

THE PLANNING ACT 2008
THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

**APPLICATIONS BY SEGRO PROPERTIES LIMITED AND SEGRO (EMG) LIMITED
FOR A DEVELOPMENT CONSENT ORDER AND A MATERIAL CHANGE CONSENT
ORDER**

– EAST MIDLANDS GATEWAY PHASE 2 (EMG2) –

Planning Inspectorate References: BC0410001 and TR0510002

WRITTEN REPRESENTATION – DEADLINE 6

*Response to the Applicant's Deadline 5 Response to Kegworth Parish Council's Deadline 4 Written
Representation*

*Covering need, alternatives and the Freeport as driver, road traffic impact, cumulative impact and network resilience,
and viability, highway costs and compulsory acquisition*

Submitted on behalf of Kegworth Parish Council

(Interested Party Reference: [REDACTED])

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Executive Summary

This representation is submitted on behalf of Kegworth Parish Council (“the Council”) at Deadline 6. It responds to the Applicant’s Response to Deadline 4 Submissions¹ (“the D5 Response”), and in particular to Appendix 7, which addresses the Council’s Deadline 4 Written Representation². It does not repeat the Council’s Deadline 4 case. Its purpose is to answer the D5 Response with new facts, argument and rebuttal on the points the Applicant has either not engaged with, or has disputed, and to cross-refer to the Deadline 4 material rather than re-state it.

The Council’s central observation is that, across the four areas of its case, the D5 Response is characterised by **deferral, deflection and reliance on agreement with third parties, rather than by engagement with the evidence**. On need, the Applicant defers the Council’s methodological criticisms of the Icen Study to a future Local Plan consultation, while continuing to rely on that same study as the evidential foundation of a Development Consent Order. On alternatives, the Applicant defends its Regulation 14(2)(d) assessment by defining a “reasonable alternative” so as to require the very Freeport and airport linkage whose provenance the Council challenges – in other words a circular answer that does not answer what the underlying economic drivers are for a large amount of new logistics space in a sub-regional that already has a lot of it, and has many other sites allocated or proposed for such development. Using historic extrapolations and anecdotal evidence of demand is simply not good enough.

On traffic, the Applicant answers detailed technical criticism largely by pointing to its Statement of Common Ground with National Highways – even where this is shown to have short comings or to be caveated, the applicant does not engage with the many concerns/questions we put forward at Deadline 4. On viability, it declines to produce the one thing requested – a re-run appraisal incorporating the full, properly costed mitigation package – while new evidence now on the Examination record shows a live and material dispute about those very highway costs. We would request again that the Examining Panel (ExP) should not allow such obfuscation to go unchallenged, and ask the Applicants to address the issues we have raised fully, and if they don’t draw clear inferences about the state of the proposals and their suitability for approval.

The Council also draws the Examining Authority’s attention to two developments since Deadline 4 that reinforce, rather than answer, its case: first, the Examining Authority has itself now posed written questions (Q15.0.2 and Q15.0.3) that go to the granularity of the need evidence, the risk that projections overstate demand, and the possibility of over-delivery – the very matters the Council raised at Deadline 4; and second, the Applicant’s own and NWLDC’s own figures indicate that EMG2 would meet only about 30% of the District’s unmet need, leaving some 70% to be addressed through the plan-led process.

The Council’s conclusion is that the case for a Development Consent Order at this scale, in this location, has not been made; that better and less harmful alternatives exist and are capable of delivery through the emerging NWLDC Local Plan and normal planning applications (as the EMA/Prologis scheme for part of the very same land demonstrates); and that the East Midlands Freeport designation – a boundary that was adjusted at the last minute in 2022 to meet a Treasury scale threshold, and not the product of any planning site-selection exercise – cannot lawfully or properly be the driver for consent. The Council’s recommendation to the Examining Authority is set out at Section 27.

¹ Applicants’ Response to Deadline 4 Submissions, Document DCO 7.17 / MCO 7.17 (June 2026), Appendix 7 (Response to submissions made by Kegworth Parish Council) (“the Applicant’s D5 Response”).

² Kegworth Parish Council, Written Representation – Deadline 4, 16 June 2026 [REP4-059D] (“the D4 Representation”). Cross-references below are given in the form “D4 §X”.

1. Introduction, scope and how to read this document

1.1 This representation is submitted on behalf of Kegworth Parish Council at Deadline 6 of the Examination into the applications by SEGRO Properties Limited and SEGRO (EMG) Limited (together “SEGRO” or “the Applicant”) for a Development Consent Order (“DCO”) and a Material Change Consent Order (“MCO”) in respect of the East Midlands Gateway Phase 2 project (“EMG2”), comprising principally the site referred to in NWLDC’s emerging Local Plan as EMP90.

1.2 The Council’s four areas of concern – need, alternatives, road traffic impact, and viability/compulsory acquisition – are unchanged from Deadline 4. This document is deliberately designed to be progressive and therefore not to simply present a restatement of our Deadline 4 representations. It is a targeted reply to the Applicant’s D5 Response. *Where the Council’s Deadline 4 evidence and argument stand un-rebutted, they are relied upon by cross-reference (in the form “D4 §X”) and are not repeated here.*

1.3 As at Deadline 4, and as the Parish Council has consistently made clear (D4 §1.2), the Council does not have the resources available to the Applicant to commission its own technical reports. It therefore continues, where relevant, to adopt and rely upon the technical evidence of others before the Examination – in particular the analysis prepared by SCP on behalf of East Midlands International Airport Limited and East Midlands Airport Property Investments (Industrial) Limited (“EMA”), and the submissions of Prologis – and the highway evidence of Leicestershire County Council (“LCC”) as the local highway authority. The Council’s reliance on those parties’ evidence is set out where it arises below.

1.4 The structure of this document follows the four areas of concern. Part 1 addresses need (responding to the D5 Response on Sections 2–6 of the Deadline 4 Representation, and to the Examining Authority’s Deadline 5 written questions). Part 2 addresses alternatives and the Freeport as driver (Sections 7–13). Part 3 addresses traffic, cumulative impact and network resilience (Sections 14–20). Part 4 addresses viability, highway costs and compulsory acquisition (Sections 21–27). Part 5 sets out the Parish Council’s overall conclusions and its recommendation to the Examining Authority.

How the Applicant responded to the Council’s Deadline 4 case

1.5 The following table summarises, at a high level, how the D5 Response treated each strand of the Council’s Deadline 4 case, and where the Council’s reply is developed in this document. It is a signpost, not a substitute for the detailed reply that follows.

Council’s Deadline 4 point	Applicant’s Deadline 5 response (in substance)	Council’s reply below
Iceni methodology / site-specific need (D4 §§2–4)	Deferred to the ‘imminent Local Plan consultation’; not engaged on the merits	Part 1, §§2–3
Projections overstating demand; e-commerce driver (D4 §3)	Not addressed	Part 1, §4 (new evidence)
Net additionality / displacement / Maersk (D4 §5)	Asserted ‘standard methodologies’; no net figure; EMG1 jobs corrected to 7,000 FTE	Part 1, §5
Reg 14(2)(d) alternatives duty (D4 §7)	Disagreed; ‘legitimate parameters, not constraints’	Part 2, §7
Freeport provenance of EMP90 (D4 §9)	‘Matters for other bodies to answer’	Part 2, §8
Ratcliffe-on-Soar / EMIP as alternatives (D4 §10)	‘Complementary; all three required to come forward’	Part 2, §9
J24 mitigation ineffective / queue onto M1 (D4 §17)	Referred to SoCG with National Highways; attributed to other developments	Part 3, §§14–15

Council's Deadline 4 point	Applicant's Deadline 5 response (in substance)	Council's reply below
Airport growth / on-airport cargo (D4 §16.3)	Assumed 938 additional airport jobs only	Part 3, §16
Finger Farm cumulative impact (D4 §18)	Now stated to be in the model as 'EM Point'	Part 3, §19
Full costed mitigation / 15.9% return (D4 §§22–26)	Declined; appraisal 'high-level and conservative'	Part 4, §§22–23

PART 1 – THE CASE OF NEED

2. The Examining Authority has now posed the Council's own questions

2.1 Since Deadline 4, the Examining Authority has issued written questions that bear directly on the Council's need case. Question 15.0.2 asks the Applicant to clarify whether the Iceni report is "sufficiently granular to demonstrate the scale and immediacy of need for EMG2 in this particular location", or whether it "merely demonstrates a broader level of need that could be delivered regionally across multiple sites, rather [than] on one site alone"; and to clarify the extent to which the report is based on projections, and "whether the use of projections could overstate future demand".³ These are, in substance, the two propositions the Parish Council advanced at Deadline 4 (D4 §§2.3–2.5 and §§3.1–3.3).

