

PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

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

RESPONSES TO CAH1 ACTION POINTS

ON BEHALF OF

EAST MIDLAND INTERNATIONAL AIRPORT LIMITED

EAST MIDLANDS AIRPORT PROPERTY INVESTMENTS (INDUSTRIAL) LIMITED

Interested Party References:



| AP No. | Action | Action By | EMA Response |
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| 1 | Set out the position on whether they consider the estimated total development cost of approximately £420 million, as stated in paragraph 4.3 of the Funding Statement, to be reasonable and accurate. | <p>Prologis (Prologis UK Limited and/ or Prologis UK 121 Limited as appropriate)</p> <p>EMIA (East Midlands International Airport Limited and/ or East Midlands Airport Property Investments (Industrial) Limited as appropriate)</p> | <p>EMA is unable to provide a substantive reply to this question until SEGRO has provided further information. As we note in paragraph 4(a) of our Written Representation, SEGRO has not provided:</p> <ul style="list-style-type: none"> • any viability appraisal or robust evidence demonstrating the commercial viability and deliverability of the development pursuant to the EMG2 DCO Application including the consequences on viability of paying market value compensation in accordance with the Compensation Code for the Prologis/EMIAL Land in addition to discharging SEGRO's financial responsibilities in terms of consideration under its option for the land included within the DCO Application south of Hyam's Lane ("Southern Land"), and the related assertion that development of the Southern Land without the Prologis/EMIAL Land is not commercially viable; or • a complete highways package including clear, auditable evidence on the deliverability, proportionality as mitigation, or funding of the proposed highway works. <p>Once satisfactory information to remedy those fundamental omissions from SEGRO's DCO application has been submitted to the Examination, EMA will provide a substantive response to this question.</p> |
| 2 | Provide an update explaining how they have considered the recent revocation decision relating to the A1 Morpeth to Ellingham scheme, particularly in the context of the discussion on the funding issue as to whether | The applicants Prologis EMIA | <p>Our response is set out in our CAH1 post-hearing submissions at paragraph 34-38 but for completeness, repeated below.</p> <p>During CAH1, the ExP raised the decision of the Secretary of State to revoke the A1 Northumberland (Morpeth to Ellingham) DCO (TR010059-002170-A1, Decision Letter dated 24 May 2024) ("the</p> |

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| <p>exceptional circumstances existed to justify revocation in that case. This should include any implications of that on this examination.</p> | <p>Morpeth Decision”) following the removal of funding for that scheme. The ExP invited the parties to consider what implications it might have in this case and, in particular, the ExP asked whether, if a fundamental change in deliverability arising from the absence of secure funding renders a scheme non-viable, the converse would mean that the presence of secure funding renders a scheme viable.</p> <p>The Secretary of State’s reasons for the revocation of the A1 in Northumberland: Morpeth to Ellingham Development Consent Order 2024 are set out in paragraph 22 of the decision letter. It reads:</p> <p><i>“The Secretary of State considers that exceptional circumstances exist which justify the revocation of the DCO. These circumstances fall into four key areas. Firstly, a fundamental change in deliverability, notably the absence of secured funding, which renders the scheme no longer viable. Secondly, a shift in strategic priorities, whereby the scheme no longer aligns with current national or regional transport policy objectives. Thirdly, the removal of planning blight from affected land. And fourthly, the need to support better planning outcomes, enabling land previously safeguarded for the scheme to be released for alternative infrastructure or development projects that are more responsive to local growth needs.”</i></p> <p>In that case there was a change in strategic priorities and a withdrawal of funding which meant that the scheme would not be delivered. As a result, there was no continued justification for the CA powers and, moreover, the continued existence of the CA powers blighted the land without the potential to deliver the benefits that justified them in the first place. This was a publicly funded scheme where the public funds were withdrawn.</p> <p>This Application does not rely on public funds in the same way and, as such, in EMA’s view there are no direct lessons to be learnt. The decision does show, however, the Secretary of State recognising that where there is doubt about deliverability (including where it occurs due to viability concerns), that will inevitably undermine the case for compulsory acquisition.</p> |
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| | | | <p>Turning to the specific question raised by the ExP, does the presence of funding render a scheme viable, the clear answer is no. Viability means essentially that there is sufficient commercial profit in a scheme to incentivise a developer to go ahead. That is a world apart from a publicly funded scheme such as the Morpeth scheme. The fact that SEGRO's parent company could on the face of it fund the DCO scheme in theory does not mean it is viable. If SEGRO's parent company acts as a rational commercial player in alignment to its fiduciary duties to its shareholders, it would only fund the DCO scheme if it is going to generate profit. As such the existence of funds is not the same as a decision to fund or funding or viability. This is made explicit in paragraph 17 of the CPO Guidance which notes that there may be projects which are not intended to be financially independent. This is not such a scheme.</p> |
| 3 | <p>Set out the "operational land" implications of the proposed compulsory acquisition, that is both whether any land is "operational land", and if so, explain what effects any compulsory acquisition or other land rights implications would have.</p> | EMIA | <p>Plots 2/4, 2/5 and 2/6 on the land plan, are required by the Applicant for the provision of the Active Travel Link ("ATL"). These plots are all land held by EMA as a statutory undertaker.</p> <p>Having analysed the drawings provided by the Applicant, (DCO 2.2B Land Plan Sheet 2 of 4 and DCO 2.4B Access and Rights of Way Plan Sheet 2 of 2) and when compared to the airport's own mapping, there may be an overlap of operational land and plot 2/6 in a small area, we are investigating this further to understand whether it is just a mapping discrepancy or a real overlap and discuss a solution if necessary with the applicant.</p> <p>Discussions between the Applicant and EMA have revealed that it is not the intention to take any operational land (car park) to construct the ATL, and accordingly Segro and EMA are working to resolve any mapping discrepancy.</p> <p>Save for this potential mapping discrepancy, EMA does not consider that there is airport operational land that is held by the statutory undertaker that is being included within the proposed CA.</p> |

