



Event Transcript

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Highway works, M1 to A50 expressway, traffic mitigation, strategic road network, business case, National Planning System, Compulsory Acquisition Order, Freeport designation, regional growth, alternative developments, multi-developer approach, viability evidence, emergency management zone, industrial estate, transportation modeling.

SPEAKERS

Eventurous AV Team

 00:51

Okay, welcome back, everyone. The time is now quarter to two, and the hearing has resumed, so picking back up agenda item six, and the issue of highway works. I would like to start by asking the applicants to provide a short overview of the need for the highway works, particularly those which the applicants consider are an NCIP in their own right, and how the need for such works may be established in policy terms within the NPS over to the applicants, please.

 01:26

Thank you, sir. Good afternoon again. Alex booth, on behalf of the applicant, so I'm going to say a very few words at the outset, and I'm going to hand over to Mr. Paul Wilson and Mr. Simon hilditch of BWB. You've heard from them before. They sit three and four seats to my right, the position in headline is that there is need for a mitigation package of highway works in order to enable the network to accommodate the traffic generated by the development, that is to say the logistics and advanced manufacturing development most significantly that mitigation package includes the m1 to a 50 expressway. But also in addition, and as your question in the agenda anticipates, there are a series of other works which are necessary in order to mitigate impact. In particular the expressway, the m1 a 50, will take traffic off the A, 543, and off the finger farm roundabout, and create room for scheme traffic. But it is only that, in conjunction with these other works which enables the development to come forward. I think in the first instance I passed to Mr. Wilson. I think it's you, isn't it, that would address Thank you.

 02:47

Good afternoon. Paul Wilson on the applicants team. So yeah, I thought it'd be worthwhile just giving a bit of a wider overview as to how the works came about and how we'd arrived at the mitigation strategy. By way of context, the proposed development generates approximately 1002 way trips in both the morning and evening peak hour to a significant amount of traffic. Of the light good, the light vehicles that are generated, about 75% head to and from the east, so towards the strategic road network, and the one in particular and 100% of HGVs are forecast to route in that direction because of the limitations on said vehicles for the right reasons, obviously amongst the villages, if you had, obviously we're providing access via a new arm on the hunters road roundabout. And then obviously, as you head east, you have the junction 23 a finger farm, which is our kind of first major point of contact. Obviously the strategic road network. And then obviously, as you head up towards m1 junction 24 you've got the East Midlands gateway, phase one access in between.

 04:00

It's obviously very good. Was I'm just going to ask you to speak a little more slowly and speak up a little just because I want to ensure the panel can hear clearly and indeed everyone else, because the sound quality wasn't that great. Thank you. Apologies.

 04:12

Hopefully could hear up to that event. I'll slow down.

 04:15

It might help you who are slightly close to the microphone.

 04:19

Hopefully that's better. Thank you. Okay, so it's obviously a complex, strategic part of the highway network. In the East Midlands, there's an awful lot of traffic that travels along said routes, a high percentage of HGVs, complex weaving issues and so on and so forth. And we've looked at two assessment years, 2028 the year of opening. 2038 is obviously the future forecast a year, and as you anticipate based on what experience in this day and age, but as you look forward to 2038 there's going to be significant levels of congestion, in particular on the m1 northbound approach to junction 24 could well be queues, based on our modelling of up to three kilometres of significant amount of queuing, we did originally start to look at what our class is a more traditional way of mitigating that impact so widening arms at junctions, increasing flare length, so on and so forth. But all that was really doing was moving cues around that specific area of the highway network. It wasn't really doing much by way of providing any form of betterment, which we obviously need to in terms of policy here. So that's where the kind of rationale arrived to needing something more significant, and where the m1 to a 50 link road came about, building on the comments that Mr. Booth made, the rationale being that there is a high volume of vehicles that travel northbound, still in the A, 453, to the A, 15, the likes, even though they've obviously got the m1 in parallel. And if we introduce that link road, it would put more traffic on back onto the m1 the key strategic road, certainly as it heads towards the A 50 on that link, and takes a lot of traffic off finger farm in particular, which thereby allows the development traffic to exit the site exit finger farm. We were absolutely acutely aware of collision issues at finger farm. There was a fatal accident the EMG one access, which we're very much aware of. And there's issues with collisions on the m1 northbound, off slip onto junction 24 because of that significant amount of queuing. So they were the reasons why we had to look at something more significant. And what the that section of the mitigation in effect does is pull a plug out in terms of congestion issues by obviously providing that link that I have to travel through. And one junction 24 Ted from the to the A, 50 from the m1 that's the head north bound. And that's obviously the key piece of mitigation that we are proposing. However, we couldn't just that wasn't sufficient enough to kind of deal with some of the other issues that the modelling work was suggesting. Hence why there's other sections of mitigation that we are equally proposing, such as increasing the flare as two lanes head Westman towards the site from finger farm. There's some minor changes proposed at EMG one. Obviously, SEGRO successfully operate that site, and we want that to continue to be the case in terms of capacity and ease of access to it. And obviously a lot of our traffic still heads towards m1 junction 24 regardless of the benefit that the new link provides. So there's mitigation proposed there, again, to mitigate the traffic that still heads, let's say, towards Nottingham or north bound on the m1 via junction 24 so the mitigation is a comprehensive package, and as far as we're concerned, entirely proportionate to what's required to mitigate such a level of development and therefore traffic that's generated by it as a result.

 08:41

Thank you for that. So I think if that's all on the overview of the need, I'll move on to subsequent questions. So reading paragraph 4.6 of the triple NPS, it states that applications for road projects should normally be supported by business case and paragraph 4.7 goes on to state that such information will be important for the Secretary of State's consideration of the benefits and impacts of a proposed Development given the agreed status of some of the highway works as an end SIP in their own right. Does that part of this proposed development need to be supported by a business case in accordance with the NPS?

 09:37

Sir Alexander booth on behalf of the applicant, I'm going to turn to Mr. Thirling To my left in a moment, who's going to address that issue. Say I was just going to pick up the point about it being an accepted position, that this is an end sit, because my understanding was that Prologis were not accepting that position. So clearly, national highways accept it. I don't. Perhaps I've misunderstood the Prologis position. And in fact, it is that, yes, it satisfies the statutory requirements of an NSIP, but on the other hand, notwithstanding that it should still be dealt with pursuant to section 105, and that may be the distinction. But I just wanted to flag that

 10:21

can I just stop you there, and maybe we can get a clarification from Prologis.

 10:28

So yes, Harry wood Philpot on behalf of Prologis, I don't think we were questioning whether it satisfied the statutory requirements, or we were pointing out is that when it comes to decision making, it would be very odd to give it the full benefit of the presumption that falls in the NPS if, for example, it hasn't had to go through that process to which you've just alluded, which underpins it. It's driven by the need to mitigate, as opposed to an independent need. That's the point we're making, and it's if I may say so. It's a point of obvious common sense. I don't think it goes to the question of whether it satisfies the criteria to be an NCIP, which is a different and much simpler point.

 11:17

Thank you, Mr. Booth.

 11:18

Thank you, sir. I'm grateful for that clarification. I think that essentially puts Mr. Philbot on the same page as Mr. Westman Smith. In so far as it's potentially being said that, yes, a section 104, position, but an important material consideration would be the circumstances in which the road is being delivered. But I'm grateful for the clarification. On that basis, I'm going to turn to Mr. Thirling, who's going to address the question of whether or not a business case is required in this case, noting that 4.6 speaks of business cases normally supporting applications of this type. Thank you, sir.

