

PLANNING ACT 2008

**APPLICATION BY SEGRO PROPERTIES LIMITED FOR THE EAST MIDLANDS
GATEWAY PHASE 2 AND HIGHWAY ORDER 202X**

**APPLICATION BY SEGRO PROPERTIES LIMITED FOR THE EAST MIDLANDS
GATEWAY RAIL FREIGHT INTERCHANGE MATERIAL CHANGE ORDER**

POST HEARING SUBMISSION

COMPULSORY ACQUISITION HEARING 2

TUESDAY 12 MAY 2026 AT 10:00

ON BEHALF OF

EAST MIDLAND INTERNATIONAL AIRPORT LIMITED

EAST MIDLANDS AIRPORT PROPERTY INVESTMENTS (INDUSTRIAL) LIMITED

Interested Party References: [REDACTED]

Appearances

1. The following people attended on behalf of East Midlands International Airport Limited and East Midlands Airport Property Investments (Industrial) Limited (“EMA”):
 - (i) Mark Westmoreland Smith KC, of Francis Taylor Building;
 - (ii) Jon Riley, Partner at Pinsent Masons LLP;
 - (iii) Ross Corser, Senior Associate at Pinsent Masons LLP;
 - (iv) Alistair Andrew, Strategic Planning Director at MAG;
 - (v) Jon Bottomley, Planning Services Director at MAG; and
 - (vi) James Ogborn MRICS, Partner, Axis Property Consultancy LLP (addressing viability matters).
2. EMA’s position in relation to compulsory purchase has been set out in its Relevant Representations **[RR-013D, s.8]** **[RR-015D, s.8]**, Written Representations **[REP1-216D]**, response to the Examining Authority’s first round of written questions **[REP1-218-D]**, response to Action Point 3 from CAH1 **[REP1-219]** and Post Hearing Submissions for CAH1 **[REP1-220]**. EMA’s interest in the Order Land is set out in its Relevant Representations **[RR-013D, s.4]** **[RR-015D, s.4]**.
3. The submissions made at CAH2 built upon and supplemented the foregoing. Certain submissions at CAH2 were made jointly on behalf of EMA and Prologis UK 121 Limited (“Prologis”) (together, “the APs”), with Hereward Phillpot KC (“HPKC”) appearing on behalf of Prologis and making coordinated submissions in conjunction with EMA’s Counsel. It is likely because of the joint preparation for CAH2 that the AP’s post hearing submissions will be similar.
4. Where agenda items were omitted or Prologis addressed the issue in the hearing, EMA’s position is recorded in these post hearing submissions. The position recorded in these notes is at the time of CAH2.

Agenda Item 3.1: Joint presentation

5. At the invitation of the Examining Authority (“Exp”), a joint presentation was made on behalf of the APs. The presentation was delivered primarily by Mr Rolinson (instructed by DLA Piper for Prologis), with an introduction by HPKC. Mr Rolinson’s presentation is being covered by Prologis and EMA adopts that summary.
6. EMA, however, notes HPKC’s introduction. He said that at Deadline 3, EMA and Prologis sent a joint letter to the Panel **[REP3-062]** expressing concern about how the Rule 13 Notification **[PD-016]** had framed the presentation requested by the Exp. The APs’ concern was that this framing risked erroneously treating the question set by section 122(3) of the Planning Act 2008 (“PA 2008”) as a “beauty parade” between the DCO scheme and the Joint Application which would not be the correct approach.

7. The APs submitted that understanding the potential public interest benefits of both schemes is only one element of a much bigger, multi-faceted equation. The relevant questions that must be grappled with in assessing whether there is a compelling case in the public interest for the compulsory acquisition of the APs' land include, but are not limited to, the following:
- (i) What is the likelihood that similar benefits will be delivered if compulsory acquisition powers are not granted, including through independent development of the southern land?
 - (ii) How likely is it that the potential benefits of the DCO scheme will in fact be delivered, and delivered in full without delay, if compulsory acquisition powers are granted?
 - (iii) If non-delivery, partial delivery or delayed delivery of the DCO scheme is judged to be a realistic scenario, what implications does that have for both the comparison of benefits and the application of the compelling case test more generally?
 - (iv) Has the Applicant demonstrated that it undertook a proper investigation of the scope for delivering the claimed benefits without the use of compulsory acquisition powers, before resorting to such a draconian measure?
 - (v) What precedent would this set for State intervention to displace the outcome of normal market competition?
8. The APs submitted that a simple itemisation or side-by-side comparison of potential benefits does not yield an answer to the ultimate question: whether, in all the circumstances, the public interest decisively demands that a commercial developer be deprived of land it is actively seeking to develop, by a commercial rival, against its will.

