

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**

PROCEDURAL UNFAIRNESS SUBMISSION

ON BEHALF OF

PROLOGIS UK LIMITED AND PROLOGIS UK 121 LIMITED

AND

**EAST MIDLANDS INTERNATIONAL AIRPORT LIMITED AND
EAST MIDLANDS AIRPORT PROPERTY INVESTMENTS (INDUSTRIAL)
LIMITED**

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1 Introduction

- 1.1 This submission is made jointly on behalf of Prologis UK Limited and Prologis UK 121 Limited (“**Prologis**”) and East Midlands International Airport Limited and East Midlands Airport Property Investments (Industrial) Limited (“**EMA**”), each of which is an affected person whose land SEGRO seeks to acquire compulsorily under the DCO Application (together, the “**APs**”).
- 1.2 Terms used in this submission have the same meaning as set out in the APs’ previous submissions unless otherwise defined. For consistency the examination library references used throughout this submission are to those submissions made by Prologis UK Limited only. The same documents were submitted on behalf of Prologis UK 121 Limited and are equally applicable to it.
- 1.3 In written submissions made before the start of the Examination, the APs raised concerns about the procedural fairness of commencing the Examination in circumstances where it was not yet possible to see or respond to the full case said to justify the compulsory acquisition of their land.¹ Those concerns were also articulated in oral submissions by leading counsel for Prologis at the Preliminary Meeting.² Notwithstanding those concerns, the ExP decided to start the Examination and to conduct the initial oral hearings immediately following the close of the Preliminary Meeting. The APs were substantively prejudiced as a result, as explained in the written submissions provided at Deadline 1.³
- 1.4 At subsequent deadlines the APs have maintained their position that the procedural unfairness arising from that initial decision has persisted and explained how it has been compounded by other factors as the Examination has unfolded. These include submissions at Deadlines 3,⁴ 4⁵ and 5.⁶ Most recently, at Deadline 6, the APs made submissions as to the procedural unfairness and prejudice that would arise if no further CAH was held which allowed the APs an opportunity to provide a structured oral presentation of their case in opposition to the proposed CA of their land, reflecting their statutory right for their case to be heard at such a hearing.⁷
- 1.5 The APs have therefore at all stages sought to make clear where and in what respects the process has given rise to procedural unfairness, and to identify how this could be addressed by the ExP.
- 1.6 On 10 August 2026, the ExP responded to the most recent of those submissions by declining to hold a further CAH.⁸ The effect of the refusal is that the APs will reach the close of the Examination without ever having had an opportunity to present their case against the compulsory acquisition of their land orally, in a structured manner, and in the light of the complete evidence relied upon by SEGRO for that purpose.
- 1.7 This submission therefore seeks to:
- (a) respond to the decision taken on 10 August 2026 and explain why the explanation provided for that decision does not answer the concerns raised; and
 - (b) provide a summary of the APs’ ongoing concerns as to the overall procedural fairness of the Examination, so that the ExP can understand them when reporting on the Examination and the DCO Application to the Secretary of State, and the Secretary of State can take them into account during the decision-making stage.

¹ [\[RR-024D\]](#) Prologis’ Relevant Representation, paragraphs 2.1–2.4 and 3.3; [\[PDA-019D\]](#) 2 February 2026 Letter to PINS on behalf of Prologis; [\[PDA-018D\]](#) Prologis’ Procedural Deadline A Written Submission, paragraphs 2.5–2.6

² [\[EV5-006\]](#) Part 2 of the transcript of the Preliminary Meeting at minute 6:54

³ [\[REP1-267D\]](#) Prologis’ Written Representation, paragraphs 2.2–2.5

⁴ [\[REP3-063\]](#) Prologis’ Deadline 3 Submission, paragraphs 1.6–1.7

⁵ [\[REP4-084D\]](#) Prologis’ Deadline 4 Submission, paragraphs 2.1–2.11

⁶ [\[REP5-065D\]](#) Prologis’ Deadline 5 Submission, paragraphs 2.1–2.3

⁷ [\[REP6-106\]](#) APs’ Joint Letter to the ExP in relation to Compulsory Acquisition Hearing 3, paragraphs 2.8 and 5.1