 11:56

Thank you. Ms Booth. Richard Thuring, on behalf of the applicant. So just firstly, to address the point, you direct us to 4.6 obviously there's an exception in that paragraph for strategic rail freight interchanges, so they don't have to provide a business case adhering to the usual guidance that's then referred to later in that paragraph. So our position is that we similarly don't need to provide a business case for any highways and sit works. And that position is well supported. It was considered in relation to East Midlands gateway one, and it was expressly considered during the course of the examination and then in the examining authorities report, and then the Secretary of State's final decision. And for the benefit of the panel's note, it's paragraph 13 of the Secretary of State's decision, which, although no longer available on the pins website, is still available on the National Archives website. And essentially that that's supports that position, as I set out, that because the highways works aren't being publicly funded, then they don't need to adhere to the usual business case requirements. What the decision did say, which might help the panel, is that the application was supported by a transport assessment that covered many of the matters that you normally expect to see in a business case, and also there have been an environmental analysis of the impacts of the highways assessment. That's exactly the same position here in relation to East Midlands gateway to the only two key changes, as you've alluded to are, firstly, the East Midlands gateway. Two, is a business in commercial development. And secondly, there's been the updated NNPS. So insofar as the NNPS continues to exempt the new, updated, I'll call it the 2024, NNPS continues to exempt strategic rail freight interchanges. We'd say it would be, you know, hesitate, say the perverse if, if you then required a business and commercial development that doesn't actually come within the national networks framework, to also require a business case for highways works that are lane to mitigate the impact of the development.

 14:32

I just sorry. Could I just come in there? Do you, could you expand on what was said in the recommendation report state in that case? And do you have the references for that?

 14:43

Thank you, sir. Richard Turley, on behalf the applicants, I do. It was, as I mentioned before. It was the examining authority said that the transport assessment that was submitted in support of the EMG one DCO essentially covered many of the aspects that you'd normally expect to see in the business case, and it included the environmental analysis the examining authority's report. References are paragraphs 4.245

 15:15

through to 4.256

 15:21

and also paragraph five point 18.

 15:26

But as you'll see if you come to look at it, those references are also given in the Secretary of State's decision letter at paragraph 13.

 15:36

Hopefully that assists you on that point.

 15:38

Thank you very much. That's helpful. Okay, so moving on then. So we've noted that some relevant representations submitted by interested parties, for example, under r dash 01, 8d and r dash 02, 7d mention the strategic importance of junction 24, of the m1 and you've touched upon it in your previous answers, that the highway works are essentially mitigation, but we're seeking clarity on to the extent that they would be strategically important, above and beyond the proposed development itself. So would they create more capacity on the network to the benefit of strategic development, or would it be purely a mitigating set of works?

 16:37

Thank you, Sir Alexander booth, for the applicant

 16:41

taking the position in stages. Firstly, there is a widely acknowledged severe congestion issue in relation to junction 24 and how it operates at certain times in the morning and am peak, particularly

 17:02

point two is that the package of works that are identified in the DCO and which Mr. Wilson has just spoken to are required as a necessity in order to deliver the space on the network that is required in order to accommodate traffic generated by the logistics development proposed on the main site.

 17:35

However, in light of that existing congestion issue,

 17:42

a a benefit, a side benefit of the works that are being proposed is that they will serve to assist in enabling delivery of other development on the strategic which will impact upon the strategic network. That it's not to say that they enable that those developments to come forward in and of themselves. The package of works that is proposed in this DCO simply serves as part of what I previously described of a wider integrated programme of works in and around junction 24 that national highways anticipate, in order to enable multiple developments to come forward. For example, were development to come forward elsewhere in the Freeport at the Radcliffe on tour, former power station. That is the position in headline. But I'm going to again, turn to Mr. Wilson to speak to not hugely granular detail, but to provide the technical flesh on those bones, so to speak.

 18:51

Thanks for that, for passing over. We are quite interested in whether that can be quantified or not, or whether it's purely a qualitative sort of assumption that it would be impactful strategically.

 19:05

Thank you, Sir Alexander booth, for the app that's noted. So what we'll look to do, whether in answer to a question provided in the first round of questions, or otherwise, is to provide you with some technical analysis in that regard. I think that's what's being sought. Thank you, sir.

 19:26

Yeah. Paul Wilson, on behalf of the applicant, we can, I haven't memorised, obviously, all the facts and figures in terms of the benefits with the reductions in queues, although I did reference obviously that three kilometre queue heading northbound, and that in effect dissipates, because, as I mentioned, we were in effect pulling a pulling the plug out with the link road that we're proposing. The proposed mitigation certainly does provide betterment, you know, well over and above nil detriment, because of that positive benefit that you get with that link road. You can't, obviously, build half a link road. So, you know, we're committed to putting that link in as well as I hasten to add, the the other areas of mitigation which we were of the opinion and discussions with the transport working group has been necessary. But as Mr. Booth pointed out, it does provide a kind of a key piece of a wider jigsaw, in effect with the discussions that have been had with the wider growth point. So it does complement that, and will certainly help play a key role in that. But to be clear, the building Mr. Booth says what we're proposing does not by any means mitigate everything you know that there may be the need for duelling on the A, 453, and certainly works more one junction one, junction 24 in relation to the Ratcliffe on saw application, but it certainly doesn't prejudice anything that any helps rather than hinders. That's okay.

 21:00

Thank you. That's helpful. Okay, so we'll move on from that line of questioning and on to the next. So we note that works number 19 is secured in the draft DCO, and consequently relates to DCO scheme involving the highway works, however, works number 19 is more spatially related to the existing EMG one DCO in the north. Therefore, could the applicants please explain the justification for including works number 19 as part of the draft DCO? In this case, over to the applicants. Please

 21:43

Thank you, sir again. Alexander booth, on behalf of the applicant, for those that aren't directly familiar, works number 19 relate to the upgrade of the existing footpath I 57 which runs westwards from EMG one to Castle Donnington. Is there any chance we'd have a plan up? Yes, I think that might be useful. I was going to suggest that if we put on the components plan that shows things very clearly, do

 22:24

that's helpful. And if we zoom in to the if we head up, head west, sorry, from there or left, there, we have it. And if I don't know if people can see that sufficiently, or if we i No, it's yes, that's the bit marvellous. There we go. So that's the footpath which currently runs Westwood, as I say, from EMG one to Castle Donnington. To put this into context, in fact, the upgrade of that footpath to a footpath cycle way comprised part of the EMG one development, and indeed, monies were paid over to The county council to enable that upgrade to take place, however, for a variety of reasons and in no way the fault of Leicestershire county council. It didn't prove possible for those monies to, in fact, be expended and the works undertaken not within the time required. And so, in fact, those monies are now, if they will not already have been, they are in the process of being paid back to SEGRO because they weren't expended in order to deliver that upgrade. However, there have been very productive discussions, again, with LCC and also the parish council, which owns relevant land interests, as we spoke to yesterday in the context of the compulsory acquisition hearing and all parties are now engaged with the common aim of delivering that upgrade. And as I say, we're grateful to LCC and the parish council for working with us in that respect. We propose, of course, that that work comes forward as part of the DCO. And the reason it comes forward as part of the DCO now is because it sits within the five kilometre isochrone for the EMG, two main site, the south and east of Castle Donnington is within the isochrone. And the idea is very definitely that where that I 57 footpath is upgraded, it will provide a cycle route through EMG one, linking with the active travel route, which is delineated with the dotted blue line. There we have it to the south east and runs down to EMG one. So we say there is a coherent and coordinated basis on which we should deliver that facility as part of the DCO. Thank you for that. Does

 25:35

the county council have any comments on that? Mrs.

 25:41

Rebecca Henderson, Leicestershire county council, Mr. Booth, in his summary, we received funds from SEGRO in 2019 pursuant to the section one agreement linked to the original DCO. Unfortunately, when we came to deliver the works post covid in 2023 soaring construction costs meant we were over 100,000 pounds short in terms of the monies required to deliver the works, and so unfortunately, The Works couldn't be delivered as originally envisaged.

 26:21

Thank you. Okay, so coming to the end of this issue before moving on to the next one, are there any comments from interested parties on what we've discussed regarding highway works?