Agenda Item 3.2: Summary of case regarding compulsory acquisition and temporary possession powers

9. The following submissions were made jointly on behalf of the APs.

Overall Position

10. The APs' overarching submission is that the Applicant has not demonstrated a compelling case in the public interest for any of the APs' land to be taken compulsorily. The condition in section 122(3) of PA 2008 is not satisfied. Further, in respect of land proposed to be set aside for future highway works not triggered by the DCO scheme, the condition in section 122(2) is not satisfied (see the APs' Deadline 2 response to Action Point 21). The APs' case is set out extensively in their respective Relevant Representations, Written Representations, Deadline 2 and Deadline 3 submissions.

Approach to the section 122(3) test

11. The AP's submissions on the correct approach to the section 122(3) test is set out in section 4 of Prologis' comments on Deadline 1 submissions **[REP2-050D]**. Parliament's choice of the word "compelling" imports the approach derived from the caselaw: the test is qualitatively different from, and materially higher than, a bare balance of advantage. The public interest must "decisively demand" the compulsory acquisition; if "any reasonable doubt on the matter, the balance must be resolved in favour of the citizen." The APs submitted that the Applicant has mischaracterised the test and seeks to set the bar too low **[REP2-050D]**. That error means the Applicant has misled itself when deciding whether compulsory acquisition is justified and is inviting the decision-maker to err in law.
12. Please also see EMA's response to AP28 on this issue.

Preliminary point – section 35 and vires

13. As set out in the Prologis Written Representations **[REP1-257D]** at section 3 and **[REP2-050D]** at section 2, the Applicant's application does not accord with the scope of the section 35 direction. Unless and until this issue is resolved, the Secretary of State has no jurisdiction to grant development consent for the proposed development and, consequently, none to grant compulsory acquisition powers. This issue also has direct implications for the compulsory acquisition case **[REP2-050D, section 5]**.
14. *Alternatives*: The APs' submissions on alternatives are set out in **[REP2-050D]** at section 3. Both the timing of the investigation of alternatives and the evidence produced are key. The burden is on the Applicant to demonstrate that it undertook a thorough, systematic and open-minded examination of all reasonable alternatives to compulsory acquisition (including modifications to the scheme) before deciding that a measure of last resort was justified. No evidence has been produced by the Applicant that is capable of satisfying that test. Prologis identified five alternatives representing pathways that could and should have been examined; not one was identified by the Applicant as having been explored. The Applicant's belated attempt to respond was wholly inadequate **[REP2-050D]**.

Delivery and viability

15. The likelihood of delivery (having regard to viability), the timing and the likely extent of delivery are important elements of the compelling case assessment. None of these matters can be accepted simply on the basis of assertions; they call for detailed and reliable evidence and thorough scrutiny through inquisitorial examination. The fairness of the PA 2008 system depends critically on the actions of the ExP in that regard. The APs have demonstrated in their Deadline 3 submissions that the Applicant's material is wholly inadequate and unreliable. The Applicant's own evidence and Statement of Reasons create, at least, a substantial doubt that the DCO scheme is viable. Mr Roberts' Appraisal **[REP3-061]** shows that, on the Applicant's own figures, its scheme is demonstrably not viable. Confirmation of compulsory acquisition powers would prevent

implementation of development on the Prologis Land without delivering the promised development in its place.

