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

DEADLINE 5 SUBMISSION

ON BEHALF OF

PROLOGIS UK LIMITED AND PROLOGIS UK 121 LIMITED

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1 Introduction and overall approach

1.1 This submission is made on behalf of Prologis UK Limited and Prologis UK 121 Limited (together, "**Prologis**") at Deadline 5 of the examination into the East Midlands Gateway Phase 2 DCO. It responds to the material submitted by SEGRO at Deadline 4 and builds on Prologis's previous submissions. It does not rehearse points already before the ExP except where necessary to signpost where they may be found. Terms used have the same meaning as in Prologis's earlier submissions unless otherwise defined.

1.2 Prologis reserves its position in respect of the further material still awaited from SEGRO at Deadline 5, including the revised Section 35 requirement to which SEGRO's Deadline 4 submissions refer, and any updates to the Environmental Statement and Statement of Reasons.

1.3 The substance of Prologis's response to SEGRO's submissions on viability, in particular Mr Cottage's Response to the expert report of Mr Roberts[1] is addressed in the further expert report of Mr Roberts appended to this submission at Appendix 1 ("**Second Report of Mr Roberts"**) and is therefore dealt with only at a high level in the body of this submission. Section 2 of Appendix 1 includes a response to SEGRO's letter of 24 June 2026 regarding the Deadline 4 submission of without prejudice viability evidence.

2 Responses to the Rule 17 Letter (and Regulation 20)

2.1 By way of overview on the relevant correspondence and submissions to date:

(a) On 2 June 2026, the Examining Panel ("**ExP**") issued a letter under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (the "Rule 17 Letter"), seeking further information.

(b) At Deadline 4 Prologis and EMA provided a Joint Response (the **"Joint Response**") to the Rule 17 Letter.

(c) On 22 June 2026, SEGRO then wrote a further letter to the ExP in response to the Joint Response and the Rule 17 letter, inviting the ExP to reconsider the Rule 17 request and either withdraw or revise it (the "**SEGRO letter**").

(d) By a letter dated 23 June 2026 ("the **ExP Response**") the ExP declined to withdraw or revise the Rule 17 letter and stated that it did not consider the information it had sought to constitute "further information" for the purposes of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the "**EIA Regulations**").

2.2 The concluding paragraph to the ExP Response stated that the ExP does not consider it necessary to enter into further correspondence on these matters at this stage, and Prologis has therefore waited for the next scheduled opportunity to make written submissions (Deadline 5) to address the ExP on the issues arising from the correspondence summarised above.

2.3 There are three issues arising from the correspondence which it is necessary to address:

(a) SEGRO's mischaracterisation of Prologis's position;

(b) the consequences of the Rule 17 request and subsequent correspondence by reference to Regulation 20 of the EIA Regulations;

(c) the disaggregation of effects as between sections 104 and 105 of the PA 2008.

[1] Appendix L – DCO 7.13 Applicant's Response to Deadline 2 and 3 Submissions

SEGRO’s Mischaracterisation of Prologis's position

2.4 At paragraph 3.4 of the SEGRO Response, SEGRO quotes a statement from paragraph 3.9 of the Joint Response that the issue Prologis has raised in respect of the Southern Land “*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*”. As paragraph 3.4 of the SEGRO Response itself acknowledges, and as is abundantly clear from the Joint Response, the quoted words relate specifically to the future development of the Southern Land, and to that issue alone. They sit within section 3 of the Joint Response, which deals with the Southern Land under a separate heading.

2.5 Prologis’s position has always involved two distinct points, which the Joint Response keeps separate. In relation to the effects of the DCO project on the future development of the Northern Land pursuant to the Joint Application, Prologis and EMA welcomed the ExP’s conclusions in the Rule 17 Letter, agreeing that these are likely significant effects of the project which require assessment in the Environmental Statement pursuant to regulation 14 of the EIA Regulations. That is an EIA issue. The Southern Land point addressed at paragraph 3.9, by contrast, is not.

2.6 That distinction is apparent on the face of the Joint Response. Section 2 deals with the issues associated with the Joint Application and the Northern Land; section 3 deals separately with the Southern Land, where the words quoted by SEGRO appear; and section 4 addresses regulation 20 of the EIA Regulations and is expressly concerned with the updates “*to the ES the ExP <u>has now requested</u>*” (emphasis added) in the Rule 17 Letter (paragraph 4.1). Those updates included additional information to deal with the Joint Application and the Northern Land. They did not, of course, include any additional information to deal with the future development of the Southern Land, for the reasons set out in the Rule 17 Request.

2.7 Notwithstanding that clear distinction, under the heading “*Consequences of the Rule 17 Request*”, paragraph 5.2 of SEGRO’s response argues that the Rule 17 request has “*disproportionate consequences*” on the basis that “*neither the Applicants, <u>nor Prologis</u> nor EMA consider that the <u>potential impacts of the proposed development the Joint Application</u>* [sic] *is an EIA issue or a matter that falls to be assessed and analysed through the lens of the EIA Regulations*” (emphasis added).

2.8 In doing so, the SEGRO Response wrongly deploys what was said at paragraph 3.9 of the Joint Response – which concerned only the Southern Land – as if it had been directed at the assessment of the impacts of the Proposed Development on the Joint Application. The two points are, and have always been, distinct, and there is no proper justification for SEGRO seeking to conflate them in its submissions to the ExP. That is a plain and material mischaracterisation of Prologis’s position, which we draw to the attention of the ExP now because, as explained below, the underlying issue to which it relates remains ‘live’.

Consequences of the Rule 17 request and subsequent correspondence under Regulation 20 of the EIA Regulations

2.9 The ExP’s Response states that the request made for additional environmental information in the Rule 17 Letter is not to be regarded as a request for “further information” for the purposes of Regulation 20 of the EIA Regulations, on the basis that it “*relates to the analytical presentation and disaggregation of effects already assessed, and the structuring of evidence to support the ExP’s statutory functions”.* Prologis has considered that explanation carefully, by reference both to the two numbered updates to the Environmental Statement requested on page 6 of the Rule 17 letter and to what was said on its behalf in the Joint Response. Having undertaken that exercise, it is apparent that the explanation provided in the ExP Response addresses only the second of the numbered updates requested by the ExP in the Rule 17 request, namely: “*Disaggregate the effects relating to Part 1 of the dDCO (and its associated development) from those relating to Part 2 (and its associated development)”.* The explanation does not engage with or address the first, and distinct, numbered update requested, namely: “*Amend the baseline to include the joint application and assess the “delivery scenario” and “non-delivery scenario” as set out above*”.

2.10 That first numbered update requested by the ExP to the Environmental Statement plainly does not concern the presentation of effects already assessed; it requires the assessment of likely significant effects which the Environmental Statement does not presently provide. That is reflected in, and consistent with, the ExP's subsequent Rule 17 request, made in a letter dated 19 June 2026 which built upon the earlier request in the Rule 17 Letter. The seventh numbered paragraph of that subsequent request required SEGRO to "… *review their case for compulsory acquisition in light of the updates to the ES and, particularly, consider any implications regarding their approach to the compelling case in the public interest test, updating their Statement of Reasons as appropriate. For example, the question of whether the non-delivery and delivery scenarios would change the public interest benefits or the balance of the compelling case in the public interest test is something that the applicants should explicitly address*". The need for a consequential reassessment of the case for compulsory acquisition reflects the fact that this will be new environmental information, previously unavailable and not therefore reflected in SEGRO's Statement of Reasons as currently drafted.

2.11 The first numbered update is therefore the clearer example of "further information" within the meaning of the EIA Regulations, being both directly relevant to reaching a reasoned conclusion on the significant effects of the development on the environment and necessary for the Environmental Statement to satisfy the requirements of regulation 14(2) for the reasons summarised in section 4 of the Joint Response.

2.12 The ExP Response rightly rejected SEGRO's invitation to amend its Rule 17 request. It follows that the requirement to update the Environmental Statement to assess the displacement and sterilisation effects associated with the development proposed in the Joint Application remains outstanding and is due to be provided at Deadline 5.

2.13 For the reasons set out at paragraphs 4.1 to 4.5 of the Joint Response Prologis maintains its position that the first numbered update to the Environmental Statement is clearly "further information" as defined. Receiving this information (and any associated updates to the Statement of Reasons) only at Deadline 5 of the examination further aggravates the procedural disadvantages associated with SEGRO's failure to provide this material as part of the application. The process mandated by Regulation 20 of the EIA Regulations is designed to ensure that Interested Parties such as Prologis are not disadvantaged as a result of such late provision of environmental information of this sort, and are instead given a fair opportunity to examine and respond to the late submission of such material outside the time pressures associated with the examination timetable.

2.14 Prologis therefore respectfully invites the ExP to review the position articulated in the ExP Response with those points in mind.

Disaggregation of effects as between sections 104 and 105 of the PA 2008

2.15 As to the disaggregation of the effects of Part 1 (the section 104 NSIP works) and Part 2 (the section 105 non-NSIP works) of the dDCO, Prologis awaits the Applicant's analysis. Prologis does, however, take issue with the Applicant's contention that the planning balance, and the overall outcome, would be the same however sections 104 and 105 of the PA 2008 are applied (Applicants' Post-Hearing Submissions (DCO 7.14), Item 3.1, relying on EFW Group Ltd v Secretary of State [2021] EWHC 2697 (Admin) at [77] to the effect that the "*overall outcome would have been the same*").

2.16 There can be divergent outcomes: the section 104 NSIP works may be acceptable in their own right while the section 105 non-NSIP works are not. The benefit of the section 104 works cannot render the section 105 works acceptable; and if the section 105 works would not be acceptable but for the section 104 works, the question of alternatives is squarely engaged. The proper disaggregation of the assessment is necessary precisely so that these questions can be addressed lawfully, as the ExP has itself recognised.

2.17 It is prudent also to note that the distinction between DCO s105 works and the highway works, and then the MCO works requires three disaggregated components. These points should all be shown separately in order to assist the decision-maker.

3 Section 35 Direction

3.1 Prologis has set out its analysis of the Section 35 Direction, and of the consequences of the divergence between the development it describes and the development for which SEGRO seeks consent, at paragraphs 3.1 to 3.35 of its Deadline 4 Submission (16.06.26) and in its Responses to ExQ2 (response to Q1.0.5), and does not repeat that analysis here. The manner in which SEGRO has dealt with the Section 35 Direction in its Deadline 4 material does not answer Prologis's case and in important respects reinforces it.

SEGRO's changing position

3.2 SEGRO's position on the Section 35 Direction has shifted materially as the Examination has progressed, and the case it now advances is difficult to reconcile with the position it adopted at the outset. When the discrepancy between the development consented by the Section 35 Direction and the development proposed in the DCO Application was first raised by the ExP, SEGRO's case was that nothing turned on the "*substantial carbon neutral campus/headquarters including co-located head office functions*" that the Section 35 Direction describes. In its oral submissions at ISH1, SEGRO contended that the carbon neutral campus/headquarters was not "*integral*"[2] to the Section 35 Direction. In its response to Action Point 15, it went further, stating that it was "*not considered appropriate for the dDCO to secure the provision of a carbon neutral campus/headquarters for Maersk*". On that footing, SEGRO's position was that no carbon neutral campus/headquarter needed to be provided for, secured or delivered at all.

3.3 As the ExP has rightly continued to press the point (through its action points and its written questions) and Prologis has provided detailed legal submissions on the issue, SEGRO has moved away from that position and now seeks to bring the DCO Application into conformity with the Section 35 Direction by relying upon a control in the form of a requirement. A first, purely contingent, requirement was proposed in SEGRO's response to Action Point 15. This was a "*Carbon neutral construction and operation*" requirement applying only "*if*" a campus/headquarters came forward, and requiring no more than measures to be taken "*with a view to achieving*" carbon neutral construction. Prologis has already explained why that requirement does not cure the difficulty at paragraphs 2.21 to 2.33 of its Deadline 2 Submission and at paragraphs 16 to 17 of its Written Summary of Oral Submissions at ISH3.

3.4 At the May Hearings, SEGRO indicated that it no longer suggested that requirement ought to be imposed and would instead bring forward a different and more onerous version. This is still awaited and will apparently be submitted at Deadline 5, but in its response to Action Point 30 SEGRO has explained that the further revised requirement would seek to secure that 10% of the DCO Scheme is delivered as a carbon neutral campus. In its Deadline 4 response to Prologis's submissions (Applicant's Response to Deadline 2 and 3 Submissions. Appendix 6, pages 83 to 84), SEGRO now states in terms that the submission that the application fails to comply with the section 35 direction is denied "<u>*on the basis that*</u> *delivery of the campus will be secured by* [the as yet unseen] *Requirement 32*" (emphasis added). SEGRO's change of position is itself telling. By offering a requirement to secure a carbon neutral campus at all SEGRO necessarily accepts what it had earlier denied – that the campus/headquarters is a component of the project which the Section 35 Direction requires, and which the dDCO must secure. That is difficult to reconcile with SEGRO's original position that nothing of substance turned on the campus/headquarters element at all.

SEGRO's changing emphasis

3.5 Faced with that difficulty, SEGRO argues that the bare fact that the Secretary of State found the project as described in the Section 35 Application and Section 35 Direction to be nationally significant allows it to deviate materially from the description of development to which the Direction relates. SEGRO's response to ExQ2 1.0.5 appears to suggest that so long as the development is "*of a substantial physical size*" then it necessarily remains within the scope of the Section 35 Direction regardless of whether it does or does not correspond to the description of the development to which the Section 35 Direction relates. This is an untenable position and one that is unsupported by any

[2] As per Counsel for SEGRO's comments at 1:17:20 of ISH 1 Event Transcript Part 2

structured or principled legal analysis. In this respect it is notable that SEGRO's Response to ExQ2 1.0.5 does not answer the ExP's clear and direct question about the correct legal approach to this issue and instead directs attention to paragraphs 2.1 to 2.16 of its response to Prologis's Deadline 2 and Deadline 3 submissions which, it is claimed, address "this point". Those paragraphs do not, in fact, articulate a direct (let alone reasoned) response to that question as to the correct legal approach. SEGRO's position on that question of law remains entirely unclear.

3.6 The correct approach (as per Prologis's detailed response to ExQ1.0.5 and its Deadline 4 submission) is clear. First, the Secretary of State does not have a discretion to allow the development secured by the DCO to deviate from the wording of the Section 35 Direction on the basis that it would be sufficiently similar in nature and scale to remain nationally significant. Second, it is necessary to apply the clear and ordinary meaning of the words used in the Section 35 Direction to describe the development to which it relates and to ensure that the development applied for accords with that description. SEGRO's contention that the reasons given for the Section 35 Direction can apply to a materially different description of development inverts that exercise. It uses those reasons to contradict, rather than illuminate, the description of development to which the Section 35 Direction relates. That is not a legitimate approach to interpretation, particularly where the meaning of the Section 35 Direction determines both jurisdiction and the availability of compulsory acquisition powers.

Draft requirement

3.7 The requirement on which SEGRO's position now relies has still not been produced. Prologis reserves its position to make further comment at Deadline 6 once it has sight of it, but maintains its points already that do not depend upon the wording – in particular that the divergence between the Section 35 Direction and the development to which the DCO Application relates is a matter of jurisdiction that cannot be cured by a requirement.

3.8 Prologis does, however, draw two matters to the ExP's attention now:

(a) On the basis of the material that SEGRO has submitted at Deadline 4, the requirement would secure only a modest proportion (10%) of the scheme as a 'carbon neutral campus' (the meaning of which has yet to be defined by SEGRO). It is not apparent why the chosen proportion is said to be appropriate and sufficient to satisfy the Section 35 Direction, and it does not correspond with the "very substantial" carbon neutral campus/headquarters, anticipated to occupy approximately a third of the site, that SEGRO itself described in its Section 35 Application when seeking to justify the making of the Direction.

(b) Securing a proportion of floorspace as a "campus" does not address the distinct questions of what constitutes a "campus" in this context (and thus the legal meaning and effect of the suggested requirement), and whether the "co-located head office functions" required by the Section 35 Direction are a primary Use Class E(g)(i) use, which Prologis has raised in its Deadline 4 Submissions, including the question of its assessment.

Ancillary office use

3.9 A discrete but related issue concerns ancillary office use. In Appendix 6 of SEGRO's Response to Deadline 3 and Deadline 4 submissions (page 84) it is said that "*The development comprises primarily a logistics and manufacturing hub. Any office use is ancillary to that primary purpose*". In resisting Prologis's case that the development described in the Section 35 Direction requires a primary Use Class E(g)(i) head office use, SEGRO's position is, in substance, that the development proposed within the order limits as a whole is a B2/B8 development and that the office content is ancillary to that B2/B8 use, such that no separate office use needs to be applied for or secured. In advancing that analysis SEGRO does not, however, make clear what it says the relevant planning unit would be for the purposes of determining what is the primary use and whether any other uses are properly regarded as ancillary to that primary use. That omission is significant.

3.10 In determining this issue, the ExP and the Secretary of State will need to grapple with that preliminary question. If SEGRO wishes to invite the Secretary of State to adopt its analysis, it must approach it in a structured and principled way to demonstrate that its case is both legally robust,

reflecting the principles established by case law, and that it represents the most appropriate outcome applying those principles to the facts of this case. Prologis recognises that, in the case of an individual occupier's unit, an element of office use would normally be ancillary to that occupier's B2 or B8 use of that unit, but it does not follow, and SEGRO has not explained how, the substantial campus/headquarters and co-located head office functions contemplated by the Section 35 Application and described in the Section 35 Direction could properly be regarded as ancillary to the use of another occupier's warehouse unit elsewhere on the estate. Prologis's analysis of ancillary use as it relates to the Section 35 Direction is further set out at paragraphs 3.13 to 3.19 of its Deadline 4 Submission and is not repeated here.

4 Reasonable Alternatives

Approach to reasonable alternatives

4.1 SEGRO's contention, in its Response to Deadline 2 and 3 Submissions[3] is that Prologis has overstated the emphasis to be placed on the timing of the exploration of reasonable alternatives required by paragraph 8 of the Guidance. Prologis has set out the correct approach in full at Section 6 of its Written Representation and at Section 3 of its Deadline 3 Submission and does not repeat it here except to emphasise that the duty in paragraph 8 is expressed in the past tense – the applicant must demonstrate that reasonable alternatives "have been explored". The emphasis on timing is inherent in the Guidance issued by the Secretary of State to guide applicants as to how this issue will be approached in decision-making and not a matter of Prologis's invention.

