

SECOND REBUTTAL

of:

MR ALEXANDER EDWARD KINGTON

On behalf of:

SEGRO (PERIVALE PARK) LIMITED

In relation to:

**THE MAYOR'S OFFICE FOR POLICING AND CRIME (PERIVALE) COMPULSORY PURCHASE
ORDER 2020**

Date:

14 SEPTEMBER 2021

1 DETAILS OF WITNESS, ROLE AND RESPONSIBILITIES

Personal Introduction and Qualifications

- 1.1 My name is Alexander Edward Kington. I am a Vice President at Altus Group ("**Altus**").
- 1.2 I have described my role and responsibilities at Altus Group in my Rebuttal Proof of Evidence submitted in these proceedings on behalf of SEGRO, dated 4 May 2021 (my "**First Rebuttal**").
- 1.3 I have prepared and previously submitted an Updating Statement in relation to these proceedings, dated 6 August 2021 (my "**Updating Statement**").
- 1.4 This Second Rebuttal should be read together with my First Rebuttal and Updating Statement. For ease, I have adopted terms in this Second Rebuttal, which I defined in my First Rebuttal and Updating Statement.

2 SCOPE OF REBUTTAL

- 2.1 This Second Rebuttal relates to the Supplemental Proofs of Evidence dated 6 August 2021, which have been submitted on behalf of MOPAC in these proceedings.
- 2.2 Section 3 of my Second Rebuttal provides:
 - (a) my response to the Supplemental Proof of Evidence provided by Mr. Simon Warren dated 6 August 2021; and
 - (b) an update in relation to correspondence with Mr Warren since the submission of his Supplemental Proof of Evidence, principally:
 - (i) an email which Mr Warren sent to me on Friday 6 August 2021, immediately following submission of my Updating Statement (which I attach to this Second Rebuttal at **Appendix 1**);
 - (ii) my response to Mr Warren's above email dated 10 August 2021 (which I attach to this Second Rebuttal at **Appendix 2**);
 - (iii) an email which Mr Warren sent to me on Friday 13th August 2021 (which I attach to this Second Rebuttal at **Appendix 3**; and
 - (iv) my response to Mr Warren on Friday 27th August 2021 (which I attach to this Second Rebuttal at **Appendix 4**).
- 2.3 Section 4 of my Second Rebuttal sets out my conclusions.
- 2.4 At Section 5, I make various declarations.

3 RESPONSE TO SUPPLEMENTAL EVIDENCE SUBMITTED BY SIMON WARREN DATED 6 AUGUST 2021 AND UPDATE IN RELATION TO CORRESPONDENCE

3.1 Freehold Valuation

- (a) Mr Warren's Supplemental Evidence makes a number of observations in relation to the valuation of the freehold of the Order Land. I note that Mr Gomez-Baldwin in his Second Rebuttal addresses the errors and incorrect assumptions made by Mr Warren.
- (b) It is my understanding that Mr Warren does not specialise in investment valuation matters and yet does not appear to rely on valuation advice obtained from a suitably qualified and recognised valuation expert. I would therefore regard Mr Warren's opinions in relation to freehold valuation matters as non expert ones to which only limited weight should be attached.
- (c) In his email dated 13 August 2021, Mr Warren stated that "*[MOPAC's] clear preference is to purchase the freehold but as is self-evident from the below and from our Inquiry evidence you and your clients are not willing to engage on [sic] discussions to sell despite all our attempts to get you to engage*".
- (d) I was particularly surprised by Mr Warren's frank statement, as this marked a significant change in the case being advanced by MOPAC which had previously provided detailed evidence that MOPAC wished to secure a long lease of the Order Land rather than purchase it. On 27th August I replied to Mr Warren that "*SEGRO has engaged on MOPAC's preference as stated in its case up until now (i.e. a long lease). SEGRO has not enthusiastically engaged in freehold sale discussions because they do not want to sell the freehold and the offers made by MOPAC have fallen so far short of market value that they cannot reasonably be considered as fair or reasonable attempts to negotiate*."
- (e) In his Supplemental Evidence Mr Warren states "*SEGRO is merely aggressively pushing MOPAC towards entering into leases of the Order Land as it suits its investment strategy and promises to shareholders*". I find it extraordinary that he refers to SEGRO as acting aggressively especially given it is MOPAC which is seeking to acquire SEGRO's land compulsorily. MOPAC requested a long lease and SEGRO are an investor that has only relatively recently purchased the property so of course they want to retain ownership. It is correct that SEGRO objected and continues to object to a CPO of its land and at an earlier point (i.e. soon after its purchase of the land) stated it had its own redevelopment ambitions for the land. SEGRO has however been able to consider matters and has altered its redevelopment plans and sought to find a solution which accommodates MOPAC as well as enabling SEGRO to keep its land. SEGRO's position cannot be seen as aggressive and throughout negotiations, they have sought to accommodate MOPAC's many and various leasehold demands.