 26:43

Harry wood, Philpot, KC, on behalf of Prologis. So it won't surprise you to hear that we don't really have much to comment on at this stage, because, as you'll recall from the discussion yesterday, we are at something of a disadvantage in terms of being able to comment on, for example, proportionality and justification of highway works when we don't have yet sight of any of the relevant material. So this stage, we have to hold our fire and wait and see.

 27:17

Thank you. Mr. Philpott, okay.

 27:23

Apologies, missing hands,

 27:27

gentleman at the rear first I

 27:43

John, hello. If you could start again, just for clarity, there it raised.

 27:47

Thank you. It's John Marriott on behalf of protect Diceworth and CPRE Leicestershire. I just want to make sure that everybody understands that when people talk about mitigation, they don't mean total elimination of the impact of the development. It still gets worse so, and the documents clearly show that.

 28:08

Thank you. Mr. Murray was through a gentleman. I'll come to West Mr. Westman Smith, after the gentleman to the rear.

 28:17

Mr. Sutton, I believe

 28:20

Ray Sutton resident and Kegworth parish council, not North West Leicestershire District Council. Just to emphasise that the point that has just been reiterated by my learned friend here about the lack of information at this stage on so that these highways, and I include the footpath change in this so that it can be comprehensively assessed. At this stage, there is a shortage of relevant information at every level. We haven't yet explored the draft local plan level in terms of North West Leicestershire District Council or the state of the planning application, which has a national highways hold on it pending information. But the general situation beyond, perhaps what was mentioned yesterday, when the applicant said that we were in an advanced stage of solving all these problems and put it down because it was reiterated with an extra emphasis shortly afterwards, it is not satisfactory, and I wanted to add my local voice to that, because the last speaker has emphasised the local element. And I have to say that local people, and I think I represent them as well as anybody else. I've been home for lunch etc, have not been consulted much at any stage, and the many, many discussions that feed into these hearings, and I wanted to make that point, thank you.

 29:51

Thank you, Mr. Sutton, like to just reiterate the point that obviously, after we've received deadline one submissions, we'll have a clearer picture of the way forward in terms of further hearings and deciding what needs to be aired at those so please keep that in mind. I'll come to East Midlands Airport. I think they want to come in now.

 30:19

Thank you, sir. Mark Westman Smith for East Midlands Airport, and it's purely to put the matter on record, but for the same reasons, as articulated by Mr. Philpott for Prologis, the airport too are principally in listening mode at the moment in relation to highways matters. We may have things to say, but we are in listening mode and will respond when we've seen what the situation is in terms of modelling, because, as Mr. Philpott said, we're at a bit of a disadvantage. I mean, the local highways authorities have seen things we haven't, and obviously, to comment, we need to see them.

 31:04

Thank you, applicant. Want to come back on any of that?

 31:09

Thank you. Yes. Alexander booth, on behalf of the applicant, just to come back at a relatively high level and in the round I mean, first noting the position as adopted by Mr. Philpott and then later endorsed by Mr. Westman Smith. I mean, I obviously expect and acknowledge there will always be a degree of hyperbole in a situation such as this, but in so far as it's being suggested by either those parties, or indeed others individuals, that there has been a lack of evidence and a lack of clarity transparency as to the position, I'm afraid, that is wholly rejected. And of course, when learning from Mr. Philpott talks about, I paraphrase here, being in the dark. I mean, the transport assessment here has more than 70 appendices. A huge volume of evidence is already before this examination, and indeed is available both to Mr. Philpotts client and also to Mr. Westman Smith's client. So I'm afraid I don't accept the characterisation of the position as put it's right to say that some further work is being undertaken, but indeed, just to clarify and correct a point I made this morning, I talked yet this morning about the further work that LCC had requested be done and that we were in the process of completing. And I think I to use the Hillary Clinton dome. I think I misspoke when I said that the analysis hadn't been done. The analysis has, in fact, been done. All that hasn't been done up to this point is the modelling. And the decision had been taken that because the effects were so minimal, it wasn't necessary to model them. LCC have very fairly and reasonably asked that we model them, so we're modelling them, and that is going to come forward next next week, ultimately, there will be an updated transport assessment. But to say that there isn't currently a position that's capable of being considered by other parties to the examination, I'm afraid, simply isn't right. And when the gentleman refers to all these problems, and that's the term used as regards highways issues. I'm afraid, again, we don't accept that characterization, because, given this is a transport and highways and sip in terms of part two, I reiterate what I said yesterday, which is that the position is surprisingly and almost uniquely well advanced, given we are at day one of the examination. So I do stand by that assessment.

 33:46

Thank you. Thank you. I think Mr. Philpott, just quickly. Mr.

 33:50

Philpott, I can deal with it very quickly. You don't need me to reiterate the explanation we've given in our relevant representations about why the absence of the 2023 work materially affects our ability to interrogate and respond to the highways impact and the mitigation works. It's pretty obvious, but we've set it all out. I don't need to repeat it now.

 34:14

Yes, county council,

 34:17

thanks, sir. Harry horses from Leicester highways, if it's helpful, just consciously, probably want to move on on the agenda, but just from a context perspective, from where we're at and what's prompted some of the discussions around the room, we're in a less than perfect world in terms of strategic planning in this area, and as a statutory consultative planning process, we same national highways and other stakeholders to those parties have to those parties have to consider what's been submitted to us, given the nature of strategic commercial development that's been proposed, our interest clearly is within the SRN safe operation, and from an LTC perspective, it's the residual impact on our network post agreement to those matters. So where the assessment has got to is clearly ongoing, as per our comments previously, there's an awful lot of work been done over an awful long period of time, but we haven't, as an authority, got to the point of satisfaction with that, especially in terms of the local road network impacts, but we would continue to work with with developers and stakeholders to seek to try and get get to that point throughout the examination period, we are in a privileged position that we're able to see much of that information prior to all the parties around this table, and we're conscious of that also. So if it's helpful, we can expand later in the transport section around our involvement and what's expected. But I just thought it was hopefully helpful to outline some of the context of some of the things that we've said and how that is impacted and interpreted by the colleagues around the table. Thank you.

 35:48

Yeah, that's helpful. I mean, clearly there's some disagreement and lots of moving parts. You know, we are quite early in the process, obviously. So we'll see how things land in due course, and then we'll see how we revisit it. So I'll move on from Highway works now, and on to EMG one works.

 36:19

So I'd like to ask the applicant, as before, to provide a short overview of the need for the EMG one works, and the relationship with the EMG one DCO and how the need for such works may be established in policy terms within the NPS, over to the applicants, please, sir.

 36:40

Alexander booth, on behalf of the applicant. I mean, I'm on the point of, indeed his move now, Mr. Harley has come up to the front bench, sat two to my right, and he can speak to the need for the EMG one works. But insofar as he was going to do that, I anticipate, and indeed, he has forewarned me that there would be very significant overlap in terms of the need for the EMG one works, ie the MCO package, and his explanation as to need for EMG two, because we are in many senses, talking about Not, not. It's not different sides of the same coin. It's the same side of the same coin.

 37:22

Ready? Yeah. So, I mean, you know, as I said, we don't necessarily need to duplicate things. So if you're happy to leave it at what was said earlier, I'll just move straight on to some of the questions, or specific questions.

 37:36

Thank you, sir. I think we are, are we? So Mr. Hardy can stay there in case questions come that I would like to throw at him, but yes, so we won't repeat what we've said previously about need.