4.2 SEGRO seeks to sidestep the logical implications of the timing point by submitting that there is no requirement to "*pull down the shutters*" when the application is submitted, and that the MHCLG Guidance on the Compulsory Purchase Process (January 2025, paragraph 2.8) envisages compulsory purchase powers being pursued in tandem with negotiations. That does not address the requirements of the Guidance nor is it a satisfactory response to the concerns raised by Prologis in line with the Guidance. Neither the Guidance nor Prologis contend that negotiations must have concluded before an application is made, or that powers may not be sought while negotiations continue. Its point (and the principle enshrined in the Guidance) is that the applicant should be able to demonstrate the genuine and structured consideration it gave to reasonable alternatives before it resolved to apply for powers of compulsory acquisition. SEGRO can either demonstrate that it took this approach and undertook such an exercise before deciding to apply, or it cannot. The steps taken *after* submission can have no direct bearing on that question.

4.3 It does not therefore assist SEGRO to say that "*the fact that an applicant responds during the Examination to alternatives raised in relevant representations does not make that response a post hoc rationalisation*" but is "*an ordinary and necessary part of the examination process*". Prologis does not suggest that it is impermissible for SEGRO to respond to the alternatives identified by Affected Persons now. SEGRO can and should do that, but it cannot thereby retrospectively satisfy the steps it should have undertaken at an earlier formative stage, when it should not have made up its mind to seek powers of compulsion and alternatives to compulsory acquisition (including amendments to the scheme) could more easily have been pursued. The difficulty is that a response now is no substitute for evidence of what SEGRO actually considered before it applied. It is the absence of any such evidence (not the fact of a response) that gives rise to the concern that its position is a rationalisation after the event.

4.4 SEGRO's Deadline 4 response gives no indication, still less evidence, of when, by whom, or on what basis any alternative was assessed before the DCO Application was made. Its assertion that it is "*indisputable from the record of interaction between the parties that alternatives have been thoroughly explored*" does not discharge that burden. A record that suggests meetings and correspondence took place does not show what alternatives were considered, what information was prepared to inform that consideration, or how and by whom they were assessed.

[3] Pages 93-98 and 104-108 of DCO 7.13

4.5 SEGRO's principal response to the criticism that it has produced no such evidence is that the engagement between the parties is "*subject to a non-disclosure agreement or covered by without prejudice*", so that it is "*unreasonable…for Prologis (and EMA) to criticise the lack of evidence of alternatives when such arrangements prevent the sharing of much of that evidence*". That does not meet the point. The criticism is not, in the main, directed at the confidential content of the current negotiations, it is directed at the absence of any documented, pre-application assessment showing that SEGRO itself genuinely considered and explored reasonable alternatives to compulsory acquisition before it resolved to seek compulsory acquisition. This is material that should be found in SEGRO's own documentation recording its internal decision-making, and should be unaffected by the confidentiality that attaches to the negotiations with Affected Persons now ongoing.

4.6 Nor is the difficulty confined to the absence of evidence. Each of the five alternatives now under consideration was proposed by Prologis, not by SEGRO. Where Prologis has pressed them, SEGRO has repeatedly failed to respond substantively, has declined to provide the information needed to evaluate them, and, at an earlier stage, amended its own scheme in a way that reduced its compatibility with the Joint Application. That is the conduct not of a party genuinely exploring alternatives, but of one reacting to alternatives put to them and seeking to foreclose them. By contrast, Prologis has amended its own scheme to keep those alternatives open and to enable the development of the Southern Land, notwithstanding that the onus of identifying and pursuing reasonable alternatives to compulsory acquisition rests on SEGRO as the party seeking those powers, not on Prologis or any other affected person.

4.7 Underlying SEGRO's response is the contention that the only question is whether Prologis's alternatives provide a "*realistic, deliverable and sufficiently certain substitute*" for the powers sought, and that Prologis wrongly proceeds as if the Joint Application and the DCO Scheme were equivalent, or as if uncertainty in the DCO process neutralised uncertainty in the alternatives. That is to mischaracterise and thus to miss the point that Prologis advances and the duties to which SEGRO is subject. It accepts that the question is whether there is a reasonable alternative to compulsory acquisition; but (as explored further in section 5 below) a reasonable alternative need not replicate the DCO Scheme, nor be free of all uncertainty, in order to defeat the case for the powers. The relevant comparison is between the limited additional benefits that genuinely depend on the powers and the draconian step of expropriating a willing and capable rival developer – not between an identical alternative and the DCO. SEGRO's framing assumes the very point in issue, that only single-developer delivery by compulsion is appropriate.

Chronology of Engagement

4.8 The history and timing of the engagement must also be set straight. As Appendix 2 to Prologis's Deadline 4 Submission shows, negotiation began late and much of the early engagement was performative. SEGRO notified Prologis of its intention to apply in November 2024, but no substantive negotiation took place before it first submitted the DCO Application (including a request for powers of compulsory acquisition) in August 2025; the first meeting between the parties did not occur until 12 February 2025, and meaningful engagement on the alternatives only began after the DCO Application had been made, by which stage SEGRO's position was, in substance, "DCO or nothing". The DCO Application was thus presented to Prologis as a *fait accompli*. That account is consistent with the position Prologis has maintained throughout, and Prologis does not accept any suggestion that it is the party holding matters up as the pattern disclosed by the correspondence is the opposite.

4.9 SEGRO's chronology, at Annex 7A to DCO 7.16, records an offer made by SEGRO on 22 April 2026 which it has since chased, the suggested inference being that the matter now rests with Prologis. That inference should not be drawn. The 22 April 2026 offer was made, and falls to be understood, in the context of the continuing without prejudice discussions described above, in which Prologis has consistently sought to move matters forward. Those discussions remain ongoing with Prologis having since provided a response to SEGRO's offer. Had negotiations commenced at an earlier formative stage their prospects of success would have been substantially improved because of the far greater range of options still available (including amendments to the scheme).

4.10 As to disclosure of the without prejudice material, at its response to ExQ2 Q7.0.2[4] SEGRO states that it is content to release all of the material covered by the non-disclosure agreement ("**NDA**") and the without prejudice rule, but that Prologis and EMA "*have not agreed*", implying that Prologis has been asked to agree to the release of relevant material and is withholding its consent. That is not an accurate or fair characterisation. Prologis has not refused disclosure. Indeed, it has waived confidentiality to some extent in respect of its own schedule of correspondence. On being informed of SEGRO's intention to disclose material covered by the NDA by SEGRO's legal representatives, Prologis (through their own legal representatives) asked only that SEGRO raise any further material it intended to disclose with it in advance, so that they could consider whether the material could properly be disclosed – a copy of this correspondence is available at Appendix 2. Prologis does not, however, consider it appropriate for the whole of the without prejudice correspondence to be placed in the public domain while there remain realistic prospects of the negotiations producing an agreed outcome. That would not be sensible or conducive to successful negotiation. Prologis nevertheless reserves the right to release that material at a later stage should that situation change. The ExP should not, in these circumstances, draw any inference adverse to Prologis from the fact that the material has not been disclosed in full.

Southern Land

4.11 SEGRO states that its "*viability appraisal demonstrates that the Southern Land alone is not viable as a standalone development separate from the northern land*" (Applicants' Response to Deadline 2 and 3 Submissions (DCO 7.13). That assertion is not made good by the evidence. The appraisal SEGRO relies upon tests only its own scenario – one that as explained in the Second Report of Mr Roberts (see Appendix 1) is not rooted in reality and is also built upon SEGRO's commitment to acquire the Aldridge Land at a price of its own choosing. What has not been assessed are the alternatives Prologis has actually identified - development of the Southern Land in its own right by a willing developer, for example through a planning application under the Town and Country Planning Act 1990, or development of that land under the DCO without the need for powers of compulsory acquisition. SEGRO cannot reasonably expect the ExP or the Secretary of State to accept its assertion that the development of the Southern Land alone is unviable when it has not tested any of the realistic scenarios in which such development could occur (and which Prologis has identified). The substance of the viability evidence is addressed at Section 6 and in the expert report at Appendix 1, the point here is that this remains a critical gap in the evidence adduced to seek to substantiate SEGRO's own case for obtaining powers of compulsory acquisition, which it is for SEGRO to fill.

Viability of the Joint Application scheme

4.12 SEGRO's contention that the Joint Application is not viable is not made out. As Prologis has shown, the Joint Application is, on SEGRO's own inputs, manifestly viable, generating a residual land value materially in excess of the value SEGRO itself assumed for the Prologis/MAG Land in its own DCO appraisal. SEGRO's asserted viability difficulty has not been caused by the Prologis scheme, nor does it arise from anything inherent to the Southern Land itself; rather, it is the product of SEGRO's own contractual commitment to overpay for the Aldridge Land. The substance of that evidence is addressed in the expert report at Appendix 1 and at Section 2 of Prologis's Deadline 3 Submission, and the implications for the compelling case analysis are summarised at Section 6 below.

4.13 Recognising the difficulty identified above, SEGRO has attempted to recast the issue, submitting that "the question is not whether the Joint Application development is viable in isolation, but whether Prologis would choose to participate in the DCO Scheme rather than pursuing its own competing development". That recasting effectively abandons SEGRO's argument that the Joint Application scheme is not viable (and is therefore unlikely to be implemented), because it rests upon the assumption that, if Prologis had a choice whether to implement the Joint Application scheme or the DCO on its own land, it would be commercially rational to choose the former.

Multi-developer approach

[4] Annex 7A of DCO 7.16 – Responses to ExQ2

4.14 SEGRO contends that the practical problems of two developers building out the DCO Scheme render the "*DCO-based*" alternatives unreasonable. It asserts that separate delivery would adversely affect the delivery of the whole DCO Scheme, and that the alternatives involve an unacceptable "*mix and match*" approach. However, two developers delivering this site pursuant to the DCO would be providing infrastructure of mutual benefit, with substantial crossover between what each requires. The existence of shared infrastructure is a reason for co-operation, not an obstacle to it. The apportionment of costs, and the other practical matters SEGRO raises, are routinely dealt with on strategic sites through standard planning and commercial mechanisms which are capable of reflecting the parties' respective interests and the differing characteristics of their respective development. As Mr Roberts' report (Appendix 1) explains, the effect of the requirement in the dDCO regulating the timing of the delivery of the highways works relative to the commercial development would effectively compel the landowners to co-operate. No further compulsion is required to achieve that objective. It is for SEGRO to demonstrate that no such mechanism could reasonably be relied on to deliver the site as a whole – it has not done so.

4.15 As for SEGRO's further objection that the DCO Scheme cannot be "*re-engineered*" and that this is "*not a matter of substituting parameters*", the alternatives do not require the assessed scheme to be redesigned. They require the exclusion (or in one scenario the reduction) of compulsory acquisition powers, with any consequential amendments separately assessed in the ordinary way.

Tension in SEGRO's submissions

4.16 There is an unresolved tension at the heart of SEGRO's case on alternatives which require co-operation and agreement between the parties. On the one hand, SEGRO contends that such alternatives are not realistic, because there is no real prospect of agreeing the necessary joint venture or co-operation mechanism.

4.17 On the other hand, in its response to ExQ2 Q7.0.2 and the negotiation chronology at Annex 7A, SEGRO maintains that it is engaged in genuine and continuing negotiation directed at reaching precisely such an agreement. Those two positions cannot comfortably stand together. If SEGRO genuinely considered that there was no real prospect of agreement, there would be no purpose in the negotiations on which it relies and the continuation of those negotiations is itself inconsistent with the contention that agreement is unrealistic.

5 Compelling case test

SEGRO's mischaracterisation of Prologis's case

5.1 In its Response to Deadline 2 and 3 Submissions (DCO 7.13, pp.120–121 and pp.157–158), SEGRO contends that Prologis's analysis of what is required to demonstrate a compelling case in the public interest is intended to "*muddy the pool and distract*" the Examining Panel from where its focus should properly lie, and dismisses the additive/attributable distinction as "*an artificial construct of Prologis' own devising*".

5.2 That attempted stigmatisation of Prologis's approach is unfounded and is rejected in the clearest terms. Far from seeking to distract the ExP, Prologis has consistently sought to identify, with care and precision, the issues that the Panel and the Secretary of State must grapple with in applying the compelling case test on the particular and unusual facts of this case – a private developer seeking to acquire by compulsion the land of an equally willing, capable and funded commercial rival that is actively promoting materially the same development on the same land. That is an entirely appropriate exercise for an Affected Person faced with the prospect of compulsory acquisition to undertake. Indeed, it would plainly be unhelpful for Prologis not to identify those issues to assist the ExP and the Secretary of State in understanding the tasks required at the decision-making stage having regard to the legal and policy matrix in this case.

5.3 Those issues are not answered, and cannot be deflected, by SEGRO advancing an inaccurate caricature of Prologis's submissions or by unfounded assertions as to Prologis's motivation in making them. The questions that genuinely fall to be addressed include:

(a) how likely the benefits of the DCO Scheme are to be delivered in full, and within the Freeport Window;

(b) the implications of any realistic prospect that the DCO Scheme is not delivered, or is delivered only in part or later than SEGRO assumes, including the risk that the grant of powers on a contested basis is itself liable to give rise to further delay in delivery within the Freeport Window;

(c) the likelihood of materially the same benefits coming forward without the exercise of compulsory acquisition powers; whether SEGRO genuinely investigated the delivery of those benefits without recourse to compulsion before applying for the powers; and

(d) the precedent that the grant of such powers, in a private-to-private acquisition of this kind, would set.

These are proper, necessary and difficult questions which go to the heart of the section 122(3) assessment, and Prologis is not only entitled but obliged to place them before the ExP and the Secretary of State. They are developed in full in Prologis's Written Representation (Section 5), Deadline 2 Submission (Section 4), Deadline 3 Submission (Section 4) and Deadline 4 Submission (Section 4), and in Prologis's Written Summaries of Oral Submissions at CAH1 and CAH2.

5.4 SEGRO further suggests (DCO 7.13, p.121) that, if Prologis's approach were correct, no compulsory acquisition for any development could ever be justified, because it could always be said that the benefits flow from the development rather than from the legal mechanism by which the land is assembled.

5.5 That suggestion is neither correct nor logical, and it mischaracterises Prologis's case. Prologis has never submitted that benefits associated with development can never justify compulsory acquisition. Its case, as set out at paragraphs 4.3 to 4.5 of its Deadline 4 Submission and paragraphs 5.3 to 5.4 of its Deadline 2 Submission, is that the section 122(3) balance can only be struck in favour of acquisition by reference to those benefits that are genuinely attributable to the exercise of the powers (i.e. they would be unlikely to arise but for the exercise of those powers); and that, on the particular facts of this case, the benefits relied upon by SEGRO can for the most part be delivered without the powers, because Prologis is a willing, capable and funded developer actively promoting materially the same development on the same land (Written Representation, paragraphs 5.12 to 5.13).

5.6 Where the claimed benefits genuinely could not be achieved without compulsory acquisition, Prologis's analysis presents no obstacle to the test being satisfied; the test would simply be applied, on its facts, to benefits that truly depend on the powers sought. SEGRO's submission therefore seeks to convert a fact-specific and evidence-based objection into a point of principle that Prologis has never advanced, and it should therefore be rejected.

The additive/attributable distinction

5.7 SEGRO suggests (DCO 7.13, pp.120–121 and Annex B) that the distinction between benefits that are merely "*additive*" and those that are properly "*attributable*" to the exercise of compulsory acquisition powers is "*misconceived*" and "*misleading*", and that it appears neither in section 122(3) of the PA 2008, nor in the Compulsory Acquisition Guidance, nor in any decided case.

5.8 That response is devoid of substance and does not engage with the underlying principle (or logic) of the point. The distinction is not a free-standing legal test that Prologis seeks to graft onto the statute; it is simply a necessary analytical step in applying the section 122(3) test correctly.

5.9 Only those benefits that would be unlikely to be achieved without the exercise of the powers can properly attract material weight in the balance in favour of acquisition; benefits that would be likely to accrue in any event (whether through the exercise of those powers or through conventional planning and commercial mechanisms) cannot, because they do not depend upon, and so cannot justify, the interference with private rights that compulsory acquisition entails. That reasoning is rooted directly in the authorities. As Prologis explained at paragraph 4.4 of its Deadline 4 Submission, it follows

from the *De Rothschild* principle that "*no reasonable Secretary of State would confirm a compulsory purchase order, imposing a purchase on an unwilling landowner, if that same landowner was willing to sell ... land which would be seen to serve equally well for the same purpose*", which necessarily requires the decision-maker to ask whether the purpose for which the land is said to be required could be achieved without compulsory acquisition.

5.10 If it could, the interference is not justified and the compelling case under section 122(3) is not made out. The fact that no court has had occasion to articulate the distinction in those precise terms in a contested case is a neutral factor: either the logic is sound or it is not, and it is telling that SEGRO has chosen to attack the label rather than to grapple with the substance. The distinction, and its application to each category of benefit relied upon by SEGRO (including Freeport business rates, operational jobs, GVA, the Community Park, sustainable transport and BREEAM standards), is developed in full at paragraphs 5.3 to 5.5 of Prologis's Deadline 2 Submission, paragraphs 4.3 to 4.8 of its Deadline 3 Submission, and paragraphs 4.3 to 4.5 of its Deadline 4 Submission, together with the Spawforths analysis appended to the Deadline 3 Submission.

The A453 dualling

5.11 As to the A453 dualling, SEGRO's response simply does not grapple with the substance of the oral submissions that Prologis made at the hearings, which are now captured in writing in Prologis's Written Summary of Oral Submissions at CAH2 (paragraphs 25 to 26) and ISH3. Prologis does not repeat those submissions in full here but invites the ExP to review the Written Summary and then to compare that to SEGRO's 'response'. When that is done, the complete absence of any engagement with Prologis's submissions appears to indicate that SEGRO has no satisfactory answer to them. In those circumstances it is not lawfully open to the Secretary of State to confirm compulsory acquisition over those plots.

Private loss

5.12 On private loss (in response to ExQ7.0.5), SEGRO suggests (Response to ExQ2 (DCO 7.16), response to Q7.0.5) that it was not required to undertake <u>any</u> assessment of the nature and extent of the private loss that would be suffered by affected persons, on the basis that private loss "*will be different in each case*" and that to assess it on an individual basis "*would be to apply an inconsistent test and result in different landowners being treated differently*"; it says that it considered private loss only as part of the overall balancing exercise, and that it did not, and could not, set out what that loss would be for each landowner. Those suggestions are misconceived and wrong as a matter of principle. The compelling case test requires a demonstration by the applicant that the public benefits would outweigh the private loss that would actually be suffered as a result of the proposed compulsory acquisition (not some hypothetical 'generic' assumed private loss), and the severity of that loss cannot rationally be weighed without regard to the particular circumstances of those affected. For example, the weight attached to the private loss that would flow from the exercise of powers of compulsory acquisition would plainly be affected if the land in question was owned and occupied by a long-established family business that cannot relocate, or comprised the home of an elderly owner-occupier with a lifelong attachment to that property. In contending that such individual factors need not be considered, SEGRO in substance concedes that it has not considered them. That much was already evident from the absence of any reference to such consideration in the Statement of Reasons, let alone articulation of what that loss is likely to be in this case.