Comparison to the 'no-CA' world

16. The starting point is that there is a willing, capable and highly experienced developer actively promoting at least equivalent development on the very land the Applicant wishes to acquire compulsorily. In the no-CA world:
 - (i) planning permission is likely to be forthcoming for the Joint Application scheme and would be implemented rapidly;
 - (ii) by the time the Secretary of State makes his decision on the DCO application (and probably much sooner), North West Leicestershire District Council's decision on the Joint Application will have been made;
 - (iii) compulsory acquisition is plainly not needed to facilitate delivery of equivalent benefits from that land;
 - (iv) the Joint Application will deliver some benefits over and above those attributed to the EMA/Prologis Land in the SEGRO Application (for example, an on-site Training Hub modelled on Prologis' DIRFT Training Hub, and increased floor area of 135,000 m² compared to 120,000 m²); and
 - (v) development is likely on the southern land in the no-CA world (supported by Mr Roberts' evidence on viability).
17. The APs emphasised that the correct comparison is not between the DCO scheme and (a) no development or (b) only the Joint Application development. The more likely position absent compulsory acquisition powers is either: (a) the Applicant enters into a joint venture arrangement with the APs (a DCO-based alternative to compulsory acquisition) because this would be commercially attractive without compulsory acquisition powers; or (b) development on the APs' land via the Joint Application and, soon thereafter, development on the southern land via a separate planning permission. Well-established and proportionate alternative mechanisms exist for co-ordination and comprehensiveness without recourse to compulsory acquisition. It should be emphasised that these points relate to the application of the compulsory acquisition tests and are distinct from any questions as to the proper approach to the environmental assessment of the SEGRO scheme.
18. In substance, the APs submitted that compulsory acquisition powers are sought inappropriately to provide a commercial advantage to one developer over another, rather than to secure development that would not otherwise come forward.

Adverse public interest implications

19. The frustration of the Joint Application scheme benefits is a substantial public interest consideration on the detriment side of the balance. The harm arises from

the point at which the Joint Application scheme is approved and becomes permanent once compulsory acquisition powers are granted. This must be assessed alongside the uncertainty of delivery of the DCO scheme itself. The Applicant seeks state-sanctioned expropriation of a commercial rival's land to achieve a commercial opportunity it could not obtain through an open competitive bid. Its purpose is to develop land in essentially the same manner as its commercial rival; that, the APs submitted, cannot amount to a compelling case in the public interest.

20. The APs noted that the submissions made by MLF during the hearing regarding private developers having compulsory purchase powers were concerned with regeneration CPOs under section 226 of the Town and Country Planning Act 1990, which are materially different from the circumstances of this case. As explained in the Prologis Written Representations at section 5 and EMA's Post CAH1 Submissions **[REP1-220, §9]**, for the UK Government to authorise such a step poses a material risk to foreign direct investment. It would set a troubling precedent and chill the appetite of other investors.
21. SEGRO suggested during the hearing that this was a jury point. This is far from a jury point. It is the very reason Parliament requires there to be a compelling case in the public interest. It is why the use of what the courts have called "*draconian powers*" should be as a last resort and the Courts have said any doubt should be resolved in favour of the land owner. SEGRO's entire response is that the use of compulsory purchase is ordinary. It is a 'nothing to see here' defence. But that is a complete failure to properly apply the tests and a failure to recognise that, whilst compulsory purchase powers are usually used in DCOs, they are nationally significant schemes and most are providing infrastructure. This is by contrast, a commercial scheme for a private operator. SEGRO's response is another example of it failing to engage in the substance of the compulsory purchase tests.

Conclusion on the statutory tests

22. Drawing together the foregoing, the APs' conclusions on the statutory tests are as follows:
 - (i) Section 122(2) of PA 2008 requires that the land is required for the development to which the development consent relates, or is required to facilitate, is incidental to that development. In respect of Plots 1/7, 2/2 and 2/3, these are subject to the safeguarded area for the future A453 dualling **[REP2-008D, dDCO, p.51; R31] [REP1-024D]**. That dualling does not form part of the DCO development; it relates to a third party's future schemes. Compulsory acquisition is sought over land where the Applicant's commitment (under Requirement 31) is, essentially, to do nothing other than safeguard. Such land is not "required" for the DCO development, does not "facilitate" it, and is not "incidental" to it. Any landscaping proposed on that safeguarded land cannot be required as it is acknowledged that it may be removed to facilitate a later and different scheme.