⁸ [\[PD-032\]](#) ExP letter dated 10 August 2026

2 Legal Context

- 2.1 The common law has built up a body of principles governing procedural fairness of public decision-making. Whilst these principles may derive from a variety of contexts, it has been made clear that they are to be applied within the context in which the relevant public decision-making powers are exercised.⁹ Within this framework, the present context requires, as a minimum, that:
- (a) an affected party knows in sufficient detail the case which it has to meet, so that it can address the matters weighing against it;¹⁰
 - (b) an affected party is afforded a fair and realistic opportunity to answer that case, whether in writing or, where fairness demands, orally;¹¹
 - (c) the opportunity arises at a stage at which its representations remain capable of influencing the outcome, rather than after the decision-maker's position has hardened;¹² and
 - (d) the representations made are conscientiously taken into account before the decision is reached.¹³
- 2.2 It cannot be forgotten that the APs are not ordinary affected parties in this regard. They have a particular statutory status as affected persons whose property is sought to be taken from them by compulsion. In this case the proposed compulsory acquisition would be by a private commercial developer, in order to substitute itself and its own scheme for the development which the APs are themselves actively promoting on that land. The need for procedural fairness is at its most exacting where the decision carries a consequence as serious and draconian as the forcible extinguishing of private property rights to facilitate development of the affected person's land by a direct commercial rival.
- 2.3 The PA 2008 recognises that for the purposes of ensuring a fair procedure prior to the making of a DCO there is a distinction to be drawn between interested parties and affected persons. Section 92 confers on such an affected person a statutory right to be heard, and thus to make oral representations about the compulsory acquisition request, at a compulsory acquisition hearing. The examination-stage guidance published in July 2026 reflects the same distinction, contemplating that a compulsory acquisition hearing will be a more formal and structured event permitting the systematic consideration of the objections made. Hence the PA 2008 itself recognises the importance of the distinction between the ability to make written representations and the opportunity to present a case orally at a hearing. The content of the guidance reflects the obvious point that the statutory right cannot be satisfied by a hearing which is conducted in a way that does not provide an effective opportunity to the party concerned to provide a formal, structured and systematic oral presentation of its case.
- 2.4 This more rigorous approach reflects the heightened standard required under common law. As Lord Denning observed in *Prest*,¹⁴ no citizen is to be deprived of his land against his will unless the public interest decisively so demands, and any reasonable doubt is to be resolved in favour of the citizen. Therefore, a correspondingly stricter approach to the assessment of the public interest case is required which presupposes a process capable of rigorously testing the evidence relied upon.

⁹ *R v Secretary of State for the Home Department, ex parte Doody* [1994] 1 AC 531 ("**Doody**"), 560D–G

¹⁰ *Doody*, 560E–G

¹¹ *ibid*

¹² *R v Brent LBC, ex parte Gunning* (1985) 84 LGR 168, 189–190

¹³ *ibid*

¹⁴ *Prest v Secretary of State for Wales* (1982) 81 LGR 193

- 2.5 For the reasons set out in Section 3 below, the APs submit that the Examination has fallen short of the standard of procedural fairness required under legislation, common law, and guidance for those subject to compulsory acquisition.
- 2.6 The APs have at all stages sought not merely to identify the respects in which the process has been unfair, but to identify the procedural steps by which their concerns could be addressed: the issue of advice under section 51 and the deferral of the start of the Examination until the missing material had been supplied; a written opportunity to respond to that material before the principal issues were fixed and the initial hearings held; a separate viability hearing at which the late evidence could be tested; an updated Statement of Reasons; and a further compulsory acquisition hearing with an agenda wide enough to permit their objections to be considered systematically. Each of those requests was directed to a remedy which lay within the ExP's own procedural powers. Once the Examination closes the ExP will have no further scope to address the APs' concerns through procedural steps, and it will then be for the Secretary of State to consider the merits and implications of those concerns at the decision-making stage.
- 2.7 The options which appear to remain available to the Secretary of State at that stage are limited in comparison to what can be achieved through the examination. They comprise:
- (a) seeking further information and giving affected persons an opportunity to comment on it in writing before determining the application;
 - (b) granting development consent while declining to authorise the compulsory acquisition of the Prologis/MAG Land, an outcome which paragraph 16 of the CA Guidance expressly contemplates; or
 - (c) granting or refusing the DCO Application as applied for.
- 2.8 A decision to make an Order conferring compulsory acquisition powers following a process which has not afforded affected persons a fair opportunity fully to understand the case made by the applicant for those powers and then present its own fully informed case in opposition to the grant of those powers is a decision liable to be quashed on judicial review. A person who knows of a procedural concern but fails to raise it may be held to have waived the right to object later, and the APs have accordingly been careful to raise each concern at the point at which it arose and to make clear thereafter where such concerns are maintained. Judicial review should nonetheless always be an option of last resort, and it is therefore appropriate for the APs to raise their concerns with the decision-maker first, so that the ExP may report upon them and the Secretary of State may consider and address them, so far as possible, at the decision-making stage. This submission is made in that spirit.