2.2 Question 15.0.3 records that, on the Applicant's post-hearing case, the Iceni report estimates a need for 3,969,400 sqm of additional strategic B8 floorspace over the forecast period, weighted towards NWLDC where it claims there is a 1,000,000 sqm unmet need. EMG2 as presented in the DCO application would meet around 30% of that unmet need; and that around 70% would fall to be addressed through the emerging Local Plan. On that footing the Examining Authority asks NWLDC to explain how EMG2 "would result in over delivery".⁴ The Parish Council respectfully adopts that question and develops it below and at Part 2.

2.3 The significance of these questions is twofold. First, they confirm that the concerns the Parish Council raised at Deadline 4 are live examination issues, identified as of significance by the Examining Authority, and not – as the D5 Response would have it – matters to be parked in a separate Local Plan process. Second, they frame the arithmetic of over-supply squarely: if EMG2 meets only about 30% of the unmet need, then the Applicant's contention that development of this scale is needed at this site does not follow from the very evidence base on which it relies.

2.4 Moreover, we have yet to see any clear underlying evidence linking drivers of the East Midlands economy – demographics, GDP/productivity demand requirements, growth in the supply chains being serviced by the logistical space being proposed – and in so doing justifying it on the basis of something far logical and defensible than:

- extrapolation of historic trends;
- or an amorphous estimate of market demand based on inquiries from developers about land or from tenants about space (many of which do not ultimately result in transactions being completed); and conversion rates.

Without any coherent explanation of underlying drivers for it the demand bubble Which SEGRO's proposals rely on remain unexplained. And expert 'opinions' on the position are just as a

³Examining Authority's Written Questions issued following Deadline 5, Q15.0.2 (regional need / Iceni Projects Limited report [REP1-126]).

⁴Examining Authority's Written Questions issued following Deadline 5, Q15.0.3 (NWLDC local need), citing the Applicant's post-hearing submissions [REP1-052] and the Iceni report [REP1-126].

subjective and unreliable basis for establishing a clear need case as unrealistic expectations about the continuation of historic trends.

Figure 2 — On the Applicant's and NWLDC's own figures, EMG2 meets only about 30% of the District's unmet need



Figure 2 – EMG2's share of NWLDC's unmet strategic B8 need (from the Applicant's and NWLDC's own figures; ExQ Q15.0.3, REP1-052).

3. The Applicant cannot disown the Icení methodology by deferring it to the Local Plan

3.1 The Council's Deadline 4 case set out two distinct methodological criticisms of the Icení Study: that it extrapolates historic take-up from a now much larger base rather than testing demand against a factorised, GDP- and sector-linked assessment (D4 §§3.1–3.3); and that a corridor-level 'areas of opportunity' framework has been treated as if it dictated a site-specific conclusion at EMP90 (D4 §§4.1–4.4). The D5 Response does not engage with either criticism on its merits. It states only that these appear to be matters relating to NWLDC's Local Plan evidence base, and "assumes" they will be raised through the forthcoming Local Plan consultation.⁵

3.2 That is not an answer; it is a deferral. The Applicant cannot, on the one hand, rely on the Icení Study as the principal evidential foundation for the need case in this DCO (as it expressly does, and as the Examining Authority's Q15.0.2 recognises), while, on the other, declining to defend the study's methodology in this Examination on the ground that it 'belongs' to a separate process. If the study is robust enough to justify a nationally significant infrastructure project and the compulsory acquisition of land, its methodology must be capable of being tested here, now, and by this Examining Authority.

3.3 Nor is deferral costless. On the Applicant's own figures, the total requirement is now put at 3,969,400 sqm⁶, whereas the figure the Council understood from the March 2026 Local Plan Committee papers was of the order of 3.06 million sqm (D4 §2.4). The Council does not seek to resolve that discrepancy here; it observes only that a moving headline requirement, unaccompanied by the factorised assessment the Council requested at Deadline 4, is precisely the kind of evidence about which the Examining Authority should be cautious before treating it as a demonstration of site-specific need at EMP90.

⁵Applicant's D5 Response, Appendix 7, responses to Sections 2 and 3 ("it is assumed that these concerns and queries will also be raised by the Parish Council through its representations to the imminent local plan consultation process by NWLDC").

4. The e-commerce correction: why the extrapolation is unsafe (new evidence)

4.1 At Deadline 4 the Council argued, as a matter of principle, that a projection which simply extends recent big-box take-up forward from a much larger base is liable to overstate future demand, because the exceptional pandemic-era surge in e-commerce and the historically low interest rates that funded speculative development are not repeatable drivers (D4 §3.2). The Applicant did not respond to that point. The Council now supplements it with evidence that the exceptional driver has, in fact, already normalised.

4.2 Online sales as a share of Great Britain retail sales stood at around a fifth in 2019, spiked to a record high of roughly 37% during the February 2021 lockdown, and have generally declined since that peak, settling above pre-pandemic levels but well below the 2021 high.⁷ Official statistics for the period to the end of 2025 confirm that online retail volumes have remained clearly below their 2021 peak, and that total retail volumes have not recovered to their 2019 level.⁸ In short, the single most important demand driver behind the recent surge in logistics take-up has partially unwound and plateaued.

4.3 The relevance to this Examination is direct. A methodology that extrapolates absorption rates achieved during, and shortly after, an unrepeatable e-commerce spike is likely to carry that spike forward into a twenty-plus-year forecast as if it were the new normal. That is the mechanism by which straight-line projection from a high base overstates need. It is also precisely what the Examining Authority's Q15.0.2 invites the Applicant to address. The Parish Council maintains its Deadline 4 request (D4 §3.3): that the Applicant be required to demonstrate, by reference to a factorised assessment tied to GDP, demographic and sectoral employment forecasts, that the headline requirement – and the portion of it apportioned to the M1/A50 corridor in which EMP90 sits – remains robust once the post-pandemic correction is taken into account.

5. Net additionality and displacement: the Maersk point remains unanswered

5.1 At Deadline 4 the Council distinguished between the *gross* employment and floorspace of EMG2 and the *net* addition to the sub-regional economy once displacement and the re-occupation of vacated premises are taken into account, and it identified the reported occupier interest – including from Maersk – as substantially a matter of relocation rather than net-new activity (D4 §§5.6–5.8). The D5 Response asserts that the Applicant's assessment “applies standard methodologies ... including with regard to displacement”, but it produces no net figure, no site-specific analysis of the Maersk position, and no assessment of the re-occupation of any premises that would be vacated.⁹

5.2 The Council accepts the Applicant's correction of one input. The Applicant states that EMG1 has generated a peak of some 7,000 FTE permanent jobs, not the c.850 recorded in the EMAGIC Community Forum notes on which the Council's Deadline 4 employment-density cross-check was based (D4 §§5.2–5.3). On the scale of EMG1 – a 700-acre park of some 4 to 4.5 million sq ft with a strategic rail freight interchange – a figure of that order is plausible, and the Parish

⁷House of Commons Library, Retail sector in the UK (research briefing SN06186, updated 2025): internet sales reached around 20% of Great Britain retail sales in 2019, rose to a record high of 37% in February 2021, and have generally fallen since, though remaining above pre-pandemic levels.

⁸Office for National Statistics, Retail sales, Great Britain: December 2025 (released 23 January 2026): non-store (online) retail volumes remained clearly below their 2021 peak, and overall retail sales volumes remained below their 2019 pre-pandemic level.

