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The Planning Inspectorate
c/o QUADIENT
69 Buckingham Avenue
Slough
SL1 4PN

Your reference

Our reference

ASY/ASY/335094/111
UKM/211900066.1

By Email Only: emgateway2@planninginspectorate.gov.uk

16 June 2026

Dear Sirs

DEADLINE 4 SUBMISSIONS IN RELATION TO AN APPLICATION BY SEGRO PROPERTIES LIMITED ("SEGRO") FOR A DEVELOPMENT CONSENT ORDER IN RESPECT OF EAST MIDLANDS GATEWAY PHASE 2

OUR CLIENT: PROLOGIS UK LIMITED AND PROLOGIS UK 121 LIMITED ("PROLOGIS")

We refer to the Examining Panel's Rule 8 letter dated 18 March 2026. We write on behalf of our client Prologis in relation to their submissions at Deadline 4 in connection with the above application submitted via the East Midlands Gateway Phase 2 portal.

Documents Submitted

The following documents have been submitted at Deadline 4:

1. Prologis' Deadline 4 Submission (including responses to Action Points arising from CAH2 and ISH3 notwithstanding item 6 below);
2. Prologis' Responses to ExQ2;
3. Prologis' Summary of Oral Submissions at CAH2;
4. Prologis' Summary of Oral Submissions at ISH3;
5. A joint letter from Prologis and EMA/EMIAL to the Examining Panel ("**Exp**") in respect of the Rule 17 Letter dated 2 June 2026 (appended to this letter at Appendix 1);
6. Prologis' Response to Action Point 35; and
7. Summaries of item 1-5 above (appended to this letter at Appendix 2).

Please note that the summaries are intended to aid the Examining Panel but should not be relied upon as the definitive representation of Prologis' case. For the full statement of Prologis' position on any

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matter, the Examining Panel is respectfully advised to consult the relevant full document in each instance.

Prologis' Response to Action Point 35

Action Point 35 requested that a Prologis and SEGRO prepare a single joint Excel spreadsheet setting out their respective valuations side by side, using consistent cost headings, clearly identifying areas of agreement and disagreement.

In response to Action Point 35, Prologis' viability expert, Mr Peter Roberts FRICS CEnv of DWD has prepared two separate excel spreadsheets titled "**Prologis Response to AP35 - DCO Scheme Viability Deadline 4**" and "**Prologis Response to AP35 – Land South of Hyams Lane – Aldridge Land Deadline 4**" which uses consistent cost headings and retaining all formulae as requested, setting out Excel versions of the Appraisals attached at Appendices F and H of Mr Cottage's Report Ref: Document DCO 4.5. Mr Roberts and Mr Cottage have set out their respective positions in respect of the approach to, and inputs adopted in assessing the viability of the DCO scheme in the DCO Schedule Viability Deadline 4 workbook which replicates Appendix F of Mr Cottage's Report. Whilst Mr Cottage was invited by Mr Roberts to set out his position on a similar basis in respect of the Land South of Hyams Lane – Aldridge Land workbook which replicates Appendix H of Mr Cottage's Report, he declined to engage with Mr Roberts. It is therefore the case that this workbook only includes Mr Robert's comments.

Both workbooks allow the ExP to consider the respective positions of Mr Cottage and Mr Roberts and test the impact of their respective positions on the viability calculations by altering the various inputs. In addition, the ExP can test different assumptions in respect of assumed land values on profit and test the land values that would be required to generate target profit levels.

Mr Roberts has provided separate Excel viability assessments of the full SEGRO scheme and the reduced "Land south of Hyams Lane" scheme to follow the approach taken by Mr Cottage within his Report and to reflect the fact that they are two distinct schemes. This is also because SEGRO assert that development of the "Land South of Hyams Lane" cannot viably come forward in isolation from the Prologis/MAG land such that it is necessary to test this assertion separately from the full SEGRO scheme.

Collaboration with EMA/EMIAL

Prologis notes that it has had sight of the Deadline 4 Submission made by East Midlands Airport Limited and East Midlands Airport Property Investments (Industrial) Limited (together "**EMA/EMIAL**"), and that those submissions have been prepared following collaboration and discussion between the Prologis and EMA/EMIAL.

Prologis considers that EMA/EMIAL's submissions are aligned with Prologis' own case. Prologis therefore supports and agrees with EMA/EMIAL's submissions insofar as they overlap with and reinforce the points advanced by Prologis, without seeking to repeat those points in Prologis' own submissions.

AI Declaration

In compliance with the requirement in the Rule 8 letter, Prologis confirms that artificial intelligence tools (Microsoft Copilot and Harvey) have been used to a limited extent in the preparation of the submissions enclosed with this letter. Specifically, AI has been used to assist with select research and proof-reading aspects of the documents. The outputs generated by AI have been reviewed and verified by qualified professionals.