 37:48

So essentially, we only have one question on the EMG one works, and that is to understand more about how the land associated with plot 16 is used under the EMG one DCO at present, for example, is the land needed for mitigation at present? Would its replacement? Would its use need replacement mitigation, if that land was developed? And furthermore, when did the need for the additional floor space arise, and why wasn't it developed as part of the original EMG one DCO,

 38:29

thank you, sir. Alexander booth, on behalf of the applicant, I think I can feel this myself, but to the extent Mr. Harley has something to add, I know he will step in. Well, either him, or indeed, I think it might be Mr. Hilditch To his right would probably be better placed to answer, but I'm going to have a stab, and that is in terms of plot 16. It's not that there is a need which has recently emerged. There has always been a need for 16, we would say, in terms of the logistics development that came forward as part of mg EMG one in the round. However, when the order was being promoted, and of course, it was being promoted with a view to the Secretary of State for Transport granting the DCO, it was anticipated by DFT that HS two would run through, or rather beneath. Initially it was running through EMG one, and then further discussions led to the project going into tunnel beneath EMG one, but then coming up, essentially surfacing at plot 16. So plot 16 was left vacant for that purpose. There was no formal safeguarding because the matter was the subject of detailed discussion between the applicant and DFT, but it was agreed that plot would be left vacant to enable the surfacing from the tunnel of HS two at that point, subsequently, the routing of HS two changed, and it was moved further to the east, I believe, on the other side of the motorway. And of course, all sorts of things have happened since then, but then plan to change, essentially, in terms of what the DCO had ear marked for this plot? The short answer is nothing. It wasn't identified as being required for any particular purpose. I think at one point it was used temporarily for drainage purposes, but that was only a temporary need, and essentially it sits as white land. So that is why it didn't come forward originally, and that is and it's coming forward now, as SEGRO looks to move forward, consolidate its position on EMG one through the MCO and look to deliver EMG two, I'm just going to turn very briefly to my right to see if there's anything further that Mr. Hilditch needs to have.

 41:00

Simon hilditch with the applicant third, no, I think Mr. Booth has said it all, but there are some original plans for HS two which we can provide with the formal submission to show you the original routing as promoted at the time. If it would help?

 41:13

Yeah, if we could make that an action point that would be helpful for context. Thank you for that. Is there anyone else who wants to comment on the EMG one works,

 41:28

can't see any hands,

 41:32

so I'll move on to alternatives.

 41:38

So as before,

 41:41

like to ask the applicants to provide a short overview of the alternatives that they considered as part of the proposed development particularly why a multi developer approach with Prologis and East Midlands Airport was not considered as an alternative, given it was a known factor over to the applicants, please.

 42:08

Thank you, sir. Alexander booth, on behalf of the applicant, sir, in a moment, I'm going to turn to Mr. Green, sat two to my right. Mr. Green is from Delta planning, and he is going to address the question of alternatives by reference to Chapter Four of the ES, which considers reasonable alternatives, so that assessment, the assessment of reasonable alternatives, is appropriate for the purposes of the environmental statement. And of course, I know, as the panel is aware, the requirement to assess reasonable alternatives is also that set out in the compulsory acquisition guidance. Before he does that, though, sir, before he turns to chapter four and those various options, I'm going to address one notional alternative discussed at the examination, that is essentially the multi party development, which is flagged in the first of your questions, and in particular what you say as to entering into a joint development with Prologis in circumstances where, certainly as they suggest, they be left to build out land to the north of Highhams Lane and SEGRO Deliver land to the south. So there are, there's a short point to make before I look to go any further, and that is this, of course, to the extent the question posits, look, should you be doing something with Prologis? It's important to remember the chronology here, and of course, we'll put this in a written note. But when this project was initiated, Prologis were nowhere on the scene. They are very new to the party, and only relatively recently, he came to commercial terms with the airport with a view to delivering their joint development north of Highhams Lane. So it's right to say certainly, that they were well aware of this project already happening when they came on board for the purposes of their own project. And of course, they were nowhere on the scene, and it was not appropriate. Would not have been appropriate for us, necessary for us to explore a joint venture with them when we initiated this project, because, of course, they were nowhere to be seen. But sir, the position is essentially that we have not assessed in the s, in the ES, this multi party Prologis SEGRO development, because it is not a reasonable alternative in that context. Again, it's important that the panel understand that it's not simply a situation where we have two halves of a single hole, and it would be appropriate for the joint application submitted by mag and pursued by Prologis to be delivered on the north and we deliver the rump of the DCO scheme to the south. These are not two halves. These are different schemes, fundamentally different in certain respects. For example, the scheme as posited by Prologis, does not involve provision of a community park. The DCO scheme has a community park banded down the full width of the western flank. Prologis and mag seek to step development far closer to Diceworth, heading westward. It's a different it's a different package. Similarly, and I referred to these features previously, the HGV parking that we propose on the northern part of our site, the wider site that is not included within the Prologis scheme, so that would not come forward. So we're not looking at a CD can. It's not a question of simply taking our scheme, cutting it in two and leaving them to deliver the remainder. They've got a completely different scheme, but putting that matter to one side, and this question of

 46:20

why it isn't a reasonable alternative.

 46:24

There are, I think,

 46:27

three headline points. The first of these is timing.

 46:31

The southern land, that is a the land currently held by the applicant, could only realistically come forward after the northern land had been permitted and indeed developed at least to some point, because the access for any development of the southern land would come through the northern land to the A, 453, as this examination is well aware, there is no planning permission for the northern land, and there are continuing issues with the slippage of the determination of the outstanding airport application, further and again, I've already referred to this we say there is no evidence before this examination as to the viability of development on the northern land. As such, there is significant doubt as to whether it will come forward at all, even if permitted in those circumstances. Timing of delivery of the northern land is a real concern as to whether or not a multi party development is a reasonable alternative, because where timing is uncertain, we simply can't bring forward the southern land, and there's no confidence in our ability to be able to do so. Secondly, sir, the commercial position, the airport has made no secret of its intent to seek a ransom from SEGRO in respect of the southern land. Indeed, there's been reference to that on more than one occasion from Mr. Westman Smith, in the context of the nation. So there is uncertainty as to the commercial terms that will be offered. We're not in position possession of any at present, and in any event, such commercial angle, so to speak, would necessarily have an impact on viability of the southern land development. Were it to be a free standing development?

 48:28

Sorry, Mr. Booth, can I just cut in there? I mean, I'm mindful we've heard a similar thing yesterday in terms of compulsory acquisition. Would that be a fair thing to say?

 48:40

Yeah, absolutely. So sorry, I'm not, but I suppose I'm looking to answer the question, and there's 30 seconds more on this, and then that's it, because you're absolutely right to correct me for wasting it's fine.

 48:50

It's fine. As we've already said, there's inevitably going to be a degree of overlap, yes, just as a yes. Very relevant, and for for everyone else too, that we don't necessarily need to know. We can cross issues if we've heard the information already. So it'd be good if we could focus on new issues specific to maybe outside of commercial acquisition. If yes or any.

 49:20

So thank you, sir. Noted the last point, sir, and perhaps, as I say, the most important of the three for the purposes of your query as to why not a multi party development is viability, and I'm conscious that we discussed that today. But to reiterate, in the space of 10 seconds, even without any ransom payment to the airport or Prologis. Delivery of the southern land scheme is not viable. The quantum of development properly accommodated on the southern land when considered with the infrastructure costs necessary to deliver it simply does not amount to a credible financial case. So by reference to those timing considerations, commercial position and viability considerations. What we say is that multi party alternative is not a reasonable alternative, and therefore, in those circumstances, doesn't fall to be considered in the context certainly of Mr. Green's assessment. But unless I can assist you further, I'm going to turn to Mr. Green to deal with those other alternatives that he addresses in the context of Chapter Four of the ES. Thank you, Mr.