3.2 Lease Terms

- (a) In his Supplemental Evidence and in his emails dated 6 August 2021 and 13 August 2021, Mr Warren highlights what he considers to be the principal points between SEGRO and MOPAC in relation to the terms for the grant of a long lease. I have set

out below my responses to those issues, in order to bring the latest position to the Inspector's attention.

(i) **Right to Renew**

- (A) Mr Warren notes at paragraph 4.3.1 of his Supplemental Evidence that MOPAC "*need longer than guaranteed 15 plus 15-year leases (i.e., 30 years) so as to ensure the long-term delivery of MOPAC's VRES operations to London. There will be even less land and property opportunities available in 30 years' time than what is available at present. MOPAC need a permanent solution rather than delaying the issue until such time as any leases that may be agreed expire*".
- (B) I do not find any reference in the evidence previously submitted on behalf of MOPAC, whether in witness Proofs of Evidence, or MOPAC's Statement of Case, which supports an alleged need for in excess of thirty years – on the contrary, MOPAC has in recent times sought much shorter terms of 3 and 10 years (please refer to Mr Warren's Proof of Evidence paragraphs 5.2 and 5.3) which were deemed adequate for MOPAC's short-term and long-term needs respectively. These are new assertions on behalf of MOPAC and not supported by evidence hitherto submitted to the Inquiry.
- (C) Furthermore, it is simply incorrect, as MOPAC claims, that there are no opportunities to acquire alternative sites or that "*There will be even less land and property opportunities available in 30 years' time than what is available at present.*" In Mr Gomez-Baldwin's Proof of Evidence and Appendices dated 20 April 2021, a number of sites in North-West London were described which serve to demonstrate that properties which broadly match MOPAC's requirements had indeed come to the market, during the period MOPAC/Knight Frank had been searching. And yet MOPAC do not appear to have considered any of these opportunities or others like them. In my First Rebuttal (at paragraph 6.4) I concluded that "*in my opinion, plenty of industrial sites are marketed for ongoing industrial uses and in my view, this will continue in future – both in North-West London and nearby. I am confident opportunities will present themselves which are suitable for MOPAC's requirements*". Mr Warren has not disagreed with this conclusion in his Supplemental Evidence.
- (D) Properties will continue to trade in London in the next thirty years, even if they are not cleared and vacant sites. Thirty years is a very considerable amount of time during which to search for alternative sites. The longer the search period the more the likelihood finding one, particularly if MOPAC and Knight Frank adopt a more proactive approach than evidenced to date. In addition, in undertaking a search for alternative sites on behalf of MOPAC, it appears that Mr Warren looked for (open)land only, not sites with income generating buildings that could provide vacant possession in a reasonable time period,

which I considered would have opened up substantially more opportunities.

- (E) In my email dated 27 August, in respect of the latest request for a lease with perpetual renewal, I reminded Mr Warren that perpetual rights to renew leases do not work in law and pointed to my explanation which I set out in an email dated 10 August 2021 and on 16 July 2021. I further advised Mr Warren that MOPAC has in recent memory sought leases of 3 and 10 years, prior to SEGRO's offer of a 30 year (15 years' renewable) lease.
- (F) In my correspondence with Mr Warren, I further sought to offer MOPAC some degree of comfort in relation to its ability to terminate the breaks in the proposed long leases "*SEGRO is not proposing any Tenant breaks but would be pleased to engage with MOPAC if it has particular concerns to raise. I have said previously that I'm confident SEGRO would be open to discussing a surrender as and when MOPAC are in a position to relocate.*" This would provide MOPAC with flexibility whereby it would benefit from a minimum of thirty years' occupancy of the Order Land, but, if it finds alternative premises during the term, or needs less land, or wished for any other reason to terminate its lease, MOPAC can take comfort that in all likelihood SEGRO would be willing to take an early surrender of MOPAC's leases.