Yours faithfully



DLA Piper UK LLP

Appendix 1 – Joint Letter to Exp

FAO: EMG2 Examining Panel via
The Planning Inspectorate
c/o QUADIENT
69 Buckingham Avenue
Slough
SL1 4PN

Your reference

Our reference

ASY/ASY/335094/111
UKM/212828556.1

16 June 2026

To the Examining Panel ("**ExP**")

Planning Act 2008 – sections 91, 92, 93 and 153
The Infrastructure Planning (Examination Procedure) Rules 2010 – rule 13
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 – regulations 33, 35 and 36
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

1 Introduction

- 1.1 This is a joint letter from both Prologis UK Limited, Prologis UK 121 Limited ("Prologis") and East Midlands International Airport Limited and East Midlands Airport Property Investments (Industrial) Limited ("EMA"). In this letter Prologis and EMA are referred to collectively as "**the APs**".
- 1.2 We write in response to the ExP's letter dated 2 June 2026 issued under rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 ("**the Rule 17 Letter**").
- 1.3 The APs welcome the Rule 17 Letter and in particular the ExP's decisions as to the inadequacy of the structure and content of the Environmental Statement ("ES") in its current form.
- 1.4 The APs are engaging with the Rule 17 Letter now, at Deadline 4, rather than awaiting the Applicant's response, for three reasons:
 - (a) There are elements of the ExP's reasoning in respect of the Prologis/EMA Land and the Joint Application which go beyond what has been submitted on behalf of the APs that we wish to address, and other elements in respect of the Southern Land which appear to indicate that written submissions made on behalf of the APs have been

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misunderstood and therefore remain to be addressed. It is considered helpful to draw these points to the ExP's attention at the first available opportunity so that this can be considered further.

- (b) There are procedural consequences of the ExP's request (in particular under Regulation 20 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("**EIA Regulations**")) which now need to be addressed.
- (c) In addition to the identified need for the Applicant to revise the ES, the consequences of the ExP's decision include a need to revise the Statement of Reasons. The APs consider that it would be appropriate for this to be done at the same time as publication of the revised ES.

- 1.5 The third of those points is straightforward and was already anticipated by the ExP in the fourth bullet point under agenda item 3.2 for CAH2: "*whether in light of the above, and if it is determined that further socio-economic assessment is required for the delivery and non-delivery scenarios, the applicants must then suitably revisit and update their approach to the compelling case test in their Statement of Reasons in the context of justifying compulsory acquisition powers*". It is also explained in the Prologis deadline 4 submissions and we do not therefore elaborate on it further in this response. The APs draw attention to it here because of the need to consider and address the timetabling consequences that flow from it at the earliest opportunity.
- 1.6 The substantive consequences of the ExP's determinations for the compelling case test under section 122(3) of the Planning Act 2008 ("PA 2008") are also addressed in the DL4 Submission and are not repeated here.

2 The Prologis/EMA Land and the Joint Application

- 2.1 The APs welcome the ExP's conclusions that:
- (a) in the absence of the DCO there is a sufficient degree of likelihood that the development proposed in the Joint Application would occur such that it should be taken into account in the ES;
 - (b) the contended displacement and sterilisation of the environmental effects associated with that development would therefore be likely significant effects of the DCO project and should be assessed as such in the ES pursuant to Regulation 14 of the EIA Regulations; and
 - (c) the Joint Application provides sufficient environmental information to enable those likely significant effects to be assessed.
- 2.2 The APs welcome the ExP's conclusions, which in many respects reflect their own submissions. However, the APs consider that the correct analysis is simpler than the ExP's reasoning suggests and requires no more than the three conclusions set out in the previous paragraph. In particular, the APs do not consider it necessary to rely on paragraph 3 of Schedule 4 of the EIA Regulations and the concept of the likely evolution of the baseline (which concerns "*natural changes from the baseline scenario*"). The ExP's Rule 17 request is clearly correct: once the ExP concluded that the Joint Application's displacement is "likely" in EIA terms, the request for further assessment followed logically and no additional legal justification is needed to support it.

3 The Southern Land

- 3.1 The Rule 17 Letter states that the "counterfactual baseline" of a hypothetical future planning application coming forward on the Southern Land cannot be included as part of the EIA future

baseline as it is too speculative and contingent (being tier 3 development within the context of PINs guidance). This has been characterised as the submission advanced by Prologis during the examination.

- 3.2 Prologis's submissions on the Southern Land are not concerned with the EIA baseline; they go solely to the weight to be given to the benefits SEGRO relies upon to justify compulsory acquisition. The Rule 17 Letter's characterisation does not reflect how Prologis has expressed this part of its case. As explained in Prologis' Deadline 4 Submission, the same misunderstanding was reflected in the CAH2 agenda. The time scheduled for CAH2 did not allow for those points to be discussed and the parties were asked to address them in written submissions at Deadline 4. The APs have not therefore had the opportunity to correct this apparent misunderstanding before the Rule 17 Letter was published.
- 3.3 Prologis' submissions about the prospects of development of the Southern Land coming forward absent compulsory acquisition have not been advanced as an EIA baseline point. The point is much simpler than that and goes solely to the approach to be taken to the benefits relied upon by SEGRO to seek to justify compulsory acquisition.
- 3.4 To assist the ExP, the following references identify where this issue has been addressed in Prologis's written submissions:
- (a) Relevant Representation – sections 8 and 13 (qualitative cross-analysis of the two schemes' benefits and conclusion that no materially additional benefits exist that are exclusively contingent on CA);
 - (b) Written Representation:
 - (i) paragraphs 5.26–5.31 which reject SEGRO's presentation of a false binary (see below), explaining that in a realistic counterfactual scenario the Southern Land would come forward through a separate Town and Country Planning Act 1990 application;
 - (ii) paragraphs 5.33–5.39 which expressly invite the Examining Authority to place the public interest harm of frustrating the Joint Application on the detriment side of the s.122(3) balance
 - (iii) Spawforths Planning Report (Appendix 1) paragraphs 5.69–5.73 which address the adverse consequences if the Joint Application is frustrated
 - (c) Deadline 2 Submission:
 - (i) paragraphs 3.21-3.22 which address SEGRO's responses to Prologis' submissions on the Southern Land.
 - (ii) paragraphs 5.3–5.7 addressing the binary-counterfactual point and emphasising that the public interest harm of frustrating the Joint Application must be placed in the balance under s.122(3);
 - (d) Deadline 3 Submission:
 - (i) paragraphs 4.1–4.29 which explain that the correct comparator is not the DCO Scheme versus no development at all, but the DCO Scheme versus the realistic two-developer alternative scenario;