- (ii) There is no need for compulsory acquisition to deliver industrial and logistics development. The public interest is entirely blind as to who delivers the benefits. There is no benefit in the Applicant specifically delivering them – a factor that would usually be powerful but is simply not present in this case.
 - (iii) Paragraph 8 of the CPO Guidance requires that all reasonable alternatives must be explored. Where reasonable alternatives exist, a compelling case cannot be shown. The *Prest* case illustrates this point (see [RR-013D, §§8.3–8.4]).
 - (iv) Paragraphs 12 and 13 of the CPO Guidance address private loss and the importance of viability evidence. There is at least a doubt over delivery of the DCO scheme, and there is clear private loss flowing from the grant of compulsory acquisition powers which would effectively prevent the Joint Application development from proceeding.
 - (v) All that remains of the Applicant’s case is the assertion that a single developer is required for the delivery of site-wide infrastructure. That assertion is wrong [RR-013D, §§8.13–8.17]: there are well-established means of pooling contributions and delivering large complex sites through co-ordinated development. The avoidance of piecemeal development comes nowhere near establishing a compelling case in the public interest.
23. For those reasons, the APs submitted that compulsory acquisition powers cannot be justified and there is no compelling case in the public interest for the acquisition of the APs’ land.

ExP Questions

ExP Question 1

24. The ExP asked whether the contended socio-economic benefits of the Joint Application could be displaced by the DCO scheme upon its delivery (the delivery scenario), and therefore whether the Environmental Statement (“ES”) must treat such displacement as a likely significant effect of the project.
25. EMA’s position is that for the purposes of the Environmental Impact Assessment (“EIA”), “likely” connotes a real risk, rather than a probability. This is established by the authority of *R (on the application of An Taisce) v Secretary of State for Energy and Climate Change* [2014] EWCA Civ 1111 at [12]: a real risk means more than a bare possibility but does not require proof that effects will probably occur. In any given case, a number of outcomes may be “likely” as so defined, and the ES should assess each of them.
26. The socio-economic benefits of the Joint Application would be displaced upon the grant of the DCO with compulsory acquisition powers. The Applicant’s Counsel appeared to suggest that “likely” means “extremely probable”; if so, that was wrong as a matter of law.

27. For the reasons explained in EMA’s Written Representations, implementation of any planning permission for the Joint Application is only likely once the shadow of compulsory acquisition is lifted. Despite the APs’ appetite and willingness to proceed, the commercial risk for customers would be unacceptable whilst the threat of compulsory acquisition persists. The relevant effect flows from the decision to approve the project including all authorisations needed (i.e. development consent and necessary powers including compulsory acquisition).
28. If planning permission for the Joint Application is granted by the time the Secretary of State determines the DCO application, the issue of likelihood is straightforward. Absent a decision to grant compulsory acquisition powers, it would be at least probable that the Joint Application development would be implemented.
29. If the decision on the Joint Application is still pending, the Secretary of State needs to judge whether there is a real risk that such development would be authorised and implemented in the no-CA world. As Mr Rolinson’s planning report demonstrates, both authorisation and implementation are highly likely and the test of real risk plainly would be met.
30. In the delivery scenario, the benefits of the Joint Application are also displaced. This is relevant to the overall assessment of socio-economic effects on a net basis. Even on the best case for the Applicant, it is necessary to understand what would be displaced in order to understand the required “netting off”. This analysis is necessary but not sufficient; it remains necessary also to consider what would happen to the southern land absent compulsory acquisition.

ExP Question 2

31. The ExP asked whether the definition of “project” for EIA purposes is contingent upon physical works; whether in a non-delivery scenario the relevant effects would still fall within the definition; and whether the sterilisation of socio-economic benefits should be treated as a likely significant effect and assessed in the ES.
32. EMA’s position is that the definition of “project” comprises “development” as defined, which includes physical works, although it need not. A project can include a change of use or intensification; it can also include the continuation of an existing use.
33. In *Inter-Environnement Wallonie v Conseil des Ministres* [2020] Env LR 9 at [71]–[72], the European Court of Justice held that a legislative act extending the life of a nuclear power station engaged EIA because it was “inextricably linked” with upgrading works needed, even though further decisions were required. It said:

*“71. In the light of those various factors, **measures such as those at issue in the main proceedings cannot be artificially dissociated from the work to which they are inextricably linked when assessing, in the present instance, whether they constitute a project within the meaning of the first indent of art.1(2)(a) of the***

EIA Directive. It must therefore be held that such measures and the upgrading work inextricably linked thereto together constitute a single project within the meaning of that provision, subject to findings of fact that are for the referring court to make.