3 The Principal Concerns

- 3.1 This section addresses the respects in which the Examination has been procedurally unfair to the APs and in which the underlying concern remains live at the close of the Examination. Each point has been raised at the time it arose and is maintained in this submission:

Requiring the APs to make their Relevant Representations and Written Representations without key information

- 3.2 The DCO Application was made and accepted without the evidence central to the compulsory acquisition case, as the APs explained before the Examination began¹⁵:

- (a) No viability evidence accompanied the application, notwithstanding that the Statement of Reasons asserted that the Southern Land would not be viable as a standalone phase;

¹⁵ [RR-024D] Prologis' Relevant Representation, paragraphs 2.1–2.4 and 3.1

- (b) The Environmental Statement did not assess the socio-economic and land-use consequences of frustrating the Joint Application or acknowledge the alternative proposals at all.
- (c) The highways case relied upon was not examination-ready, with National Highways and LCC identifying fundamental gaps including the need to rebuild the assessment on the 2023 PRTM. Further, information on the optioneering process carried out by SEGRO to determine the mitigation proposed at M1 Junction 24, first requested at Deadline 1¹⁶ and going to the necessity of compulsory acquisition powers, remains outstanding.

The APs were therefore required to state their case against the proposed taking of their land before the applicant's case had been adequately articulated and supported by evidence that could be scrutinised, a concern flagged in Prologis' Written Representation.¹⁷

- 3.3 Through the Relevant Representations, the APs asked the ExP to issue advice under section 51 PA 2008 and to defer the start of the Examination until the viability, EIA and highways lacunae had been filled, and until the parties had been afforded a written opportunity to respond to that material before the principal issues were fixed and the initial hearings held.¹⁸ The Rule 6 letter of 10 February 2026 did not respond to that request.¹⁹ The APs pointed out at Procedural Deadline A²⁰ and again at the Preliminary Meeting that a reasoned procedural decision was required before the Examination could properly commence.²¹
- 3.4 The Examination nevertheless proceeded, and the initial oral hearings (OFH, CAH1 and ISH1) were held immediately following the close of the Preliminary Meeting.
- 3.5 The missing material was produced, piecemeal, after the APs had been obliged to submit both their Relevant Representations and their Written Representations:
 - (a) Mr Cottage's Viability Appraisal, received at Deadline 1 (although the viability evidence base remains inadequate as further detailed at paragraph 3.11 below);
 - (b) the PRTM 2023 sensitivity test and the Stage 1 Road Safety Audits, received at Deadline 1; and
 - (c) the comparison of the socio-economic benefits of the DCO Scheme with those of the Joint Application, received at Deadline 5.
- 3.6 Further material remains outstanding, not least an updated Statement of Reasons. Without this update, SEGRO's formal written articulation of its CA case rests on assertions which it no longer supports or seeks to support through evidence. This leaves the APs, the ExP and the Secretary of State without any single, current and reliable statement of the case made for compulsory acquisition.
- 3.7 As the APs explained at Deadline 4,²² the consequence has been that an application which was not ready for examination has been supplemented incrementally, largely at the ExP's prompting and at the APs' expense. As such the case the APs have had to meet has been a moving target throughout, and successive deadlines designed to allow them to answer it passed without the complete material being before them.