(ii) **Rent**

- (A) Mr Warren sets out the parties' positions on rent at paragraph 4.3.2 of his Supplemental Evidence.
- (B) Mr Warren states at paragraph 4.4.2 that "*Under the Landlord and Tenant Act 1954 on a standard lease renewal, all tenant improvements would be disregarded in assessing the rent at lease renewal. My view is that SEGRO have not reflected the improvements made by MOPAC in the rent they are seeking.*" Mr Warren is wrong. Under the 1954 Act, any improvement carried out by a tenant is disregarded for the purposes of setting rent. However if the improvement was carried out as a result of an obligation owed to its immediate landlord, such improvement is not disregarded. The works to which Mr Warren refers were undertaken pursuant to the original Agreement for Lease and therefore the works to which Mr Warren refers can be "regarded" for rental purposes. To be clear, SEGRO has taken the improvements into account.
- (C) In his email dated 13 August 2021, Mr Warren refers to 'rent', 'rent free', 'option to renew' and 'pre-emption' as the key issues outstanding and states "*...there has been no movement on any of these points since your initial offer in May*". It is incorrect to state there had been no movement on 'rent' s . In fact Mr Warren acknowledged to me in our meeting on 1 July that SEGRO had indeed already improved on the

initial terms provided to MOPAC (at their request), effectively 'negotiating against themselves'. Furthermore, I have seen no movement or attempts to justify his rental position from Mr Warren. I have provided building and open storage letting evidence that justifies SEGRO's position. Indeed to further enforce the reasonableness of its approach, SEGRO have said that to get the lease renewals settled prior to the Inquiry, they are prepared to honour the rent proposal on unit 16 despite significant stronger rental evidence

- (D) However, in my email to Mr Warren dated 27 August 2021, I sought to cut through the detail to get to the critical concerns. Although SEGRO considers its rent proposals to be fair, reasonable and justified, I proposed to Mr Warren that *"to avoid debate and to remove any lingering question as to whether the lease offer that SEGRO has made is fair and therefore a genuine alternative to CPO, SEGRO proposes that the rent could be set by an independent third party expert. The question of rent would therefore be out of both parties' hands; and the independent expert would set the rent at what they considered to be the open market rent, based on representations put forward by landlord and tenant."*
- (E) Whilst it would be preferable to negotiate the rents with MOPAC, I consider that a reference to an independent third party would remove any and all residual concerns that MOPAC could reasonably have in relation to what constitutes a market rent and what works should be disregarded (if any).. At the time of writing I have still had no acknowledgement of or response to the above.

(iii) Rent Free Period

- (A) In my opinion, a new 15 year lease of a building to a tenant with a good covenant might warrant a 12-15 month rent free period in order to reflect fit out time and incentive to enter into the lease. Whilst such rent-free periods might be expected on the lease of a building, rent free periods in relation to open storage areas are very rarely as long, if indeed they are granted at all. This is clearly because there is no real fit out and outlay normally required.
- (B) Rent-free periods are also far less frequently granted on lease renewals because in such cases the tenant is already in occupation and will have fitted out the premises. Where a landlord offers a rent-free period this would most likely form part of a negotiated settlement. For instance, a landlord may be prepared to offer a rent-free period if this helps them to achieve a target headline rent or a tenant may want such a period to help with short term cashflow / planned building improvement expenditure. In my opinion, a Court will seek to settle the rent, taking into account open market rental evidence discounted to reflect any rent-free period.

- (C) I have made clear to Mr Warren, that the independent third party would determine whether a rent-free period should be granted and in my opinion they will most likely take the same approach as a Court i.e. to grant no rent-free period.