- 3.5 SEGRO's own case is that development of the Southern Land "*is not viable as a separate development*"¹. When this is combined with their additional assertion that the Prologis/MAG Land is "*integral to the viability of the overall EMG2 DCO Scheme development*"² the conclusion they invite the Secretary of State to reach is that the benefits from development on the Southern Land cannot come forward absent compulsory acquisition and are therefore benefits in favour of compulsory acquisition.
- 3.6 As was put in Prologis' Written Representation, this presents the ExP with a '*false binary*' wherein the choice is presented as being between:
- "the full DCO Scheme – with all its claimed benefits delivered comprehensively, on time and within the Freeport Window – and a world in which nothing further happens. However, that is not a realistic or honest characterisation of the counterfactual...In the no-DCO world, nothing prevents SEGRO, any other developer, or the landowner from promoting a planning application under the Town and Country Planning Act 1990 for the development proposed (or something similar) on the Southern Land."*³
- 3.7 Therefore, if, contrary to SEGRO's contention there is a reasonable prospect that the Southern Land would be developed absent compulsory acquisition powers, the weight that can be attached to the claimed benefits in the compelling case balance is correspondingly diminished.
- 3.8 Prologis has provided substantive evidence and submissions which demonstrate that there are at least reasonable prospects that development of the Southern Land would come forward in the absence of the DCO. This includes evidence as to need and demand for such development and the commercial drivers and incentives in play⁴, the significant locational advantages of the site⁵, the supportive policy position⁶ and the likely viability of such development⁷. Moreover, there is no reason to believe that a suitable highways solution could not be achieved for such development; SEGRO has simply not modelled or assessed what mitigation would be required, and the ExP is therefore not in a position to conclude that highways considerations would preclude development of the Southern Land in isolation.
- 3.9 Hence, Prologis's case in respect of the Southern Land is, and has always been, that the ExP and the Secretary of State must consider whether in the light of the evidence there is a reasonable prospect that development of that land would come forward in the absence of the DCO and if so the implications of that conclusion for the application of the compelling case test. That is not an EIA issue and is not therefore a matter that falls to be assessed and analysed through the lens of the EIA Regulations and guidance directed to that legislation and its specific requirements (as has been done in the Rule 17 letter).
- 3.10 The ExP's analysis of this part of Prologis's case is therefore directed to a different and distinct issue which Prologis has not raised. It follows that the issue that Prologis has in fact raised remains undetermined.
- 3.11 The APs suggest that it would be expedient for the ExP to revisit this issue in light of the submissions set out above, and to do so during the examination rather than waiting until the report-writing stage. That is because if the ExP does form the view that there is a reasonable prospect that development of that land would come forward in the absence of the DCO, it may

¹ Paragraph 3.75, Appendix 6 – DCO 7.2 Applicant's Response to Relevant Representations Deadline 1

² Paragraph 3.8, Appendix 6 – DCO 7.2 Applicant's Response to Relevant Representations Deadline 1

³ Paragraph 5.27

⁴ Please see paragraphs 4.6-4.9 and 4.19-4.20 of the DWD Report at Annex A of Prologis' Deadline 3 Submission

⁵ Paragraphs 6.14-6.17 of the DWD Report

⁶ Paragraphs 2.15-2.28 of the Spawforths Report at Appendix 1 of Prologis Written Representation

⁷ Paragraphs 9.35-9.41 of the DWD Report

well wish to ask for further information and/or submissions about that issue during the examination. This could include, for example, seeking updates to the Statement of Reasons.

4 Regulation 20: "Further Information"

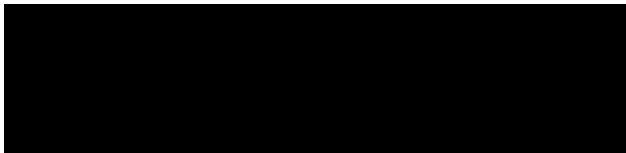
- 4.1 The revisions to the ES the ExP has now requested constitute "further information" within the meaning of the EIA Regulations. This engages Regulation 20, which mandates that consideration of the application must be suspended pending publication of, and consultation on, the further information. The APs draw this to the ExP's attention because the Rule 17 Letter does not address these procedural requirements, which must now be built into the examination timetable.
- 4.2 Under the EIA Regulations, 'further information' is defined by reference to two limbs which must both be satisfied (in the view of the ExP/Secretary of State):
- (a) additional information which is directly relevant to reaching a reasoned conclusion on the significant effects of the development on the environment; and
 - (b) additional information which is necessary to include in an environmental statement or updated environmental statement in order for it to satisfy the requirements of regulation 14(2)
- 4.3 The information requested by the ExP satisfies both of these limbs.
- 4.4 As to limb (a), the ExP would not have taken the step of issuing a Rule 17 request had it not concluded that the information sought was directly relevant to reaching a reasoned conclusion on the significant effects of the development on the environment. The direct relevance of the information sought is clearly articulated in the Rule 17 Letter itself and is not therefore repeated here.
- 4.5 As to limb (b), the additional information that the ExP has sought falls squarely within sub-paragraphs (b) and (f) of Regulation 14(2). It includes both descriptions of the likely significant effects of the proposed development on the environment (sub-paragraph (b)) and additional information specified in Schedule 4 relevant to the specific characteristics of the particular development and to the environmental features likely to be significantly affected (sub-paragraph (f)).
- 4.6 The Rule 17 Letter does not itself address the procedural implications of the requests made by reference to the EIA Regulations. These are set out in regulation 20(1), which provides that where the ExP or Secretary of State requires further information, consideration of the application must be suspended until the requirements of paragraphs (3) are met regarding the publication and consultation on the further information including (under Reg 20(3)(b)(x)) a period of not less than 30 days allowing for representations on the further information.
- 4.7 It is important, therefore, that the ExP confirms how and when these mandatory procedural requirements will be addressed. In particular, the APs invite the ExP to confirm: (i) that consideration of the application will be suspended until the Regulation 20 requirements are met; and (ii) that Interested Parties will be afforded the minimum 30-day period to review and respond to the further information before the examination resumes.