¹⁶ [\[REP1-216D\]](#) Section 6, please also see further requests for this information at Deadline 3 [\[REP3-059\]](#) paragraph 7.17, Deadline 5 [\[REP5-060D\]](#) paragraphs 5.2-5.3, and Deadline 6 [\[REP6-091D\]](#) paragraph 4.11

¹⁷ [\[REP1-267D\]](#) Prologis' Written Representation, paragraphs 2.2–2.3

¹⁸ [\[RR-024D\]](#) Prologis' Relevant Representation, paragraph 3.3

¹⁹ [\[PD-010\]](#) Rule 6 letter

²⁰ [\[PDA-018D\]](#) Prologis PDA Submission, Section 2

²¹ [\[EV5-006\]](#) Part 2 of the transcript of the Preliminary Meeting at minute 6:54

²² [\[REP4-084D\]](#) Prologis' Deadline 4 Submission, section 2

Late and inadequate evidence on viability

- 3.8 Viability is central to the positive case advanced seeking to justify CA. As the APs pointed out in their Written Representations,²³ it is relied upon affirmatively by SEGRO in the Statement of Reasons in two respects: (1) that the DCO Scheme is viable, and (2) that independent development of the Southern Land is not viable. Yet no viability evidence at all was submitted with the application.
- 3.9 The APs asked for:
- (a) the viability appraisal for both (1) and (2) above to be disclosed at the outset²⁴ and renewed that with a request for the underlying modelling (without which the appraisal was of limited use);²⁵
 - (b) a separate viability hearing at which the competing expert evidence could be examined orally;²⁶ and
 - (c) the Statement of Reasons to be updated so that the compelling case was articulated by reference to the evidence as it ultimately stood.²⁷
- 3.10 The viability evidence relied upon by SEGRO was produced late:
- (a) Mr Cottage's Viability Appraisal appeared only at Deadline 1, after the APs had made their Relevant Representations and Written Representations; and
 - (b) the underlying electronic appraisal models were produced only in response to a hearing action point after CAH2, and so were not available at either hearing.
- 3.11 The viability evidence is also inadequate, and remains untested, in the following respects:
- (a) the ExP directed the preparation of joint spreadsheets under Action Point 35, which was of assistance so far as it went, although preparation of the spreadsheets was led by Prologis's expert with SEGRO's expert declining to engage with the Southern Land workbook;
 - (b) SEGRO has since retreated from the assertion that the Southern Land would not be viable if developed on its own, now advancing a materially different proposition and unexamined position;
 - (c) SEGRO declining the ExP's request to update its Statement of Reasons to address the compelling case implications; and
 - (d) no viability hearing has been convened to directly test the evidence.
- 3.12 The Examination will therefore close with a central and positively-relied-upon element of the compulsory acquisition case never having been tested orally, with the Statement of Reasons unrevised, and with the APs having been obliged to expend expert resources responding piecemeal to material which should have accompanied the application.

Late and inadequate EIA

- 3.13 The Environmental Statement as submitted did not assess the significant adverse socio-economic and land-use consequences of granting a DCO which would frustrate delivery of the development

²³ [\[REP1-267D\]](#) Prologis' Written Representation, paragraph 2.2(a)

²⁴ [\[RR-024D\]](#) Prologis' Relevant Representation, paragraph 15.4(a)

²⁵ [\[REP3-063\]](#) Prologis Deadline 3, paragraph 2.11

²⁶ [\[REP4-084D\]](#) Prologis' Deadline 4 Submission, paragraph 2.16

²⁷ [\[REP4-074D\]](#) Joint Letter from Prologis and EMA/EMIAL in respect of the ExP's 2 June Rule 17 letter

proposed in the Joint Application and did not assess the delivery and non-delivery scenarios at all, as the APs flagged in their Relevant Representations.²⁸

- 3.14 The deficiency was addressed (and then only with a superficial and high-level appraisal) only after the ExP's Rule 17 letter of 2 June 2026, with the revised material arriving at Deadline 5, some four months into a six-month examination, and the APs' technical review demonstrates that the material submitted is inadequate.²⁹
- 3.15 The APs have consequently been required to respond, in the ordinary compressed deadline cycle and without the statutory consultation period (addressed further below), to environmental material which should have been publicly available for scrutiny when they prepared their Relevant Representations and Written Representations. The assessment of the very harm on which their objection to compulsory acquisition principally depends therefore came too late to inform the identification of the principal issues, the first two rounds of written questions, or any of the hearings which had by then been held.