 50:26

Green. Thank you. David Green, Delta planning for the applicant. So what I was going to offer to do is take you through the sort of methodology and scope of Chapter Four rather than the depth of the detail. Yeah, that sounds good. Thank you. So it's good practice as assessors for us to look at look at it in three ways, really. First of is doing nothing. Secondly, is looking at alternative locations for the proposal. And then thirdly, is looking at the proposal at an alternative scale or use or design. And that's the sort of structure we take. We take in chapter four, and but at the outset, we then set out some context which much pulls on the information you've heard from earlier today, from colleague, Mr. Harley, and that sets the scene for what we then go on to assess, because it's a really important context, because we are this nexus of economic policy, economic benefit around the International Airport and the rail freight. And so it's in that context that we then scoped down the number of alternatives that could reasonably be considered as a reasonable alternative. So the first one then do nothing. Given that context, the Do Nothing scenario would lead a huge loss of economic and social benefits, and therefore was not really considered as a realistic opportunity in this location with all the locational and American benefits that are associated with it. Turning to alternative locations the chapter, then, first of all, scopes out the highway works themselves as a discrete package, because they are fundamentally driven from the necessary necessity to mitigate the traffic from EMG to works. And likewise, we then scoped out the MCO, given that's inherently an option for existing EMG one DCO, so the alternative locations focuses solely on the EMG two works, and in doing so, it looks at three, three options scenarios. It looks at other three port sites. It looks at sites consistent with EMG one, and it looks at sites in close proximity to EMG one. I'll just take those three briefly and turn so other Freeport sites has been explained earlier. It's not it's not the ambition of the free port to make one site replace the other. It's a collective whole, and therefore, displacing one for another is not an option. Is not a reasonable alternative. So that was ruled out. Looking at sites contiguous with the MG one a thorough search was north east, south west, around the boundaries of that site, and it became very apparent to set out in the chapter that there was simply not a parcel of anywhere near sufficient size or suitability, given proximity of neighbouring uses that would accommodate a development of the proposed scale of the proposals put forward. And then, thirdly, sites in close proximity to EMG one, given the setting, the scene setting we gave earlier, we felt a narrow area of search. So we looked at first of all where we are as the MG two works, the site itself, which is about one and a half kilometres away. We double that, and we took it from there, but we felt any further than that would fundamentally just lose the whole objective of the project. So quite a quite a narrow search area for alternative sites. And the only sites you'll see in the chapter that came out of that was Lane south of Kegworth bypass, which was then assessed no particular benefits came from that as an alternative.

And in fact, there was, there was some clear elements that wouldn't, wouldn't be provided by the the MG to main worksite. So again, it was not considered a reasonable alternative as because there was no betterment. So having looked at the locations that then, the third component we turned to is looking at alternative developments, options for the scheme itself. Alternative land uses was briefly considered. But given the again, the background context we've given in the chapter is not a viable alternative to just look at an alternative use, alternative development scales. Again, anything smaller would just not meet the the objectives of three port or meet the aspirations of the project in terms of its economic benefits. And then alternative design and layout was the final exercise that's carried out. And that's really where the iterative process of environmental assessment comes to the fore. And it demonstrates through the chapter how the evolution of the scheme has come around, looking at different different alternatives, looking at looking at different distances from the village, looking at different access points, looking at different design scenarios, such such that it demonstrates we feel that it comes up with the project as submitted, is the right balance between the objectives for the project against the environmental constraints and the operational requirements of occupiers. So that then brings to an overall conclusion that there's, there's no reasonable alternatives to what's been put forward that would secure the same level of economic and social benefits that are set out in elsewhere in the environmental statement, particularly chapter five and summarising the planning statement. So hope that gives you a flavour of where we came from?

 56:02

Yes, thank you. That's helpful.

 56:06

Okay, so I'll move on to our questions. Heroin.

 56:14

Philpott, on behalf of Prologis, are you intending to seek responses after you've run through your questions?

 56:19

Yeah, so we'll keep the same cadence. We'll come to you at the end, once we've gone through the applicant's questions. So as I say, moving on to our questions, this is a bit of a lead up to this question for context. So clearly, the relationship between the DCO scheme and the joint application is complex and contentious, and something we are trying to probe from a number of different directions. Likewise, questions need to start with a range of different propositions in order to get the framing right and for them to be useful. And so I must stress that these propositions in no way indicate we have predetermined views about interconnected issues one way or another. So with this in mind, we're interested to understand the consequences if the joint application by Prologis and East Midlands Airport was to frustrate the delivery of the DCO scheme. For instance, if the joint application was granted an implement for the DCO scheme and created an incompatibility that prevented the DCO schemes delivery, or if the joint application was granted and implemented and potentially created viability issues preventing the remaining elements of the DCO scheme from being delivered. So in these scenarios, without the DCO scheme, would the free port be significantly underdeveloped, and would there be a failure to maximise the free port's potential benefits? Furthermore, note in what we've discussed about the highway works earlier, without the DCO scheme and the highway works therein, would regional growth be suppressed in any way due to unaddressed constraints on the strategic road network? So to that question, if, and it's a big if, there is potential for the DCO scheme to maximise the Free Port designation and create strategic highway capacity to support regional growth. Would this present a significant point of difference between the DCO scheme and the joint application, to the extent that the joint application should not be considered a reasonable alternative over to the applicants, please.

 58:44

Thank you. Booth for the applicant, sir. Just at the outset, you posited two scenarios. One of them was in the event of a grant of planning permission of for the I'm going to call it the joint development, just to say the airport and Prologis development, and that of itself frustrating and preventing delivery of the DCO. And then I think you looked to a scenario where this DCO was not granted, and only the joint, that joint permission was granted and built out, to be clear, sir, as regards the first scenario, we don't see that that would be a bar to the grant of this DCO and the delivery of our development. I mean the grant of planning permission, if and when and it happens, is in no way we say a bar to the granting of this DCO and indeed the delivery of development pursuant to this DCO, but pausing there, sir, and considering in the scenario wherein this DCO is not granted, and indeed only permission is granted in respect of that Prologis airport application, we say so, the answer to that is yes, there would be fundamental consequences in that regard the southern land. And by that, I mean the land to the south of Highhams Lane, in broad terms, comprises two thirds of the wider DCO site, and that wider DCO site, embracing both the northern and the southern land, as I've previously indicated, itself, comprises the lion share of the emagic cluster. The Imagic cluster is one part of three in terms of the Free Port, but you'll be aware that no development has come forward on any part of the Freeport yet, save for the elements of EMG one which comprise part of the Freeport designation. So it's not as if we are in a scenario where it doesn't really matter if the southern land comes forward or not, because the balance everything else has happened that is in no way the position that we are in now. So in circumstances where the northern land came forward as part of the Prologis development, we say that that would result in the loss of this two thirds the southern side, and that, in practical terms, amounts to the loss 200,000 square metres of logistics and advanced manufacturing floor space, including, I think we think at least 40,000 square metres, which would be the Advanced Manufacturing content that would have knock on consequences, because it would mean a loss of

around 5.7 million of retained business rates per annum. Those business rates would be lost to the free port. Answer, there would be a loss in business rates income receivable by the free port over the life of the Free Port of some 180 million plus. The figure we have is 188 million. So that is not our figure. That is the figure generated by the free port. So that is their figure. And so to the extent you wish to better understand that figure, it may that you put a question to them, and indeed, sir, that puts me in mind of the earlier point that the panel raised this morning as regards the designation of the free port. Again, that question, sir, I think is probably better put to the Free Port themselves. They will be better placed to provide you with the explanation as to how the designation came about. But So sir, I'm talking about a loss of 200,000 square metres of floor space, 5.7 million of business rates per annum, a loss in income receivable by the Freeport of 188 million over the life of the Freeport, a loss of some 1800 on and off site operational jobs and a loss of at least 91 million per annum in terms of GVA, which could be generated through on site employment. So we say, Sir, those are the positions. Those are the consequences were the SEGRO element of the E magic site, by which I mean the southern land, land to the south Highhams Lane not to come forward. So I think that's, Liam, one of your question, Liam, two consequences of not providing the highway works well. So I mean the position then will be that. And this goes to the the wider, significant, strategic significance of the works as spoken to Mr. Wilson. I mean, I don't have the some precise detail, and we're going to come back to you with the detail so far as we can in relation to which developments are dependent on our mitigation package as phase one of the wider integrated programme. But what we do say, Sir, is that there are developments out there in this strategic and economically significant part of the country which are dependent on the programme the integrated programme of work identified by national highways for which we are providing the first phase as the necessary mitigation for our own scheme. So yes, there are significance. There is significance in terms of the loss of this land, in terms of free port delivery, and there is a wider significance, we say both in terms of Freeport designation, but also in terms of wider economic growth within the region.