(iv) **Pre-Emption Flexibility**

- (A) At paragraph 4.4.4 of his Supplemental Evidence, Mr Warren states, *"MOPAC have requested that if SEGRO wishes to sell or transfer the Order Land at some time in the future, MOPAC is to be given the right to match the price paid by the purchaser and purchase the Order Land. This request has been rejected by SEGRO"*.
- (B) I consider this to be an extremely unusual request from a prospective tenant and as I explained to Mr Warren in my email dated 10 August 2021, I do not consider that a freeholder, in the open market, would willingly offer this to any tenant. SEGRO offered to keep MOPAC abreast of its plans to sell the Order Land (it has none, I understand). In his response to me, dated 13 August 2021, Mr Warren stated that SEGRO's offer gave no certainty or legal security.
- (C) In my email dated 27 August 2021, I stated that *"SEGRO recognises MOPAC's concern and will therefore offer a right of pre-emption to MOPAC in the event that SEGRO sells the Order Land. The pre-emption would not apply in the event that SEGRO sold the Perivale Park Estate, including within which the Order Land. However, please do not interpret this offer as a suggestion that SEGRO has any intention in the short, medium or long term of selling its asset – SEGRO is a long-term investor and is offering the pre-emption because MOPAC has requested this and SEGRO is willing to accommodate this in order to find a leasehold solution prior to Inquiry."*
- (D) I have had no response from Mr Warren to my offer, which addresses one of Mr Warren's four "key issues" in his email dated 13 August.

(v) **Flexibility**

- (A) In his email dated 6 August 2021, Mr Warren explained that one of the *"key lease points that remain outstanding" related to "Flexibility and assurance in any lease that SEGRO will not in any way oppose, delay or hinder MOPAC's and any permitted occupiers development, use including any necessary alterations to the Order Land necessary to enable MOPAC and the MPS and/or other permitted occupiers to deliver its services and meet its operational objectives including making any planning applications in this regard with no objection from the landlord"*. Mr Warren did not raise flexibility as a concern in his Supplemental Evidence and yet it has been included in subsequent emails as one of MOPAC's concerns.

- (B) In my email dated 10 August, I invited Mr Warren to re-read my comments made in previous email correspondence, which I consider addressed the point. Mr Warren then asked me, in his email of 13 August to "*update the leases so there is no confusion on the lease terms and flexibility you are offering*".
- (C) Having not received any comments from MOPAC on SEGRO's draft leases (sent to MOPAC by Mr Gomez-Baldwin on 26 May 2021), I felt it entirely unreasonable for MOPAC to request their redrafting. It felt like this was a tactic to prevent progress at SEGRO's expense. Accordingly, I reiterated SEGRO's position in my email dated 27 August 2021, "*MOPAC has requested flexibility on alterations so that it can react to operational needs. SEGRO is content in principle with a wider alterations clause and we have already confirmed to you that SEGRO is comfortable with MOPAC's request to be able to change use and carry out relevant alterations subject to compliance with relevant planning requirements.*"
- (D) I have had no response from Mr Warren to my proposal.

3.3 Redevelopment

- (a) At my meeting with Mr Warren on 1 July, I explained that SEGRO were committed to agreeing new leases with MOPAC and they had turned their development focus to elsewhere on the Perivale Park estate. In his email dated 13 August Mr Warren instead of welcoming this requested that SEGRO "*...share drawings and plans showing your current development plans for the estate...*"
- (b) In my email dated 27 August I explained that this was '*...a distraction and unnecessary. The proposals are in their infancy and do not affect the Order Land. We would much prefer MOPAC to focus its attention on lease terms...*'. The plans remain in their infancy but the critical point is that SEGRO have listened to MOPAC and are accommodating its requirements whilst considering redevelopment elsewhere. It is important to recognise that redevelopment elsewhere on the Perivale Park involves the demolition of older, but nevertheless still functioning and income-generating buildings, and agreeing compensation under the Landlord & Tenant Act 1954 with two tenants. Clearly this is not as attractive as developing on a cleared site such as the Order Land but nevertheless SEGRO have taken the decision to move on and the various lease agreements proposed provide ample evidence of SEGRO's commitment to allowing MOPAC to continue undisturbed for many years as a very long term (and protected) tenant.

4 SUMMARY AND CONCLUSIONS

- 4.1 Mr Warren appears to indicate in his Supplemental Evidence and subsequent emails, that MOPAC considers it to be best for MOPAC to 'push on' with the CPO on the basis that acquiring the freehold is MOPAC's 'preference'. This approach is flawed. First, it is the opposite of the position that MOPAC took in the evidence presented at the beginning of this Inquiry (i.e. that it preferred a long lease) and it has offered no real explanation for the change in direction. But,

more fundamentally, an acquiring authority's 'preference' should not come into play, particularly where those preferences have changed at the 11th hour and without justification. My understanding is that - an acquiring authority such as MOPAC must demonstrate that CPO is a last resort ie that it has exhausted available non-CPO solutions to its problem, no matter what its personal 'preferences' might now be.