⁹Applicant's D5 Response, Appendix 7, response to Section 5 (employment / displacement), stating that the assessment applies “standard methodologies with assumptions clearly set out, including with regard to displacement and indirect effects”, and correcting the EMG1 figure to a peak of 7,000 FTE permanent jobs as at December 2025 (per Applicants' Response to Deadlines 2 and 3 Submissions [REP4-033]).

Council does not press its earlier density cross-check.¹⁰ But that correction does not touch the point that matters. Whether EMG2 supports 2,000 gross jobs or 7,000, the question the Council and the Examining Authority need answered is the *net* figure after displacement.

5.3 Two features of the Applicant's own material sharpen the need for that net analysis. First, the Applicant's public job claims for EMG2 are themselves inconsistent, ranging from "a minimum of 4,000 jobs" to "5,720 operational jobs" – a spread of over 40%.¹¹ That is exactly the kind of unexplained variation in headline benefit that makes the transparent, methodologically-explicit breakdown the Parish Council requested at Deadline 4 (direct, indirect and induced figures, and the density assumptions behind them: D4 §5.5) indispensable to a fair planning balance. Second, Maersk – the occupier the Applicant has itself relied upon as evidence of demand – is already established at EMG1.¹² To the extent that Maersk's requirement at EMG2 would be met by relocating or consolidating an existing East Midlands operation, it is displacement, not net-new demand; and the buildings it vacates would themselves return to the market.

5.4 There is a further dimension the Applicant has not addressed at all. If EMG2 releases or duplicates capacity that is, or would otherwise be, provided elsewhere in the corridor – including at the other Freeport sites which, on the Applicant's own case, are all to come forward (see Part 2) – then the marginal need for floorspace at EMP90 is correspondingly reduced. The Applicant's evidence nowhere tests the net effect of EMG2 on the wider requirement. The Council therefore renews, and does not repeat, its Deadline 4 request (D4 §5.8): that the Applicant be required to quantify, for EMG2 and specifically for the reported Maersk interest (although if any other tenants of EMG1 are planned tenants of EMG 2 the same considerations would apply to them), the proportion of demand that represents relocation from existing premises, the likely re-occupation of those premises, and the resulting net economic and employment benefit.

6. Conclusions on need

6.1 For the reasons in this Part, and in the Deadline 4 Representation which the Council relies upon by cross-reference, the case of need for development of this scale at EMP90 is not made out and has not been repaired by the D5 Response. In summary: (a) the Examining Authority's own questions confirm that granularity, projection risk and over-delivery are live issues; (b) the Applicant cannot rely on the Icení Study while declining to defend its methodology; (c) the demand driver behind the extrapolation has already normalised; (d) evidence outlining underlying economic drivers that support the claimed demand and that they will continue on into the foreseeable future are also needed; and (e) the net, displacement-adjusted benefit of EMG2 – including the reported Maersk relocation – remains unquantified. On the Applicant's and NWLDC's own figures, EMG2 meets only about 30% of the District's unmet need, the remainder being a matter for the plan-led process addressed in Part 2.

¹⁰SEGRO Logistics Park East Midlands Gateway (EMG1) is described by the Applicant as a 700-acre development that has delivered of the order of 4–4.5 million sq ft of logistics accommodation, incorporating a 50-acre Strategic Rail Freight Interchange (sources: segro.com; slp-emg.com). On that floorspace, a peak of c.7,000 FTE implies a job density broadly consistent with published guidance for large logistics parks – unlike the c.850 figure recorded in the EMAGIC Community Forum notes on which the Council's Deadline 4 cross-check was based.

¹¹The Applicant's own public statements for EMG2 give a range of job figures, from "a minimum of 4,000 jobs" and "c.4,000 new jobs" to "5,720 operational jobs located at EMG2" (segro.com, EMG2 pages, accessed 2026). Across c.326,500 sqm this range implies materially different job-density assumptions.

¹²SEGRO, press release "Maersk to establish new centre of excellence at SEGRO Logistics Park East Midlands Gateway" (April 2023): Maersk is an established occupier at EMG1, its arrival building on the jobs already created there.

PART 2 – ALTERNATIVES AND THE FREEPORT AS DRIVER

7. The Regulation 14(2)(d) defence is circular on its own terms

7.1 The Council's Deadline 4 case on alternatives was that the Applicant's assessment in Chapter 4 of the Environmental Statement proceeds from a starting proposition – that only a site closely related to East Midlands Airport, EMG1 and the Freeport can be a reasonable alternative – which forecloses, rather than performs, the comparative assessment Regulation 14(2)(d) requires (D4 §§7.1–7.3). The D5 Response confirms the point rather than answering it. The Applicant states that the linkage to the airport, EMG, the Freeport and the strategic highway network comprises “legitimate parameters rather than arbitrary constraints”, and that a site which cannot fulfil “the operational, locational and economic requirements of the proposed development” is not a reasonable alternative “simply because it may have different environmental effects”.¹³

7.2 *That reasoning is circular.* It defines the “requirements of the proposed development” so as to build in the very Freeport-and-airport linkage whose planning provenance the Parish Council challenges (Section 8 below), and then excludes every site that lacks that linkage as incapable of being a reasonable alternative. On that logic no site other than EMP90 could ever qualify, and the alternatives assessment can only ever return the answer the Applicant began with. Regulation 14(2)(d) requires alternatives to be tested against their environmental effects for the purpose of meeting the underlying objective – here, the provision of additional strategic B8/B2 floorspace in the sub-region. *The Applicant is entitled to describe its commercial preferences; it is not entitled to convert them into the legal test for what counts as a reasonable alternative.*

7.3 The Council does not suggest that Regulation 14(2)(d) requires every conceivable site to be assessed, nor a full Environmental Statement for each rejected option. Its point is narrower and, it submits, unanswered: *the objective against which alternatives should have been tested is the meeting of strategic distribution need, not the replication of a single developer's Freeport-anchored scheme on a single parcel.*

8. The Applicant cannot rely on Freeport status while declining to answer for its provenance

8.1 At Deadline 4 the Parish Council set out, from publicly available sources, the procedural history by which the EMP90 land came to sit within the EMAGIC Freeport tax site: promoted by the airport and SEGRO in 2020 and then removed from the bid; re-included in early 2022 following a Treasury-driven requirement for the tax site to take in additional land to meet a minimum area threshold; designated by regulations with effect from 22 March 2022; with no published shortlist of candidate parcels, appraisal criteria or reasons; and with EMP90's ‘in principle’ Local Plan status resolved only in November 2025, after the DCO had been submitted

¹³Applicant's D5 Response, Appendix 7, response to Section 7: the objectives (linkage with East Midlands Airport, East Midlands Gateway, the Freeport and the strategic highway network) are “legitimate parameters rather than arbitrary constraints”, and a site which “cannot realistically fulfil the operational, locational and economic requirements of the proposed development cannot be seen as a ‘reasonable alternative’ simply because it may have different environmental effects”.

(D4 §§9.2–9.6). The D5 Response does not engage with any of this. It states that the designation of the Freeport and its size are “matters for other bodies to answer”.¹⁴

8.2 That response is not tenable given the weight the Applicant places on Freeport status elsewhere in its own case. The Applicant relies on the Freeport designation as the distinguishing feature that makes EMP90 ‘strategic’, that supposedly limits the field of reasonable alternatives (Section 7), and that supposedly differentiates EMP90 from better-scoring sites such as EMP63 and EMP66 (D4 §8.4). An applicant cannot make a designation the load-bearing element of its need and alternatives case and, in the same breath, disclaim any responsibility for explaining how that designation came about or whether it rested on any site-selection exercise at all.

8.3 The Council’s submission is the same as at Deadline 4 and is reinforced by the Applicant’s silence: a site whose ‘strategic’ status derives from a 2020 commercial promotion, a 2022 boundary adjustment made to meet a Treasury scale threshold, and a 2025 Local Plan resolution that post-dates the DCO, cannot be treated as a fixed starting point that limits the alternatives to be considered. It is precisely because that status has never itself been tested against alternatives that the Examination is the first genuine opportunity to do so.

