIP (and its associated development).

Broadly speaking, Prologis, EMIA, Protect Diseworth and North West Leicestershire District Council all agreed that the way in which the Environmental Statement was structured would not allow the Examining Panel to properly assess the DCO application as set out above within its recommendation report to the Secretary of State.

The applicants' principal position was that because the benefits of each proposal were so great, the planning balance would be the same no matter how s104 or s105 of the PA2008 were applied. However, the Examining Panel gave examples of how the outcome under s104 and s105 of the PA2008 could change depending on the way the planning balance was undertaken.

For instance, if assessing the highways NSIP under s104 of the PA2008, the Secretary of State would need to understand the benefits and adverse impacts. But given the Environmental Statement conflates the assessment of the highways NSIP with the non-NSIP highways works (that is the associated development to the business and commercial proposal) it is currently impossible to determine what benefits and adverse impacts should be attributed to the highways NSIP and tested under s104 of the PA2008.

There is also a clear risk that by relying on the aggregated assessment of highways works within the Environmental Statement the non-NSIP highways works could be uprating or

downrating the effects of the highways NSIP, and this could subvert the lawful s104 balance.

It is also not clear whether the approach in Net Zero Teesside is applicable to the proposed development in this case and that assessing the proposed development in the alternative would provide a remedy given there are two distinct proposals within the PA2008 regime, notwithstanding they are in a single application.

For example, if the Secretary of State assessed everything under s105 of the PA2008 the Examining Panel is concerned that the highways NSIP would be erroneously stripped of the presumption that should apply to it under s104 of the PA2008, and that this would subvert the lawful balance. Alternatively, if the Secretary of State assessed everything under s104 of the PA2008, the Examining Panel is concerned that the business and commercial proposal would be erroneously afforded the presumption when it should not, and that this would also subvert the lawful balance.

The Examining Panel also refers to the joint letter from the Departments for Transport and for Housing, Communities and Local Government aligning the two examinations (that is EMG2 and that for the Material Change Order) [PD-007D] which states “it would be helpful if the Examining Panel was to consider matters in relation to the business and commercial component of the EMG2 application in a discrete part or section of the report”. Therefore, it is difficult to determine how the aggregated assessment would enable the Examining Panel to report in the manner requested.

Altogether, the Examining Panel is clear that to avoid the risk of legal error in discharging the decision making framework under s104 and s105 of the PA2008, the Environmental Statement must be amended to completely disaggregate the assessment of the DCO application, so that the likely significant effects of the business and commercial proposal (and its associated development), and the highways NSIP (and its associated development) are assessed separately.

## The request

The Environmental Statement should be updated as follows:

1. Amend the baseline to include the joint application and assess the “delivery scenario” and “non-delivery scenario” as set out above,
2. Disaggregate the effects relating to Part 1 of the dDCO (and its associated development) from those relating to Part 2 (and its associated development).

The latter can be provided in a schedule similar to the way that the applicants have done for the draft Material Change Order application.

The Examining Panel appreciates that this will be a substantial piece of work and therefore requests that the applicants provide this information at **Deadline 5, 30 June 2026**. Please can the applicants provide an update on their intended approach at **Deadline 4, 16 June 2026**.

Yours faithfully

*Robert Jackson*

**Robert Jackson**  
**Lead member of the panel of Examining Inspectors**

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