5.13 That is not a neutral omission: it is a gap in SEGRO's evidence that goes directly to the section 122(3) balance, and it reinforces Prologis's long-standing submission – made at paragraphs 5.7 to 5.8 of its Written Representation and in its Written Summary of Oral Submissions at CAH1 – that there has been no real assessment of private loss, that the interference must be shown to be for a legitimate purpose and to be necessary and proportionate (Compulsory Acquisition Guidance, paragraphs 10 and 12), and that the Statement of Reasons must be updated to identify and assess that loss properly. Prologis develops the legal consequences of that failure further in its legal submissions below.

Displacement and the future baseline

5.14 SEGRO contends that the criticisms made of the DCO Environmental Statement, for failing to assess the displacement of the Joint Application, could equally be levelled at the Environmental Statement for the Joint Application, which does not assess the "displacement" of the DCO Scheme by the Joint Application; it submits that, if the DCO Scheme were displaced by the Joint Application, that would result in the non-delivery of the Highways NSIP, and that this asserted inconsistency betrays the weakness in the contention that development in the alternative should be treated as part of the future baseline.

5.15 That argument is misconceived, for two reasons.

(a) First, the two situations are not equivalent. The grant of planning permission for the Joint Application could not in any way 'displace' the DCO Scheme. If the DCO is granted with powers of compulsory acquisition, SEGRO can acquire the land to which the Joint Application relates and thereby prevent implementation (or further implementation) of the development authorised by the permission. Until the application for the DCO has been determined, implementation of any such permission is not likely for the reasons articulated in Prologis's Written Representation at paragraphs 5.34 to 5.37 and 7.22 to 7.25, and in Prologis's Deadline 4 Submission at Section 5. Further and in any event, even if the DCO was granted without powers of compulsory acquisition and Prologis undertook works which implemented a grant of planning permission, SEGRO has itself built protection against that 'displacing' the development consent into its own draft Order – Article 42 of the dDCO expressly providing that, notwithstanding the decision in Hillside, the implementation of another permission will not invalidate the development consent. Having secured its scheme against displacement in these ways, SEGRO cannot maintain that the Joint Application Environmental Statement was deficient for not assessing displacement.

(b) Secondly, the Joint Application Environmental Statement addressed the DCO Scheme as an alternative to the Joint Application rather than as a cumulative or in-combination scenario, which is the orthodox and correct treatment of a competing scheme and is not a like-for-like counterpart of the assessment that the ExP has required of SEGRO.

5.16 In any event, SEGRO's argument is inconsistent with the submission it makes, at paragraphs 13 and 14 of its Post-Hearing Submissions (DCO 7.14), that "displacement" is a "misnomer"; that the developments proposed on the northern land under the two applications are "similar"; that any assessment should be blind to the identity of the developer; and that "the substitution of one similar form of development with another on the same land is not displacement" and is not an effect requiring assessment under the EIA Regulations. SEGRO cannot have it both ways.

5.17 If, conversely, such substitution does require assessment, then SEGRO's resistance to the further assessment that the ExP has required in the Rule 17 Letter is untenable. Prologis's full submissions on displacement, and on the meaning of "likely" in this context, are set out in its Written Summary of Oral Submissions at CAH2 (paragraphs 28 to 36) and at paragraphs 5.1 to 5.2 of its Deadline 4 Submission.

Public interest harms and precedent

5.18 In striking the compelling case balance, the ExP must also weigh on the detriment side not only the private loss to Prologis and MAG but also the public interest harms that the grant of the powers would cause – harms that arise on the making of the Order, whether or not the powers are ever exercised. The first is the loss of the opportunity to deliver the policy-compliant Joint Application and its benefits (up to 135,000 sqm of floorspace, approximately 1,919 FTE operational jobs, some £109 million per annum in gross GVA, a Training Hub, a Transport Hub and a Community Park), a harm which the Environmental Statement does not assess at all and which falls to be placed expressly in the section 122(3) balance. The second is the broader precedent: the use of compulsory acquisition by one private developer to expropriate the land of an equally capable commercial rival, in order to secure a commercial opportunity it was unable to obtain through open-market competition, would undermine the security of title on which commercial development investment in the United Kingdom depends, and would risk chilling foreign direct investment of the kind that Prologis and its occupiers represent.

5.19 These harms are not theoretical; they are immediate and certain, and they weigh directly against the existence of a compelling case. They are developed in full at paragraphs 5.13 to 5.18 and 5.33 to 5.39 of Prologis's Written Representation (and in the letter from Prologis's UK Managing Director at Appendix 4 to that Representation), at paragraphs 5.6 to 5.7 of its Deadline 2 Submission, and at paragraphs 4.26 to 4.28 of its Deadline 3 Submission.

The nature of the compelling case test

5.20 Underlying all of the above is the distinct and demanding character of the compelling case test, which Prologis's earlier submissions have addressed in detail.

5.21 SEGRO's Deadline 4 submission– that section 122 admits of no heightened standard for private-to-private acquisitions (DCO 7.13, pp.115–116) – misreads the decision of the Supreme Court in *Sainsbury's Supermarkets Ltd v Wolverhampton City Council* [2010] UKSC 20: the point is not that a different statutory test applies, but that the acute sensitivity of expropriating one private developer's land for the commercial benefit of its rival is a matter to which the decision-maker must give particular weight within the section 122(3) balance. Prologis's full treatment of the test and the authorities is at paragraphs 5.3 to 5.7 of its Written Representation and paragraphs 4.4 to 4.17 of its Deadline 2 Submission, as updated in Section 4 of its Deadline 4 Submission.

6 Viability

6.1 Prologis's substantive response to SEGRO's Deadline 4 viability material, including Mr Cottage's response to Mr Roberts's evidence, is contained in the Second Report of Mr Roberts FRICS CEnv of DWD, appended at Appendix 1. The ExP is invited to read that report in full for the detailed analysis; this section summarises the key points and signposts where they are developed.

6.2 The key points, which are developed in the Second Report of Mr Roberts, may be summarised as follows:

(a) SEGRO has still not provided any appraisal based on a realistic commercial market value assessment of the Prologis/MAG Land. Mr Cottage's appraisals continue to rely on a value of £225,000 per acre, derived from SEGRO's 2020 option agreement with Mr Aldridge rather than from any market evidence, together with an alternative figure of £31,250,000 – neither of which he advances as a market value (Second Report of Mr Roberts, Section 5 and paragraphs 8.9 to 8.11). Land value is an essential input to any viability appraisal, and without a realistic market value SEGRO's appraisals cannot be relied upon.

(b) On Mr Cottage's own figures, SEGRO cannot both pay a market value for the Prologis/MAG Land and achieve its stated minimum 15% profit hurdle. His £31,250,000 sensitivity appraisal reaches only 14.98%, and only by wrongly stripping out costs, so the DCO Scheme is marginal at best and, once a realistic market value is adopted, unviable (Second Report of Mr Roberts, paragraphs 5.12 to 5.13 and 8.6).

(c) SEGRO has adduced no evidence that development of the land south of Hyam's Lane would be unviable or undeliverable as a standalone or collaborative development. The only appraisal relied upon – which Mr Roberts describes as the "Fourth Scheme" – is an artificial construct that assigns 91% of the scheme costs to land comprising only 56.55% of the area and disregards the cost-sharing the dDCO would effectively require in the absence of powers of compulsory acquisition, so this key plank of SEGRO's case is unproven and may no longer be pursued (Second Report of Mr Roberts, Section 6 and 8).

(d) The dDCO itself, at paragraphs 5 and 6 of Part 1 of Schedule 2, already effectively compels SEGRO and Prologis to collaborate in delivering development of the Prologis/MAG and Aldridge Land in the absence of powers of compulsory acquisition. In those circumstances, the grant of compulsory acquisition powers is not necessary to ensure that the costs of the associated infrastructure would be shared appropriately; indeed, granting those powers would make delivery of both landholdings less, not more, likely (Second Report of Mr Roberts, paragraphs 1.7 to 1.8 and 6.8).

6.3 Notably, Mr Cottage does not invite the ExP to conclude that the Prologis scheme is unviable, and adduces no evidence to that effect (Second Report of Mr Roberts, Section 7). The consequence for the section 122(3) balance is that SEGRO has not demonstrated, on robust market-facing evidence, either that its own scheme is viable or that the benefits it relies upon to justify compulsory acquisition depend on the exercise of those powers.

7 Community Park

7.1 As part of its Deadline 4 Submissions, SEGRO has provided new material in relation to the proposed Community Park. Prologis has reviewed that material and does not consider that it alleviates its concern that the benefits claimed for the Community Park are significantly overstated as it is unable to effectively achieve all of its functions for the reasons below:

(a) The proposed ecological function of the Community Park is not considered to be able to operate effectively alongside unrestricted public use. The usage of the Community Park as Skylark mitigation would require restrictions on dog walkers during nesting season and would more than likely require fencing, which could be as high as 1.5m high. As such, the limited area of the Community Park, in this circumstance, is considered to result in an avoidable conflict between ecological protection and public access.

(b) The proposed SUDS features within the Community Park have steep sided slopes, with the features to the north of the site engineered into the existing slope, resulting in the likely need for fencing, on Health and Safety grounds. Similarly, the footpath route to the east of the most northerly SUDS feature, sits 10m above the base of the basin, with a 1 in 3 slope running from the edge of path downwards. Locating these features within or adjacent to recreational areas increases risks to users and undermines the drainage system's performance.

(c) Over a third of the proposed Community Park would not be publicly accessible due to the nature of the proposed SUDS features, which is a 1 in 3 slope. This part of the Community Park would also not be suitable as Sky Lark mitigation.

(d) The proposed Community Park and its approach to very much separate off the community space with the main park and employment uses, which severs interaction between the employment use and the Community Park. This contrasts with the Prologis PARKlife initiative which encourages interaction with the surrounding landscape and provides multiple access links into the park.

(e) The proposed Community Park proposes the use of small blocks of woodland, which would potentially be ineffective given the need for wide spacings, in order to satisfy bird strike guidance, given the close proximity of East Midlands Airport.

7.2 Prologis maintains that the proposed Community Park is so constrained in layout and functionality that it cannot deliver the level of multi-functional use claimed. Consequently, the benefits put forward by SEGRO are considered to be substantially lower than stated, which must be reflected in the case for compulsory acquisition.

8 Highways

8.1 Prologis has had sight of and has nothing further to add to the submissions made by EMA in relation to SEGRO's updated submissions on transport matters on which they have led to date – in particular in relation to the airport's operations.

8.2 SEGRO relies on National Highways' response to the Joint Application[5] (DCO 7.13, Annex J), and on the National Highways holding objection dated 10 June 2026[6], to cast doubt on the deliverability of the Joint Application. That reliance is misplaced, a holding objection is, by its nature, a position adopted pending further information or clarification rather than a refusal, and Prologis and East Midlands Airport continue to work constructively with National Highways and LCC to resolve the outstanding matters. Discussions with National Highways are progressing at a fast pace and an updated holding notice was submitted by National Highways on 16 June 2026. Since this time, and in response to points raised, the applicant has been in further correspondence with National Highways regarding the residual modelling, construction and sustainable transport matters raised with the intention of closing out such points in a timely manner.

8.3 In its response to Action Point 36, SEGRO suggests that, if Prologis developed the Joint Application and then the land south of Hyam's Lane came forward separately, the resulting highways arrangement at the crossing might be unacceptable, raising it as an obstacle to sequential development of the two parcels. The Joint Application site outline masterplan has been designed to include a potential highways tie-in with Hyam's Lane and onwards to a potential development on the land south of Hyam's Lane. The site levels have been designed to accommodate this. Were development to the south of Hyam's Lane to proceed, any agreed alterations to Hyam's Lane access could be secured via Traffic Regulation Orders with changes to the highway via a highway agreement under section 278 of the Highways Act 1980.

9 Conclusion

9.1 For the reasons set out above, and in Prologis's earlier submissions, Prologis respectfully invites the ExP to:

(a) find that the development for which consent is sought does not accord with the development described in the Section 35 Direction;

(b) review the conclusion reached in the ExP Response and treat the first numbered update sought in the Rule 17 Letter (amendment of the baseline to include the Joint Application and assessment of the delivery and non-delivery scenarios) as "further information" for the purposes of Regulation 20 of the EIA Regulations, with the procedural consequences that follow;

(c) find that the updated material provided by SEGRO does not demonstrate that it genuinely and properly explored reasonable alternatives to compulsory acquisition before resolving to seek the powers;

(d) have regard, in assessing whether a compelling case in the public interest under section 122(3) of the PA 2008 has been made out, to the limited benefits genuinely attributable to the exercise of the powers, the absence of any proper assessment of private loss, the public interest harms and adverse precedent that weigh against the grant, and the reduced weight of the Community Park benefits; and

(e) find that SEGRO are yet to demonstrate on robust evidence that its own scheme is viable.

DLA Piper UK LLP

30 June 2026

[5] Annex J – DCO 7.13

[6] Response to Action Point 49 – DCO 7.15 Applicants' Response to Hearing Action Points

Appendix 1 – Second Report of Mr Peter Roberts FRICS CENV

EAST MIDLANDS GATEWAY PHASE 2

EXAMINATION DEADLINE 5

ON BEHALF OF

PROLOGIS UK LIMITED

AND

PROLOGIS UK 121 LIMITED

EXPERT FINANCIAL VIABILITY ASSESSMENT

SECOND REPORT OF

PETER ROBERTS FRICS CENV

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GLOSSARY

Aldridge Land:	Plots 1/1 and 1/2 as detailed on the DCO Land Plan Sheet 1 of 4 Document ref: 2.2A.
Aldridge Option Agreement:	Promotion and Option Agreement dated 31 March 2020 between SEGRO and Mr Aldridge
Applicant:	SEGRO Properties Limited
Compensation Code:	The body of statute and case law and the established practices for the assessment, payment and determination of compensation for compulsory acquisition of land and rights, including the Land Compensation Acts of 1961 and 1973, the Compulsory Purchase Act 1965, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, the Planning Act 2008, the Housing and Planning Act 2016 and the Neighbourhood Planning Act 2017, in each case as amended from time to time.
dDCO:	The draft East Midlands Gateway Phase 2
MAG:	Manchester Airports Group
Market Value:	*… the estimated amount for which an asset and/or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's-length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion."*
Prologis:	Prologis UK Limited and Prologis 121 UK Limited
Prologis (Joint) Application:	Planning Application ref: 24/00727/OUTM
Prologis/MAG Land:	Plots 1/3, 1/4, 1/5 and 1/7 as detailed on the DCO Land Plan Sheet 1 of 4 Document ref: 2.2A.
Prologis/MAG Option Agreement:	Promotion, Planning and Option Agreement between Prologis and MAG
SEGRO:	SEGRO Properties Limited (the Applicant)
SEGRO Option:	Promotion and Option Agreement dated 31 March 2020 with Mr Aldridge in respect of Plots 1/1 and 1/2
Viability:	A viability appraisal deducts all the costs of delivering the development from the value that would be released on completion thereof and assesses whether there is a sufficient

residual amount left to provide the developer with sufficient profit to incentivise them to accept the risk of incurring those costs and the landowner with a price for their land that provides sufficient incentive for them to transfer their ownership to the developer having regard to the potential for competing offers in the market.

1.0 INTRODUCTION

1.1 I have been provided with a "Response to Peter Robert's (sic) Deadline 3 Report" by Mr Cottage ("**the Response**"). I have reviewed the Response and respond by way of this Report.

1.2 Mr Cottage's Report raises a number of matters to which a considered response is required in order that the ExP are apprised of the correct factual position. I trust that the reason for this approach will become apparent.

1.3 There are a significant number of points raised by Mr Cottage with which I am in disagreement, but I have decided to only address those that I consider to be directly relevant to the ExP's deliberations. As such, my silence on any particular matter raised by Mr Cottage should not be interpreted as comprising agreement and I reserve the right to address those issues in the future in light of any responses that may be submitted by or on behalf of SEGRO.

1.4 My conclusions, by way of a brief summary are:

1.5 Despite his representations to the contrary, Mr Cottage has still not provided a commercial (as opposed to hypothetical) assessment of the viability of the DCO scheme. A commercial assessment of viability needs to test whether a scheme is capable of delivering the level of profit required by the developer and releasing sufficient value to purchase the required land. However, Mr Cottage has still not adopted a realistic market value for the Prologis/MAG land. He has instead relied upon a value of £225,000 per acre in order to achieve the hurdle rate and sought, incorrectly, to present £31,250,000 (which equates to £306,372 per acre) as my opinion of market value. For the avoidance of any doubt, I do not accept that either of these figures have any relevance to market value. It is therefore the case that all of his appraisals (being appendices F and H to his original report together with appendices 2 and 3 of his Response) rely on hypothetical land values that bear no resemblance to the market.

1.6 Mr Cottage's assessments of viability on the assumption that the DCO was confirmed but SEGRO was refused powers of compulsory acquisition in respect of the Prologis/MAG land, disregard key provisions of the dDCO in respect of the delivery of the highway works. Mr Cottage's conclusion that this scenario would be unviable is based, therefore, on an entirely hypothetical and incorrect assumption that SEGRO would bear the majority, if not all, of the highway costs. He has therefore assessed an entirely hypothetical scenario. This is before any account is taken of the price that SEGRO has agreed to pay Mr Aldridge. This appraisal is therefore of limited, if any, assistance.

1.7 There is therefore no reliable evidence before the ExP that demonstrates that the SEGRO/dDCO scheme is viable and, on the basis of the evidence that is available, it is apparent that, once proper regard is had to the cost of acquiring the Prologis/MAG land, that scheme will not be viable. Furthermore, there is no evidence that it is necessary to grant compulsory acquisition powers to SEGRO in respect of the Prologis/MAG land. There are provisions of the dDCO that would effectively oblige Prologis and SEGRO to collaborate in delivering development of the Prologis/MAG and Aldridge land in that scenario.

1.8 The grant of compulsory acquisition powers will simply make it less rather than more likely that development of both land holdings will come forward as SEGRO cannot demonstrate that they can generate 15% profit **AND** pay market value for the Prologis/MAG land.

2.0 MY APPROACH

2.1 In his Response Mr Cottage frequently adopts an "ad hominem[1]" approach questioning my professionalism, knowledge, expertise and objectivity as well as suggesting that I have spun and/or manipulated appraisals and have been partisan[2].