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| | | | <p>For clarity, land parcels 1/2, 1/4 and 1/14 held by EMIAL, which is not the airport statutory undertaker. All other land in the Book of Reference identified by the applicant that describes EMA is land held by a statutory undertaker, but <u>not</u> operational land. For completeness, a detailed table is included at Appendix 1.</p> |
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Appendix 1

EMA and EMIAL Land Ownership as per the Book of Reference

| Plot References | | Land Owner |
|-----------------|---|-------------|
| 1/2 | Land owner not a Statutory Undertaker | EMIAL |
| 1/4 | Land owner not a Statutory Undertaker | EMIAL |
| 1/6 | EMA and EMIAL benefit from rights of way and entry over this plot for the benefit of adjoining land. EMA and EMIAL need to consider further the potential for a scenario where the applicant compulsorily acquired this plot without acquiring the relevant adjoining land and, if appropriate, to address that matter in the Statement of Common Ground being negotiated with the applicant in relation to this and other plots. | - |
| 1/7 | Land held by Statutory Undertaker, but not Operational Land | EMA |
| 1/8 | Land held by Statutory Undertaker, but not Operational Land | EMA |
| 1/10 | Land held by Statutory Undertaker, but not Operational Land | EMA |
| 1/11 | Land held by Statutory Undertaker, but not Operational Land | EMA |
| 1/14 | Land owner not a Statutory Undertaker | EMIAL |
| 1/15 | Land held by Statutory Undertaker, but not Operational Land | EMA |
| 1/16 | Land jointly held with Statutory Undertaker, but not Operational Land | EMA & EMIAL |
| 1/17 | Land jointly held with Statutory Undertaker, but not Operational Land | EMA & EMIAL |
| 1/18 | Land held by Statutory Undertaker, but not Operational Land | EMA |
| 1/19 | Land held by Statutory Undertaker, but not Operational Land | EMA |
| 1/20 | Land held by Statutory Undertaker, but not Operational Land | EMA |
| 2/1 | Land held by Statutory Undertaker, but not Operational Land | EMA |

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| 2/2 | Land held by Statutory Undertaker, but not Operational Land | EMA |
| 2/3 | Land held by Statutory Undertaker, but not Operational Land | EMA |
| 2/4 | Land held by Statutory Undertaker, but not Operational Land | EMA |
| 2/5 | Land held by Statutory Undertaker, but not Operational Land | EMA |
| 2/6 | Active travel link- considering Operational Land status as mapping issue identified | EMA |
| 2/25 | EMA has rights in relation to this plot and a restrictive covenant as to its use. EMA will wait to see the applicant's reply to ExQ1 Q7.0.2 before commenting further in this respect. | - |
| 2/26 | Land held by Statutory Undertaker, but not Operational Land | EMA |
| 2/27 | Land held by Statutory Undertaker, but not Operational Land | EMA |
| 2/38 | Similar principle to 2/6 – mapping to be confirmed | |