The failure to respond to the APs' submissions on Regulation 20

- 3.16 The information sought by the Rule 17 letter constitutes further information within the meaning of Regulation 20 of the EIA Regulations, as the APs explained in their joint response to that letter.³⁰ Regulation 20(1) then requires that consideration of the application be suspended until the publication and consultation requirements of Regulation 20(3) are met, including a period of not less than thirty days for representations.
- 3.17 The APs invited the ExP to confirm that consideration of the DCO Application would be suspended until the Regulation 20 requirements had been met, and that interested parties would be afforded the minimum thirty-day period to review and respond to the further information before the Examination resumed.³¹
- 3.18 By its letter of 23 June 2026,³² the ExP stated that it did not consider the information sought to constitute further information. That response engaged only with the disaggregation update. It did not address the baseline and scenarios update, which is the clearer example of further information and the request from which the Regulation 20 consequences most obviously flow. The APs drew this point to the ExP's attention and invited further consideration of the issue at Deadline 5³³ and Deadline 6³⁴ yet it remains unanswered.
- 3.19 The consequence is twofold:
- (a) the APs have been deprived of a statutory consultation period expressly provided for their protection in relation to the very information which the ExP itself considered necessary; and
 - (b) an unresolved question of law now falls to be determined for the first time in the ExP's report, at a stage when no party can make submissions upon it. The ExP will need to grapple with the point, and the Secretary of State will need to satisfy themselves upon it, before any substantive decision is made.

Content and conduct of the CAHs

²⁸ [\[RR-024D\]](#) Prologis' Relevant Representation, paragraph 3.3(b)

²⁹ [\[REP6-107\]](#) Prologis' Deadline 6 Submission, section 6 and Appendix 1

³⁰ [\[REP4-074D\]](#) APs' joint response to the ExP's Rule 17 letter

³¹ *ibid.*, paragraph 4.7

³² [\[PD-025\]](#) ExP letter dated 23 June 2026

³³ [\[REP5-065D\]](#) Prologis' Deadline 5 Submission, section 2

³⁴ [\[REP6-107\]](#) Prologis' Deadline 6 Submission, section 6

- 3.20 In substance both hearings were conducted in a manner largely indistinguishable from issue-specific hearings, led by the ExP and confined to its agenda, which is not what section 92 or the guidance anticipate:
- (a) CAH1 was a brief half-day hearing directed principally to allowing SEGRO to give an overview of its case, with site-specific matters for affected persons expressly deferred to a later hearing, and it took place before any viability evidence had been produced at all.
 - (b) The APs asked, in advance of CAH2, that the opportunity to make oral representations should not be confined to the ten-minute presentation identified in the hearing notification, and that they should be able to speak to the compulsory acquisition request more generally.³⁵
 - (c) CAH2 took place without SEGRO's electronic appraisal models, without the revised campus/headquarters requirement and without any assessment of the socio-economic consequences of the delivery and non-delivery scenarios. It was time-constrained by an Open Floor Hearing listed the same day, beginning at 11.40am, and could not complete the agenda items, two of which had to be deferred to written submissions. The APs' request regarding the single ten-minute presentation was not granted and the opportunity to present their case orally was limited by the ExP's agenda to a ten minute presentation the ExP wished to hear on the joint application, and eight minutes in which each AP could summarise the entirety of its case against the proposed compulsory acquisition.
- 3.21 The result is that the APs' statutory right to be heard on compulsory acquisition matters has not been honoured in substance. The two hearings that were held could not adequately perform that function, because at neither of them was the evidence relied upon by SEGRO complete, and at neither of them were the APs able to present their case in a structured manner of their own choosing. Nor could the ExP itself use those hearings to probe and test material which did not then exist.
- The refusal to hold a further CAH and the curtailment of the written alternative*
- 3.22 The only means by which that defect could have been cured was the holding of a further CAH. The APs requested one at Deadline 4, together with a separate viability hearing at which the late evidence on that issue could be examined and tested,³⁶ and maintained that request at Deadline 5.
- 3.23 No separate viability hearing was held. The only further compulsory acquisition hearing notified, on 21 July 2026,³⁷ was proposed to be confined to a single topic of the ExP's own choosing, namely the potential implications of the possible takeover of SEGRO plc by Prologis Inc. Confining CAH3 in that way would have meant the Examination closing without the section 92 right having been honoured in substance, for the reasons set out in the APs' Deadline 6 Joint Letter.³⁸ In that letter, the APs asked that the agenda be widened so as to allow the systematic consideration of their objections to the compulsory acquisition of their land, in accordance with the July 2026 guidance. They did not ask for the hearing to be repeated, nor for the matters already covered at CAH1 and CAH2 to be reopened.
- 3.24 By its letter of 10 August 2026³⁹ the ExP cancelled CAH3 and declined the APs request. Its reasons were that the PA 2008 process is predominantly written and that written submissions carry equal weight with oral ones; that two compulsory acquisition hearings had already been held, at which both APs were significant participants; and that the right to request a hearing does not require an examining authority to hold additional hearings at the repeated request of affected parties.
- 3.25 With respect, that reasoning does not engage with the substance of the request made or the reasons articulated for that request. The statement that written and oral submissions carry equal weight does