72. The fact that the implementation of those measures requires the adoption of subsequent acts in respect of one of the power stations concerned, such as issue of a new specific consent for the production of electricity for industrial purposes, does not change that analysis.” (our emphasis)

34. The Court’s language – “*artificially dissociated*” – was carefully chosen. The EIA framework is designed for a broad approach ensuring environmental protection, not a narrow legalistic approach that avoids scrutiny.
35. In this case, there is a single legislative act (the DCO as a statutory instrument) which includes both development consent and other authorisations (including compulsory acquisition) intended to enable development. Those elements are inextricably linked and comprise a single project for EIA purposes. The assessment of adverse socio-economic effects cannot properly ignore the environmental effects flowing from the decision, whether or not the proposed development is ultimately implemented. Whether direct or indirect, the effects are effects of the decision that allows development to proceed and are inextricably linked to the physical works for which consent is sought.
36. In many cases adverse effects will occur from physical activity, but that is a matter of causation and case-specific analysis, not a principle of law. There is no legal principle confining the requirement to assess adverse effects to situations where physical works are carried out. The same point applies to other DCO provisions (for example, the stopping up or diversion of rights of way). Where a DCO requires measures to facilitate development, the socio-economic impacts of those measures must be assessed in EIA. Not to do so would be wholly artificial and would fail to reflect the actual environmental impacts experienced by those most directly affected.
37. This is an issue of law, not judgment. The decision-maker’s judgment must be exercised within the correct legal framework. If the identification of the project is artificially constrained, the decision-maker will go wrong in law.
38. Even putting aside the EIA obligation, the socio-economic effects are, in any event, an obligatory material consideration. If the Secretary of State were to grant the DCO without taking account of the sterilisation of benefits in a non-delivery scenario, the decision would be unlawful for failure to take account a material consideration which is obviously material.
39. The Secretary of State cannot be sure that the DCO scheme would be implemented. A non-delivery scenario is at least a realistic possibility, as is partial or delayed delivery. Any assessment of the compulsory acquisition case must consider the implications of those scenarios. The Secretary of State needs to be

advised of the ExP's conclusions and recommendation in light of those implications. One way or another, assessment of this issue is essential.

ExP Question 3

40. The ExP asked whether the non-delivery scenario should be assessed, given that the Applicant contends it is not likely, and asked how many DCOs had been consented but never delivered.
41. It would be obviously wrong, as a matter of basic principle, for an inquisitorial body to simply accept an applicant's assertion on this point. To do so would involve a failure of its duty to examine and test the case, whether or not the point is actively contested. In this case, the point is actively contested by the APs (both of whom are experienced commercial developers) with detailed written evidence. Non-delivery is at the very least a realistic possibility.
42. EMA (together with Prologis) considered the request for information on DCOs that had not been delivered. Whilst the list is not comprehensive, a selection of cases known to the APs' teams includes numerous examples. These examples are clearly not on all fours with the current application as such there is a limited degree to which these examples are directly relevant but (a) the ExP asked for examples and (b) they make the generic point that not all schemes come to fruition including NSIPs. Further, this is a relatively unusual DCO application (a business and commercial scheme) and there are no examples of such schemes having been granted a DCO and implemented.
43. Business and commercial DCOs are fundamentally different from the usual DCO (for a bridge, road, or power station – which are all-or-nothing propositions based on public financing or a strike price). Business and commercial schemes are different in that decisions over implementation may be staged and implementation may be partial. Demand-led development with individual units is different from, say, a power station (all or nothing) or a Strategic Rail Freight Interchange (where expensive rail infrastructure is only possible with sufficient commercial units). Moreover, as commercial schemes with no public subsidy, they stand or fall on commercial viability; the evidence on viability in this case is not encouraging. Pure business and commercial schemes are much more likely to end up with partial or delayed implementation.
44. The following examples of consented-but-not-implemented DCOs were identified:
 - (i) Immingham Green Energy Terminal – a green energy terminal and hydrogen production facility, promoted by ABP and Air Products. Expected to deliver £4.5 billion of economic value and 1,400 jobs. DCO granted 6 February 2025. Air Products cancelled the project in summer 2025, citing the absence of policy support and government financial backing.
 - (ii) North Killingholme Power Project – a gas-fired generating station promoted by C.GEN Killingholme Ltd. DCO granted 11 September 2014. Not

implemented despite a decade having elapsed; amendment orders were sought to extend the time limit and transfer to Uniper.