5 Resolution of Outstanding Matters

- 5.1 In light of the matters set out above, the following sequence of procedural events should naturally follow:

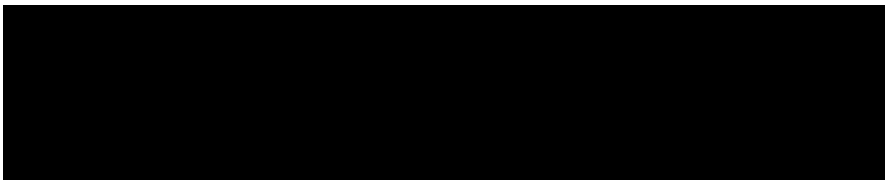
- (a) The Applicant should provide the further information at Deadline 5 (30 June 2026) as already requested.
- (b) The Statement of Reasons must be updated to properly reflect the assessed effects of the project. The ExP should therefore confirm when it will require the Applicant to provide an amended Statement of Reasons reflecting the further assessment.
- (c) Pending compliance with the Regulation 20 requirements, consideration of the application must be suspended. This is a mandatory requirement under Regulation 20(1), not discretionary. The Applicant must comply with the publication requirements in Regulation 20(3), and Interested Parties (including Prologis/EMA) must be afforded the minimum 30-day period to review and respond to the further information before consideration of the application can resume.
- (d) Following the consultation period, the ExP should consider the representations received and determine whether a further hearing (or hearings) should be arranged to examine and test the further information and the responses to it.
- (e) The ExP is invited to reconsider the Southern Land issue (in particular, whether SEGRO's assertions as to viability and deliverability have been properly assessed) so that it can determine whether additional evidence, submissions and/or documentation may be required in respect of it during the examination.

Yours sincerely



DLA PIPER UK LLP

On behalf of Prologis



On behalf of EMA

Appendix 2 – Summaries of Prologis' Deadline 4 Submissions

PLANNING ACT 2008

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

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

SUMMARY OF DEADLINE 4 SUBMISSION

ON BEHALF OF

PROLOGIS UK LIMITED AND PROLOGIS UK 121 LIMITED

Executive summary and introduction

- 1 This Deadline 4 Submission advances three central propositions: that SEGRO's failure to provide essential evidence with its application continues to compromise the fairness of the examination; that the DCO Application as made does not correspond to the development specified in the Section 35 Direction; and that the compelling case test for compulsory acquisition is not satisfied because the vast majority of the benefits claimed by SEGRO would accrue regardless of whether compulsory powers are granted. Content on the vires issue, the Joint Application's highways mitigation and the Rule 17 Letter is addressed in full in Prologis's ExQ2 responses and joint Rule 17 submission (Appendix 6), and should be read alongside this Submission.
- 2 The Submission is interim in certain respects: at the May Hearings (12–14 May) SEGRO indicated it would bring forward at Deadline 4 both a revised requirement to align the application with the Section 35 Direction and a substantive response to the DWD viability evidence of Mr Peter Roberts FRICS, neither of which had been provided; Prologis reserves its position accordingly.

Procedural fairness

- 1 Three months into the six-month examination, evidence central to the compulsory acquisition case remains outstanding, and key stages – the ExP's first two rounds of questions and two weeks of hearings – have passed without Prologis having sight of the material needed to understand the case to take its land. The PA 2008 depends on a "front-loaded" process, and in a private-to-private acquisition the Supreme Court in *R (Sainsbury's Supermarkets Ltd) v Wolverhampton City Council* requires a stricter approach to the public interest assessment. The belated provision of viability, transport and socio-economic material will not cure the disadvantage already suffered.
- 2 CAH2 was time-constrained, affording Prologis only a ten-minute presentation on the Joint Application and a combined sixteen minutes shared with MAG. SEGRO withheld its cashflow analysis save on terms that Prologis first disclose its own confidential cashflow material – not a position of equivalence, given the burden rests on SEGRO as the party seeking the powers. Prologis requests that the ExP convene a further compulsory acquisition hearing and a separate viability hearing.

Section 35 Direction, vires and campus headquarters

- 1 The Direction was granted for "a logistics and manufacturing hub, including a substantial carbon neutral campus/headquarters including co-located head office functions". Properly construed, "substantial" governs the campus/headquarters as a whole and not merely the carbon-neutral element; "campus" connotes multiple buildings in a landscaped setting; and "co-located head office functions" denote a primary Use Class E(g)(i) use, not an office ancillary to a single warehouse. The recently approved Frasers Group headquarters campus at Rugby illustrates the concept contemplated.
- 2 SEGRO's current masterplan has stripped out the standalone offices, hub and sports facilities, leaving a single warehouse unit labelled "Plot 1 – Campus Development" of the same functions as every other unit; there is no reasonable basis on which the Secretary of State could find the development as applied for corresponds with the Direction. SEGRO's only options are to amend the application to bring it within the Direction or to withdraw it; the issue cannot be cured by a requirement. No assessment of a substantial head-office scheme has been undertaken for EIA or viability purposes, and even if it fell within scope it would carry no greater weight than any comparable B8 scheme, diminishing the section 122(3) case.