³⁵ [\[REP3-063\]](#) Prologis' Deadline 3 Submission, Appendix 1, joint letter from Prologis and EMA to the ExP dated 28 April 2026

³⁶ [\[REP4-084D\]](#) Prologis' Deadline 4 Submission, section 2

³⁷ [\[PD-030D\]](#) Rule 13 notification of hearings dated 21 July 2026

³⁸ [\[REP6-106\]](#) Joint Letter from Prologis and EMA/EMIAL in respect of CAH3, paragraphs 2.8 and 5.1

³⁹ [\[PD-032\]](#) ExP letter dated 10 August 2026

not reflect or acknowledge the statutory right to a hearing provided by section 92 and its implications. By legislating so as to confer on affected persons a distinct right to make oral representations Parliament recognised a qualitative difference between the two, and the public interest importance of a right to be heard where land is proposed to be taken by compulsion. In short, if the ability to make written representations was considered equivalent in that context, Parliament would not have created a statutory right to be heard. Reliance on CAH1 and CAH2 does not answer the points made above as to the state of the evidence at each of those hearings; and the APs' request was not a repeated request for an additional hearing on matters already heard, but a request for one effective opportunity to be heard, now that SEGRO's full case and evidence was available.

- 3.26 The resulting difficulty for the APs is compounded by the constraint placed on the APs' ability to seek to mitigate the absence of an effective hearing by providing a full, structured presentation of their case in writing in light of SEGRO's full case and evidence. The ExP has made it clear that the summary and signposting document permitted at Deadline 7 is not to repeat representations, must not be closing submissions, and will likely not be accepted if those constraints are not observed.⁴⁰ The APs are therefore denied both the oral opportunity to make a full, structured presentation of their case and the opportunity to provide a written substitute for it.

4 Effect on the APs

- 4.1 The cumulative effect of the unfairness identified above is that the APs will have participated throughout an Examination in which they were never able to present their case in the manner the statutory scheme contemplates, and this cannot be remedied by the volume of material they have been obliged to produce in response to a case that was itself disclosed piecemeal.
- 4.2 It follows that the unfairness and its impact are not simply about the APs' ability to make submissions. They are also about the APs' ability from the very outset and throughout to inform the ExP in the performance of its inquisitorial role. A fully articulated case, deployed at the outset, informs the identification of the principal issues, the framing of the written questions, the listing and agendas of hearings and the use of the ExP's Rule 17 powers. Where the affected persons' case cannot be fully stated in the formal written documents required to be submitted at that stage, the inquisitorial process is itself deprived of the material it needs at important junctures:
- (a) the Relevant Representations were made without any viability evidence, without any assessment of the consequences of frustrating the Joint Application and without an examination-ready highways case, so the principal issues and the Rule 6 procedural decisions were fixed without the benefit of the APs' full case;
 - (b) the Written Representations and the responses to ExQ1 were prepared in the same state of knowledge;
 - (c) CAH1 preceded any viability evidence;
 - (d) CAH2 preceded the appraisal models, the revised campus requirement and any assessment of the delivery and non-delivery scenarios;
 - (e) the socio-economic and baseline assessment work arrived only at Deadline 5, after the second round of written questions and hearings had concluded.
- 4.3 As a result, the APs have not been able to:
- (a) state their full case against the taking of their land in the documents designed for that purpose, at a time when it could shape the conduct of the Examination;

