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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

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 play[4], the significant locational advantages of the site[5], the supportive policy position[6] and the likely viability of such development[7]. 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

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[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

[redacted]

DLA PIPER UK LLP

On behalf of Prologis

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