9. Ratcliffe-on-Soar and EMIP: “complementary, all three required” concedes the point

9.1 On the other two Freeport sites – Ratcliffe-on-Soar and Goodman’s EMIP at Burnaston – the D5 Response says that the three sites are “complementary” and “not interchangeable”, and that “all three sites are required to come forward to realise the Freeport’s ambitions”.¹⁵ That answer does not obviate the Parish Council’s point; it concedes it. If the sub-regional need is such that all three sites are required in order to deliver it, then the demand the Applicant says EMG2 would meet is not uniquely attributable to, or dependent upon, EMP90 – it is spread across at least three sites, as the Council submitted at Deadline 4 (D4 §10.2).

9.2 That concession connects directly to the arithmetic in Part 1. On the Applicant’s and NWLDC’s own figures EMG2 meets around 30% of the sub-regions unmet need. If the balance is to be delivered partly at Ratcliffe-on-Soar and EMIP (both of which, as the Council noted at Deadline 4, are being progressed through a structured Local Plan and – in EMIP’s case – NSIP processes that have tested their suitability: D4 §10.3), and through the emerging NWLDC Local Plan, then the need for the current DCO is mute and should be handled in the normal way through the Local Plan procedures. The effect of the current 500,000 sqm DCO for EMP90 is to try to override this proper consideration with prospectively an outcome that will result in over-supply, not unmet need – that is the risk the evidence now discloses.

9.3 As to the 25ha ‘strategic scale’ threshold, the Applicant’s point that the Iceni 2025 report also refers to it, does not meet the Parish Council’s objection (D4 §10.5). The objection was never that the threshold is unheard-of, but that it was imported without local derivation from a West Midlands study, and that in any event Ratcliffe-on-Soar and EMIP comfortably exceed it – so it cannot be the reason for their exclusion as alternatives. That remains the case.

10. Land south of the Kegworth Bypass: a straw man

10.1 On land south of the Kegworth Bypass, the D5 Response from SEGRO answers a case the Parish Council did not make. It says the Applicant need not “*provide a mirror-image Environmental Statement for every rejected site*”, nor benchmark “*every conceivable*

¹⁴Applicant’s D5 Response, Appendix 7, response to Section 9: “The Applicants would suggest questions regarding the designation of the Freeport, and its size, are matters for other bodies to answer.”

¹⁵Applicant’s D5 Response, Appendix 7, response to Section 10: “all three sites serve distinctive and complementary functions within the East Midlands Freeport rather than being interchangeable ... all three sites are required to come forward to realise the Freeport’s ambitions”; and defence of the 25ha threshold on the basis that the Iceni (2025) report also references it.

environmental matter".¹⁶ The Parish Council never asked for either. As the Council was careful to say at Deadline 4, it does not contend that land immediately south of the Bypass is necessarily preferable, and it simply recognises the highway-access concerns (D4 §11.2).

10.2 The Council's actual point was specific and remains unanswered: the comparative assessment addressed access, public transport and the Public Safety Zone in detail, but provided no site-specific analysis – even at a screening level – of the very environmental topics that are most in issue at EMP90, namely the effect on Diseworth, its Conservation Area and the separation between the village and the airport/EMG1 commercial area (D4 §§11.2–11.3). A comparison that omits the topics on which the chosen site performs worst cannot be said to have taken the environmental effects into account in the balanced way Regulation 14(2)(d) requires. Characterising the Parish Council's request as a demand for a '*mirror-image ES*' is a straw man.

11. The correct procedure on alternatives to compulsory acquisition (supporting Prologis)

11.1 The Council adopts and supports the analysis in Prologis's Deadline 5 submission on the approach to reasonable alternatives, which addresses a duty distinct from, but complementary to, the Regulation 14(2)(d) duty considered above. As Prologis explains, the duty in paragraph 8 of the relevant Guidance is expressed in the *past tense*: the applicant must be able to demonstrate the genuine and structured consideration it gave to reasonable alternatives *before* it resolved to apply for compulsory acquisition powers.¹⁷ Steps taken after submission cannot cure the absence of that anterior exercise.

11.2 The Parish Council endorses three key points that Prologis makes, and hereby adds a fourth of its own:

- *First*, the Applicant's Deadline 4 material gives no indication, still less evidence, of when, by whom, or on what basis any alternative was assessed before the DCO application was made; a record that meetings and correspondence took place is not evidence of a structured pre-application appraisal of alternatives.
- *Second*, the Applicant's reliance on a non-disclosure agreement and 'without prejudice' status does not meet the criticism, because the criticism is directed not at the confidential content of current negotiations but at the absence of documented pre-application decision-making, which is the Applicant's own internal material.
- *Third*, each of the five alternatives now under consideration was proposed by Prologis, not by SEGRO, and the Applicant has – on Prologis's account – reacted to and sought to foreclose them rather than genuinely explored them, at one stage amending its own scheme in a way that reduced its compatibility with the Joint Application.

11.3 The fourth point is the Council's own. The Regulation 14(2)(d) alternatives duty (Sections 7–10) and the compulsory-acquisition alternatives duty (this Section) are separate legal requirements, but they fail here for the same underlying reason: *the Applicant treated EMP90, and single-developer delivery of the whole of it by compulsion, as the fixed premise from the outset, rather than as a conclusion to be reached after alternatives had been explored*. The relevant comparison, as Prologis puts it, is between the limited additional benefits that genuinely

¹⁶ Applicant's D5 Response, Appendix 7, response to Section 11: the legal test "is whether this assessment has taken the environmental effects into account in a reasonable manner, not whether every conceivable environmental matter has been exhaustively benchmarked site-by-site", and the Applicant is not required to "provide a mirror-image Environmental Statement for every rejected site".

¹⁷ Prologis UK Limited and Prologis UK 121 Limited, Deadline 5 submission (Reasonable Alternatives), relying on paragraph 8 of the Guidance (the duty, expressed in the past tense, that reasonable alternatives "have been explored" before the applicant resolves to seek compulsory acquisition) and addressing MHCLG Guidance on the Compulsory Purchase Process (January 2025), paragraph 2.8.

depend on the compulsory powers and the serious step of expropriating a willing and capable rival developer – not between an identical alternative and the DCO scheme.

12. Deliverability through the plan-led route

12.1 The Applicant's answer on the EMA/Prologis scheme is to cross-refer to its response to the Examining Authority's Rule 17 letter and to its submissions on phasing and interoperability.¹⁸ The Council does not seek to pre-empt the Rule 17 exchange. It makes one point of principle, which the D5 Response does not displace. The EMA/Prologis application for some 135,000 sqm on part of the very EMP90 land – proceeding through the ordinary Town and Country Planning Act process, with Prologis as development partner – is direct evidence that market demand on this land can be met, at a materially smaller and less harmful scale, without a Development Consent Order and without compulsory acquisition (D4 §§12.1–12.3).

12.2 That evidence dovetails with the Examining Authority's Q15.0.3. If EMG2 meets only about 30% of the District's unmet need, and some 70% falls to be addressed through the emerging Local Plan, then the plan-led process – which is designed to test scale, location and alternatives with the benefit of Sustainability Appraisal and public examination – is the proper vehicle for the balance of the need and is demonstrably capable of bringing forward development on this land through normal applications. The Parish Council's position is not that no development should occur, but that the appropriate levels of need can be met, and the best locations for it to be met, can be better tested, through the local plan-led route rather than through a DCO for this site alone.

13. Conclusions on alternatives

13.1 The D5 Response has not repaired the deficiencies in the alternatives case identified at Deadline 4; in several respects it has confirmed them. The Regulation 14(2)(d) defence is circular; the Applicant declines to answer for the Freeport provenance on which its own case depends; the 'all three sites required' answer concedes that the need is spread across multiple sites; the treatment of land south of the Bypass answers a case the Council never made; and the Applicant has produced no evidence of the structured, pre-application consideration of alternatives that the compulsory-acquisition Guidance requires. The Parish Council, therefore maintains that its Deadline 4 request for a structured, criteria-based comparative assessment of alternatives on a like-for-like environmental basis, and submits that the plan-led route – not a DCO at this scale – is the appropriate means of meeting such need as is made out.

¹⁸ Applicant's response to the Examining Authority's Rule 17 letter dated 19 June 2026 [PD-024], submitted at Deadline 5, to which the D5 Response cross-refers on the question of a smaller scheme (Appendix 7, responses to Sections 7 and 12).