⁴⁰ [\[PD-032\]](#) ExP letter dated 10 August 2026; [\[PD-010\]](#) Rule 6 letter

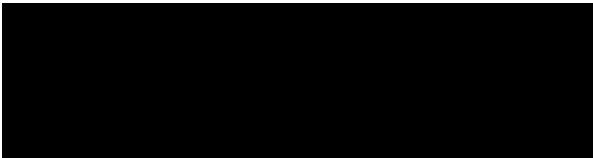
- (b) deploy expert evidence on viability and environmental effects at the outset, so as to inform the ExP's written questions, its choice of hearings and its questions at the hearings that were held;
 - (c) make oral representations about the compulsory acquisition request in the light of the complete evidence, or in an appropriate structure; and
 - (d) hear SEGRO's completed CA case and its key justifications (including the unviability of the Southern Land) tested orally at any point.
- 4.4 That matters because these are precisely the safeguards which the law provides where a person's land is to be taken against their will, and because their absence has left the ExP itself without material it needed properly to examine the DCO Application.
- 4.5 It is no answer to say that the APs have been able to fully participate in the Examination and have made extensive written and oral submissions throughout such that their rights cannot be considered curtailed. Much of what the APs have had to say has been directed to identifying what was missing from SEGRO's case and explaining why it mattered. The volume of that material is a measure of the deficiency and its significance, not of the adequacy and effectiveness of the opportunity to oppose the proposed Order. Further, the fact that the APs have at all stages sought to participate constructively and to make their case as well as they could in the circumstances does not excuse or remove the effect of the procedural unfairness they have suffered. A party which does its best in an unfair process does not thereby make the process fair.

5 Implications for the ExP and/or Secretary of State

- 5.1 The principal implication for the ExP is that it will report to the Secretary of State upon an Examination in which the section 92 right has not been honoured in substance, and in which central and positively-relied-upon elements of the compulsory acquisition case have not been tested orally at all.
- 5.2 The APs recognise that with the Examination now approaching its close, the scope for further procedural steps is limited. The APs therefore invite the ExP to:
- (a) consider these concerns, report on them to the Secretary of State and reflect its findings upon them in its recommendations;
 - (b) record where it considers the evidence relied upon in support of compulsory acquisition has effectively been tested in the manner section 92 and the guidance envisage; and
 - (c) consider whether there are any further steps which it considers the Secretary of State could and should take in response.
- 5.3 The implications for the Secretary of State depend upon whether it is otherwise concluded that the DCO should be granted as sought:
- (a) if the Secretary of State concludes, for reasons unrelated to procedure, that the Order should not be made in the form applied for, or that compulsory acquisition powers over the Prologis/MAG Land should not be authorised, the implications of the procedural unfairness will be correspondingly limited.
 - (b) if, on the other hand, the Secretary of State is otherwise minded to grant the DCO as sought, the APs invite the Secretary of State to consider the substance and the likely legal implications of the APs concerns about procedural fairness before any decision is taken.
- 5.4 The unfairness which has occurred is not of a kind which can readily be undone at the decision-making stage. The opportunity which the APs have lost was the opportunity to state and to present their case at the times, and in the forms, which the statutory scheme provides, so that it could inform

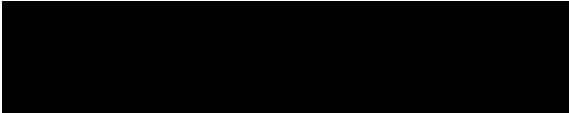
the way in which the Examination was conducted, the questions the ExP asked and the evidence it required.

- 5.5 Once the Examination has closed, that opportunity cannot be recreated. Written submissions invited by the Secretary of State cannot substitute for a hearing which should have been held. Further information gathered after the event cannot restore the ability to shape an inquisitorial process that is over. These are matters to be weighed in deciding whether it is appropriate to authorise the compulsory acquisition of the APs' land at all.



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On behalf of Prologis



PINSENT MASONS LLP

On behalf of EMA

1 September 2026