Compulsory acquisition test, benefits and viability

- 1 SEGRO's reliance on *London Borough of Bexley v Secretary of State* does not assist: the powers there were held by a public authority, the case turned on its own facts, and *Bexley* in fact confirms that a comparative and proportionate assessment is required – an assessment that goes against the DCO. Applying the *De Rothschild* dictum, only benefits attributable to the exercise of compulsory acquisition powers (those that could not be achieved without them) can be placed in the section 122(3) balance; the additive/attribution distinction is a necessary step in the reasoning, and the additional benefits here can largely be delivered without the powers.
- 2 Prologis welcomes the ExP's Rule 17 determinations that both the "delivery scenario" (displacement of the Joint Application's benefits) and the "non-delivery scenario" are likely significant effects requiring assessment; "likely" connotes a real risk rather than a probability (*An Taisce*), and SEGRO accepted at CAH2 that displacement was "extremely probable". The realistic possibility of non-delivery must be carried into the section 122(3) balance, requiring SEGRO to revise its Statement of Reasons. The Southern Land point goes to the weight attaching to the claimed benefits, not the EIA baseline.
- 3 On the joint Viability Spreadsheet (a reworking of SEGRO's own assumptions, prepared unilaterally by DWD after Mr Cottage declined to contribute), the scheme does not achieve SEGRO's own 15% profit-on-cost hurdle once a realistic market value is paid for the Prologis/MAG Land – SEGRO's appraisal records only 15.91% before the DWD deficiencies. The £225,000 per acre figure, derived from the Aldridge Land agreement, is not a market value; the viability difficulty is of SEGRO's own making, flowing from its contractual commitment to overpay for the Aldridge Land. The RICS Professional Standard applies equally in the B2/B8 context, and late disclosure of the Argus files does not cure the absence of a market-based land value and sensitivity analysis.

Highways and action points

- 1 The "pink package" and the Joint Application mitigation address a similar issue at Finger Farm Roundabout but differ in detail; the Joint Application represents an equally valid alternative contribution to the same long-term strategic needs. On the action points, Hyam's Lane is adopted highway and would not constitute a ransom strip, so its compulsory acquisition is not necessary; and access to the Southern Land through the Moto Donington Park MSA could not be achieved even theoretically, being contrary to Circular 01/2022.

DLA Piper UK LLP

16 June 2026

PLANNING ACT 2008

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

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

SUMMARY OF RESPONSES TO EXQ2

**ON BEHALF OF PROLOGIS UK LIMITED AND PROLOGIS UK 121
LIMITED**

- 1 **ExQ 1.0.5 – Section 35 Direction.** The Secretary of State has no discretion to allow the development secured by the DCO to deviate from the wording of the Section 35 Direction on the basis that it is “sufficiently similar in nature and scale to remain nationally significant”. To do so would conflate two distinct statutory processes – deciding whether a development is nationally significant, and determining a DCO application within the regime. While the SoS retains the power to vary or revoke a direction under section 233 PA 2008, that power is exercisable only in response to a qualifying request and must be sought by the applicant before the examination; it cannot be used to cure jurisdictional difficulties at the decision-making stage. *EFW Group Ltd v Secretary of State* [2021] EWHC 2697 (Admin) confirms that a section 35 direction fixes the “gateway” through which a project enters the PA 2008 regime. SEGRO has made no qualifying request to vary the Direction, and a variation at the decision-making stage would deprive Affected Persons such as Prologis of important procedural safeguards.
- 2 **ExQ 1.1.1 – Section 35 Direction.** Prologis confirms it has not made any application for a Section 35 Direction in respect of the Joint Application, the EMG2 site or any land in the vicinity, and the reference in REP2-032 should not be read otherwise. For completeness, Prologis holds an unrelated Section 35 Direction in connection with the Daventry International Rail Freight Terminal IV, which concerns wholly different land and has no bearing on this examination; critically, Prologis is not there seeking to compulsorily acquire land being actively promoted by a commercial rival for similar development.
- 3 **ExQ 7.0.1 – “Ransom” value.** The correct footnote reference is footnote 19 to paragraph 4.13 (not footnote 13), which lists a selection of cases dealing with ransom value. Full references are provided, with full judgments at Appendix 1: *Stokes v Cambridge Corp* (1961) 13 P. & C.R. 77; *Railtrack plc v Guinness Ltd* [2003] EWCA Civ 188; *Persimmon Homes (Wales) Ltd v Rhondda Cynon Taff CBC* [2004] 9 WLUK 339; *Snook v Somerset CC* [2004] 4 WLUK 104; *Wards Construction (Medway) Ltd v Barclays Bank Plc* (1994) 68 P & CR 391; *Batchelor v Kent CC* (1990) 59 P. & C.R. 357; and *Hertfordshire CC v Ozanne* [1991] 1 W.L.R. 105.
- 4 **ExQ 7.0.2 – Alternatives.** A joint venture was only one of several proposals Prologis made to enable delivery in this location while avoiding compulsory acquisition. Prologis does not, as its principal case, dispute that the meetings and correspondence listed by SEGRO took place; its objection is that what occurred did not amount to genuine, substantive negotiation conducted at a formative stage, and a detailed schedule of the engagement is provided at Appendix 2. Genuine negotiation requires sufficient information and an open mind, not a “take it or leave it” approach. SEGRO dismissed the Access Option as unviable without engaging – the asserted lack of viability being a function of SEGRO’s own decision to acquire the Aldridge Land at an inflated price – and failed to provide viability appraisals (not disclosed until 17 November 2025, some nine weeks after first requested) and the Aldridge option terms. No substantive negotiation occurred before the DCO application in August 2025, and SEGRO’s position was effectively “DCO or nothing”; SEGRO has therefore not discharged the CA Guidance duty to explore all reasonable alternatives, and Prologis remains willing to continue to engage.
- 5 **ExQ 7.0.4 – Exercise of compulsory acquisition powers.** There is no existing statutory mechanism to restore an affected person’s position where CA powers have been exercised but the scheme is not delivered, and a tailored private-developer equivalent of the Crichel Down Rules secured by the dDCO would not resolve the concern. The Crichel Down Rules are a non-statutory framework applying to the public sector and presuppose the exercise of powers, so do not assist here. The fundamental difficulty is timing: Prologis’s loss crystallises immediately on the grant of CA powers – losing the ability to implement the Joint Application, the investment made and delivery within the Freeport window – and a right to buy back at market value years later would not restore that position. Where the ExP considers non-delivery a real risk, the appropriate response is to withhold CA powers, not to assume a future buy-back could cure the harm; the absence of any genuine restoration mechanism underlines the deficiency in SEGRO’s failure to identify and assess private loss.
- 6 **ExQ 19.0.12 – Work packages.** The packages of works shown on REP1-054 should not be treated as fixed or committed highway schemes; they are candidate interventions to address longer-term