2.2 In addition, rather than addressing the substance of my evidence directly and the matters that are of relevance to this matter, Mr Cottage consistently misrepresents my position and presents "strawman" arguments addressing matters that have either not been raised and/or are of no relevance. I regard this as unhelpful with the potential for distracting the ExP from grappling with the key issues concerning viability.

2.3 I trust that the ExP will form their own opinions in respect of my integrity and independence in this matter. I have not therefore responded directly to these matters save that, in addition to confirming my duties to the ExP as an Expert Witness, I am happy to stress that I have and continue to act *"…with objectivity, impartiality, without interference and with reference to all appropriate available sources of information*" as required under paragraph 2.1 of the RICS Professional Statement "Financial viability in planning; conduct and reporting."[3]

2.4 I am also happy to confirm that I have sought to "*advocate reasonable, transparent and appropriate engagement between the parties, having regard to the circumstances of each case*" in accordance with paragraph 2.10 of the same RICS Professional Standard.

2.5 Unfortunately, this has not been reciprocated as demonstrated most recently by Mr Cottage refusing to engage at all in respect of the Excel modelling of the development of the Aldridge land (the land south of Hyam's Lane) necessitating my preparation of both the Viability Excel modelling appraisals supplied at Deadline 4.

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[1] Attack against the character, motive or some other attribute of the person making an argument rather than the substance of the argument itself

[2] By way of selected examples (there are others I could include), Mr Cottage states in his Response that I "…*relies on **selective** sensitivity modelling*" (paragraph 5), have *"…attempted to create **confusion**… …by selectively **manipulating** the inputs…"* ,"*…**ignore** real world evidence*" (paragraph 13), applies an *"…**inflexible** approach…"* (paragraph 27), "**spinning** of that appraisal " (paragraph 35), together with *"…**slanted manipulation**…"* and have made a suggestion that "*…is extraordinary and only serves to demonstrate the **lack of objectivity***…" (paragraph 49 and my assertions "*…only serve to demonstrate his **partisan approach** and the **lack of objectivity** in his analysis.."* (paragraph 58).

[3] This is one of the of the RICS Practice Statements that Mr Cottage takes exception to.

2.6 In this context I have been provided with a copy of a letter dated 24 June 2026 from Gowlings concerning the Excel spreadsheet relating to the SEGRO scheme. It is asserted that I agreed to the inclusion of certain text drafted by Mr Cottage. This is incorrect.

2.7 For clarity, I deleted Mr Cottage's text from the released version precisely because I do not agree that it is a fair representation of the position. In any event, it has always been open to Mr Cottage to assist me with the preparation of the Excel spreadsheets and formulas contained therein so he could have suggested a solution to address his concerns, but he did not do so.

2.8 My position on the matter is that the Excel finance calculations, do not exactly match those generated by the Argus model, but the outputs in respect of the calculations of land value and profit are within a more than reasonable tolerance such that there is no material impact.

2.9 I illustrate this point by reference to a comparison of Mr Cottage's Argus appraisal outputs with those assessed by the Excel spreadsheet.

- At Appendix F of his first Report (Document DCO 4.5) Mr Cottage adopts a land value of £225,000 per acre for the DCO scheme and calculates a profit of 15.91% using Argus. The Excel spreadsheet calculates a profit of 15.8285% which, rounded to two decimal places, is 15.83%.

- At Appendix H of his first Report (Document DCO 4.5), Mr Cottage adopts a land value of £225,000 per acre in respect of what I refer to later in this Report as the "Fourth Scheme" of 3.62%. The Excel spreadsheet generates a profit of 3.53%.

- At Appendix 2 of his Response, Mr Cottage adopts a land value of £31,250,000 for the Prologis/MAG land in respect of the DCO scheme and, having incorrectly deducted Sale Costs, calculates a profit of 14.98%. The Excel spreadsheet generates a profit of 14.9194% which rounded to two decimal places is 14.92%.

- At Appendix 3 of his Response, Mr Cottage adopts a land value of £31,250,000 for the Prologis/MAG land in respect of the DCO scheme, incorrectly deducts Sale Costs but adds £1,800,000 to the Highway Costs to calculate a profit of 14.34%. The Excel spreadsheet generates a profit of 14.2884% which rounded to two decimal places is 14.29%.

2.10 Having tested the Excel spreadsheets on different assumptions, there are also circumstances in which the profit is marginally greater in comparison.

2.11 There is no suggestion by Gowlings that the text boxes within the Excel spreadsheet submitted by Prologis do not include all of Mr Cottage's finalised comments. In contrast, my comments within

the version submitted by SEGRO had been provided on a without prejudice basis and did not represent my final considered position.

2.12 In summary, my comments as set out on the version submitted by SEGRO were incomplete and, as far as I am concerned, were still covered by without prejudice privilege. The version submitted by Prologis contains my final comments and should be read in place of those set out in the SEGRO versions.

3.0 FRAMING OF THE ISSUES TO BE CONSIDERED BY THE EXP

3.1 Mr Cottage states at paragraph 3 of his Response that:

"*The issue the EXP needs to consider is the DCO Scheme's commercial viability, not its planning viability for the purposes of the NPPF and PPG. What the EXP needs to know is whether the DCO scheme is commercially viable in the "real-world" circumstances facing the Applicant and so is likely to be delivered*" (emphasis in original text).

3.2 A commercial viability appraisal seeks to assess whether, having taken account of all revenue and costs (including the costs of complying with planning obligations), a development can deliver both the level of profit required by a developer to implement the development, and sufficient value to incentivise the landowner to release their land for development. Such an approach would have regard to realistically anticipated costs (including the cost of site assembly) and revenue.

3.3 A so called "planning viability" appraisal is exactly the same exercise in that it assesses the commercial likelihood of delivering the development for which it seeks planning permission save that, unlike a commercial appraisal, the planning obligations are not fixed. As such, if the scheme cannot deliver the required profit and land value, the appraisals are re-run on different assumptions in respect of the planning obligations to establish whether the scheme can be made viable on the basis of reduced planning obligations. I have provided written and oral evidence on behalf of both Local Planning Authorities and developers in this regard.

3.4 Alternatively, it may be the case that planning permission would only be granted for a change of use/development that is contrary to a planning designation if it could be proven that policy compliant development would be unviable. In this regard, I have also provided expert evidence on a number of matters concerning departures from policy allocations on the grounds of viability including successfully acting for a Local Planning Authority in respect of a proposed change of use from commercial to residential on the grounds that commercial use was no longer viable, and also a well-known developer seeking planning permission for a food store site on a B1/B8 allocated site on the grounds that, without the value generated by the food store element, development of the site for B1/B8 was commercially unviable.

3.5 There is therefore no fundamental difference between a "commercial" or "planning" viability exercise and the comparison being made by Mr Cottage is entirely false.

3.6 It is against this background that Mr Cottage continues as follows:

"…In contrast, a planning-based Financial Assessment ("FVA")_, as per the NPPF and PPG, used to assess if a development is able to provide planning contributions and affordable housing, is a completely different exercise, based on government policy and existing use land values, rather than market metrics. Applying an (sic) FVA methodology to determine the commercial viability of the DCO Scheme would lead to incorrect conclusions being reached."

3.7 This is a muddled and inaccurate presentation of the position. The correct position is that:

1) The NPPF and PPG do not **only** consider viability for the purposes of the provision of planning contributions and affordable housing.

2) A Financial Viability Assessment ("FVA") does not rely **solely** on government policy. It also relies upon local policies and market evidence as presented to an Inspector during the appeal process.

3) A FVA is adapted for the purposes for which it is required on a case-by-case basis and, as a matter of fact, does not always rely on existing use land values even when considering the provision of affordable housing pursuant to residential schemes[4].

4) Whether or not he recognises it, Mr Cottage has in fact relied upon a Financial Viability Model but has simply called it a commercial viability appraisal albeit there is nothing commercial to his approach to the land acquisition costs in respect of the Prologis/MAG land.

3.8 In any event, Mr Cottage has not identified a single area where his overall approach to the viability model differs from mine notwithstanding our fundamental difference of opinion as to the basis of value to be assumed in respect of the land acquisition costs[5]. As such, other than perhaps seeking to defend his lack of reference to the appropriate guidance, I fail to understand the relevance of these arguments to the judgment that the ExP and Secretary of State will need to make based on the evidence.

3.9 Mr Cottage has not presented any evidence to demonstrate that the DCO scheme is commercially viable in "real world" circumstances because, inter alia, he has adopted hypothetical assumptions in respect of the cost of site assembly rather than commercially robust estimates as to what the

[4] Alternative Use Value may also apply. It all depends upon the evidence. Such alternatives may include a different scheme providing the same category and mode of use as being proposed.

[5] My position is that the value of the Prologis/MAG land should be assessed on a commercial market value basis whereas Mr Cottage has adopted entirely hypothetical and illustrative estimates of value that disregard the market.

market would expect SEGRO to pay on a commercial basis. He has therefore only demonstrated the viability of the SEGRO scheme **IF** he adopts either £225,000 per acre or £31,250,000 in respect of the Prologis/MAG land. However, he has not provided any financial modelling that adopts a realistic commercial market value for that land that accurately reflects what would be accepted as reasonable by the market.

3.10 He does not suggest anywhere, nor can he do so, that the market would consider either of his assessments as to the assumed cost of acquiring the Prologis/MAG land (i.e. £225,000 per acre or £31,250,000) to be commercially realistic. He also does not, and cannot, assert that SEGRO have a realistic expectation that Prologis/MAG would accept offers on this basis.

3.11 It is therefore factually the case that, despite advising the ExP that they should consider the *"DCO Scheme's" commercial viability"* Mr Cottage has not provided any evidence in this regard, and he therefore fails the very test that he has set himself.

3.12 I am unclear as to why, in his Response, Mr Cottage only directs the ExP to considering the commercial viability of the DCO scheme and does not present any analysis of the likely commercial viability of independent delivery of development on the Aldridge land in circumstances in which the development proposed in the Joint Application comes forward first or in parallel.

3.13 Further, as I set out later in this Report, Mr Cottage is clear in his Response that his previous evidence about development of the Aldridge land does not address this issue either. In this regard he states that:

"…The appraisal was produced to assist the EXP in understanding the implications of confirming the DCO without compulsory purchase powers over the Prologis/MAG Land, not to demonstrate whether or not the Aldridge Land is independently viable. Whether the Aldridge Land is independently viable is not an issue that is directly relevant to the viability of the DCO Scheme."[6]

3.14 Mr Cottage repeats this comment later in his Response with additional text as follows:

"…An independent development of the Aldridge Land (separate from the other elements of the DCO, including the Highways Works) is not something the Applicant is proposing and it is also not directly relevant to the EXP's consideration of whether the DCO scheme is viable."[7]

[6] Paragraph 9 of the Response
[7] Paragraph 50 of the Response

3.15 If I have understood correctly, Mr Cottage is saying that he has not provided any evidence as to whether the development of the Aldridge land is viable either as a separate phase of the DCO scheme or as a development outside of the DCO because he says, contrary to SEGRO's stated position in its Statement of Reasons, that these are effectively not relevant matters for the ExP.

3.16 This is significant because it means that more than three months into the examination SEGRO has yet to provide any evidence to support a key element of its case for compulsory acquisition and Mr Cottage appears to be declining to assist in this regard although SEGRO has been aware of this critical gap in the evidence since at least January 2026.

3.17 As Prologis stated in its Relevant Representations (RR-024D) at paragraphs 9.4 and 9.5:

"9.4 *A key element of that case* [(i.e. SEGRO's case)] *is the assertion that if the development proposed by Prologis and MAG proceeds "development of the southern part of the EMG2 Main Site [the Southern Land] would not be viable or deliverable as standalone development". In other words, SEGRO's case for the grant of compulsory acquisition powers relies on an assertion that acquisition of the Prologis/MAG land is necessary to make its own scheme viable* ***and that it could not bring forward a scheme on its own land if the Prologis/MAG Land is developed separately***[8]*. However, SEGRO has provided no evidence to substantiate this claim and to justify acquisition of land on which, by implication, development is considered to be viable. Nor has it adduced any evidence to demonstrate that the proposed development would be viable with that land included.*

9.5 On the facts here, this deficiency goes to the heart of the statutory test for compulsory acquisition under section 122 PA 2008 and the accompanying Guidance – that there be a compelling case in the public interest for the compulsory acquisition of land.…".

3.18 As Mr Cottage does not address this issue and, according to what he now says, does not intend to do so, the deficiency identified by Prologis remains.

3.19 In summary, from my understanding of the case that SEGRO has presented in its Statement of Reasons, the following issues fall to be considered by the ExP and the Secretary of State:

1. Has SEGRO demonstrated that the DCO scheme is likely to be viable as a whole?

[8] My emphasis

2. Has SEGRO demonstrated that development of the southern part of the EMG2 site, in circumstances where the northern part is developed by Prologis/MAG pursuant to the Joint Application scheme, "…*would not be viable or deliverable as standalone development…*"?

3.20 The answers to these questions are:

1. Despite advising that the ExP should consider the commercial viability of the SEGRO scheme, Mr Cottage has failed to provide any evidence thereof. There is therefore no evidence before the ExP demonstrating that "*on market metrics*" (to borrow Mr Cottage's phraseology) the SEGRO scheme is commercially viable. In reality, there is no evidence at all that SEGRO can both deliver 15% profit AND pay full market value having regard to commercial reality for the Prologis/MAG land. In fact, the evidence that has been provided demonstrates that the scheme could not deliver the minimum required profit of 15% if the land value was assessed on a market value basis. The position is even worse once any access premium due to Prologis/MAG, in accordance with accepted market and case law principles, is taken into account.
2. As I set out later in this report, Mr Cottage has not provided any evidence to demonstrate that development of the Aldridge land would not be viable or deliverable as a standalone development. The evidence that has been presented is clear that, once a commercial market approach is taken, such development is eminently viable. This is notwithstanding the fact that Mr Cottage has declined to provide any evidence additional to that provided in his first Report to rectify the deficiencies he alleges in my previous Report.

4.0 RICS REQUIREMENTS

4.1 Mr Cottage and I both refer in our respective Reports to the RICS Professional Standard – Valuation of Development Property 1st Edition and the RICS Valuation -Global Standards ("**PS VDP**"). However, I also refer to the RICS Professional Standard "Financial viability in planning: conduct and reporting" ("**PS FVPCR**") and the RICS Professional Standard "Assessing viability in planning under the National Planning Policy Framework" ("**PS AVPNPPF**").

4.2 Mr Cottage devotes significant time and effort to arguing that, inter alia, I am mistaken to have had any regard to the latter two publications[9], I have adopted an incorrect approach to viability[10] (although my cashflow/mathematical approach is the same as the approach he has taken) and I have misled the ExP[11]. These are entirely strawman arguments, and it is telling that Mr Cottage does not set out what material impact he suggests that any of this would have on my conclusions even if his assertions were correct (which they are not).

4.3 Mr Cottage expressed similar views at CAH2 and the ExP will recall that I voiced surprise and concern about the position he appeared to be adopting. I retain those concerns and would add that Mr Cottage's continued efforts in this regard can only serve to distract attention from the considerable holes in his evidence and thereby maintain the illusion that the "*DCO Scheme is viable and there is no evidence of substance that would suggest otherwise*"[12] when the factual position is precisely the opposite.

4.4 In seeking to support his position Mr Cottage, as I set out below, misrepresents and embellishes the response provided to him on these points by the RICS. He does this by adding his own text to the advice provided by the RICS, such that the reader would reasonably assume that the RICS had said something which clearly, they had not, and makes a number of entirely unfounded assertions. However, despite all of this, the fact remains that he and I have adopted exactly the same approach

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[9] For example, see paragraph 20 of the Response where Mr Cottage says: *"…Mr Roberts' insistence that our appraisals need to reflect the requirements of the Royal Institutions of Chartered Surveyors Professional Standards "Assessing Viability in Planning under the National Planning Policy Framework" and "Financial Viability in Planning: Conduct and Reporting" is entirely misconceived*."

[10] For example, see paragraph 12 of the Response where Mr Cottage says "*Mr Roberts' appraisal incorrectly treats the assessment of viability as a theoretical exercise dependent on the manipulation of a single appraisal to provide results…"*

[11] This is a theme of his Response but to illustrate the point he states at paragraph 13 and 14 that I have "*…attempted to create confusion… ...selectively manipulating… …adopts inconsistent approaches… …unfocussed and overly complicated approach*."

[12] See paragraph 58 of the Response

to the mechanics of the viability appraisal, with the only material difference in that regard between us relating to the approach to land value. I say that land value should be assessed on a commercial market value basis whereas Mr Cottage has adopted values that are, at best, illustrative but in no way representative of the commercial marketplace.

4.5 Whilst I have every confidence that the ExP has no wish to adjudicate on disputed RICS matters I feel that it is relevant to the matter of considering the weight to be applied to Mr Cottage's evidence as opposed to mine, to set out the factual position.

4.6 The PS VDP, as relied upon by Mr Cottage relates, as its title suggests, to the valuation of development property. It is to be applied by RICS Members when providing valuation reports to clients that are fully compliant with the requirements of the RICS Valuation-Global Standards such that they may be relied upon for the purposes of financial accounting and lending purposes.

4.7 Whilst Mr Cottage clearly relies upon this publication in respect of his approach to viability, the factual position is that the word "viable" does not appear anywhere within the 53 pages comprising this Practice Statement. The word "viability" only appears in a single sentence which reads: "*Sufficient enquiries should be made to establish whether the presence of on-site or neighbouring environmental features influence the development process, the density or even the viability of the project.*" The Glossary does not even include a definition thereof.

4.8 Mr Cottage therefore challenges my reliance on Practice Statements which define and address viability and the reporting thereof in considerable detail whilst stating his reliance on a Practice Statement that makes a single passing reference to viability and does not provide any commentary or assistance in understanding the principle or practice of assessing viability.

4.9 In this regard, Mr Cottage states at paragraph 21 that "*the RICS Professional Standard that relates to the undertaking of a commercial viability assessment is Professional Standard: Valuation of Development Property.*" For the reasons I have given, that is not correct.

4.10 Mr Cottage attempts to bolster his position in paragraph 22 of his Response where he states:

"Attached at Appendix 1 is an email from the Knowledge and Information Services Manager at the RICS that confirms: 1) The RICS Professional Standard: Valuation of Development Property, relates

*to valuations (**and viability assessments)***[13](the text in bold does not appear in the email to which he refers) *based on market metrics."*

4.11 As the ExP will note, the email he is referring to does not include the phrase *"(and viability assessments)."* Those words have been inserted by Mr Cottage, such that his statement does not align with the email upon which it is allegedly derived and, as a result, conveys an entirely different meaning to the reader. The absence of those words from the RICS email is entirely unsurprising for the reasons set out above.