 1:04:51

Thank you, sir. Thank you so I'll come to Mr. Philpott Prologis.

 1:04:59

Thank you very much, sir. Harry wood, Philpot kings Council, on behalf of Prologis, I'm going to try and take matters in what I hope is a logical order. The first, as Mr. Booth helpfully delineated in his response, there are two broad scenarios contemplated and the first question of the implications of any grant of planning permission on the the northern part of the EMG to main site for the DCO in this process, and my note of the way Mr. Booth put it, no bar to the grant of the DCO or to delivery of the DCO. Now we listen to that with interest. And the reason for that, sir, as you, we supply you in deadline one with SEGRO s representations to the local planning authority in respect of the joint application and our response to them, and when you get that document, you'll see a central theme of SEGRO representations to the local planning authority in respect to the joint application, is an assertion that quotes, approval of the joint application would undermine the DCO process continue, and it would mean that the quote, certainty of timeline afforded by the recent DCO application and certainty of delivery achieved by the power sought in the application being lost. That's the that's the way the local planning authority was being invited to treat the relationship between the two applications by the applicant, and we have responded to say we don't understand how that could possibly be correct. And we'll give you those recommendations, not least because the applicants are

seeking powers of compulsory acquisition, and hence we're in this situation to start with. And there are some further points that arise from the way that the position has just been presented orally on behalf of the applicant. First of all, Mr. Booth refers to the loss of the additional floor space proposed on the southern lane. I'll come to this in a bit more detail in a moment. But by way of context, it's important to think back to what you were being told earlier about the uncontroversial position as to the level of need and demand in this location for development of this sort, and the significant strategic locational advantages that exist here that are generating that level of need, and the way that the position is put on behalf of The applicant, therefore reveals a disconnect between two parts of its cases. On the one hand, it invites you to accept this is a location where people want not just because of the Freeport benefits they were coming here before those and they'll continue to come afterwards, but on the other hand, if this particular application doesn't come forward, then all of that is and I say that's clearly overplaying the applicant's hand. And then I come to the the next scenario, as it were, well, what? What happens if the development consent order is either granted but without the the compulsory acquisition powers, or it is refused? And to look at the first of the points that you have identified by way of sub issues here, and I note the way that it is framed, which we would submit is correct by looking at the alternatives considered past tense by the applicant, including potential For a multi developer approach. Now I don't propose to rehearse what's said in our relevant representations in detail that, and I'm not going to attempt a full point by point response, but I'll just make some big picture points by way of overview. Reliance is placed on the section 35 direction, but the section 35 direction does not preclude a multi developer approach. It is neutral in that respect, and my clients made the multi party point, as it were, in response to consultation on the then proposed application. Mr. Booth seeks to make much of the what he says, the absence of viability evidence in relation to the joint application, which is, of course not before this examination for determination in circumstances where there is no evidence of viability for the development in the DCA, or the lack of viability for development As of the southern land, as the reason put forward to justify compulsory acquisition, one might say the cheek of it, it is, at the least, a remarkably insensitive submission to be made on behalf of a would be acquiring authority now, Sir, in our relevant representations at paragraph 3.5 we list five realistic alternatives which would result in a multi developer approach to delivering on the EMG to main site. And it is not clear from the application material that the applicant gave serious and detailed consideration to these before submitting its application which sought compulsory acquisition powers, before resorting to that draconian step, any or all of those five alternatives will be capable of delivering the benefits claim for the DCO scheme, And I just take one example our Alternative C, which involves the grant of the DCO, but without powers of compulsory acquisition, and removing the provision that makes the benefit of the order exclusive to the applicant. That would involve no changes to the development proposed in the order, and would instead involve the amendment of Article Seven to remove the provision that displaces the default position under Section 156, named the owner of the land benefits and the DCO. Now in terms of the question that's raised about viability, looking aside the issue of evidence here, any issues that arise in relation to contributions to the cost of infrastructure in those circumstances would sensibly be the subject of discussion and negotiation. It's an entirely typical approach in commercial and planning mechanisms to deal with cost contributions in those circumstances, and there's no evidence that that was explored alternative before resorting to compulsory acquisition. There's then reference to the cost that might be associated with any ransom element. Well, if compulsory acquisition goes ahead, the valuation principles will include any such ransom payments. So it shouldn't make any difference one way or the other. And there is no evidence before the examination that the applicant sought to explore these alternatives in serious and structured way, including in discussion with those who would potentially be partners in a multi developer approach, before deciding that it would instead opt for the draconian option of seeking compulsory acquisition to take The land for itself, and one would expect in those in that scenario for there to be a need to probe and test the internal decision making of the applicant before that decision, how much weight, for example, did it attach to the public interest? Benefit of minimising the need for compulsory

acquisition before it went down this route, there has been no evidence so far, and we look forward to seeing the evidence of that in due course. I then come on to the other two sub items. First of all, consequences of not maximising the Free Port designation, if only the joint application was delivered. The Freeport concept does not include or imply any expectation that development within the Freeport will come forward in one go or via a single developer. The expectation has always been that there will be several independent developments, and there is a free port board which fosters greater collaboration and coordination. Therefore, there's no expectation that compulsory acquisition will be necessary or an appropriate part of the Freeport model. When developers are actively promoting other land. It's not as though they're sitting on their hands. They're actively promoting development in accordance with the free port objectives.

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And as I've said, the benefits that are undoubtedly in existence here in terms of, say, access to the rail terminal and a very convenient location in terms of this type of development generally, are not a differentiator between the joint application or the DCO application, or indeed any subsequent application for the southern development of the land. There is no difference, for example, in the ability of developers to access the rail terminal, depending on who they are in if the joint application was delivered within the Freeport window, it would be a very substantial in and of itself, and it wouldn't prejudice other parts of the Freeport coming forward. And it's also important, I say, when considering this issue, to keep three further points in mind. The first point is that there is no certainty that if the DCO is granted the development it authorises will be delivered either in full or at all, or that any or all of it will be delivered within the Freeport window. The likelihood of delivery and its extent and titles are matters calling for evidence and analysis, and therefore any attempted Comparison of Benefits simply in terms of what development is incorporated within each application, makes an important, and we say incorrect starting assumption. You have to go beyond that if it's going to be analysed in any fair, proper and fully nuanced way. The second point is that a real reasonable certainty that if the development consent order is granted with compulsory acquisition powers that would be enough to frustrate delivery of the development proposed in the joint application, and the adverse public interest consequences associated with that effect of making the DCO need to be examined and assessed. And as we've said, that's currently missing the third point flows from the first two, which is that the examination needs to include careful consideration, not only of the public benefits of the two development, but also whether there are alternatives which would avoid the very significant risk that the applicant's approach of going straight to compulsory acquisition might lead to a lower level of delivery, or even none in the Free Port period, because it is to set up the confrontation that I'm afraid you're having to deal with now and then, finally, in relation to the highway works, we noted, and We're interested in the way that this was framed by a learned friend as being, I think, a side benefit, or words to that effect, and that the principal aim of the highway works is to enable the development to wash its face. But leaving that to one side, it's important to understand two points here by way of context. First, the development consent order, as did, includes a tail piece to the relevant requirement, which would allow the applicant to avoid the need to provide some or all of the highway works in advance of first occupation at a later stage. Now that tail piece might well be relied upon if, as we suspect, the applicant faces problems with the commercial viability of its development as currently can scheme currently conceived and then needs to scale down its commitments to allow for occupation of some source base earlier than assumed, in the TA and the ES, and second, if that tail piece is removed, which we say it would have to be, to avoid the unlawful mismatch between assessment and order, the issues we raise about the need to have proper evidence on viability become even more pressing. And so, as that point illustrates, the likelihood, not just of implementation, but also its likely pace and extent go directly to the planning case and the adequacy of the ES, not just the policy acquisition. So apologies for dealing with that length, but that was, I hope, a good overview of our position on those three points.