capacity and safety issues at M1 Junctions 23A/24/24A. Prologis is not aware that the pink, blue or red packages have been identified for any other committed project; the Joint Application mitigation is most closely aligned with the pink package (dualling and works at Finger Farm Roundabout), though it does not propose dualling between Finger Farm and Beverley Road roundabouts or works to the M1 mainline. National Highways has issued a holding objection, a number of points have already been addressed, and a conclusion is expected sooner than the usual three-month timeframe.

- 7 ExQ 19.0.18 – Joint Application mitigation package.** It would not be appropriate to compare the relative importance of the Joint Application and EMG2 mitigation packages, as the schemes differ materially in scale and the relevant test for each is whether its own mitigation adequately addresses its impacts. The Joint Application nonetheless delivers tangible benefits to the Strategic Road Network – most evident at Finger Farm Roundabout, with modelling indicating relief at Junction 24 and reduced delay on the M1 northbound off-slip – together with relief on the A453 eastbound and the safeguarding of land for potential future dualling, representing an alternative and equally valid contribution consistent with the wider strategic programme.

DLA Piper UK LLP

16 June 2026

PLANNING ACT 2008

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

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

**SUMMARY OF WRITTEN SUMMARY OF ORAL SUBMISSIONS AT
COMPULSORY ACQUISITION HEARING 2**

ON BEHALF OF

PROLOGIS UK LIMITED AND PROLOGIS UK 121 LIMITED

- 1 This summary records the oral submissions of Hereward Phillipot KC for Prologis at CAH2 on 12 May 2026, together with submissions led by Counsel for EMA with which Counsel for Prologis expressly agreed.
- 2 **Agenda Item 2 – General updates.** Prologis accepts that compulsory acquisition can in principle be justified to achieve a better scheme in the public interest (*London Borough of Bexley v Century Estates*); the question is whether the test is met on the facts. Counsel for EMA submitted that the regeneration CPO analogy is not apt, as in that context the public authority holds the section 226 powers, not the commercial developer.
- 3 **Item 3.1 – Joint Application.** The section 122(3) question must not be framed as a “beauty parade” between the two schemes; the comparison of benefits is only one element of a wider equation. Counsel identified the questions that must be grappled with, including how likely the DCO benefits are to be delivered in full and without delay, the implications of any realistic non-delivery, the likelihood of similar benefits without the powers, whether SEGRO properly investigated delivery without compulsion, and what precedent state intervention would set.
- 4 Mr David Rolinson of Spawforths submitted that the issue is not whether employment development should take place but whether there is a compelling case for compulsory acquisition. Prologis controls the land north of Hyam’s Lane, a Freeport tax site and draft Regulation 19 allocation in an area of significant unmet need; the Joint Application is on track for committee in summer 2026; many SEGRO benefits are locational or common to both schemes, while the Joint Application delivers additional benefits (a training hub and increased floorspace); and the vast majority of benefits can be achieved without compulsory acquisition.
- 5 **Item 3.2 – Compulsory acquisition.** SEGRO has not demonstrated a compelling case under section 122(3), and in respect of the land set aside for future highway works the section 122(2) test is not met either. “Compelling” imports a standard materially higher than a bare balance of advantage, and any reasonable doubt must be resolved in favour of the citizen; SEGRO has set the bar too low. Until the Section 35 mismatch is resolved there is no jurisdiction to grant consent or the powers. The burden is on SEGRO to show it examined all reasonable alternatives; Prologis identified five, none of which SEGRO explored. On viability, Mr Roberts’ appraisal demonstrates the scheme is not viable, so confirmation of the powers would prevent development of the Prologis/MAG Land without delivering the promised development in its place.
- 6 Counsel for EMA addressed the “no-CA” world: there is a willing, capable developer actively promoting at least equivalent development on the same land, and planning permission for the Joint Application is likely to be forthcoming and implemented rapidly. Absent the powers, development would likely come forward either through a joint venture or via the Joint Application followed by a separate application on the Southern Land. The “single developer” argument fails, as established mechanisms exist to pool contributions and deliver complex sites; in substance the powers are sought to confer a commercial advantage over a rival. The frustration of the Joint Application is a substantial public interest harm, crystallising permanently on the grant of the powers, and authorising such a step would risk chilling foreign direct investment. There is a specific failure against section 122(2) for the dualling plots (1/7, 2/2 and 2/3), where the commitment under Requirement 31 is effectively to do nothing.
- 7 **Environmental assessment of displacement.** “Likely” connotes a real risk, more than a bare possibility, and each likely scenario should be assessed (*An Taisce*). The displacement of the Joint Application’s socio-economic benefits is a likely significant effect requiring assessment, as SEGRO’s counsel effectively accepted in describing it as “extremely probable”. The DCO – including the compulsory acquisition powers inextricably linked to the development – is a single project for EIA purposes (*Inter-Environment Wallonie*), so effects flowing from the decision fall to be assessed whether or not the development is implemented; this is a question of law, not judgment. In any event, those effects are an obligatory material consideration, and granting the DCO without assessing sterilisation in the non-delivery scenario would be unlawful.
- 8 **Non-delivery and viability.** No business and commercial DCO scheme of this kind has yet been granted and implemented, and such a scheme stands or falls on its commercial viability; non-