4.12 The actual drafting provided by the RICS is: "*The first of these is professional advice on valuing development property based on market metrics in accordance with the Red Book.* "

4.13 By inserting those important words in parenthesis, Mr Cottage has sought to create the impression that the email supports his position when in fact it does not. It is, at best, neutral but does not assist his argument.

4.14 In any event, the author of that email is not a chartered surveyor or even a contributor to any of the publications in dispute. It is also stated that "*we cannot get drawn into a dispute nor would we undermine your professional judgement, however I can direct you to where you can find the information to make a professional assessment."*

4.15 The author was clearly keen not to be seen to be making any judgment on the matter either way. Furthermore, she does not refer at all to the RICS Professional Standard "Financial viability in planning conduct and reporting" so the response was only partial and to assist rather than advise.

4.16 Mr Cottage therefore, in providing viability advice, relies on a RICS Practice Statement that does not even consider the concept of viability and, in seeking to justify his misapplication thereof he inserts his own text into his representation of correspondence with RICS that has the effect of altering the meaning thereof. I do not consider that approach is likely to assist the ExP or the Secretary of State in reaching a judgment about the issues in dispute in this case.

4.17 It should be pointed out that, whilst Mr Cottage advocates for there to be reliance upon the PS VDP, he has ignored its provisions in respect of the need to cross check residual land values with

[13] This text does not appear in the RICS email and has been added by Mr Cottage.

market value transactional evidence. In this regard, and by way of an example[14], paragraph 2.3.4 of the PS VDP states:

"Best practice avoids reliance on a single approach or method of assessing the value of development property. Normally, any valuation undertaken by the market comparison approach should be cross-checked by reference to the residual method. Where a residual method is used, it is similarly important to cross-check the outcome with comparable market bids and transactions where they exist, including the subject property. The advice to apply both methods when possible has been endorsed by 2019 amendments to IVS 410 (effective from 31 January 2020), which state: '… the valuer should apply a minimum of two appropriate and recognised methods to valuing development property for each valuation project…' ' (IVS 410 paragraph 120.2).

This recommendation applies to valuations for secured lending but should be best practice for all development valuations."

4.18 This is required because a residual value represents what a particular developer can afford to bid based on their specific assumptions in respect of the inputs, whereas market value assumes a bidding process where developers each have their own assumptions in respect of inputs and bid against each other. As such, a residual land value is nothing more than an indication as to what a particular party might bid and does not necessarily comprise an assessment of market value.

4.19 Despite stating a reliance on the PS VDP, Mr Cottage does not provide an assessment of market value nor provide any details of *"…comparable market bids and transactions*." As such, he has not complied with this, his preferred Practice Statement.

4.20 This is a fundamental flaw in Mr Cottage's approach, namely that he has set out to calculate what SEGRO can afford to pay for the Prologis/MAG land in order to generate a profit at or near 15% of cost rather than adopting the market value of that land and assessing what profit would result if that price had to be paid.

4.21 I addressed this point at paragraphs 3.32 to 3.47 of my previous Report and referred to case law but note that, in the Response, Mr Cottage makes no reference to my evidence about that key point of approach and has still not produced any market transactional evidence in respect of the cost that SEGRO will ultimately have to bear in acquiring the Prologis/MAG land.

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[14] This is not the only reference to utilising market transaction evidence.

4.22 Mr Cottage proceeds to assert that a viability assessment carried out in accordance with the PS AVPNPPF requirements should have regard to Benchmark Land Values derived from the values of land for its existing use. He then states that:

"It is not a measure that has any relevance whatsoever to assessment of commercial viability…"

4.23 Bearing in mind that I do not refer anywhere within my Report to Benchmark Land Values it is clear that this is an entirely strawman argument that does not bear on the issues the ExP and Secretary of State need to determine.

4.24 Mr Cottage's argument appears to be that a viability exercise carried out pursuant to the PS AVNPPF is only relevant when assessing affordable housing requirements or planning contributions as part of a residential scheme and that if the scheme is not residential the RICS requirements cease to hold.

4.25 However, viability matters are also relevant to planning matters concerning non-residential development and are not restricted to residential development alone. In these circumstances it would clearly be inappropriate to adopt a Benchmark Land Value when assisting a Planning Inspector in respect of a non-residential scheme and there is no requirement within the PS AVNPPF to do so.

4.26 The ExP will recall that I responded to this point at CAH2 when I referred to the example of planning permission being granted on appeal for a food store development in Worksop on a B1/B8 allocated site where the Planning Inspector required expert evidence that B1/B8 development was not viable unless it was delivered as part of a food-store development for which there was no allocation. Neither party considered Benchmark Land Value to have any relevance. That situation is not dissimilar to the current matter before the ExP where one of Mr Cottage's/SEGRO's arguments is that it is necessary for them to acquire the Prologis/MAG land in order to deliver otherwise unviable (according to Mr Cottage/SEGRO) development of the Aldridge Land.

4.27 For clarity, I have never argued that Benchmark Land Value was an appropriate approach in this matter. As such, Mr Cottage has done nothing more than present a theoretical strawman argument than has no relevance to the key issues the ExP and Secretary of State need to determine.

4.28 Mr Cottage then mounts another strawman argument and quotes part of the NPPG guidance in respect of developer's profit to give the impression that it should be 15-20% of GDV in all circumstances and that he and I are somehow in disagreement although we have agreed 15% of

cost. He argues that the approach set out in the NPPG "*…is not the measure that should be applied for the purpose of a commercial viability assessment."*

4.29 However, Mr Cottage has only quoted part of the relevant passage from the NPPG and it is important to note that the relevant paragraph goes on to state:

"*Plan makers may choose to apply* ***alternative figures*** *where there is evidence to support this according to the* ***type,*** *scale and risk profile of planned development… …Alternative figures may also be appropriate for* ***different development types***."

4.30 Once regard is had to the full text, rather than just that part quoted by Mr Cottage, the true position is clear in that the quoted figures are not intended to apply to all forms of development nor are they prescriptive and it is for each authority to examine market evidence and come to their own conclusions in setting Local Plan Policies in respect of the different types of development. Furthermore, any disputes are determined on the basis of the evidence presented by the Parties at the Appeal proceedings.

4.31 However, the more fundamental point is that, as the ExP will be aware, I had accepted, from the outset, that 15% of cost is appropriate as a hurdle rate in respect of this mode and category of development. There is therefore no dispute in respect of the actual percentage to be adopted, and Mr Cottage's arguments take matters no further forward.

4.32 Overall, there are three important points that need to be stressed in conclusion in respect of the RICS standards:

1. I am allowed to depart from the PS AVPNPPF to the extent that there might otherwise be a conflict between the provisions set out therein and the purposes for which my advice is required. However, the departure from part(s) of the PS's does not permit me to disregard the remainder of that Practice Statement.
2. Mr Cottage has not, and cannot, justify his decision to depart entirely from the requirements of the RICS Financial viability in planning: (sic) conduct and reporting. This requires him to act "*with objectivity, impartially, without interference and with reference to all appropriate sources of information…"* and "*advocate reasonable, transparent and appropriate engagement between the parties, having regard to the circumstances of each case."*
3. In reality, Mr Cottage and I are agreed in respect of the developer's profit requirement. We do not agree the value of the land to be acquired because I consider that a market value approach should be adopted whilst Mr Cottage relies upon theoretical and indicative opinions of land value that bear no resemblance to reality.

5.0 POSITION IN RESPECT OF THE DCO SCHEME

5.1 As the ExP will be aware, SEGRO did not submit any evidence whatsoever in respect of viability matters until the provision of Mr Cottage's Viability Appraisal (Document DCO 4.5) dated 2 April 2026.

5.2 That Report concluded that, on the assumption that SEGRO could acquire the Prologis/MAG land for £225,000 per acre, the development profit would be 15.91%. On the basis that SEGRO require a minimum hurdle rate of 15%, it was therefore Mr Cottage's contention that, assuming that the value of the Prologis/MAG land was no more than £225,000 per acre, the DCO scheme, on Mr Cottage's basis, is viable.

5.3 Mr Cottage explained that he adopted £225,000 per acre for the Prologis/MAG land because:

"*On the basis of the option agreement SEGRO has reached with landowners to the south of Hyams Lane (and reflecting the RPI increases that agreement provides for), I have adopted a land purchase cost of circa £225,000 per acre for all of the land required to develop the EMG2 Main Site; both the 147.64 acres of land controlled by SEGRO to the south of Hyams Lane and the 102 acres comprising the Prologis Land. This level of value assumes that planning permission exists for logistics/warehouse development and that a negotiated settlement is reached with Prologis/MAG.*"

5.4 As far as I am aware there is only one landowner south of Hyams Lane (i.e. Mr Aldridge) hence I am unclear as to what other landowners Mr Cottage asserts that SEGRO has agreed terms with.

5.5 As I have already pointed out, the assumption that Prologis/MAG or even a hypothetical owner of the Prologis/MAG land would accept £225,000 per acre is not based on any analysis or evidence that is grounded in reality. In this regard, Mr Cottage explained in his previous Report that he had adopted £225,000 per acre because that is what his client had agreed with Mr Aldridge[15].

5.6 However, that agreement is dated 31 March 2020 and is now over six years old. It therefore related to different market and planning circumstances and reflected the location of that land and lack of vehicular access suitable for construction and use of that land for anything other than agricultural related use.

[15] See paragraph 28 of Mr Cottages First Report Document DCO 4.5.

5.7 He now appears, within his Response to take the stance that the price that SEGRO would have to pay on a commercial market value basis is not relevant to a commercial viability appraisal as he states:

"*…It is therefore both premature to enter into a detailed debate into the amount of compensation that might be paid for the Prologis/MAG Land and it is also not an issue which needs to concern the EXP or, as I have illustrated above which needs to concern the EXP or, as I have illustrated above, is of any great significance to the question pf whether or not the DCO scheme is viable. The only reason a value of £225,000 per acre was adopted in my indicative residual appraisal was because this represented a "neutral" equalisation of value over the DCO scheme site and under any reasonable analysis it is clear that if some higher price might have to be paid, this would fall comfortably within the envelope of a normal risk/sensitivity analysis*."

5.8 This completely avoids the issue that it is still necessary to adopt a realistic market assessment of value for a viability appraisal to be of any assistance, but Mr Cottage consistently fails to do so. He also fails to refer to any documents, publications, case law, or other authorities to justify refusing to adopt a market value approach in assessing commercial viability. In that regard, the lack of a commercial market value approach to the cost of land assembly is incompatible with his stated intent to provide a commercial viability appraisal. It is not possible to produce a commercial viability appraisal that does not adopt a market value approach to the land assembly cost.

5.9 The determination of compensation is of course a matter for the Upper Tribunal Lands Chamber and there is no dispute that it is not for the ExP to decide what that compensation will ultimately prove to be. However, the viability of the DCO scheme **is** a matter (and is agreed to be an important matter) for the ExP and the Secretary of State in this case and it is an inescapable fact that the only way such viability can adequately be assessed is if a commercial market value assessment is made as to the likely cost of acquiring the Prologis/MAG land. This is the fundamental hole in his evidence that Mr Cottage either refuses or is unable to address.

5.10 It is necessary for Mr Cottage to raise a strawman argument in respect of compensation to distract from the fact that he has not provided a commercial market value assessment suitable for the purposes of assessing viability, which is the immediate issue raised by SEGRO's own positive case to seek to justify the granting of powers of compulsory acquisition. The fact that the Secretary of State's decision will not (and could not) have the effect of determining the quantum of compensation does not absolve SEGRO from having to address the market value element of the appraisal of viability. As Mr Cottage's evidence does not contain an assessment of this issue, it

therefore follows that he has not provided anything to the ExP upon which an assessment of viability can made.

5.11 In this context, the suggestion by Mr Cottage that all the land required for the DCO scheme has the same value regardless as to its location, configuration and relative disadvantages and advantages is contrary to market reality and common sense.

5.12 I note that, within his Response, Mr Cottage tests his appraisal on an assumption that the Prologis/MAG land might be worth £31,250,000 (£306,372 per gross acre) but (a) that figure is not advanced as his estimate of commercial market value, and (b) it is only by removing the sale costs that he had previously felt it appropriate to include (the removal of those costs is incorrect as I explain below) that he is able to generate a profit of 14.98%. which falls short of Mr Cottage's minimum hurdle rate of 15%.[16]

5.13 There is therefore a clear contradiction between the mathematical reality of his own calculations and his assertions that: "*The DCO Scheme is commercially viable and there is no evidence of any substance that would suggest otherwise*"[17] when his own evidence shows that an increase to £31,250,000 renders the scheme unviable unless he removes his Sale Costs at which point the scheme's viability becomes marginal at best. Mr Cottage's assertion that a higher price would *"…fall comfortably within the envelop of a normal risk/sensitivity analysis*"[18] does not hold when tested mathematically.

5.14 However, Mr Cottage has presented no evidence at all as to the commercial market value of the Prologis/MAG land, as opposed to his theoretical figure of £31,250,000, and the ExP therefore has nothing before it from SEGRO or Mr Cottage to demonstrate that the SEGRO scheme can deliver a minimum of 15% in profit **AND** provide commercial market value to the owner of the Prologis/MAG land. This is despite the fact that Mr Cottage clearly accepts that "… *viability is an important issue for the EXP to take into account when considering whether to confirm consent for the DCO scheme*."[19]

5.15 In essence, Mr Cottage accepts that viability is an important point but despite the assessment of viability comprising the testing of a scheme to determine whether it can deliver both a market level

[16] See paragraph 40 of Mr Cottages First Report Document DCO 4.5
[17] See paragraph 58 of the Response
[18] See paragraph 44 of the Response
[19] Paragraph 15 of the Response.

of profit **AND** a market level of land value, Mr Cottage has continued to only provide evidence as to what SEGRO would like to receive by way of profit and pay to acquire the Prologis/MAG land. That is an entirely different exercise and is of no assistance to the ExP.

5.16 It is therefore inescapably the case that there is no evidence that, having regard to the reality of values in the marketplace, SEGRO could acquire the Prologis/MAG land at market value and generate a profit in excess of Mr Cottage's hurdle rate of 15%.

5.17 It is important to reiterate the point that SEGRO are seeking compulsory acquisition powers to acquire the Prologis/MAG land, based, in significant part, on assertions as to viability, and it is therefore incumbent upon them to justify their position and provide evidence that is demonstrably robust, reliable and compelling. Mr Cottage has not provided any evidence on this point, and it should not be lost that I can only respond to what has been submitted.

5.18 Ultimately, even if the ExP were to decide that all my points were totally without merit it would still remain the case that the ExP does not have any evidence before it upon which it could rationally decide that SEGRO had demonstrated that the scheme generates sufficient profit and land value on a commercial market facing basis to be considered viable.

5.19 Mr Cottage has not therefore provided the ExP with a "commercial viability" assessment and fails his own test as set out at paragraph 3 of his Response.

Land Value and Selling Fees

5.20 It is notable that Mr Cottage consistently avoids the adoption of market value in his viability appraisals although he presents those appraisals, inaccurately, as commercial appraisals. On the basis that it is his client that seeks the grant of compulsory acquisition powers, it is incumbent upon him to demonstrate to the ExP that his appraisals adopt realistic, robust and reliable inputs but, irrespective as to his other inputs, his assumed land values do not withstand comparison with the real-world market.

5.21 I will respond to any evidence on market land values that Mr Cottage may wish to provide during the course of this examination.

5.22 Mr Cottage appears to continue to stand by his position that the value of the Prologis/MAG land is the same as that agreed with Mr Aldridge in respect of the land south of Hyams Lane i.e. £225,000 per acre (indexed). He has therefore assumed that the market would consider the value of the Prologis/MAG land and the Aldridge land to be equivalent on a price per acre basis.

5.23 My understanding of his reasoning for this, taking his evidence in the round and following the arguments presented by SEGRO, is because he is of the view that development would only come forward if SEGRO controlled all the land required for the scheme such that an equalisation basis should apply to land value and, as demonstrated by his appraisal as attached at Appendix F to his first Report the value that allows SEGRO to receive 15% profit on cost is £225,000 per acre across the Aldridge and Prologis/MAG land.

5.24 Mr Cottage's entire approach therefore rests upon an assumption that neither the Aldridge or Prologis/MAG land are capable of independent development generating value in its own right and would not therefore be of interest in the market to developers other than SEGRO.

5.25 However, the market would take the view that planning permission would be granted for independent development of the Prologis/MAG land. That permission would be capable of implementation as, contrary to points made by Mr Cottage in respect of alleged third-party ownerships,[20] the developer of the land also controls all the land required to implement development. SEGRO are not, therefore, the only purchaser in the market, and the market value would have regard to competition between developers, including Prologis, each bidding their best price.

5.26 As such, the market value of the Prologis/MAG land which comprises the best and highest price anticipated in the market place would have little, if anything to do with what SEGRO could afford to pay so much as what the market would determine, as there would be no obligation or compulsion on the land seller to accept anything other than the highest and best price irrespective of who makes that offer.

5.27 With regard to Mr Cottage's assertions in respect of third-party landownerships within the Joint Application, I am advised that there are none that cannot be addressed through the provisions of the Highways Act 1980. As such, Mr Cottage is incorrect to imply otherwise. Similarly, I am advised that there is no proper basis for any third-party claim in respect of mineral rights. In essence, I am advised that there are no interests in land that comprise an impediment to development or any material risk to viability.

5.28 A commercial test of viability should therefore have regard to the price that would need to be paid by SEGRO in the market place to outbid all other developers and prospective purchasers bidding

[20] See paragraph 26 of Mr Cottage's Response

for the Prologis/MAG land and it is that price rather than the price that SEGRO would prefer to pay on an equalisation or any other basis that is relevant. Any appraisal that does not follow this principle, such as those presented by Mr Cottage, does not comprise an assessment of commercial viability which Mr Cottage has confirmed that the ExP requires.

5.29 However, Mr Cottage does not state anywhere what his opinion in respect of the market value of the Prologis/MAG land actually is, nor provide any evidence in support of that opinion and analysis thereof.

5.30 There is therefore a clear contradiction between Mr Cottage's acknowledgement that the appropriate test is that of commercial reality which, by definition, has regard to market reality and his provision of viability appraisals which rely upon an assumed land value of £225,000 per acre derived from what SEGRO can pay in order to generate a profit above 15%.