4.2 Mr Warren, on behalf of MOPAC, has failed to engage in any meaningful way in leasehold negotiations. Having submitted his Supplemental Evidence to the Inspector, summarising the key issues as he saw them, he then decided to promote an additional issue (flexibility regarding alterations). Mr Warren has not provided any rental evidence to justify his position which is the minimum expected if a party was serious about finding agreement through negotiation.

4.3 In summary Mr Warren highlights the following as being reasons why MOPAC rejects the long lease offers made by SEGRO:

- (a) The 30-year lease term is 'too short'
- (b) The parties cannot agree an appropriate rent;
- (c) The parties cannot agree a suitable rent free period;
- (d) MOPAC wants a right of pre-emption in the event SEGRO sells the Order Land; and
- (e) MOPAC wants flexibility in relation to alterations.

4.4 As can be seen from my emails to Mr Warren, SEGRO has addressed each of the above points where possible and made substantial concessions. SEGRO has been fair and considerate and made a number of concessions which no landlord would reasonably be expected to offer if this were a regular lease negotiation not under threat of compulsory acquisition. By contrast MOPAC has either responded to SEGRO's concession and offers by being obstructive or has failed to respond at all.

5 DECLARATIONS

5.1 In accordance with the requirements set out at PS5.4 (i) RICS Practice Statement and Guidance Notice entitled "Surveyors acting as expert witnesses 4th edition" I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

5.2 In accordance with the requirements set out at PS5.4 (ii) RICS Practice Statement and Guidance Notice entitled "Surveyors acting as expert witnesses 4th edition" I confirm as follows:

- (a) I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.
- (b) I confirm that I understand and have complied with my duty to the Inquiry as an expert witness which overrides any duty to those instructing or paying me, that I have given

my evidence impartially and objectively, and that I will continue to comply with that duty as required.

- (c) I confirm that I am not instructed under any conditional or other success-based fee arrangement.
- (d) I confirm that I have no conflicts of interest.
- (e) I confirm that I am aware of and have complied with the requirements of the rules, protocols and directions of the Inquiry.
- (f) I confirm that my report complies with the requirements of RICS - Royal Institution of Chartered Surveyors, as set down in the RICS practice statement Surveyors acting as expert witnesses.

Signed

A handwritten signature in cursive script that reads "Alex Kington".

Dated **14 September 2021**

Alex Kington

APPENDIX 1

From: Simon Warren <Simon.Warren@knightfrank.com>
Sent: Friday, August 6, 2021 5:19 PM
To: Alex Kington <alex.kington@altusgroup.com>
Subject: RE: MET POLICE- PERIVALE

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Dear Alex

Thank you for your note below which has clearly been not been written by you! As stated previously my role and instructions are merely to investigate, negotiate and report on the possibility of a lease/s

Your comments below will I am sure be dealt with by the various MOPAC witnesses in the supplementary proofs we are lodging today

It seems we are no further forward with the key lease points that remain outstanding namely

1. Rent and Rent Free Period of the Building and the Land
2. The ability to renew the lease after 30 years
3. The right of pre-emption for MOPAC to purchase should SEGRO wish to sell/transfer the site
4. Flexibility and assurance in any lease that SEGRO will not in any way oppose, delay or hinder MOPAC's and any permitted occupiers development, use including any necessary alterations to the Order Land necessary to enable MOPAC and the MPS and/or other permitted occupiers to deliver its services and meet its operational objectives including making any planning applications in this regard with no objection from the landlord

I can confirm that unless there is movement on these four key leasing points our instructions are to progress with the CPO Inquiry. Therefore could you please respond with SEGRO's final position regarding the above points of the lease/s by Wednesday 11th August, so that if an agreeable proposal is given leases can be entered into prior to the start of Inquiry. I can confirm any last minute offer made immediately before Inquiry will be too late and in this event we will be requesting the Inspector proceeds as we cannot countenance any further delay or risk safeguarding policing in London. We reserve the right to show this email and make reference to it at Inquiry in the event that a further last minute offer is made by SEGRO.