- (iii) Keadby 3 Carbon Capture Power Station – a gas-fired CCGT with carbon capture (approximately 910 MW) promoted by SSE Thermal and Equinor. DCO granted 7 December 2022. Must commence by 7 December 2029. No updates on construction have been published; SSE’s website states the project “*could be operational towards end of decade*”.
- (iv) Tidal Lagoon Swansea Bay – an approximately 320 MW tidal lagoon promoted by Tidal Lagoon (Swansea Bay) plc. DCO granted 9 June 2015. Funding was pulled; the project was never lawfully commenced. The Court of Appeal confirmed in 2022 that the DCO had lapsed.
- (v) Manston Airport – reopening as a dedicated air freight facility (10,000+ cargo movements per year). DCO granted 18 August 2022 (redetermined after the original grant on 9 July 2020 was quashed in February 2021). No substantive implementation has taken place; the time limit is 18 August 2027.
- (vi) International Advanced Manufacturing Park (IAMP), Sunderland – promoted by two local planning authorities with a section 35 direction. The Councils owned little of the land initially; landowners were resistant. The Councils subsequently acquired approximately one third. Despite infrastructure going in early, only a couple of units have been built. The Councils obtained variation and subsequently revocation of the section 35 direction; part of the site has proceeded under planning permissions. Less than half the site has been developed a decade later. This demonstrates that business and commercial projects of national significance are more susceptible to commercial headwinds than traditional NSIPs.

45. The conclusions that can be drawn are:

- (i) Business and commercial projects of national significance are more susceptible to commercial headwinds than NSIPs for basic needs;
- (ii) Promoters and occupiers may prefer the TCPA process (IAMP);
- (iii) Neither a section 35 direction, nor planning policy, nor planning permission guarantees delivery;
- (iv) Changing commercial markets impact viability for business and commercial schemes more than for traditional NSIPs; and
- (v) When the evidence is considered as a whole (both the specific viability evidence in this case and the general examples above), it is not credible for the Applicant to claim that a non-delivery scenario could not happen.

46. The non-delivery scenario should therefore be assessed accordingly.

ExP Question 4

47. The ExP asked whether, if further socio-economic assessment is required for delivery and non-delivery scenarios, the Applicant must re-visit the compelling case test in the Statement of Reasons.
48. In EMA's view submitted that the consequences identified in the ExP's questions do necessarily flow from the answers. The Applicant should reassess its case and revise its Statement of Reasons to reflect this critical shortcoming. It should also take the opportunity to deal with the other fundamental flaws identified by the APs. The Applicant has approached the compelling case test on the basis of a significant misunderstanding of its requirements; that error infects the whole of the Statement of Reasons.
49. Further, the Applicant has not correctly identified and appraised the individual elements of the test (for example, its approach to alternatives) and this renders the Statement of Reasons unfit for purpose. There are real and multi-layered problems: the test has been misunderstood and misapplied (the scales are tilted, not flat – it is a compelling case that is required); and the ingredients put into those scales are also wrong (see responses to the above questions). These matters need to be addressed.

ExP Question 5

50. The ExP asked whether the counterfactual that development on the southern land would come forward under a planning application is too speculative.
51. There are two important preliminary points in response:
 - (i) The question was framed in a way that does not reflect how the APs have expressed their case. The submissions about the likelihood of development on the southern land coming forward in a no-CA/no-DCO scenario were not advanced on the basis that this should form the baseline for EIA. What was said about EIA concerns the Prologis/MAG land only. In respect of the southern land, the issue is raised in the context of what would happen if no compulsory acquisition powers are granted – which is necessary to understand to properly to evaluate the claimed benefits of compulsory acquisition. If land to be acquired and the southern land would likely be developed in any event, there is little benefit from compulsory acquisition powers. The point is made about how the compelling case should be approached, not as an allegation that the EIA is inadequate.
 - (ii) The PINS guidance on cumulative impact does not assist here. That guidance has a specific purpose derived from the EIA Regulations obligation to account for cumulation with other existing or approved projects. It is concerned with a different question arising in a different legal context from the statutory constraint preventing the Secretary of State from including compulsory acquisition in the DCO unless a compelling case is established.