5.31 Rather than providing his own land value evidence, Mr Cottage tries to create the impression that I have formed the opinion that the appropriate market value would be £31,250,000. In this regard he states that: "*Mr Roberts undertakes a residual appraisal to produce what he calls a "theoretical residual value" of £31.25 million."*[21] He also refers to "*Mr Robert's* (sic) *theoretical residual valuation*"[22]

5.32 These comments are just examples of the theme that he presents which, taken as a whole, implies that I am of the opinion that the market value of the Prologis/MAG land is £31,250,000. This is not correct, but I have given Mr Cottage the benefit of the doubt that this is a misunderstanding on his part and am happy to clarify the position.

5.33 The basis for the figure of £31,250,000 is set out at Section 7 of my report and it was intended to show that, on the **basis of the figures adopted by Mr Cottage** save for site specific adjustments, independent development of the Prologis/MAG land was not only commercially viable but generates a land value in excess of the £225,000 per acre as was being assumed by Mr Cottage at that point. The point of that exercise was to demonstrate that the £225,000 per acre figure relied upon by Mr Cottage is demonstrably too low.

[21] See paragraph 37
[22] See paragraph 28 of the Response

5.34 The adoption of land value of £225,000 per acre is also incompatible with Mr Cottage's statement that: *"…the Applicant believes Prologis has paid/will pay substantially more than £31.25 million to acquire the land and rights it needs for the Prologis Scheme."* [23]

5.35 It is notable that he does not state the basis for SEGRO holding this belief nor the price that SEGRO believes Prologis will/has paid. However, the more relevant point is that these terms were agreed in the open market. Mr Cottage is therefore aware that the market has already spoken and the answer, according to the information he appears to have in his possession, was not £225,000 per acre or £31.25 million but something higher.

5.36 It is interesting that he states at paragraph 49 of his Response that:

"*The fact that Mr Roberts' position on the DCO Scheme's viability is misconceived is not only evidenced by a proper application of sensitivity analysis. His assertion that the Applicant cannot afford to offer more than £225,000 per acre (circa £22.9 million) for the Prologis/MAG Land, is entirely based on a slanted manipulation of my DCO Scheme residual appraisal and ignores real world events. As underbidders on both land parcels making up the Prologis/MAG Land, the Applicant has already offered more than Mr Roberts' theoretical residual value of £31.25 million for the Prologis/MAG Land in total (prior to Prologis' involvement/acquisition.*"[24]

5.37 This paragraph does not sit easily with his assertion that he is advising the ExP that, for the purposes of his appraisals, Prologis/MAG would accept £22,950,000 (i.e. £225,000 per acre). If, as he confirms, SEGRO offered more than £31.25 million, what is the basis for his assumption that Prologis/MAG would accept £22,950,000?

5.38 The fact that SEGRO clearly thought that the Prologis/MAG land was worth more than £31,250,000 indicates, I would suggest, that my approach is far from misconceived and is in full accordance with the market. Furthermore, as Mr Cottage is clearly aware of the history of offers made by his client which were presumably intended to bring about a purchase, the obvious question is why Mr Cottage has not revisited the Applicant's previous offers and provided a true opinion of market value instead of relying on figures that are clearly hypothetical and indicative.

5.39 In any event, the current market value would take into account that, comparative to the circumstances that existed at the date of acquisition, there is now greater certainty in respect of

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[23] See paragraph 27 of the Response
[24] Paragraph 49 of the Response

the grant of planning permission in respect of the Joint Application, and the costs of securing permission have substantially been incurred. As and when the Joint Application is granted planning permission, there will be even less risk, and the market value will increase further.

5.40 As such, armed with all this information, I question how Mr Cottage can continue to maintain that the cost of acquiring the Prologis/MAG land would only be £225,000 per acre and why he has not tested his appraisal on the basis of a price *"…substantially more than £31.25 million."*

5.41 Mr Cottage takes the stance in respect of an increased land value from £225,000 per acre to £31,250,000 that: *"…this is not a material cost in terms of the DCO Scheme Development as a whole and falls well within the range of a normal sensitivity analysis exercise."*[25] However, he clearly realises that this statement cannot be true unless he reduces the cost burden to the scheme below that which he assumed in his first Report (Document DCO 4.5).

5.42 He has therefore now introduced a new argument that SEGRO will not sell the completed development and would therefore not incur the costs associated therewith stating:

"*…in reality, as a REIT, the Applicant will hold the development rather than sell it. This means the Applicant will not actually incur the circa £7 million of notional disposal fees including in my appraisal."*[26]

5.43 In effect, he is stating that the Secretary of State can assess and determine this issue on the assumption that SEGRO will maintain the entirety of their scheme in one ownership for the foreseeable future with no disposals or portfolio management through inter-company transfers and/or sales in the market. This is an extremely definitive statement for Mr Cottage to make, but he does not provide any evidence and SEGRO have, to the best of my knowledge, not made any statements that would justify such an assumption. I am therefore unclear as to whether this is SEGRO's actual position as stated publicly or just his assumption, and either way, what evidence is relied upon to support it.

5.44 Publicly available evidence shows that SEGRO does sell completed developments to the wider market and also carries out intercompany transfers all of which incur legal fees and valuation costs. For example, SEGRO has created separate holding companies for each of the existing EMG units known as SEGRO (EMG Unit 1) Limited, SEGRO (EMG Unit 2) Limited and so on.

[25] See paragraph 37 of the Response
[26] Ibid

5.45 Furthermore, Unit 3 Wilders Way (within EMG 1) was acquired by Bcap SG 7 Limited from SEGRO on 25 June 2021 for a consideration of £100,500,000. SEGRO have also disposed of units elsewhere to, for example, Amazon at Northampton Logistics Park.[27]

5.46 His statement therefore runs counter to the approach taken by SEGRO in the market.

5.47 I do not consider that it would be appropriate, in the real world, to assess viability on the assumption that SEGRO will not sell the development or transfer any part of it and I do not accept that Mr Cottage's assertion that no associated costs will be incurred, whether they are labelled as Sale and Legal costs or a different label is attached, is realistic.

5.48 In any event, any valuation that would be relied upon for the purposes of, inter alia, company accounting, internal/external lending, taxation, intercompany transfers and property management would all assume that costs in this regard would arise regardless as to whether or not an actual sale takes place. As such, regardless as to whether the description of those fees accords precisely with Mr Cottage's definition of Sale Fees, costs will still arise and should be taken into account.

5.49 Notwithstanding these points, even on the highly unlikely assumption that SEGRO will not incur any of these fees, Mr Cottage's appraisal as attached at Appendix 3 of his Response demonstrates that SEGRO could still only generate a profit of 14.98%[28] which is below his required minimum hurdle rate of 15%[29]. However, Mr Cottage still states at paragraph 58 that:

"The DCO scheme is commercially viable and there is no evidence of any substance that would suggest otherwise."

5.50 At best, the scheme, on this basis would be described as marginal particularly bearing in mind that it relies upon an assumption that SEGRO would never incur any Sales Costs which, in the absence of persuasive evidence, seems unlikely and could not be regarded as a robust assumption to make for the purposes of assessment.

5.51 Furthermore, his profit level of 14.98% assumes an artificially reduced cost of acquiring the Prologis/MAG land of £31,250,000 although he is fully aware that the true market value is in excess

[27] I am not at liberty to disclose further information as my firm acts for Amazon and I am subject to confidentiality requirements
[28] See Appendix 2 to the Response
[29] See paragraph 40 of Mr Cottage's First Report Document DCO 4.5

of this[30]. Clearly, once a realistic market value for that land is taken into account, the appraisal could not even generate 14.98%.

5.52 In any event, Mr Cottage does not explain why, having made clear in his earlier Report that *"…a profit of circa 15% would be regarded as the minimum level of return (hurdle rate) acceptable for a development of the nature and scale of the EMG2 DCO Scheme.."*[31] (emphasis added) and underlined that point in his oral evidence to the ExP, he now invites the ExP and Secretary of State to conclude that his evidence demonstrates likely viability on an assessment that generates a profit of only 14.98% on the entirely hypothetical basis that SEGRO will not incur the costs he previously included, on the assumption that the entirety of the estate will be retained in a single ownership.

5.53 I accept that it is not as simple as saying that SEGRO would proceed at 15.1% but not at 14.98%. However, bearing in mind that the available evidence shows that the market would expect to pay significantly in excess of £31,250,000 for the Prologis/MAG land (something any robust viability appraisal would need to reflect) Mr Cottage's appraisal does not demonstrate, on the balance of reasonable probabilities, that the scheme is likely to be commercially viable.

Highway Costs

5.54 Mr Cottage argues, in effect, that the red RAG rating provided by Gardiner & Theobold in respect of Junction 24 M1 works is unwarranted.

5.55 Ultimately, only a highways engineer can comment as to whether or not the ExP should be concerned with the potential for these costs to increase but there is an additional matter which Mr Cottage has not explicitly addressed.

5.56 In this regard, the answer to Question 8.4.1 as set out in the Deadline 4 submission by National Highways Limited states the following:

"The key points currently in dispute between NH and the Applicant as are follows:

Commuted sum: NH policy requires a commuted sum where it takes over responsibility for new highway assets. ***The Applicant is negotiating the principle of a commuted sum*** *and the parties are engaged in discussion on this matter.*

[30] The alternative explanation would be that SEGRO over offered when seeking to purchase the Prologis/MAG land but that is contradicted by the fact that they were outbid.
[31] Ibid

*Bond sum: **NH requires a sum of 200% the value of the specified works**. This is in line with the figure agreed on several other schemes. **The Applicant is seeking a 120% bond sum**.*

Insurance: NH requires public liability insurance of £50 million for works, whereas the Applicant is seeking a £10 million sum.

These remaining issues relate to financial matters. NH considers its position reasonable, given the significant highways NSIP within the scheme. If the Applicant's terms were to prevail, the costs would be passed on to NH and ultimately, the taxpayer, which would be an unreasonable burden arising as a result of a third-party scheme.

NH's preferred form of protective provisions is as enclosed in its relevant representation [RR-022]. If an agreement is not reached with the Applicant, NH will submit its preferred protective provisions at the penultimate deadline."

5.57 Mr Cottage refers within his appraisal to "*s278/Bonds/Commuted Sums*" that total £5,232,000. However, he does not provide a breakdown of this cost between the headings nor set out the calculations from which this figure is derived. It is not therefore currently possible to ascertain what allowance Mr Cottage has made nor whether it is based on what SEGRO are currently offering or what National Highways require. If he has only adopted what SEGRO is offering there would be a risk that the final costs may be higher than that which he has currently assumed.

Sensitivity Analysis

5.58 Mr Cottage clearly realises the difficulties he is facing in maintaining the position that his client's scheme is viable. He therefore decides, unlike the approach he took in his first Report, to provide a "sensitivity analysis."

5.59 On the basis that Mr Cottage argues that the RICS Practice Statement Valuation of Development Property applies I have noted that this defines "Sensitivity analysis" in the Glossary in the following terms:

"*A series of calculations resulting from the residual appraisal involving one or more variables (rent, sales, values, build costs, etc) that are varied to show the differing results."*

5.60 Paragraph 7.1.4 of the same document also states:

"The *simplest form of risk analysis is sensitivity analysis, which should be used to evaluate how changes to individual inputs (such as construction cost or sales values) might affect the valuation of development property. It should be undertaken in order to inform the valuation, which may lead the*

valuer to arrive at a different market value to the residual output single valuation outcome (while also considering any analysis of comparables).”

5.61 I fully accept that, as I have already pointed out, this Practice Statement relates to, as the text confirms, the valuation of development property rather than the provision of viability appraisals but consider that this aspect of the guidance is helpful as I would hope that it would be common ground between Mr Cottage and me in light of this that the analysis should not only consider the revenue aspects of the appraisal but also the construction costs and that it should test both anticipated improvements by way of revenue increasing quicker that construction costs and the alternative scenario where cost increases outstrip increases in revenue.

5.62 However, Mr Cottage's "sensitivity analysis" assumes that rents will only increase and yields will only decrease (therefore resulting in an increase in the value of the scheme) whilst all costs, including, inter alia, materials, labour, finance and acquisition costs, remain completely static. He then presents this as "proof" that the DCO scheme is and will remain viable.

5.63 I do not accept that this is remotely realistic or commensurate with the commercial reality of the market and reasonably anticipated economic conditions. It is plainly not a robust set of assumptions to adopt for the purpose of decision-making. To this end, Mr Cottage has not produced any evidence at all to substantiate his assumption that the costs of the scheme will all remain static. Bearing in mind that it is for SEGRO and Mr Cottage to justify their stance as it is SEGRO that is seeking the grant of compulsory acquisition powers, I will review and respond to any evidence Mr Cottage may produce to seek to justify his position in due course.

5.64 I appreciate that his appraisal as attached at Appendix 3 of his Response makes an addition of 10% which equates to £1,800,000 to the cost of the Highways Works but that is his sole acknowledgement in respect of cost increases. In this regard, the total costs set out within his appraisal total have increased as a result of this from £407,409,012 to £409,681,934 representing a total increase in costs of 0.56%.

5.65 I have noted that, comparing the appraisals attached at Appendices 2 and 3 of his Response it is apparent that the impact of an increase in the costs by £1,800,000 which equates to 0.56% results in the overall profit reducing from his hypothetical[32] assessment of 14.98% to 14.34% which represents a 4.3% reduction in profit. It is against the background of this mathematical calculation

[32] Hypothetical because it excludes Sale Costs

that I highlight that Mr Cottage states that *"…a cost variation of, say £10 - £20 million, while on the face of it a large sum, may not be materially significant in terms of scheme viability, amount to only 2.5 – 5% of overall costs.."*[33]

5.66 I do not understand how Mr Cottage reconciles these two positions. If an increase in costs of only 0.56% results in a 4.3% reduction (in reliance on Mr Cottage's appraisal) in profit from 14.98% to 14.34%, how is it that a significantly larger increase in costs of 2.5 to 5% "*may not be materially significant*"?

5.67 In addition, Mr Cottage has not set out, within his Sensitivity Analysis Report his increased total revenue but I have calculated that he has increased revenue from £468,443,652 to £497,251,986 which is an addition of £28,818,334 which equates to an increase of 6.15%.

5.68 In essence, he has only increased the costs by 0.56% but increased revenue by 6.15%. To all intents and purposes this amounts to freezing all costs whilst assuming that the revenue will only grow.

5.69 I note that he refers to CBRE's comment that "*EMG 11 would outperform regional competitors with superior site quality, brand recognition and access efficiencies*."[34] However, those comments were in respect of their advice as to what rents and yields Mr Cottage should adopt as at the present day not a prediction of future growth.

5.70 It is important, at this juncture, to correct Mr Cottage's representation of my position in respect of rent and yield improvements. The impression provided by Mr Cottage throughout his Report is that I am of the view that rents will only increase and yields will only decrease such that revenue will only increase. For clarity, this is not my position.

5.71 It has consistently been my position that revenue may improve but, equally, it may decrease. I take the same stance in respect of construction costs. I do not consider that it would be appropriate for either the ExP or the Secretary of State to base their decision on an assumption that rents and yields will only move in the way (and for costs to remain static) Mr Cottage suggests.

5.72 In this regard, the whole point of a sensitivity analysis is to answer "what if" questions NOT, as Mr Cottage's evidence might suggest, to present potential outcomes as certainties. As such, I would

[33] Paragraph 34 of Mr Cottage's Response.
[34] See paragraph 48 of the Response

consider it entirely inappropriate for Mr Cottage to invite the ExP and Secretary of State to conclude that viability can only improve which is what Mr Cottage is, at the very least, implying.

5.73 His sensitivity analysis is therefore of no material assistance because it relies on the wholly unjustified assumptions that:

a) revenue will only increase

b) labour, construction and finance costs will remain static

c) the cost of acquiring the Prologis/MAG land will not exceed £31,250,000

d) SEGRO will not incur any Sale Costs nor conveyancing or valuation costs and will retain the entirety of the development within a single company structure.

Track Record

5.74 Mr Cottage asserts at paragraph 58 that:

"The Applicant is an experienced developer with an excellent track record which includes the successful delivery of two other DCO schemes. The likelihood that the Applicant deliberately made the DCO scheme unviable or that it put itself in a position where it can only make it viable by paying Prologis and MAG less than they would be entitled to in the event of compulsory acquisition, as Mr Roberts suggests, should be considered bearing this track record in mind."

5.75 The ExP will note that Mr Cottage does not set out the details of the two DCO schemes he is referring to. However, I am aware that SEGRO obtained The East Midlands Gateway Rail Freight Interchange and Highways Order 2016, and the Northampton Gateway Rail Freight Interchange Order 2019 so have assumed that he is referring to these schemes. It is my understanding, that these schemes involved the acquisition of agricultural land that had no pre-existing development prospects other than as part of the relevant DCO scheme. SEGRO were therefore in a position whereby whatever they could afford to offer would be higher than the price the landowners would otherwise receive in the market. That is not the case with this scheme.

5.76 I am therefore unaware of any circumstances relating to these DCOs where SEGRO have been required to pay market value that reflects the prospect of alternative development, let alone alternative development that is likely to be at least as valuable as SEGRO's own proposed development on that land. In essence, SEGRO's experience in delivering schemes pursuant to the exercise of DCO powers has involved commercial agreements on the basis of the land value delivered by the scheme NOT alternative development value.

5.77 It is therefore possible that SEGRO entered into the Aldridge Agreement in March 2020 and agreed to pay Mr Aldridge a price of £225,000 per acre because they erroneously assumed, on the basis of their experience with these previous schemes, that there was no prospect of alternative development in respect of the Prologis/MAG land and they anticipated that they could therefore agree an equalised price having regard to the SEGRO scheme only.

5.78 Either way, the fact is that SEGRO have found themselves in a position where, regardless as to how it came about, the current commercial market reality is that SEGRO are not the only developer interested in developing the Prologis/MAG land and, if that land was to be theoretically offered to the market, they would, as happened last time round, not be the only bidders in the market.

5.79 Mr Cottage states that my *"…assertions in this regard only serve to demonstrate his* [i.e. my] *partisan approach and the lack of objectivity in his* [i.e. my] *analysis.*[35]*"* He also asserts that that I have suggested that SEGRO "…*has a misunderstanding of the market that means it cannot afford to pay Prologis/MAG the market value of its land, is extraordinary and serves to demonstrate the lack of objectivity in (and this reliability of) Mr Roberts' analysis. The Applicant will clearly not have offered a value for the Prologis/MAG Scheme or for that fact the Aldridge Land, that it knew rendered the DCO Scheme unviable."*

5.80 His footnote to "*misunderstanding of the market*" refers to paragraph 11 ii). If that reference is meant to refer to my Report, paragraph 11 ii) does not exist and Section 11 comprises my statements in accordance with Civil Procedure Rules and RICS requirements.