PART 3 – TRAFFIC, CUMULATIVE IMPACT AND NETWORK RESILIENCE

14. “National Highways agrees with us” is not an answer to the technical case

14.1 The Council’s Deadline 3/4 traffic case adopts SCP’s Technical Note 04, prepared for EMA, and applies it to Kegworth’s particular reliance on the M1 Junction 24 / Finger Farm (Junction 23A) corridor (D4 §§14–20). On the single most serious point – that the Applicant’s own modelling shows the proposed Junction 24 mitigation making the M1 southbound off-slip queue *longer* (from 669m without mitigation to 1,140m with it), and reaching back onto the M1 mainline, a result TN04 describes as illogical and unexplained (D4 §§17.2–17.3) – the D5 Response says only that the Applicant refers to its Statement of Common Ground with National Highways, which “*confirms their position and agreement*”.¹⁹ It offers no explanation of why mitigation lengthens the queue, does not address the unexplained divergence between the 2019 VISSIM and 2023 PRTM results, and does not answer the non-disclosure of the underlying model files.

14.2 An agreement between the Applicant and National Highways is not a substitute for engagement with the technical points, for three reasons. First, a Statement of Common Ground records that two parties agree; it does not explain *why* the modelled outcome is as it is, and it cannot cure an internal inconsistency in the modelling that a third competent party (SCP, for EMA) has identified. Second, the points at issue were raised by SCP/EMA and by the Parish Council, not by National Highways, so National Highways’ agreement with the Applicant does not – and should not be allowed – to dismiss of them. Third, and most fundamentally, EMA’s consultants record that the underlying Junction 24 VISSIM input data and methodology have not been made available to them at all, so the figures cannot be independently checked (D4 §17.6).²⁰

14.3 The Council therefore maintains its Deadline 4 submission (D4 §§17.4, 17.6, 20.2): the acceptability of the Junction 24 proposals turns on modelling that has not been explained or disclosed, and the Examining Authority cannot properly be satisfied of the safety case for a junction immediately adjacent to Kegworth on the strength of an inter-party agreement whose evidential basis remains closed to scrutiny.

15. Defining away the cumulative impact: J23A, the M1 off-slip and the growth the need case depends on

15.1 The D5 Response contains a recurring device that the Council invites the Examining Authority to scrutinise closely. On the M1 southbound off-slip, the Applicant explains that the 1,140m/1,722m queues reaching the mainline arise under a “Scenario A” that includes “multiple Freeport sites, draft local plan growth, and the remainder of the ... Ratcliffe on Soar development”, but excludes their mitigation; and that in the EMG2-only scenario (Stage 2B) EMG2 does not materially affect the off-slip.²¹ On the A453/East Midlands Airport roundabout (Junction 23A), the Applicant says the junction operates within capacity in the scenario that

¹⁹Statement of Common Ground between the Applicant and National Highways [REP4-053].

²⁰Applicant’s D5 Response, Appendix 7, response to Section 14, stating that for the reasons in its Response to Deadlines 2 and 3 Submissions [REP4-033] the Applicant does not agree with many of the points in SCP’s Technical Note 04 (TN04, Rev 4.0, 28 April 2026) [REP3-060], on which the Council relies.

²¹Applicant’s D5 Response, Appendix 7, response to Section 23: TN04 paragraphs 4.12–4.18 concern the M1 southbound off-slip under “Scenario A” traffic demand, which “includes multiple Freeport sites, draft local plan growth, and the remainder of the Uniper Ratcliffe on Soar development, but does not include for mitigation measures associated to any of these developments”; and that, per TN04 Figure 8 (Stage 2B), EMG2 does not have a material impact on that off-slip.

includes EMG2 but *excludes* the draft Local Plan allocations (Isley Woodhouse and others), and only fails in the scenario that includes them – “therefore, mitigation is not required for the EMG2 development”.²²

15.2 In each case the Applicant judges EMG2’s impact in a scenario that strips out the very committed and draft-plan growth on which the need case for EMG2 depends. That is not a neutral analytical choice. The Applicant’s case in Part 1 is that a large and pressing need exists across the corridor and that the Freeport sites and Local Plan allocations are all coming forward; its case in Part 3 is that, for the purpose of judging highway impact, that same growth should be set to one side so that EMG2 can be shown not to ‘cause’ the failure. The reassurance that “EMG2 alone does not tip the junction over” is therefore true only in a world that the Applicant’s own need case says will not exist.

15.3 Properly understood, the Applicant’s Scenario A explanation is the cumulative case in its own words: on the Applicant’s own modelling, the M1 southbound off-slip immediately adjacent to Kegworth will experience queues of 1,140m rising to 1,722m, reaching back onto the motorway mainline, once the Freeport, Local Plan and Ratcliffe growth is in place – and no party’s mitigation is modelled as curing it. Whether or not EMG2 is the marginal cause, EMG2 is one of the developments whose cumulative traffic produces that outcome, and it is seeking consent now, ahead of any coordinated solution. The Parish Council’s concern is not with the attribution of blame but with the safety of the result and the absence of any mechanism to prevent it.

16. Background airport traffic and new on-airport cargo: the 938-jobs proxy

16.1 At Deadline 4 the Council asked the Applicant to test a sensitivity reflecting credible growth in East Midlands Airport itself – a 24/7 dedicated freight hub with no rail link – of the order of 10 million passengers per annum and 650,000 tonnes of freight, together with the associated staff, HGV, taxi and seasonal peak movements, because Junction 9 is already shown to be over capacity in the 2038 baseline before EMG2 traffic is added (D4 §16.3). The D5 Response does not provide that sensitivity. Instead, it states that the modelling assumes “938 additional jobs across East Midlands Airport”, being the figure used for the EMA/Prologis Joint Application.²³

16.2 A fixed assumption of 938 additional airport jobs is not the same thing as testing growth associated with the airport’s future growth in throughput – which based on the figures above could be 100% for passengers and 50% for freight. At a WLU assumption of ten passengers per tonne of freight the incremental increase in employment by 2050 relative to today’s position of 5mppa pax and 400,000T of freight is that amounts to 6,500,000 WLUs in total and even at a job per WLU as high as low as 700/1m WLUs (and an airport of this size would normally generate 1000 jobs per million WLUs), that amounts to 4,500 jobs, nearly five times the figure the applicant is relying upon. Hence it does not nearly take into account sufficiently the HGV and vehicle movements associated with growth in air cargo tonnage and passenger numbers up to the airport’s permitted capacity, and it does not capture the traffic generated by *new on-airport cargo floorspace* that is being brought forward on the airport itself. Under established transport-appraisal practice, committed growth of this near-certain kind – including airport passenger growth up to permitted caps – would be built into the future baseline demand matrix, not

²²Applicant’s D5 Response, Appendix 7, response to Section 16: the A453/East Midlands Airport roundabout (Junction 9) operates within capacity under the Stage 1B scenario (EMG2 in, 2038, but excluding the draft Local Plan allocation sites including Isley Woodhouse), and only operates over capacity under Stage 1A (which includes those allocations); “therefore, mitigation is not required for the EMG2 development”. Residual impacts on the Strategic Road Network are “being reviewed in collaboration with LCC and further details are to be submitted to Deadline 6”.

²³Applicant’s D5 Response, Appendix 7, response to Section 16: the modelling assumes “938 additional jobs across East Midlands Airport (which is the same as that used by EMA and Prologis for the Joint Application)”.

represented by a single jobs figure.²⁴ The effect of representing airport growth by a 938-jobs proxy rather than a projection of close to 4500 additional jobs by 2050, is to understate the background against which EMG2's own traffic is assessed at exactly the junctions on which Kegworth depends.

16.3 The Parish Council therefore renews its Deadline 4 request for an airport-growth sensitivity at Junction 9 and along the A453 corridor, and adds a request that the Applicant confirm whether, and how, new on-airport cargo floorspace and its HGV generation have been included in the committed-development baseline.