Regards

Simon

APPENDIX 2

From: Alex Kington <alex.kington@altusgroup.com>
Sent: 10 August 2021 21:09
To: Simon Warren <Simon.Warren@knightfrank.com>
Subject: [EXTERNAL] Re: MET POLICE- PERIVALE

Dear Simon

You must form your own view on what the behaviour of a reasonable public body seeking to exercise compulsory acquisition powers – and indeed how those who represent it – looks like. My view is that a body seeking to exercise such powers should use every sinew of effort to agree matters with affected parties at all times up to the start of the Inquiry (and beyond) and will be judged on that basis. Accordingly, there is no justification in your email for the imposition of a meaningless and arbitrary deadline of 11 August for our response, nor for your decision to effectively down-tools thereafter. The Inquiry is currently scheduled to recommence on 1 September and MOPAC should, acting reasonably, look to do whatever it takes to reach agreement by then, not stop decide to stop three weeks before and the time it may take to enter into a formal lease is quite evidently not a bar to negotiations which appears to be your view.

I note that you took 6 working days to respond to my email of 29 July, yet you require SEGRO to respond within 3 working days. You might note that I am responding within 2 days. There can be no basis whatsoever to support any suggestion that SEGRO and I have failed or are failing to do everything we can to move quickly in the hope that terms can be agreed and the Inquiry avoided.

In relation to your points, SEGRO's position is clearly stated as follows:

1. Rent and rent free period –

- a. Whilst there is undoubtedly more evidence for buildings than there is for land, I have provided evidence that I believe clearly shows the rent proposed to MOPAC is in fact lower than market value. The fact the sites are smaller does not mean the evidence is not relevant (as I believe is your intention). In my opinion quantum has already been applied to reflect the larger site. What must not be missed however is the value that could be applied to the long term lease SEGRO are offering to MOPAC, which is unique and I am certain is

incomparable. We have not sought to reflect this in the rent to date however. To further our position we are looking into obtaining Independent Expert advice to support our proposal.

- b. In our meeting on 1st July I said I'd keep you updated on any leasing activity at Perivale Park. You are aware that the lease on unit 1 (35,793 sq ft GEA) was recently surrendered. We were instructed by SEGRO to commence marketing in April 2021. We recently instructed solicitors on a 10 year lease with a mutual break option on expiry of 5th year (to allow the Landlord flexibility to redevelop) at £18 per sq ft with 4 months rent free. Unit 16 is smaller than unit 1 and benefits from higher eaves and a secure yard. Given SEGRO's desire to urgently agree lease terms and avoid the Inquiry, at this time they are prepared to honour their previous proposal (£13 per sq ft & 5 months rent free) despite unit 1 terms and off-estate evidence clearly supporting a substantially higher rent (this is despite the fact that, as my email below explains, rent free on lease renewal is not the 'norm'). It's worth noting there was another tenant prepared to pay £18psf on unit 1.
- c. SEGRO has explained why the works undertaken pursuant to the Agreement for Lease works should be disregarded – please refer to my Updating Statement. MOPAC's position appears to be simply "our lawyers have told me to ignore it", with no further justification. Until MOPAC explains why it should be ignored, SEGRO will not do so. MOPAC has asserted that of the £1 million cost of the works, the (then) Landlord contributed £25,000. Notwithstanding that this point is now moot given the legal position, you have steadfastly refused to provide evidence of this.

2. Renew after thirty years

- a. As you well know MOPAC would have a statutory right to renew the lease(s) at the end of the thirty year term.
- b. Absent any legal basis or authority to support it MOPAC has nevertheless proposed a perpetual renewal mechanism. Not only is this a unique proposal in my experience I understand it is unlikely to work in law – I have explained this in my email dated 16 July 2021 to you, but I repeat that here:

As you will no doubt know, the maximum a court can provide on a 54 Act renewal is 15 years, so we are already going well beyond that by giving MOPAC the potential of a guaranteed 30 year term, inside the Act, so with the prospect of a further 15 years.

- In terms of a right to renew in perpetuity, we're surprised that you've proposed that – the advice we've had from the lawyers is that there's a very

real risk that this would make the right to renew void. I'm no expert, but I've copied from their advice:

"It's not clear whether a right to renew for a total period exceeding 60 years from termination of the existing lease will be void (section 145 and paragraph 7(2), Schedule 15, LPA 1922), as the point has not been tested. But, Dray and Rosenthal, Barnsley on Options (Sweet & Maxwell, 6th ed, 2016), paragraph 7-016, poses the question whether successive renewals, each for less than 60 years, but which together amount to more than 60 years will be void – and the authors conclude that "...in the absence of authority on the point, there is a real risk that the statute would be construed purposively and such provisions for renewal held void"."