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That was helpful. Thank you, Mr. Philpott, East Midland airport.

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So just before Mr. I tried to step across Mr. Westman Smith. So just to say that you will anticipate that I do wish to come back on a number of points as raised by London from Mr. Philpot, I'm happy to come back after all parties have had set but I just wanted to raise with you the question of whether or not you thought it would be helpful to come back on Mr. Philpotts point. Now, while they're fresh in your mind, rather than when Mr. Westman Smith isn't layered up, but if Mr. Westman Smith is is keen to have his say now, rather than later, I'm not going to fight him about that. It was just simply a question of what would assist the panel.

 1:19:58

Let me just step in. I think we'll come to the applicants last just to mop things up. So I think we've been going on quite a while, and we probably need a break in short order. So to East Midlands Airport now.

 1:20:12

Thank you. Mark Westman Smith for East Midlands Airport, I've got the difficult task of coming second on issues where East Midlands Airport is obviously wholly aligned with Prologis. So I'm not going to repeat matters. There's only a few points that I just want to briefly draw out. So I will be brief. First point relates to the assessment of realistic alternatives in our written rep, which is our o1, 5d, paragraph, 812, we set out a series of realistic alternatives. They are along the same lines as the Prologis alternatives and cohere around coordination between the two proposals. But the short point that I want to make is that in so far as booth drew a straight line between the assessment of alternatives in the context of the environmental statement and the assessment of alternatives in the context of compulsory acquisition, that's not something that we accept in the context of the ES What is required under the infrastructure planning, environmental impact assessment regulations is a description of the reasonable alternatives studied by the so it only goes so far, but in the context of compulsory acquisition and the question of the compelling case, the existence of a reasonable alternative can undermine that case. So it's far more fundamental issue in that context, and particularly here, where we're talking about alternative ways of delivering essentially the same benefits.

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That's the first point.

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The second point is in terms of the rejection of the multi developer approach. Mr. Philpott has touched on this, but I just point out that the structure of the Free Port is a series of sites around a broad area. There was never any stated intention that they should all be developed by a single entity. On the contrary, the dispersed sites point away from that conclusion, anything more on that? And then the last point is just the reasons given by the applicant as to why a multi party approach here is not a reasonable alternative. And there were three points made. The first was in relation to chronology and the reliance of access across the land north of Highhams lane that isn't a real issue. That is a point of creation. The airport has no in principle issue with SEGRO Taking access across that land. The second point was in relation to the viability of the joint application. Well, this is not an inquest into that joint application. And as my learner from Mr. Philpott said, we are also operating in a vacuum as to the viability evidence in relation to the southern land, and that's because it's relied on as a point to support compulsory acquisition.

 1:23:50

So sorry, can I just cut in there? I mean, so your position is, you can correct me if I'm wrong, but your position is, the applicant should be demonstrating viability. Should the joint applicants be doing the same for the northern parcel? Is that a reasonable position at hold

 1:24:11

not necessary, because you are not looking into that application? There's, there's a distinct point in that there has been the suggestion, the oral suggestion, that that joint application is unviable. If that is a point that they the applicant seeks to make good, they need to do that. But we do observe at this stage that it's a curious position to take that their part of the site is unviable. That's a definitive statement. And to solve that, what they need is take another part of the overall EMG to site which they allege is unviable, to solve that position that isn't a internally reconcilable position, but that's for the applicant to deal with, and when we see their position on that, we can comment on it,

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just to cut in again there, but doesn't the viability of the joint application go to the heart of whether it's a reasonable alternative, because it follows, if it isn't viable, then it's not a reasonable alternative, unless I'm working some we

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are very comfortable it's it is a viable scheme, and look forward to understanding the basis on which it is suggested it's not viable.

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There was just one of the third point that was raised, what was described as the commercial position and uncertainty as to commercial terms to be offered because of the value of access. And the very short point there is, it doesn't matter whether we come to an agreement, or whether we are compulsorily acquired, the market value of the land will be paid, and that will reflect any value in terms of access.

 1:26:14

Mr. Philpott,

 1:26:15

Harry wood Philpot on behalf of prologis and so just said that Mr. Booth has it in mind when he comes back on the points that have just been made by Mr. Westman Smith on viability, you'll appreciate, of course, that there is a very significantly different context here, that the context in which we raise the issue of viability are two assertions in the statement of reasons that seek to justify the use of compulsory acquisition powers. One, an explicit assertion that an alternative is not unsupported by evidence, and then secondly, an implicit assertion that the DCO is viable, also unsupported by evidence, now made explicit orally, which is put forward as part of a positive case to seek to justify taking my client's land as part of our relevant representations. We explained why on the face of it, and as Mr. Westman Smith has just explained, there is an internal incoherence to the position on viability, which at the very least calls it into question. Those factors, none of those factors apply to my client's scheme, which is being put forward in a normal way commercially. As a commercial scheme, we're not seeking to justify compulsory acquisition. There is as yet no coherent basis to believe that there's any issue with the viability of our scheme. So it's very different context, and they're not they're not to be equated. It's for the applicant to rule out the reasonableness of an alternative.

 1:27:51

Thank you, Miss Philpott, I think we've got Miss Sutton at the back, and then I'll come to anyone online.

 1:27:58

Thank you, sir. Resident kedworth parish council, not speaking on behalf of North West Leicestershire District Council, of which I'm a member. There are learned colleagues here, far better than I to develop the arguments about alternatives, but I wish to offer a few questions as an aside for and learn friends to pursue as of necessary overall. And this is, I'm sure not the right language. Seems to me that the whole DCO application is strategic context versus operational advantage. And we are not, I emphasise, not an EMG, one situation at all. We are where we are now. That's the background, sir. To my comments in considering whether has looked at alternatives, it seems significant to me that the East Midlands development company was set up in 2021 and was phased out in 2024 when the East Midlands Combined Authority became a reality, and that was in relation to sites at the airport Ratcliffe on saw and Totem. It was cross now cross boundary in its intent, and it may or may not be significant that the applicant was not part of that discussion when a multiple decision of sites and a strategic area were being considered, others will judge so. Next, we've already established, I think, but I repeat whether other sites in the Freeport, some of which are nearby, have been considered thirdly, on the same sort of theme regarding the new mayoral authority to which I have referred. This is an indication of whether this particular DCO application is very selective, and whether it does truly look at more strategic development in the area. We are aware that already the mayoral authorities produced its spatial plan with a huge emphasis arc, which is to the immediate south of the combined authorities area, and that is one that learned friends might like to consider

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toward dropping up sir,

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I think that the lack of serious consideration of alternatives by the applicant. Over the last number of years, since 2020 January, 2022, when this land was designated, has probably made life quite difficult for the Leicestershire county council highways and for national highways, I have read, with some interest, the Leicestershire county council highways representation, with its reference to East Midlands development point, which some of us scratched our heads for a while to find the origin of what it meant. But it think it refers to the consortium, largely private sector consortium planning highways works around junction 20 and everything else that we've mentioned, I believe it was selective, and I would suggest that that has been a distraction, possibly leading to some of the lack of information that some of us have highlighted already at the beginning of this examination. And so I would just point out that that is a fact. And I would lastly point out, and I hope this question is asked or perhaps answered either in the hearing or in representations afterwards by national highways, because there seems to me to be currently coming right back to the discussion that the learned friends have been having, there seems to me to be some some contradiction, perhaps in layman's language, between national highways currently putting a hold and a block on the planning application that is live With North West Leicestershire District Council for the Prologis and East Midlands Airport applicant, and the strategic the implicit strategic support for the DCO, albeit, we have tried to tease out already today, what the phasing might be, what is strategic And what is operational, and how it all links together, and I think so that is the end of my contribution. Thank you.

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Thank you. Mr. Sutton, is there anyone else in the room before I go to online, the applicants, finally, so I think we have MS Ahmed

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with their hand up on teams.