17. A453/The Green Junction left to fail by design, and the risk of rat-running through Kegworth

17.1 On the A453/The Green junction, where the minor-arm queue is forecast to grow to 706m by 2028 and 989m by 2038 – *“essentially queu[ing] all the way back towards the village of Diseworth”* – the D5 Response makes a striking admission. It states that mitigation *“has not been proposed ... so as to not encourage traffic to route via the local roads”*.²⁵ In other words, a junction on Kegworth's and Diseworth's doorstep is to be left to fail *by design*, on the basis that congestion there will deter drivers from using local routes.

17.2 The Parish Council makes two points. First, deliberately leaving a junction to operate at nearly a kilometre of queuing in order to suppress local-road use is not mitigation of an impact; it is the acceptance of an impact, and one experienced most acutely by the two villages immediately adjacent to it. Second, the strategy depends on an assumption about driver behaviour – that traffic will re-route to Finger Farm and the A42 rather than seek out local roads – whose scale the Applicant has not demonstrated. Standard pan-regional highway-assignment modelling captures exactly the opposite risk: as strategic junctions congest, equilibrium assignment pushes traffic onto lower-capacity minor and rural roads, with the associated local delay and severance in nearby villages. The Council's concern, unanswered since Deadline 4 (D4 §16.2), is that traffic deterred from The Green will find its way through and around Kegworth, including onto the Kegworth Bypass, without this having been assessed.

18. Resilience: concentrating a national logistics cluster on one fragile junction pair

18.1 Standing back from the individual junctions, the Council invites the Examining Authority to consider the resilience of the corridor as a whole, a matter the Applicant's evidence does not address. The M1 Junction 24 / Junction 23A corridor is one of the most complex highway matrices in the country: two closely-coupled motorway junctions linked by the A453, with Donington Services (a motorway service area) between them, serving seven inward feeder streams (the M1 north and south; the A50; the A453 north and south; the A42; the A6/A6006 local connectors; and the airport and Gateway HGV traffic). Kegworth and Diseworth depend on this single junction pair for all access to the M1, the A453 and the wider Strategic Road Network.

18.2 Onto that single corridor the Applicant's own case would layer a very large and growing concentration of development: EMG1 (now fully occupied); EMG2 (up to 500,000 sqm); the EMA/Prologis scheme; the Finger Farm employment units; growth at the airport (passenger and cargo, plus new on-airport floorspace); the Ratcliffe-on-Soar redevelopment; Isley Woodhouse

²⁴ DfT, Transport Analysis Guidance. Established practice is that committed growth of near-certain schemes (including airport passenger growth up to permitted caps) is built into the future baseline demand matrix using standard trip-end growth factors, rather than being represented by a single employment assumption.

²⁵ Applicant's D5 Response, Appendix 7, response to Section 16: “mitigation has not been proposed at the A453/The Green junction so as to not encourage traffic to route via the local roads”, the Applicant considering that traffic would reroute via Finger Farm rather than The Green, Grimes Gate or the A6 Kegworth bypass because of the capacity created by the mitigation.

and the wider draft Local Plan allocations; and a proposed new village. Figure 1 illustrates the convergence.

Figure 1 – Cumulative development converging on a single, fragile motorway-junction pair

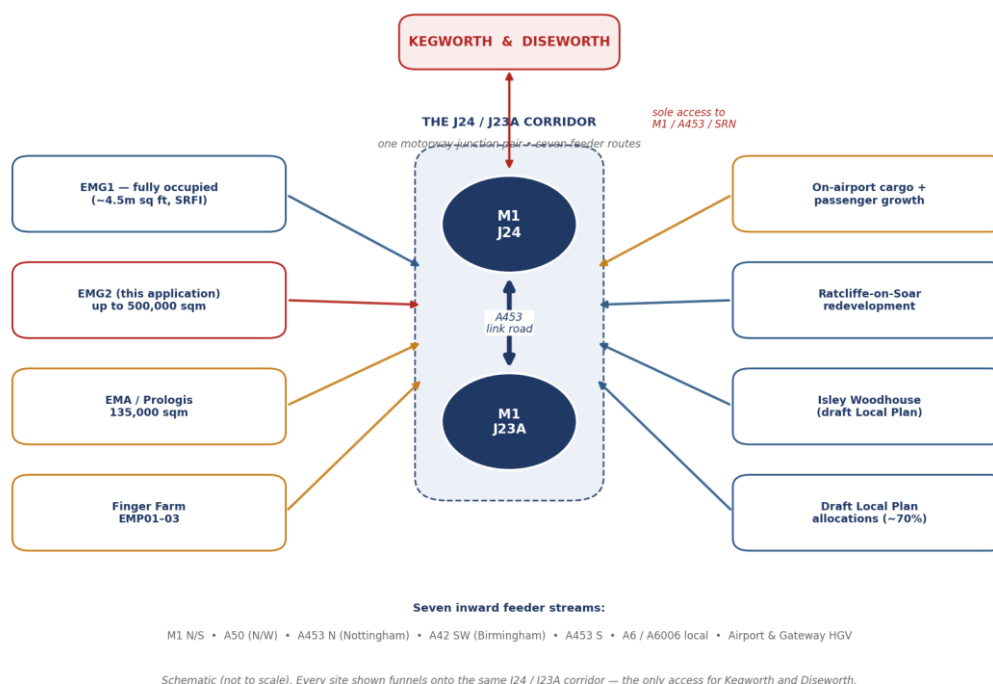


Figure 1 – Cumulative development converging on the single M1 J24 / J23A junction pair on which Kegworth and Diseworth depend.

18.3 Table B below lists the principal components of that cumulative load. The Council's point is one of network resilience, not merely peak-hour capacity: a logistics cluster of national significance, operating 24/7, is being concentrated on a corridor with a single motorway-junction pair and no alternative strategic route for the villages that adjoin it. The Applicant's evidence contains no assessment of how that corridor performs under incident conditions – an accident, a carriageway or overnight closure (of the kind the Applicant itself anticipates for gantry works at Junction 24), or an airport disruption – when the fragility of a single-corridor dependency is most exposed and traffic is forced onto local roads through Kegworth.

Table B – Cumulative development converging on the J24 / J23A corridor

Component	Status	Approx. scale	Route to corridor
EMG1 (SLPEMG)	Built / fully occupied	~4–4.5m sq ft; 50-acre SRFI	J24 / A453
EMG2 (this application)	DCO/MCO in examination	Up to 500,000 sqm	J24 / A453 / Finger Farm
EMA / Prologis scheme	TCPA application	~135,000 sqm	J24 / airport roundabout
On-airport cargo & passenger growth	Committed / consented	Growth to permitted caps	J9 / A453 / Finger Farm
Finger Farm (EMP01–03)	Consented	~6,885 sqm + new arm/crossing	Finger Farm (J23A)
Ratcliffe-on-Soar	LDO (2023) / redevelopment	Employment / energy	J24 (via wider scheme)
Isley Woodhouse & draft Local Plan allocations	Emerging Local Plan	~70% of unmet need	J9 / J24 corridor
Proposed 'new village'	Draft Local Plan	Residential-led	J24 consortium scheme

Furthermore, in addition to the above, there are massively increasing shed/HGV inputs at A50 J1 by Castle Donington. Only a limited proportion of those movements will be NW on the A50 and the rest will flood on to these core J24/23a routes. Have these new sources of traffic been included in the modelling?

19. Finger Farm Roundabout: what the Applicant has now conceded, and what remains

19.1 On Finger Farm Roundabout the Council recognises that the D5 Response now provides substantive information that was not previously apparent to it. The Applicant states that the consented Finger Farm employment development is included in the transport model (as “EM Point”, modelled as a worst-case office use with higher trip generation than the consented industrial scheme), that the new access arm and signalised pedestrian crossing are included, and that mitigation is proposed at the roundabout to increase capacity of the A453 westbound exit.²⁶ To the extent that answers the Council’s Deadline 4 concern that the Finger Farm development had not been included at all (D4 §18.5(i)), the Council acknowledges it candidly and welcomes it.