Hence, it would seem a very big risk to go further than we are offering (which again, we'd reiterate, is a much better position than you'd expect to get from a 54 Act renewal).

- c. It is well established that 30 years is a long lease, particularly for a site such as The Bilton Centre. The lease term is well in excess of what MOPAC has previously sought and held here and elsewhere and is double the period that MOPAC could legally expect (as a maximum) via the 1954 Act renewal process.

3. Pre-emption

- a. No freeholder, in the open market, would willingly offer any party a pre-emption right, let alone to an occupational tenant on a site such as this.
- b. SEGRO has committed to you to keep MOPAC abreast of any plans to sell the site. You know the strength of SEGRO's reputation and how customer-centric it is and you can be assured that SEGRO will honour the commitment.

4. Flexibility

- a. May I invite you to re-read my comments at paragraph 4.7(d) of my email dated 29 July, which address this point and give you exactly the comfort that you are seeking.

I look forward to hearing from you.

Regards
Alex

APPENDIX 3

From: Lizzie Goyder <Lizzie.Goyder@knightfrank.com>
Sent: Friday, August 13, 2021 5:51 PM
To: Alex Kington <alex.kington@altusgroup.com>
Cc: Simon Warren <Simon.Warren@knightfrank.com>
Subject: RE: MET POLICE- PERIVALE

CAUTION: This email originated from outside this organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.

Dear Alex,

Simon Warren is on leave today and has asked me to send you the below in his absence.

Kind regards,

Lizzie

Dear Alex

Thank you for your note below and for your more measured response compared to the unacceptable tone and contents of your email of 29 July below.

Clearly we are at a crossroads:

- 1) Our clear preference is to purchase the freehold but as is self evident from the below and from our Inquiry evidence you and your clients are not willing to engage on discussions to sell despite all our attempts to get you to engage.
- 2) In respect of a lease it is self evident that a lease is SEGRO's preferred option and you are attempting to push us into this. Whilst there has been some movement in some of the more peripheral lease terms since May there does not seem to have been any substantial change in the key issues namely:
 - a) Rent
 - b) rent free
 - c) option to renew
 - d) pre emption

These are key issues as far as my clients are concerned and there has been no movement on any of these points since your initial offer in May. In the absence of this we are best pushing on with the CPO Inquiry. There is no point pushing every "sinew" to negotiate if we are meeting a firm brick wall from SEGRO on these points.

In terms of the timeline we have imposed of 11th August, this has merely been done to focus the parties to a conclusion and to avoid you introducing a later revised leasing offer to us on the dawn of Inquiry and to use this as an excuse to further delay the Inquiry. We are putting you on notice if you do this we will flag this to the Inspector as unacceptable conduct. We want to avoid the farcical and contradictory position we were at the date of the opening of the Inquiry whereby your official position was that you were objecting to the grant of a new lease under the grounds of development and at the same time were offering us a lease. We note during and following adjournment of the Inquiry you realised this flaw in your position and removed the official objection under redevelopment but our advice is you could still change your mind on this. You now tell us redevelopment is focused elsewhere on the estate and I would ask you to share drawings and plans showing your current development plans for the estate with both ourselves and the Inspector and for you to confirm the planning status of these.

In respect of the other points below

- Rent and Rent Free Period: I note your comments below - in my experience a longer lease tends to come with a lower rent and a larger rent free period (particularly where this is to a substantial covenant like MOPAC) as it increases the investment value to SEGRO. You seem to be arguing the opposite without any evidence to support your views
- In respect of the deal apparently lined up at Perivale Park this you admit has yet to transact so is not evidence. As your clients will be well aware from their experience in marketing Sceptre in Park Royal, deals can be agreed that never transact....In any event if you are offering 4 months rent free for a 5 year lease surely this supports min 12 months on a 15 year lease without break, not the 5 months you are offering?
- You refer to an independent assessment of the rent not being ready. Are you proposing to introduce this to the Inquiry? If so, when? At rebuttals a few days before Inquiry or at the Inquiry itself? In which case this seems very contradictory to the position you are arguing re us introducing "new evidence"? Please confirm your position here.