5.81 I am not entirely clear how my attempt to explain how SEGRO have found themselves in this situation in the absence of any alternative explanation being forthcoming from Mr Cottage is partisan nor how ignoring the reality that SEGRO/Mr Cottage are approaching land value from the perspective of what the land is worth to their scheme rather than what it is worth to the commercial market is anything but objective.

5.82 Similarly, it is factual that events have evolved (i.e. the sale of the Prologis/MAG land and subsequent submission of the Joint Application) since SEGRO entered into the Aldridge Agreement but they are either unwilling or unable (or both) to respond to the new reality.

5.83 SEGRO has had every opportunity to address their viability issues by renegotiating with Mr Aldridge to address the resulting clear deficit. However, there is no evidence that they have attempted to

[35] See paragraph 58 of the Response.

do so. Furthermore, it is apparent from Mr Cottage's evidence that they have not properly tested the potential for delivering development of the Aldridge Land together with Prologis's development of the Prologis/MAG land and yet continue to hold the position that their scheme is the only one that the market would deliver.

5.84 There is every prospect of the Joint Application being granted planning permission for development which would be attractive to developers in the market resulting in the land value increasing still further. The SEGRO scheme is not the only development opportunity available on the Prologis/MAG land, and it is not sustainable for Mr Cottage to continue to ignore the market value of that land and assess the viability of the SEGRO scheme as if that scheme will be refused planning permission.

5.85 In reality, if SEGRO had offered the best and highest price (i.e. market value) they would have been successful in acquiring the Prologis/MAG land without having to revert to the seeking of compulsory acquisition powers. The fact that SEGRO were unsuccessful with their bid is prima facie evidence that the market value of the Prologis/MAG land is higher than SEGRO were prepared (or could afford) to bid for the purposes of implementing their scheme. It is also evidence that SEGRO's opinion of value is not shared by the market.

5.86 There is therefore a clear disconnect between Mr Cottage testing viability on the basis of what SEGRO can afford to pay on the basis of his viability appraisal (as attached at Appendix F of his First Report (i.e. £225,000 per acre)) and his recognition that SEGRO were unsuccessful in competing with Prologis seeking to implement an alternative scheme when the value in the market for that alternative scheme is the cost that SEGRO will have to bear to achieve site assembly NOT what is affordable.

5.87 Overall, the point remains that Mr Cottage has not provided an evidenced assessment as to the price that SEGRO are likely to have to pay Prologis/MAG for that land nor has he adopted a commercial market value assessment within the "viability appraisals" that he is inviting the ExP to rely upon.

5.88 Land value is an essential input to any assessment of viability without which the appraisal serves no purpose and cannot be relied upon by the decision-maker here as evidence of what is likely to happen. The absence of any such assessment of commercial market value of the Prologis/MAG land can only be either because Mr Cottage has not assessed the market value or he has done so and has realised that a realistic and robust valuation would be fatal to demonstrating the viability of the SEGRO scheme as assessed on a conventional market accepted approach.

Mr Cottage's Criticisms of My Approach

5.89 With regard to paragraph 59 I refute the assertion that I have sought to create confusion. To the extent that Mr Cottage has genuinely been confused by my approach I summarise my comments in response, using Mr Cottage's enumeration, as follows:

5.90 The assertion I have been "*incorrectly conflating commercial viability with FVA's*" is a strawman argument and entirely false. The factual position is that Mr Cottage and I have adopted exactly the same approach to the calculations irrespective as to what they may be called.

5.91 Mr Cottage criticises me for not providing my own independent appraisal. However, it is for Mr Cottage and SEGRO, rather than me, to attempt to satisfy the ExP as to the viability of <u>their</u> proposed scheme and thereby to substantiate the case that SEGRO has advanced to seek to justify the grant of powers of compulsory acquisition. In that context it is entirely appropriate that I should assist the ExP in scrutinising that evidence and primarily focussing my attention on what appears to be the fundamental issue of land value.

5.92 Mr Cottage suggests that I have undertaken a "selective manipulation" of his appraisal by questioning his assumptions in respect of land value. That suggestion is entirely unwarranted, but it is also a difficult point for him to argue in any event given his belated and hypothetical removal of Sale Costs from his appraisal in an unsuccessful attempt to address the damage that increasing the land value does to his appraisal.

5.93 I totally reject the assertion that I have adopted inconsistent and contradictory approaches. I have been completely consistent throughout. Mr Cottage has simply misrepresented my position, presumably in an attempt to divert the ExP's attention from the factual deficiencies and difficulties Mr Cottage continues to face in supporting his client's position.

5.94 Mr Cottage considers that I have been "*ignoring the real world evidence such as the offers the Applicant has made for the Prologis/MAG land*." This is somewhat ironic as he has already confirmed at paragraph 49 that those offers were well above the land values that he now assumes. As such, I would gently suggest that his criticism of me more accurately applies to his own position. I note in this regard, that he does not provide any details of these offers for consideration by the ExP. Again, I can only assume that this is because they would underline the point that none of his appraisals adopt a value anywhere close to the commercial market value that would have to be paid in the marketplace by SEGRO.

5.95 At paragraph 61 of the Response, Mr Cottage encourages the ExP to remove Sales Agent and Sales Legal Costs, increase rents by £0.25 ft2 and reduce the yields by up to 0.25%. He then goes on to

state that he and I are "*agreed the rents and yields for units developed at the Freeport may well be slightly better than those adopted in my Document DCO 4.5 appraisal."* This misstates the position.

5.96 The actual position is that I agree that they *may* be better but, and this is the crucial point, they *may also* be worse. Both outcomes are possible. However, the more relevant point is that, even if the ExP were to follow Mr Cottage's suggestions, he is still unable to show that the scheme can deliver a sufficient return for **BOTH** the landowner and the developer.

5.97 It is therefore the case that, having regard to such evidence as does exist as opposed to the alternative world posited by Mr Cottage, the numbers he presents demonstrate that SEGRO cannot both acquire the Prologis/MAG land at market value and generate sufficient profit for the scheme to be considered commercially viable.

5.98 Instead, of providing the ExP with a genuine appraisal that adopts robust real world market assessments of land value, he retreats to a position that in effect, the ExP should take SEGRO's word that the scheme is viable regardless as to what the calculations may show.

5.99 In my experience, that approach is only adopted when the party in question realises that they cannot demonstrate viability using a robust appraisal and so is forced to rely instead upon claims about reputation to overcome the evidential deficit. In my opinion, that is the position here.

6.0 VIABILITY OF DEVELOPMENT OF THE ALDRIDGE LAND/LAND SOUTH OF HYAMS LANE

6.1 Having reviewed Mr Cottage's Response, the draft DCO and the various submissions I consider it is likely to be helpful for me to approach this matter from a "first principles" standpoint.

Development under the DCO if development consent is granted but compulsory acquisition powers over the Prologis/MAG land are not.

6.2 Paragraphs 5 and 6 of Part 1 of Schedule 2 to the dDCO state:

"5.—(1) The highway works must be carried out in accordance with details first submitted to and approved by the relevant body in accordance with the provisions of Parts 1 and 2 of Schedule 13 (protective provisions).

6. The undertaker must complete the highway works so that they are open for traffic prior to occupation of any authorised buildings or such alternative later stage or event as agreed by the relevant body."

6.3 The "highway works" are defined as meaning Works Nos. 6 to 19 as described in Schedule 1 of the dDCO and essentially comprise all the works required to the public highway.

6.4 Paragraph 6 is clear that these highway works must be completed prior to the occupation of any buildings. These buildings are not just those located on the Aldridge land but also those proposed to be located on the Prologis/MAG land.

6.5 It therefore follows that, in the absence of any compulsory acquisition, neither Prologis nor SEGRO could let any buildings erected pursuant to the DCO without the completion of these works. It would therefore be incumbent on Prologis and SEGRO to agree the joint delivery and/or funding of the highways works for mutual benefit.

6.6 It would also be reasonable to assume that, as part of the negotiations in respect of the highway works, an agreement would be reached that would enable SEGRO to connect into the spine road running through the Prologis development to provide access to the Aldridge land. As such, the access premium would form just one part of the overall agreement.

6.7 If, therefore, the DCO was to be made without compulsory acquisition powers over the Prologis/MAG land, and the proposed development was both commercially viable and more attractive to the parties than any other option, commercial reality would result in agreement being reached between the landowners and development coming forward in accordance with the DCO.

6.8 It is therefore clear that paragraphs 5 and 6 of Part 1 of Schedule 2 to the dDCO remove any necessity for the grant to SEGRO of compulsory acquisition powers to allow for the costs of the highway works to be set against the revenue generated by the order land as a whole.

The Alternative Aldridge Land Schemes

6.9 As I understand it there are three potential scenarios to consider as summarised below:

1. Independent development of the Aldridge land as a completely stand-alone development pursuant to a separate planning permission ("**Standalone Scheme**")
2. Development of the Aldridge land by SEGRO alongside development of the Prologis/MAG land on a joint basis pursuant to the DCO where there is a sharing of cost as set out above. ("**Collaboration DCO Scheme**")
3. Development of the Aldridge land together with the Prologis/MAG land pursuant to the DCO by a single developer assumed to be SEGRO ("**SEGRO DCO Scheme**")

6.10 Mr Cottage has assessed the SEGRO DCO scheme which I have responded to throughout this Report. However, Mr Cottage has not assessed either the Standalone Scheme or the Collaboration Scheme and there is therefore no evidence before the ExP in this regard.

6.11 Mr Cottage describes his appraisal as being produced for the purposes of assisting *"…the EXP in understanding the implications of confirming the DCO without compulsory purchase powers over the Prologis/MAG Land, not to demonstrate whether or not the Aldridge Land is independently viable."* It might appear from this description that he has addressed the Collaboration Scheme but, on closer inspection of the appraisal attached at Appendix H of his first Report Document DCO 4.5, in light of his Response, it is apparent that he has assessed a fourth option that would not exist in the real world. As this is a distinctly different scheme from those set out above I have referred to this as the "Fourth Scheme."

6.12 As I pointed out at Section 9 of my previous Report Mr Cottage has "*…assigned 91% of the total SEGRO scheme costs to the Aldridge Land development in this scenario although that land only comprises 56.55% of the total land area. The mathematical outcome of this exercise is that this leaves 9% of the SEGRO scheme cost to be assigned to the Prologis/MAG Land development which comprises 39% of the land area."*[36]

[36] See paragraph 9.23 of my previous Report

6.13 Mr Cottage has either not taken account of the effect of paragraphs 5 and 6 of Part 1 of Schedule 2 of his client's dDCO or he has assumed that despite that constraint there would be no sharing of cost between the developer of the Prologis/MAG land (i.e. Prologis) and SEGRO as developer of the Aldridge land in that scenario . He has therefore presented an appraisal that purports to assist the ExP in the consideration as to the potential for independent development of the Aldridge land in the absence of the grant of compulsory acquisition powers but, in reality tests an entirely different set of circumstances that would not exist in the real world.

6.14 As such, whilst Mr Cottage's evidence provides the impression of answering the question posed of him in respect of what would happen in the real world, he has instead contemplated a fourth scenario that assumes an entirely hypothetical scenario whereby there is no incentive for the developers to work together. It therefore follows that paragraphs 42 to 61 of his first Report (Document DCO 4.5) together with his comments in his Response do not provide any practical assistance in assessing what would be likely to happen in this scenario.

SEGRO's Case – Importance of establishing the viability of the Aldridge development.

6.15 As I set out in Section 3 above, it is SEGRO's position as part of its case for seeking to justify compulsory acquisition that if the development proposed by Prologis on the Prologis/MAG land was to proceed, "*development of the southern part of the EMG2 Main Site would not be viable or deliverable as a standalone development.*"

6.16 The position advocated by SEGRO is that, because the Fourth Scheme only generates a profit level of 3.62%[37], they need to include the Prologis/MAG land because development of that land will deliver a profit sufficiently above Mr Cottage's hurdle rate of 15% to result in an average of 15% across the combined land.

6.17 As the Fourth Scheme is flawed and relies on a series of assumptions that would not be reflected in the real world, that position is clearly not sustainable.

6.18 Putting to one side the identified problems with the Fourth Scheme, SEGRO's position in respect of the need for the Prologis/MAG land to make up the profit deficit of the Fourth Scheme is at odds with Mr Cottage's argument as set out at paragraph 66 of his first Report (Document DCO 4.5)[38] that:

[37] See paragraph 60 of his first Report Document DCO 4.5
[38] Which he directly references at paragraph 23 of his Response

"…it is not possible to conclude that development of the Prologis Land in isolation would itself be viable, deliverable, or capable of contributing to, or underwriting, the strategic infrastructure costs associated with the EMG2 DCO Scheme. Any assertion that development on that land would come forward independently is therefore currently unsubstantiated."

6.19 On Mr Cottage's analysis he cannot conclude that the development of the Prologis land could, inter alia, contribute *"…to the strategic infrastructure costs associated with the EMG2 DCO scheme.."* and yet it is SEGRO's argument that it is necessary to incorporate this land within the DCO scheme in order to bring the overall profit up from 3.62% to a minimum of 15%.

6.20 In essence, as I return to later, it cannot be logically correct for SEGRO to assert that the viability of the Prologis development is uncertain on the one hand and yet argue that the development of that land for a similar form of development but with less revenue-generating floorspace under the DCO Scheme is necessary to counter the unviability of developing the Aldridge Land in isolation and thereby generate a profit overall of at least 15%.

6.21 In this context, Mr Cottage commented at paragraph 10 of his First Report that:

"*Moreover, because both Prologis and East Midlands International Airport have suggested in their relevant representations that development of the EMG2 Main Site could effectively be brought forward in two "phases" (with Prologis undertaking a first phase on 102 acres of land to the north of Hyams Lane ("the Prologis Land") pursuant to the joint planning application … …and SEGRO undertaking a second phase on land it controls to the south of Hyams Lane,* ***it is important to understand whether, if that were to happen, each phase would be independently viable. If either phase were not independently viable, because it would not achieve a return in excess of a normally acceptable developer's hurdle rate, this would risk that phase not being brought forward within any readily foreseeable time period (including by September 2031 when the Freeport benefits come to an end) or at all**"

6.22 He then concluded at paragraph 69 that:

*"**Only a comprehensive, single developer approach produces a viable and deliverable scheme. Any alternative scenario relying on fragmented delivery, separate phases, or third-party land control carries a substantial risk that the development and associated infrastructure will not be brought forward at all within any reasonably foreseeable timescale**."*

6.23 This conclusion is entirely without merit because the Fourth Scheme, upon which this assertion rests, would not exist in the real world and he has not provided any evidence in respect of the Standalone Scheme or Collaboration Scheme as defined above.

6.24 Notwithstanding this fundamental lack of evidence, I note that SEGRO now state that:

*"**The Applicants' viability appraisal demonstrates that the Southern Land alone is not viable as a standalone development separate from the northern land.** The risk that Prologis would choose to implement the Joint Application (if it receives planning permission) rather than cooperate in delivery of the DCO Scheme on its land is precisely the problem with alternative (c). It would leave the Southern Land stranded, without the critical mass of development or infrastructure necessary for viability. The question is not whether the Joint Application development is viable in isolation, but whether Prologis would choose to participate in the DCO Scheme rather than pursuing its own competing development. Given Prologis's clear opposition to the DCO and its promotion of the Joint Application, such confidence is wholly lacking.[39]"*

6.25 It is therefore surprising to read Mr Cottage's comments in the Response that:

"*The appraisal was produced to assist the EXP in understanding the implications of confirming the DCO without compulsory purchase powers over the Prologis/MAG Land, not to demonstrate whether or not the Aldridge Land is independently viable.* ***Whether the Aldridge Land is independently viable for development is not an issue that is directly relevant to the DCO scheme****.*"[40]

6.26 There is therefore an apparent contradiction between Mr Cottage's position and that of his client. This is unexplained as he does not make any comment whatsoever in respect of the development of the Aldridge land within paragraphs 58 to 62 of his Response which comprises his conclusions. In fact, he does not express any conclusions relating to the viability of independently developing this land and the impression given is that Mr Cottage no longer has any opinion either way in respect of the viability of such development.

6.27 Whilst the asserted lack of viability/deliverability of independent development of the Aldridge land has been explicitly identified as a key part of SEGRO's justification for the grant of compulsory acquisition powers, the Response therefore leaves unclear whether SEGRO continues to invite the

[39] See response to 3.21 to 3.26 on page 104 of Document DCO 7.13/MCO 7.13
[40] Paragraph 9 of the Response – similar comments are made at paragraph 50 of the Response

ExP and the Secretary of State to accept that assertion in the absence of any evidence in respect of the Standalone Scheme and Collaboration Scheme.

6.28 In the absence of any evidence capable of supporting such a conclusion, it may be that this aspect of SEGRO's case is no longer pursued.

6.29 I should point out, at this juncture, that Mr Cottage declined to engage with me in providing the ExP with the Excel model referred to above to assist the ExP in respect of his evidence regarding the viability of the development of the land south of Hyams Lane in isolation from the Prologis/MAG land.

6.30 Considering that this model is directly derived from his appendix H, as attached to his first Report, I am unclear as to why, bearing in mind our respective duties to the ExP, he was unwilling to do so other than such a response would be consistent with SEGRO no longer pursuing this argument.

6.31 That model recreates Mr Cottage's assessment of the Fourth Scheme which the ExP can use to test the impact on viability on the assumption that Prologis and SEGRO would reach a commercial agreement in respect of the sharing of the highway costs by replacing the costs adopted by Mr Cottage with reduced costs such that the model only has regard to that proportion of the cost that would be borne by SEGRO.

6.32 For the avoidance of doubt, my position remains that development of the Aldridge land is viable regardless as to whether such development comes forward pursuant to the Standalone Scheme or the Collaboration Scheme. I can reach this conclusion because, even though the only appraisal of development of the Southern Land alone that has been provided to the examination concerns the Fourth Scheme, that scheme carries a far greater quantum of cost than that which would apply in the real world and, therefore, if that scheme is mathematically viable, notwithstanding that it is entirely hypothetical, then the Collaboration Scheme will only be more viable because it would be carrying a reduced cost.

6.33 In addition, it should be stressed that the Prologis development of the Prologis/MAG land would be implemented in the absence of the dDCO and has been designed specifically to facilitate the provision of access to the Aldridge land so that independent development of that land could come

forward in accordance with a planning application secured in accordance with the provisions of the Town and Country Planning Act 1990.[41]

6.34 I demonstrated at Section 6 of my previous Report that, on the assumption that the developer would require a minimum profit of 15%, the Fourth Scheme would generate a land value in excess of agricultural land value. As such, from a commercial market perspective, even the hypothetical Fourth Scheme would be viable.