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Thank you. Fiona Ahmed, on behalf of National Highways, I just wanted to respond to a few points that have been raised, firstly, in recognition of the need for a series of significant interventions at junction 24 to mitigate the impact of growth in the area and to avoid a sub optimal piece meal. Approach and consortium of developers have been working on a strategic solution to address the forecast congestion at the junction. A design has been proposed to enable growth on the western side of the junction to come forward, and work is underway to demonstrate that the proposed design is operationally effective through traffic modelling. I wanted to just correct the fact that this has yet. Neither the mitigation nor the junction modelling has yet, has been agreed by national highways at this stage. However, national highways have been in discussion with the consortium and agree that mitigation proposed by the applicant could, in due course, form part of a wider strategic solution for the junction. My next point is that the applicant strategic and micro simulation modelling, which has been validated by national highways, demonstrates that the proposed highway mitigation provides wider benefit than simply mitigating the impacts of the EMG to development as alluded to by the applicant. It also eliminates forecast Main Line congestion on the m1 Norton on the approach to junction 24 and remove substantial traffic from finger farm roundabout and the A, 453, if the applicants DCA was not granted, the modelling forecasts would therefore suggest that there will be residual congestion and safety on approach to junction 24 which will constrain growth in the area. My final point is in relation to the last gentleman who just spoke about the why national highways have put a block on the other application. At the moment this we've not received an evidence base for this application, and as national highways and evidence based, evidence led, we we wait to receive that information, and we can evaluate that in due course when that's been received. Yeah, you.

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Thank you very much for that.

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So we'll, we'll finish up coming to the applicants. I don't

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want to impinge on your ability to say what you need to say. But I think we've been going for quite a while and need a break, so just keep that in mind.

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Thank you, sir. I'm not going to take that personally. I'm not going to read read that as something that an observation you're making in light of how long and slow I've been. I've got a number of points. I'm going to come back on each of them relatively swiftly. First, sir, and it's a point in response to learning from Mr. Philpott, you'll recall, right at the outset of his submissions, he said, Well, we note what Mr. Booth says about the grant of planning permission not being a bar to deliver this development. We've made a note that's not how we understood the applicant's position to stand. Because we're we're aware of representations they've made, etc, etc, etc. So the short answer to that, and I'm sure you understood it, if none of them Miss philport, didn't, what I was saying was that the grant of planning permission for their development would not comprise a legal bar. That is to say, it would not stop you as a matter of law. There wouldn't be any hillside type point which would prevent the grant of this DCO. I stand by the entirety of what has been said to the local planning authority as regards the joint application and the implications of granting commission for it. But what I say also is that were it to be granted, it would not comprise a legal bar. That's point 1.2 again. I think this is just a short point. I not entirely clear as to what no friend was saying, but I think he was suggesting, insofar as I was suggesting, that there would be a loss of development that would that would amount to effectively the applicant overplaying its hand. And to be clear to I maintain that position, it is not overplaying our hand when I say in the event that their development were to come forward, delivery of the southern land would be lost because of the viability issues relating to delivery of the southern land, crucially, together with the infrastructure. So that's the second point. The third point is a viability point. I've got my note of this as the cheek of it, because I've never been accused of being cheeky. What was said was it was inappropriate, perhaps, of the applicant to point to the lack of viability evidence in support of the joint application scheme in circumstances where there is currently no such evidence in support of the DCO scheme. So to be clear, following receipt of the relevant representations where points were taken in respect to this issue, as I have previously indicated, proposing to provide viability evidence to the examination by deadline, one, that is to say, at the very beginning of the examination, that is in light of the opposition to the case for compulsory acquisition, as set out in the statement of reasons. And there is nothing untoward or in any way unreasonable about that. There is I've said it orally, and if it helps, Mr. Westman Smith will say it in writing, a requirement for viability evidence in relation to the joint application. And the reason I say that is as follows, yes, a viability position is relied upon by the applicant to justify compulsory acquisition powers. So we are providing evidence, but viability is also relied upon by the airport and Prologis as the basis for their audition to compulsory acquisition. And so this is a point that you obviously grasp, because you put the position to Mr. Westman Smith, what those parties are representing to the inquiry examination is that there is a fallback position. Leave us to our own devices, and we will deliver now. We dispute that,

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and we say that is not a viable fallback position, and

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it is incumbent on them, insofar as they to make good their position in opposition to our case for compulsory acquisition. What Mr. Westman Smith goes on to say is that, well, we look forward to the applicant demonstrating that our development is not viable. So to be clear, we cannot do that. We cannot provide an assessment of viability. We have run the numbers on the basis of what we understand those parties to have paid the land, that is to say, their land cost. And we say it is those costs, together with terms of acquisition, which render their development non viable unless there is a ransom payment delivered by the SEGRO company in relation to the southern land. And we've already explained that that won't be forthcoming. So we say it is not viable. We are not going to provide a viability assessment of their development. It is for them to do that, because they are the party in possession of all to enable them to do so now. So, I mean, there may be some at this examination who were comforted and reassured by me learned friend, Mr. Westman Smith, warm assertion that his client is content that their development is viable. But, and I mean no disrespect to Mr. Westman Smith, that assurance is of absolutely no evidential heft at all. It simply can't be right that the examination is told by Westman less, Mr. Westman Smith, that his development is viable and that goes away with it. So we say the position is that we are content to speak to our viability case. If they wish to rely upon a viability case to underpin their resistance to compulsory acquisition powers, then they will need to provide evidence to support it. So the fourth point, and again, I'm only picking up a number of points because I can't deal with everything. And the fourth point is that what my learned friend Mr. Philpott suggested was that we'd gone straight to compulsory acquisition. So of course, that's simply in no breath. It's right to say that my client started engaging with the airport to try and acquire their land in February 2020, those negotiations continue for some years, until my client told the airport in September 2023 that it was considering making a DCO, which DCO would, of course, contain compulsory acquisition powers. Processes only came upon the scene in, I believe, August 2024 and so in those circumstances, we've already been negotiating with the then landowners since August 2024 we have explored alternatives with those parties. And in particular, Prologis. I can't speak to the substance of the discussions, because a lot of that discussion was on a without prejudice basis. But suffice it to say that we do not accept on that we have not explored each and every angle that is relevant to the possibility of a joint venture. Next. It's the point about certainty. You'll recall what learning from Mr. Philpott said was that there is no real certainty in this case, save that if you grant the development consent order that will frustrate delivery of joint application development. Sir, I'm not going to rehearse the point I made yesterday in relation to the fact it's a joint application development, not a joint permission development, we say, Sir, that is not the only certainty if you grant the DCO, there is also certainty that our development will be delivered. And a point that I made I didn't make yesterday, but I ought to have done in that context is that this is a DCO sought, one of the SEGRO Group of Companies. SEGRO has a national, indeed International, reputation as a deliverer of logistics development two development consent orders have previously been granted to SEGRO, East Midland gateway and Northampton gateway. It has built out both. So we have a track record. And in circumstances where this development consent order is granted, it will be delivered. And so in so far as land policy goes again to the well, in terms of the socio economic impact of the loss of their development, we say that that is an artificial construct, because those benefits will be delivered, and more will be delivered by reference to this scheme. And then so the last point, the seventh point, it's one about the tail piece. So you'll recall, towards the end of his submissions, I think Mr. Philpott raised a query as to whether or not the fact was suggested in terms of one of the requirements. It spoke to a

lack of confidence in the viability of our development and whether or not, in fact, the highways package was going to be delivered. So there is no lack of confidence we are going to deliver the highways package, and to the extent that it would comfort those in the examination or the panel, now they can put a red line through that tail piece. Now, I mean, it's there for discussion, but if it's a matter of any interest or concern on the part of the panel, then we say, you put a line through it, because that's so as I say, I'm not going to pretend I've picked up all the points I've sought to pick up the main ones.

 1:45:48

Thank you. So I think we'll close things there in terms of this agenda item, and we'll take a break. So we'll adjourn now at half three, and we'll take 15 minutes come back at quarter to four, so we're adjourned. Thank you.