19.2 Three matters nonetheless remain, and the Council frames them narrowly. First, the assertion that the roundabout “will operate better with EMG2 and mitigation in place” is stated rather than evidenced to Interested Parties; the Council asks that the Finger Farm VISSIM outputs, with EM Point included, be placed on the record so that the improvement can be seen and tested. Second, an office trip profile is not self-evidently the worst case for a roundabout that must accommodate 24/7 HGV movements; the Council asks the Applicant to confirm that the modelling captures the all-day and HGV operation of the corridor, not merely the office commuter peak. Third, the Parish Council’s Deadline 4 point about the physical constraint of the additional arm and the pedestrian-crossing signal stage on the scope for future signal-phasing mitigation (D4 §18.3, fourth bullet) is a geometric and operational point that is not answered simply by confirming that the arm is ‘in the model’; it should be addressed under the full cumulative load shown in Figure 1.

20. Model transparency as a precondition of resolution

20.1 A theme runs through Part 3: on point after point, the Applicant’s answer rests on modelling – the Junction 24 VISSIM, the PRTM sensitivity tests, the Finger Farm results, the airport assumptions – whose inputs, validation and methodology have not been fully disclosed to Interested Parties, and in EMA’s case have not been disclosed at all. Kegworth Parish Council does not have the resources to build a rival model and does not need to. What it and the Examining Authority require is the ability to see that the Applicant’s model meets the standard validation benchmarks and reflects the agreed scope.²⁷

20.2 The Parish Council therefore submits that disclosure of the relevant model files, the validation evidence (including flow and journey-time validation) and the agreed model scope, to Interested Parties, is a precondition of the Examining Authority being able to resolve the disputes in this Part. The Council notes that the Applicant has itself said that further VISSIM sensitivity

²⁶Applicant’s D5 Response, Appendix 7, response to Section 18: the consented Finger Farm employment development is included in the transport modelling as “EM Point” (worst-case office development, higher trip generation than the consented industrial development), together with the new site access arm and signalised pedestrian crossing (Uncertainty Log, Transport Assessment Appendix 8 [REP1-031 to REP1-050]); mitigation is proposed at Finger Farm to increase capacity of the exit onto the A453 westbound; and the traffic flow diagrams are at Appendix 7 of the 2023 PRTM Sensitivity Test Modelling Note [REP1-058].

²⁷DfT Transport Analysis Guidance Unit M3.1 (Highway Assignment Modelling) sets the validation benchmarks (for example flow validation by the GEH statistic and journey-time validation), and the scope and key parameters of a model are ordinarily fixed in a Model Specification Report / Option Assessment Report agreed with the approving authorities. Disclosure of the model and its validation is what allows those benchmarks to be checked.

work and the residual Strategic Road Network position, being developed with LCC, are to be submitted at Deadline 6; the Council reserves its position on that material until it has had the opportunity to consider it and asks that it be provided to Interested Parties in a form that can be independently checked.

21. Conclusions on traffic, cumulative impact and resilience

21.1 For the reasons in this Part, the D5 Response has not demonstrated that the highway and traffic impacts of EMG2 on the Junction 24 / Finger Farm corridor – and on Kegworth's access and amenity – have been adequately assessed or would be adequately mitigated. The Applicant substitutes agreement with National Highways for engagement with the technical case; defines away the cumulative impact by assessing EMG2 in scenarios that exclude the growth its need case depends on; represents airport growth by a 938-jobs proxy rather than a realistic number; leaves Junction 8 to fail by design; and has not addressed the resilience of a single fragile corridor carrying a national logistics cluster. Until these matters are resolved, and the underlying modelling disclosed, the Examining Authority cannot properly be satisfied, for the purposes of paragraph 116 of the National Planning Policy Framework, that the development would avoid an unacceptable impact on highway safety, nor that the scale, location and timing of the Junction 23A and 24 works are justified.

PART 4 – VIABILITY, HIGHWAY COSTS AND COMPULSORY ACQUISITION

22. New evidence: the National Highways cost dispute and the Gardiner & Theobald red rating

22.1 The Council's Deadline 4 case on viability was, of necessity, put on the basis that no cost evidence had been produced to confirm or repudiate its concern that the claimed circa 15.9% return did not reflect the full cost of effective highway mitigation (D4 §§21.3, 28.1, Viability summary). Since Deadline 4, evidence has entered the Examination record that substantiates that concern directly. The Council relies on it, and on the analysis of it in Prologis's Deadline 5 financial-viability evidence.

22.2 National Highways' own answer to Written Question 8.4.1 records that three financial matters remain in dispute between National Highways and the Applicant in relation to the highway works: the principle of a commuted sum for National Highways' adoption of new highway assets; the bond sum, where National Highways requires 200% of the value of the works (in line with other schemes) and the Applicant seeks 120%; and public liability insurance, where National Highways requires £50 million and the Applicant seeks £10 million.²⁸ National Highways states that, on the Applicant's terms, those costs would fall to National Highways and ultimately to the taxpayer.

22.3 Prologis's Deadline 5 evidence adds two further points. First, Gardiner & Theobald applied a 'red' RAG rating to the Junction 24 M1 works – the highest risk category. Second, the Applicant's viability witness includes a combined "s278/Bonds/Commuted Sums" allowance of £5,232,000 but provides no breakdown between those headings and no calculations, so it cannot be established whether the allowance reflects what National Highways requires or only what the Applicant is offering; if the latter, the final costs may be materially higher.²⁹

22.4 The significance of this evidence is that it converts the Council's Deadline 4 concern from an inference into a documented dispute. The very cost inputs that feed the viability appraisal – bonds, insurance and commuted sums on major Strategic Road Network works – are unresolved, are the subject of a red risk rating, and are, on the face of the Applicant's own figure, unbroken-down and quite possibly pitched at the Applicant's offer rather than National Highways' requirement. Table C summarises the dispute.

Table C – The National Highways / Applicant highway-cost dispute (Q8.4.1; Prologis D5)

Cost item	National Highways requirement	Applicant's position	Effect if Applicant's terms prevail
Bond sum	200% of value of works (as agreed on other schemes)	120% of value of works	Shortfall risk falls to NH / taxpayer
Public liability insurance	£50 million	£10 million	£40m cover gap on SRN works
Commuted sum	Required on adoption of new assets	Principle under negotiation	Unquantified future liability

²⁸ National Highways, answer to Written Question 8.4.1 (Deadline 4), recording the key points in dispute with the Applicant: a commuted sum (NH policy requires one where it adopts new highway assets; under negotiation); a bond sum (NH requires 200% of the value of the works, in line with other schemes; the Applicant seeks 120%); and public liability insurance (NH requires £50 million; the Applicant seeks £10 million). NH states that on the Applicant's terms the costs would fall to NH and ultimately the taxpayer and refers to its preferred protective provisions [RR-022].

²⁹ Prologis UK Limited, Financial Viability Assessment Expert Evidence – Second Report (Peter Roberts FRICS CEnv), Deadline 5, at paragraphs 5.54–5.57: Gardiner & Theobald applied a 'red' RAG rating to the Junction 24 M1 works; the Applicant's viability witness ("Mr Cottage") includes a combined "s278/Bonds/Commuted Sums" allowance of £5,232,000 without a breakdown between those headings or the underlying calculations, so it cannot be established whether the allowance reflects what NH requires or only what the Applicant is offering; if the latter, final costs may be higher.

Cost item	National Highways requirement	Applicant's position	Effect if Applicant's terms prevail
G&T risk rating (J24 works)	—	'Red' (highest risk)	Cost-increase risk flagged
's278/Bonds/Commuted Sums' allowance	Basis: NH requirement	£5,232,000 (no breakdown)	May reflect offer, not requirement → costs may be higher

23. The Applicant's viability defence still withholds the one thing requested

23.1 The D5 Response does not produce a revised appraisal. It says that the DCO 4.5 appraisal was "intentionally high-level and conservative, rather than definitive" and "just one illustration"; it concedes that variations to the income and cost inputs are "possible (and indeed likely)"; and it relies on its witness's contention that revenue upside and sale-cost savings from holding EMG2 as an investment will "more than offset any cost risks".³⁰

23.2 The Council makes three observations. First, the Applicant's own characterisation of its appraisal as conservative, non-definitive and 'likely' to require variation is itself an acknowledgement that the circa 15.9% figure is not a robust output on which the Examining Authority can place weight without more. Second, the assertion that revenue upside will more than offset cost risk is exactly that – an assertion – and it is now advanced against a factual background (Table C) in which the principal cost risks are not hypothetical but live and quantified in National Highways' favour. Third, and decisively, the Applicant still declines to do the one thing the Council asked for at Deadline 4 (D4 §26.1): to re-run the appraisal with the full, properly costed mitigation package and disclose the resulting return. An assurance that a scheme remains viable "even if increased highways and land acquisition costs are assumed" is not a substitute for showing the figure.