delivery is at least a realistic possibility and should be assessed. Mr Roberts confirmed the Prologis/MAG Land should be valued at what the market would pay rather than what SEGRO can afford, on which basis the scheme is not demonstrated to be viable. Submissions on revising the Statement of Reasons and on the Southern Land were deferred to Section 5 of the Deadline 4 Submission.

DLA Piper UK LLP

16 June 2026

PLANNING ACT 2008

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

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

**SUMMARY OF WRITTEN SUMMARY OF ORAL SUBMISSIONS AT ISSUE
SPECIFIC HEARING 3**

ON BEHALF OF

PROLOGIS UK LIMITED AND PROLOGIS UK 121 LIMITED

This summary records the oral submissions of Hereward Phillipot KC for Prologis at ISH3 on 13–14 May 2026, together with submissions led by the representative for EMA with which Counsel for Prologis expressly agreed.

- 1 **Agenda Item 3 – Legal basis of determination (section 104/105 split).** There must be separate determinations for Part 1 (the business and commercial development under section 105) and Part 2 (the highway NSIP under section 104), because of the different statutory and planning contexts and the statutory presumption that applies under section 104. The Highways NSIP must be determined by the “highly structured” section 104 route (*Aquina*) against the National Networks NPS; if the Environmental Statement cannot serve that function it must be reworked or supplemented. The *EFW* approach is to be preferred over *Net Zero Teesside*, the latter being a decision rather than a legal precedent of assistance if lawfulness is tested in the courts.
- 2 Assessing everything under one section cannot be done: assessing all under section 104 would give the section 105 elements a presumption they do not have, while assessing all under section 105 would rob the section 104 elements of that benefit. The Environmental Statement does not disaggregate its analysis to allow the different statutory tests to be applied to the relevant parts of the scheme — Chapter 19 (climate change), for example, assesses the DCO as a whole — which matters for the section 105 elements, where the balance may tip the other way once they are considered on their own merits; in *EFW* the examining authority recommended refusal of one component while consenting another.
- 3 **Agenda Item 4 – Traffic and transport.** Three highways points (the Joint Application mitigation, the A453 dualling arrangements, and sustainable transport) were, by agreement, deferred to be dealt with in writing at Deadline 4.
- 4 **Agenda Item 10 – Draft DCO Requirement 27 (mezzanine floorspace).** As breach of a requirement is a criminal offence under section 161 PA 2008, the requirement’s reliance on undefined and unmeasurable concepts is critical. “Distribution capacity” is not defined and it is unclear how it is measured or whether judgment is involved; the requirement also ties lawful use to the “vehicle trip generation” of the whole development as presented in the Transport Assessment, with no clear time frame or means by which an individual occupier could know whether its storage use constitutes an offence. The combined effect renders the requirement completely unworkable; as this is SEGRO’s improved version, the problems are not solvable by tinkering, and the answer is to carry out the assessment properly.
- 5 **Requirement 31 – Safeguarded land (dualling).** Under paragraph 11 of the CA Guidance, the Secretary of State must be satisfied that the development could only be landscaped satisfactorily if the land is compulsorily acquired, and that the taking is no more than reasonably necessary and proportionate. SEGRO must show both that the development can only be landscaped satisfactorily if the land is used permanently for that purpose (justifying freehold acquisition) and that it would still be landscaped satisfactorily if the land is later used for dualling — which is logically impossible. The flaw is apparent from sub-paragraphs (1) and (2): if the “permitted activities” would prejudice the dualling, the requirement fails its objective; if they would not, the landscaping is acceptable without that land in any event.
- 6 **Requirement 32 – Carbon neutral campus/headquarters.** The draft requirement does not and could not solve the vires issue: it is purely contingent, applying only if a campus comes forward, and does not secure the element integral to the Section 35 Direction. It also fails to secure carbon-neutral status, requiring only a scheme “with a view to achieving carbon neutral construction” — an undefined term limited to construction that does not deliver operational net zero. SEGRO indicated it now proposes a different, more onerous requirement, on which Prologis reserves its position.