52. In order to form a judgment on the compelling case, it is necessary for the Secretary of State to consider the extent to which relevant public interest benefits are likely to be realised absent compulsory acquisition. This obligation cannot be controversial; it implicitly underlies the Applicant's own assertion in the Statement of Reasons that the southern land in isolation is not economically viable. It requires the decision-maker to make an informed judgment based on the facts.
53. The policy position is supportive of development in this location and is increasingly so (as demonstrated by Mr Rolinson's Planning Statement). For the issue to arise, the Secretary of State will first have concluded that the Applicant's development on the southern land is acceptable in the public interest. It would therefore be inherently improbable (or impossible) that equivalent development on that land would be judged unacceptable if a planning application were made. Mr Roberts' evidence shows that development is likely to be economically viable and attractive to a developer. These are matters of direct relevance to which appropriate and significant weight should be attached.

Viability

54. A number of questions were asked in relation to viability. The Applicant is due to respond in writing to the APs viability work at Deadline 4. The APs will, in turn, provide a detailed response to the Applicant's position in light of the Deadline 4 materials.

Agenda Item 4.1: Statutory undertakers

55. EMA is a statutory undertaker pursuant to Schedule 2 of the Airports Act 1986 (as defined by the Acquisition of Land Act 1981) and is the Aerodrome Safeguarding Authority for East Midlands Airport. The Applicant seeks compulsory powers over land held by EMA as airport operator, including Plot 2/6 over which Works 14b and 14c are proposed (which works form part of the Active Travel Link) (see Sheet 2 of the Land Plans **[APP-028D]** and Sheet 2 of the Works Plans **[APP-033D]**).
56. EMA's position on the Active Travel Link is set out in: **[REP1-216D]** at paragraph 5(a)–(h); **[REP1-218-D]**; **[REP1-219]**; and **[REP1-220]** at paragraphs 30–33. The Airport does not accept that the Applicant has demonstrated sufficient need to justify the Active Travel Link and certainly not for the compulsory acquisition of its land for that purpose.
57. Without prejudice to that primary position, the Airport is working with the Applicant to identify delivery by agreement if the Secretary of State finds the Active Travel Link to be required as mitigation.
58. EMA's analysis showed that part of the Active Travel Link as originally proposed cut across EMA operational land (currently used for car parking and reserved for future runway apron expansion), which would have caused serious detriment to the Airport's operations. That was not the Applicant's stated intention, and the Applicant has re-aligned the route to avoid operational land. At the time of the

hearing, revised Land and Works Plans had not yet been submitted and the extent of Plot 2/6 was yet to be reduced.

59. EMA maintains its objection on operational land grounds but expects the matter to be capable of resolution. There remain, however, two further points of objection:
- (i) Lack of need – the level of anticipated use of the Active Travel Link is very low and insufficient to justify compulsory acquisition; and
 - (ii) Alternatives – active discussions are ongoing with the Applicant to find a way forward without compulsory acquisition, and this should be possible. Options include an undertaking by EMA to dedicate the surface as highway (noting that there are important utilities beneath the surface which would need to be protected) in the event that consent is granted and the need for the Active Travel Link is established.

Protective Provisions

60. EMA confirmed that discussions regarding protective provisions are ongoing. The chronology of those discussions is as follows:
- (i) On 24 March 2026, a meeting took place between Kate Bedson (SEGRO) and Alistair Andrew (EMA), at which the principle of protective provisions was discussed, together with the need for greater detail than the EMG1 consent (owing to a change in regulations).
 - (ii) On 7 April 2026, EMA submitted drafted protective provisions.
 - (iii) On 6 May 2026, an email was received from Kate Bedson with revised protective provisions stated to be 'consistent' with the proposed planning conditions for the Joint Application.
61. EMA was due to respond to the latest drafting shortly. EMA made two points. First, protective provisions for the protection of a statutory undertaker are principally for the statutory undertaker to identify the form of protection required. Secondly, whilst EMA recognises that the proposed protective provisions were based on the Joint Application planning conditions, the distinction between planning conditions and protective provisions in a development consent order needs to be reflected in the drafting.
62. EMA confirmed that this is an area of active discussion and not one where there should be a failure to agree.