23.3 The Council therefore maintains its Deadline 4 request for a transparent, re-run appraisal, and submits that the recently disclosed cost dispute makes that request more, not less, necessary.

24. "EMG2-only, self-funded" versus "the queues are caused by other developments": an unresolved contradiction

24.1 Two statements in the D5 Response sit uneasily together. In answer to the Council's point that the Junction 24 mitigation appears to depend on a wider, unconsented consortium scheme, the Applicant says the Junction 24 works are "to accommodate the EMG2 development only", will be "funded by the Applicant", and that EMG2 is "not reliant on any wider schemes". In answer to the queue-onto-mainline point, the Applicant says the residual off-slip failure is caused by the other developments – the Freeport sites, draft Local Plan growth and Ratcliffe – whose mitigation is not modelled.³¹

³⁰ Applicant's D5 Response, Appendix 7, response to Section 25: the DCO Scheme appraisal in Document DCO 4.5 was "intentionally high-level and conservative, rather than definitive" and "just one illustration"; "it is possible (and indeed likely) that there might need to be variations to the various income and cost inputs"; and the Applicant's witness contends that revenue upside and sale-cost savings (from holding EMG2 as an investment) will "more than offset any cost risks". The circa 15.9% return is at Document DCO 4.6, Summary of Viability Appraisal.

³¹ Applicant's D5 Response, Appendix 7: at the response to Section 24, "the mitigation at Junction 24 is proposed by the Applicants ... to accommodate the EMG2 development only and will be funded by the Applicant ... the EMG2 development is not reliant on any wider schemes"; contrasted with the response to Section 23 (see note above), which attributes the residual M1 off-slip queues to "multiple Freeport sites, draft local plan growth, and the remainder of the ... Ratcliffe on Soar development" whose mitigation is not modelled.

24.2 The Applicant cannot have it both ways. If the Junction 24 works are genuinely sized for EMG2 alone and are not part of a wider scheme, then the cumulative off-slip failure the Applicant attributes to the other developments is left unmitigated, and there is no coordinated mechanism (and no identified funding) to cure a safety problem on Kegworth's doorstep. If, on the other hand, the Junction 24 works are in truth a component of, or contribution towards, the wider consortium scheme recorded by National Highways in TN04 (as the Council understood at Deadline 4: D4 §§17.5, 24.1), then the apportionment and deliverability questions the Council raised arise squarely: what share of the wider scheme's cost is EMG2's, on what basis, and is that wider scheme itself deliverable and funded? Either way, the Council's Deadline 4 requests (D4 §26.1(i)–(ii)) are unanswered.

24.3 The Council accepts the narrow point the Applicant makes on compulsory acquisition itself – that compulsory acquisition does not, of itself, reduce highway or land costs. That was not the Council's argument. The Council's argument, under section 122 of the Planning Act 2008, is that the compelling case in the public interest for compulsory powers must be judged on a viability picture that honestly reflects the full cost of the mitigation the scheme requires, and against a need case that (Part 1) is not made out and alternatives that (Part 2) exist. Where the need is not established, the alternatives are available through the plan-led route, and the cost inputs to viability are in live dispute, the public benefit said to outweigh the harm of expropriation is correspondingly diminished.

25. Conclusions on viability and compulsory acquisition

25.1 The costs of the highway mitigation at Junctions 23A and 24 are central, not peripheral, to the Applicant's case on viability and compulsory acquisition. New evidence on the Examination record shows those costs to be in live dispute, red-risk-rated, and – on the Applicant's own figure – unbroken-down and possibly understated. The Applicant continues to decline to produce a re-run appraisal reflecting the full costed package, and its own explanation of the Junction 24 works is internally contradictory. In those circumstances the Council submits that the Examining Authority and the Secretary of State cannot presently be satisfied that the statutory tests for compulsory acquisition are met, and that the Council's Deadline 4 requests for a transparent viability appraisal should be granted before the planning balance is struck.

PART 5 – CONCLUSIONS AND RECOMMENDATION

26. Overall conclusions

26.1 Drawing the four Parts together, the Council's position after the Applicant's Deadline 5 Response is as follows.

- **Need case is not made.** The Applicant relies on the Icen Study while declining to defend its methodology, deferring the Council's criticisms to a future Local Plan process; the demand driver behind the extrapolation has already normalised; the net, displacement-adjusted benefit of EMG2 (including the reported Maersk relocation) is unquantified; and on the Applicant's and NWLDC's own figures EMG2 meets only about 30% of the District's unmet need. The Examining Authority's own Deadline 5 questions confirm these as live issues.
- **Better alternatives exist and are deliverable through the plan-led route.** The Regulation 14(2)(d) defence is circular; the Applicant declines to answer for the Freeport provenance on which its case depends; the 'all three sites required' answer concedes that need is spread across multiple sites; and the Applicant has produced no evidence of the pre-application consideration of alternatives that the compulsory-acquisition Guidance requires. The EMA/Prologis scheme on part of the very same land shows that development can be delivered through normal applications, and some 70% of the unmet need falls to the emerging Local Plan in any event.
- **Traffic, cumulative impact and resilience are unresolved.** The Applicant substitutes agreement with National Highways for engagement with the technical case; assesses EMG2 in scenarios that exclude the growth its need case depends on; represents airport growth by a 938-jobs proxy; leaves Junction 8 to fail by design; concentrates a 24/7 national logistics cluster on a single fragile junction pair without any resilience assessment; and has not disclosed the underlying modelling.
- **Viability and the compulsory-acquisition case are not established.** The highway-cost inputs are in live dispute with National Highways (bonds, insurance and commuted sums), red-risk-rated, and unbroken-down; the Applicant will not produce a re-run appraisal; and its account of the Junction 24 works is internally contradictory.

26.2 Underlying all four is a single point. **The feature said to make EMP90 uniquely suitable – its Freeport status – was not the product of any planning site-selection exercise.** It resulted from a boundary adjustment made in early 2022 to meet a Treasury minimum-area threshold, with no published consideration of alternative parcels, and was reflected in the Local Plan only 'in principle' and only after the DCO had been submitted (Part 2; D4 §9). A designation of that provenance cannot be the driver for consent to a nationally significant infrastructure project and for the compulsory acquisition of land under section 122.³²

27. Recommendation to the Examining Authority

27.1 For the reasons set out in this representation and in the Deadline 4 Representation on which it builds, the Council respectfully invites the Examining Authority to find against the making of the Order in its present form, and in particular:

- to conclude that the case of need for development of this scale at EMP90 has not been demonstrated, and that on the Applicant's and NWLDC's own figures the need is capable of being met, and better tested, through the emerging NWLDC Local Plan and normal planning applications;

³²Section 122 of the Planning Act 2008 requires the decision-maker to be satisfied, among other things, that there is a compelling case in the public interest for the inclusion of compulsory acquisition powers in the Order.

- to conclude that the Applicant has not discharged the alternatives duties under Regulation 14(2)(d) or under the compulsory-acquisition Guidance, and that reasonable, less harmful alternatives – including delivery of part of the very site through the EMA/Prologis application – have not been properly explored;
- to require, before the Examination concludes, disclosure to Interested Parties of the highway model files, validation evidence and agreed model scope, and a re-run viability appraisal incorporating the full, properly costed mitigation package and the disputed National Highways cost items; and
- to conclude that, in the absence of a demonstrated need, of a lawful and evidenced consideration of alternatives, and of a viability and highway case that withstands scrutiny, there is no compelling case in the public interest for the compulsory acquisition powers sought.

27.2 The Council would welcome the opportunity to develop any of these matters at in-person hearings and also reserves the right to supplement or amend this representation in the light of the further material the Applicant has said it will submit at Deadline 6, including the further VISSIM sensitivity work and the residual Strategic Road Network position being developed with Leicestershire County Council.