DLA Piper UK LLP

16 April 2026

PLANNING ACT 2008

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

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

**SUMMARY OF LETTER TO THE EXAMINING PANEL REGARDING THE
RULE 17 LETTER**

ON BEHALF OF

PROLOGIS UK LIMITED AND PROLOGIS UK 121 LIMITED

Introduction

- 1 This is a joint letter from Prologis and from East Midlands International Airport Limited and East Midlands Airport Property Investments (Industrial) Limited (“**EMA**”), referred to collectively as “the **APs**”, responding to the Examining Panel’s letter dated 2 June 2026 issued under rule 17 (“the **Rule 17 Letter**”).
- 2 The **APs** welcome the **Rule 17 Letter**, and in particular the **ExP**’s conclusions as to the inadequacy of the current structure and content of the Environmental Statement (“**ES**”). They engage now, at Deadline 4, rather than awaiting the Applicant’s response, for three reasons: (a) elements of the **ExP**’s reasoning on the Prologis/**EMA** Land and the Joint Application go beyond what the **APs** submitted, and elements on the Southern Land appear to misunderstand the **APs**’ submissions; (b) the procedural consequences under Regulation 20 of the EIA Regulations 2017 must now be addressed; and (c) the Statement of Reasons will need to be revised at the same time as the **ES**. The third point was already anticipated by the **ExP** at CAH2 (agenda item 3.2) and is addressed in the Deadline 4 Submission, as are the substantive consequences for the section 122(3) compelling case test.

The Prologis/**EMA** Land and the Joint Application

- 3 The **APs** welcome the **ExP**’s conclusions that, absent the **DCO**, there is a sufficient likelihood the Joint Application development would come forward such that it should be taken into account in the **ES**; that the displacement and sterilisation of its environmental effects are likely significant effects of the **DCO** project to be assessed under Regulation 14; and that the Joint Application provides sufficient environmental information to enable that assessment.
- 4 The **APs** consider the correct analysis is simpler than the **ExP**’s reasoning suggests and does not require reliance on paragraph 3 of Schedule 4 (the likely evolution of the baseline). Once the **ExP** concluded the displacement is “likely” in EIA terms, the request for further assessment followed logically and needs no additional legal justification.

The Southern Land

- 5 The **Rule 17 Letter** treats the hypothetical future planning application on the Southern Land as a “counterfactual baseline” that is too speculative and contingent to form part of the EIA future baseline, and characterises this as Prologis’s submission. Prologis’s submissions on the Southern Land are not, however, concerned with the EIA baseline; they go solely to the weight to be given to the benefits **SEGRO** relies on to justify compulsory acquisition. The same misunderstanding was reflected in the CAH2 agenda, and time at CAH2 did not allow it to be corrected before the **Rule 17 Letter** was published.
- 6 The letter identifies where this issue has in fact been addressed in Prologis’s submissions — the Relevant Representation (sections 8 and 13), the Written Representation (paragraphs 5.26–5.31, 5.33–5.39 and the Spawforths Report at paragraphs 5.68–5.73), the Deadline 2 Submission (paragraphs 3.18–3.22 and 5.3–5.7) and the Deadline 3 Submission (paragraphs 4.1–4.29).
- 7 **SEGRO**’s own case is that the Southern Land is “not viable as a separate development” and that the Prologis/**MAG** Land is “integral to the viability” of the overall scheme, from which it invites the conclusion that the Southern Land benefits cannot come forward without compulsory acquisition. This presents a “false binary” between the full **DCO** Scheme and a world in which nothing happens; in reality nothing prevents a Town and Country Planning Act 1990 application on the Southern Land. If there is a reasonable prospect of such development absent compulsory acquisition, the weight attaching to the claimed benefits is correspondingly diminished, and Prologis has provided evidence on need and demand, locational advantages, supportive policy and viability, and contends a highways solution is achievable.
- 8 This is not an EIA issue and so does not fall to be analysed through the EIA Regulations as the **Rule 17 Letter** has done; the **ExP**’s analysis is therefore directed at a different issue, and the issue

Prologis actually raised remains undetermined. The **APs** suggest the **ExP** revisit this during the examination rather than at the report-writing stage, which may include seeking updates to the Statement of Reasons.

Regulation 20: “Further Information”

- 9 The **ES** revisions requested constitute “further information” within the EIA Regulations, engaging Regulation 20, which mandates that consideration of the application be suspended pending publication of and consultation on that information. Both limbs of the definition are satisfied: the information is directly relevant to a reasoned conclusion on significant environmental effects (limb (a)), and is necessary for the **ES** to satisfy Regulation 14(2), falling within sub-paragraphs (b) and (f) (limb (b)).
- 10 As the **Rule 17 Letter** does not address these procedural requirements, the **APs** invite the **ExP** to confirm (i) that consideration of the application will be suspended until the Regulation 20 requirements are met, and (ii) that Interested Parties will have the minimum 30-day period to review and respond before the examination resumes.

Resolution of Outstanding Matters

- 11 The **APs** propose the following sequence: the Applicant provides the further information at Deadline 5 (30 June 2026); the Statement of Reasons is updated to reflect the assessed effects; consideration of the application is suspended pending Regulation 20 compliance (a mandatory, not discretionary, requirement), with the minimum 30-day consultation period; the **ExP** then considers the representations and whether a further hearing is needed; and the **ExP** reconsiders the Southern Land viability and deliverability issue during the examination.

DLA Piper UK LLP (on behalf of Prologis);

Pinsent Masons LLP (on behalf of EMA)

16 June 2026