6.35 I appreciate that SEGRO are tied into the Aldridge Agreement and are therefore obliged to pay £225,000 per acre which would mean that, for them, the Fourth Scheme could not generate 15% but that is a solely a matter for SEGRO to address by renegotiation with Mr Aldridge.

6.36 If, as I have demonstrated, the Fourth Scheme is viable, it is more than reasonable, in the absence of any evidence to the contrary, for the ExP to conclude that the Collaboration Scheme would be even more viable by comparison partly, but not exclusively, because there would not be any land acquisition costs incurred by SEGRO in respect of the Prologis/MAG land and the cost burden to SEGRO would be reduced.

Access Premium

6.37 In the same way that Prologis and SEGRO would negotiate commercial terms in respect of works that are mutually beneficial, they would also negotiate the terms of access rights required through the Prologis/MAG land in order to provide access to the Aldridge land.

6.38 Mr Cottage takes exception to this at paragraphs 6 and 41 of his Response but, in my opinion, it is not remotely unreasonable for any landowner to expect payment for the grant of rights over their land in exchange for enabling significant development. Furthermore, whilst any developer of the Prologis/MAG land would be prepared to negotiate terms for mutual benefit there is no compulsion to agree terms that do not reflect the benefits being released.

6.39 In this regard, Mr Cottage states at paragraph 6 of his Response that: *"Whilst Mr Roberts also provides an "illustration" of how a further payment for the Prologis/MAG Land might be justified because it can provide access to the Aldridge Land, he doesn't suggest this is a justifiable valuation. Based on the information currently available to me, which indicates that the market would consider*

[41] Please see paragraph 4.25 of the Prologis Written Representation where this is explained together with the plans detailing the Joint Application scheme at Appendix 6 thereof which illustrate the amendments to that scheme made precisely to deal with this issue.

the independent development of the Aldridge Land to be highly uncertain and probably unviable I can see no reason to believe that such a payment would be warranted."

6.40 I am not entirely clear as to the point Mr Cottage is trying to make. However, if the grant of access by the owners of the Prologis/MAG land to the developer of the Aldridge land was to result in an increase in the market value of the Aldridge land then an access premium would arise. Furthermore, the increase in the value of that land does not alter simply because SEGRO has agreed to pay a price that is unaffordable.

6.41 The additional point that Mr Cottage has not faced up to yet is that, if his client is granted compulsory acquisition powers, the fact that they have entered into an Option agreement to facilitate the DCO scheme with Mr Aldridge which adversely impacts upon their scheme viability, would be disregarded in assessing the access premium which the market would add to the value of the Prologis/MAG land. The fact that SEGRO has rendered the independent development of the Aldridge land unviable by agreeing to, in hindsight, overpay for that land does not absolve them from having to include the value of an access premium in the valuation of the Prologis/MAG land.

6.42 Mr Cottage continues his theme at paragraph 41 of his Response wherein he states: "*Mr Robert's* (sic) *"illustration" suggesting that an additional circa £15.7 million might be justified as compensation for the Prologis/MAG Land because it provides access to the Aldridge Land (I note that Mr Roberts is careful to say it* [is] *only an illustration and doesn't suggest it is a credible valuation) is misleading and unhelpful… …there would be no statutory basis for assuming the Aldridge Lane has an independent planning permission…"*

6.43 For clarity, paragraph 4.14 of my previous Report, which Mr Cottage is referencing here, does not refer to compensation hence Mr Cottage has misstated my position. It is not necessary for there to be the exercise of statutory compulsory acquisition powers for an access premium payment to arise, and it is entirely usual for landowners and developers to agree access premiums without anyone invoking such powers. The reference to compensation is therefore defunct.

6.44 The statement by Mr Cottage that there is no statutory basis to assume that Aldridge Land has an independent planning permission is deeply flawed. This is not the forum for me to respond in detail as it concerns the application of the Compensation Code, but I am confident that SEGRO will, if they haven't already, be advised to the contrary in the future.

6.45 In any event, my observations are grounded in the real-world having regard to commercial reality. Mr Cottage clearly finds my comments unhelpful, but the principles set out within my Report are

those that apply in the real world as well as the compensation world and have been accepted by the Courts.

6.46 It is entirely appropriate that I was clear that my calculations are indicative bearing in mind that I was adopting Mr Cottage's figure of £225,000 per acre which as I have repeatedly set out is an entirely artificial assessment of value. I was setting out the mechanics and methodology to assist the ExP, not calculating a compensation claim.

6.47 In reality, there is no practical reason why terms could not be agreed for a joint delivery of the DCO scheme whereby Prologis deliver the northern section and SEGRO deliver the southern section. However, this would require SEGRO to acknowledge that theirs is not the only scheme that can come forward, the Prologis/MAG land has value in its own right independent of the SEGRO scheme, there should be a sharing of the highway costs for mutual benefit, and a recognition by both Mr Aldridge and SEGRO that the development of the southern land and therefore resultant uplift in value is dependent upon Prologis/MAG providing access rights such that it is entirely fair and reasonable that terms should be agreed on a commercial basis. This is all addressed by paragraphs 5 and 6 of Part 1 of Schedule 2 to the dDCO for which SEGRO seeks confirmation.

6.48 A preference to obtain and exercise compulsory purchase powers is not an appropriate or proportionate substitute for reaching commercial agreement. Furthermore, Prologis have every intention of implementing development of the Prologis/MAG land and, as already set out, have designed that scheme specifically to allow for separate development of the Aldridge land.

7.0 VIABILITY OF THE PROLOGIS SCHEME

7.1 I have noted from the Response that Mr Cottage does not invite the ExP or Secretary of State to conclude that the Prologis scheme is unviable nor does he present any evidence upon which such a conclusion could be reached. At best, he talks round the subject and makes various points with which I could certainly take issue but nothing substantive or conclusive is provided.

7.2 The evidence that is available, including the fact that Prologis bid in competition with SEGRO, are pursuing the Joint Application, have taken an active part in the examination proceedings at considerable cost and are acting in partnership with MAG clearly demonstrates that Prologis have every intention of implementing development as and when planning permission is forthcoming and the shadow of compulsory acquisition is lifted.

7.3 As I have explained above, it would also be illogical for Mr Cottage to invite the ExP to decide that the development of the northern land, which involves both MAG and Prologis as respective landowners, would not be viable bearing in mind the greater density of development. In this regard, the only response Mr Cottage has provided to Section 7 of my previous Report is that he doesn't know what the arrangements are between the landowners and he requires greater clarity in respect of the costs. However, as I point out below, in the highly unlikely and theoretical event that Prologis and MAG need to vary the current arrangements for mutual benefit they could do so such that this point is moot.

7.4 In addition, as I have consistently pointed out, Prologis and MAG control the land that is required for the scheme such that they don't need to acquire any additional land or rights. In the event that there was a catastrophic increase in the cost of materials, the respective landowners would work together to rectify the issue for mutual benefit.

7.5 This contrasts with SEGRO whereby they have shown no inclination to work with Mr Aldridge to address the viability hole that has arisen following the change in the commercial realities of the scheme and they have no certainty as to what price Prologis/MAG will accept or, alternatively, will be determined by the Upper Tribunal Lands Chamber. This is also against a background where there is clear evidence that the scheme is already unviable. SEGRO are not, therefore, in control of the land required for their scheme to a level that bears comparison with the Prologis/MAG position.

7.6 In any event, it is ironic that, on the one hand Mr Cottage clearly expects the ExP to take SEGRO's word that their scheme is viable and yet, seemingly, also expects the ExP to conclude that the Prologis scheme is unviable. As I have already pointed out, this is also contrary to the argument

that SEGRO have presented whereby they need to acquire the Prologis/MAG land in order to offset the deficit arising from any development of the Aldridge land that triggers their agreement with Mr Aldridge.

7.7 Furthermore, whilst Mr Cottage seeks to cast unfounded doubt on the intentions and ability of Prologis, working in partnership with MAG, to deliver development on their land, he has not produced a single shred of evidence to support those assertions. In my opinion, the fact that Prologis and MAG are clearly working together with the intention of releasing value for mutual benefit far outweighs unsupported speculation as to their motives and intentions by Mr Cottage.

7.8 As I have already pointed out, it would appear that SEGRO decided that their scheme was viable on the mistaken understanding that the Prologis/MAG land had no alternative development potential. In contrast, Prologis/MAG were fully aware, from the outset, as to the development potential of their land and have factored this into their pursuit of planning permission and objecting to this DCO. They have the desire and will to work together to deliver development of the Prologis/MAG land and intend to deliver a scheme that would facilitate access to the Aldridge land as set out above.

7.9 As I have consistently demonstrated, the reality is that the Prologis/MAG Joint Application scheme will generate, on a conservative basis, at least as much profit as that which SEGRO requires from the development of that land for its scheme. SEGRO's attempts to cast doubt on the viability of the Prologis scheme therefore runs counter to the viability argument it is trying to make to seek to justify the grant of powers of compulsory acquisition.

7.10 The price paid historically by Prologis to acquire its land would have some evidential value in assessing the cost to SEGRO of acquiring the Prologis/MAG land but would need adjusting to account for changes in physical, planning, legal and economic matters in the meantime. This is, of course, clearly set out in the various RICS Practice Statements that consider viability and valuation principles but, in any event, it is uncontroversial that market value is assessed on the basis of willing hypothetical seller and purchaser disregarding the characteristics and motivations of the actual parties.

7.11 The market, as defined therein has no interest in and would not necessarily even be aware of, the terms previously agreed by either Prologis or MAG such that those terms would have no impact on the price that would now be paid and, hence, the market value.

7.12 Mr Cottage makes some vague references to the potential for Prologis having to acquire Third Party land but does not provide any details thereof[42]. I am instructed that there are no Third-Party landowners from whom land/rights are required that could not be addressed through the provisions of the Highways Act 1980.

7.13 He also makes a vague reference to mineral rights but, again, does not provide any details. As I set out above, I am advised that there is no proper basis for any third-party claim and there are currently no known impediments to delivery.

7.14 Overall, as I have set out in this and my previous Report, all the evidence supports the assertion that the Prologis scheme is viable and, due to the relationship between Prologis/MAG, they would be able to robustly respond to any unexpected worsening in market conditions.

7.15 In contrast, the SEGRO scheme is already demonstrably unviable and SEGRO are clearly unwilling or unable to work with Mr Aldridge to rectify the position and are unable to generate enough value to pay market value to Prologis/MAG **AND** bear all the costs of the scheme **AND** generate 15% profit.

[42] See paragraph 26 of Mr Cottage's Response

8.0 CONCLUSIONS

8.1 Despite having had ample opportunity to address the deficiencies in the evidence identified by Prologis in its Relevant Representations, and despite Mr Cottage submitting two reports to the examination, the current position can fairly be summarised as follows:

1. Mr Cottage has **NOT** demonstrated that SEGRO is likely to be able to both secure a minimum of 15% profit and pay full market value to Prologis/MAG for their land.
2. Mr Cottage has attempted to improve the viability position by deducting Sale Costs on the basis that SEGRO would hold rather than sell the completed development. Notwithstanding all the reasons I have set out in this Report as to why that is not an appropriate or robust assumption to make, this still does not improve the viability to the requisite target of 15%.
3. Mr Cottage has **NOT** produced any evidence to demonstrate that development of the land south of Hyams Lane would not be viable or deliverable as standalone development nor that its development is dependent upon the grant of compulsory acquisition powers over the Prologis/MAG Land.
4. The evidence that Mr Cottage has provided in respect of this part of SEGRO's case assesses an entirely hypothetical scheme that does not reflect the provisions of the dDCO which his client is pursuing. It is clear from a review of those provisions that they would have the effect of motivating the landowners to collaborate for mutual benefit in the event that development took place pursuant to the DCO without the grant of compulsory acquisition powers.

8.2 In short, although we are now more than three months into the examination at Deadline 5[43], there is still no robust and reliable evidence in front of the ExP to demonstrate that SEGRO can achieve Mr Cottage's minimum hurdle rate **AND** bear the likely real world (as opposed to theoretical) cost of acquiring the Prologis/MAG land.

8.3 In this context, the factual position is that Mr Cottage has only provided the following appraisals in respect of the SEGRO DCO scheme:

1. An appraisal showing that **IF** Prologis/MAG were to accept a "non-market value" price of £225,000 per acre for their land, SEGRO could generate a profit of 15.91%.

[43] And over five months from when this critical evidential gap was first identified in Prologis's Relevant Representations.

2. An appraisal showing that, **IF** Prologis/MAG were to accept a "nonmarket value" price of £31,250,000 (£306,372.54 per acre) for their land, and **IF** an artificial assumption was made that the appraisal should not include sale costs, SEGRO could generate a profit of 14.98%.

8.4 Both these appraisals assess wholly hypothetical circumstances rather those that actually exist and cannot be categorised as reliable commercial appraisals.

8.5 No evidence (let alone robust and reliable evidence) is provided by Mr Cottage to demonstrate that either £225,000 per acre or £306,372 per acre would be likely to be accepted by the market as the appropriate price for the Prologis/MAG land. In the absence of such evidence those appraisals cannot be relied upon or treated as robust by the decision-maker.

8.6 Furthermore, it is clear that, on Mr Cottage's own calculations, it would be mathematically impossible for SEGRO to generate 15% profit when market value is adopted.

8.7 Mr Cottage is completely silent on these points although they go right to the heart of the issue that the ExP and the Secretary of State need to resolve. Instead, he continues to raise all kinds of superfluous issues to debate within his report and strawman arguments whilst steadfastly failing to engage with the extremely large "elephant in the room."

8.8 I have no doubt that if transactional evidence was available to demonstrate that the market value of the Prologis/MAG land was likely to be supressed to the levels Mr Cottage has tested he would have presented such evidence.

8.9 However, no such evidence has been presented. As far as I am aware, no such evidence exists. That is likely to explain why Mr Cottage has had to resort to unsupported assertions and in my view that is the appropriate inference for the ExP to draw.

8.10 In this regard, I appreciate that Mr Cottage does not consider that the RICS Professional Statements relating to viability have any relevance to this matter, but RICS Members are required to set out transactional evidence upon which their opinion of land value is based, whether that be the value of the land for its existing use, alternative use value or any other matter, so that the determining body may test that evidence for themselves. Mr Cottage has not done so.

8.11 **In conclusion, Mr Cottage has not, and on the basis of the evidence provided thus far, cannot demonstrate that the SEGRO scheme is viable.**

8.12 **Furthermore, Mr Cottage is no longer providing any evidence in respect of the viability of development relating to the Aldridge land and the evidence that has been provided relates to an**

entirely hypothetical scheme that does not reflect the provisions of his client's dDCO and would not arise in the real world.

8.13 **SEGRO's viability arguments are therefore unsupported by the evidence it has provided.**

9.0 STATEMENTS

9.1 I have set out below the statements required of me by the RICS and Civil Procedure Rules.

9.2 In accordance with the requirements set out at PS 5.4 (P) (i) RICS Practice Statement and Guidance Notice entitled "Surveyors acting as expert witnesses 4th edition" and paragraph 3.3 of Practice Direction 35, I confirm that:

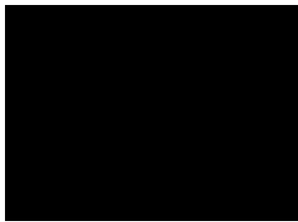
- I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true.
- The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.
- I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

9.3 In accordance with the requirements set out at PS 5.4 (P) (ii) RICS Practice Statement and Guidance Notice entitled "Surveyors acting as expert witnesses 4th edition" I confirm as follows:

- I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.
- I confirm that I understand and have complied with my duty to the Examination as an expert witness which overrides any duty to those instructing or paying me, that I have given my evidence impartially and objectively, and that I will continue to comply with that duty as required.
- I confirm that I am not instructed under any conditional or other success-based fee arrangement.
- I confirm that I have no conflicts of interest.
- I confirm that I am aware of and have complied with the requirements of the rules, protocols, and directions of the Tribunal.
- I confirm that my report complies with the requirements of RICS – Royal Institution of Chartered Surveyors, as set down in the RICS practice statement Surveyors acting as expert witnesses.'

9.4 In accordance with rules 35.10 (1) and (2) of the Civil Procedure Rules I can confirm that I understand and have complied with my duty to the Examination and also confirm that I am aware of the requirements of CPR Part 35, the Practice Direction 35 and the Guidance for the Instruction of Experts in Civil Claims 2014.

9.5 I can also confirm that I have acted with objectivity, impartially, without interference and with reference to all appropriate available sources of information.



30 June 2026

Appendix 2 – Email Correspondence between DLA Piper UK LLP and Gowlings WLG

From:
Sent: 11 June 2026 17:13
To:
Cc:
Subject: RE: East Midlands Gateway Phase 2 DCO – ExQ2 7.0.2 [GOWLG-LEGAL02.587746.2774998] [DLAP-UKMATTERS.FID5589732]

Dear Toni

Without prejudice

Further to my earlier email, we have now had the opportunity to consider matters further on behalf of Prologis. As I originally indicated, it is not accepted that clause of the NDA is engaged so as to permit the disclosure you have suggested.

Moreover, as you will appreciate, detailed correspondence has been sent between the parties on a without prejudice basis, which operates as an independent legal constraint above and outside the contractual framework of the NDA. Even if clause were engaged, it would not permit or require the production of without prejudice communications or their content, and any such disclosure would be in breach of the constraint on disclosure of such material.

We do recognise that the parties will wish to assist the ExP. Therefore, in order that we may be satisfied that SEGRO does not purport to waive or disclose any confidential or without prejudice material communicated by or on behalf of Prologis without their consent, we would ask that you provide us with a timely draft of whatever SEGRO proposes to submit to the ExP in response to ExQ2 7.0.2 before any such submission is made. We will then consider whether it may be properly disclosed. Pending our review and response, we must reiterate that no disclosure of information should be made.

We look forward to hearing from you on the above.

Kindest regards,

Howard

Howard Bassford
Partner

DLA Piper UK LLP

From:
Sent: 08 June 2026 14:58

Subject: East Midlands Gateway Phase 2 DCO – ExQ2 7.0.2 [GOWLG-LEGAL02.587746.2774998]

EXTERNAL

Dear Howard, Jon

You will have seen that, at ExQ2 7.0.2, we are all being asked to provide further information about the negotiations that have taken place between SEGRO, EMA and Prologis, including in respect of any JV. We have reviewed the NDA dated and consider clause to be engaged permitting disclosure of 'Confidential Information' . We intend to proceed on this basis and no doubt you will do the same.

Kind regards,

Partner