In respect of the works to the unit these can be dealt with in 2 parts:

- 1) The initial works carried out on MOPAC taking the unit in 2005. These were costed at £3.9M in 2005 and approximately £5.1M in today's money. I note your position is that the landlord paid for these (we can only find note of a £25,000 contribution from the landlord).
- 2) The works MOPAC did in 2010 which are covered and clearly shown in the Licence to Alterations. These were costed at £1.25M then (or c. £1.55M now) and included concreting the whole site to avoid flooding and significantly upgrading the site drainage systems.

As far as I am concerned the works in 1) would be arguably disregarded at any statutory renewal on the present evidence and in the works in 2) would also be disregarded as there is no dispute that MOPAC paid for them.

In my opinion these points are not being reflected by you in any change in the rent. This issue has been flagged to you since your previous offer in May and you have not changed your position since.

It seems simply wrong to us that we invest money in upgrading the site and we are being asked to pay a rent reflecting the improved condition of the site. Obviously if we acquire the freehold we can do works unfettered to the site as we see fit to meet MOPAC and VRES business needs in a rapidly changing world moving to electric vehicles which is likely to require new facilities. As the lease gets shorter it becomes financially difficult to justify works to the site (for example we are having to erect temporary canopies on site currently rather than invest in a permanent solution). A lease simply does not meet our business needs re investment to the site particularly when it can affect rent

- Renewal after 30 years: you have previously raised this point as a reason you cannot offer a lease past 30 years but the wording you use refers to 60 years? The inability to renew is a real issue to my client especially as you could object to a new lease after 30 years under the grounds of redevelopment which is what you did in 2021. A freehold means MOPAC are responsible for their own destiny which secures this important public service long term.

- Pre-emption right: your words about trusting SEGRO to keep us updated of their plans offer no certainty and have no legal security for MOPAC. We would remind you despite making an offer to purchase to Hermes they sold the property without telling us to SEGRO. SEGRO didn't consult with us as part of their due diligence on purchase and the first we knew about it was a press release from Alan Holland of SEGRO (again without consulting us) confirming that "the site offered medium term redevelopment potential" This does not seem to accord with your statement on a customer centric experience!

I would also remind you I personally told you prior to purchase (and SEGRO were aware from my letter to Hermes) that a CPO was being considered. Therefore they bought this property knowing the risk. I find it extraordinary they did not do their due diligence and speak themselves to MOPAC or myself to understand MOPAC's intentions prior to purchase.

- Flexibility: perhaps you could update the leases so there is no confusion on the lease terms and flexibility you are offering

In conclusion the last few emails don't seem to be making any progress on the red line leasing issues and therefore in absence of any change in your position we are better off progressing with the CPO.

Regards

Simon

APPENDIX 4

From: Alex Kington <alex.kington@altusgroup.com>
Sent: Friday, August 27, 2021 11:47 AM
To: Simon Warren <simon.warren@knightfrank.com>
Subject: Re: MET POLICE- PERIVALE

Dear Simon

Thank you for your email below. I appreciate your patience as I consulted with SEGRO and I trust you received my holding response on Monday 23 August.

The proposed compulsory acquisition of property should only occur where there is a compelling case in the public interest and an Acquiring Authority should expect robust challenge; to be held to the highest of standards; and to have to justify every step it takes. In that context, I do not accept your suggestion that my correspondence to you has been unacceptable in tone or content. I have represented my client professionally and will continue to do so.

You raise a number of points in your email of 13 August which I will seek to address below. I trust that you and your client are willing to accept the comments in positive spirit; and that you are prepared to consider them in good faith, with a view to seeking a genuine alternative to compulsory acquisition. In your message you rather surprisingly observed that MOPAC may be better off progressing with the CPO. I remind you that our roles here are not to secure what MOPAC might find more convenient or to take a certain path because others appear challenging.

Freehold Sale

I note the statement in your email that MOPAC has a "clear preference to purchase the freehold [of the Order Land]". As SEGRO has made clear in previous correspondence, this has not been MOPAC's case hitherto and it represents a material change in direction that is not supported by evidence. SEGRO has engaged on MOPAC's preference as stated in its case up until now (i.e. a long lease). SEGRO has not enthusiastically engaged in freehold sale discussions because they do not want to sell the freehold and the offers made by MOPAC have fallen so far short of market value that they cannot reasonably be considered as fair or reasonable attempts to negotiate.

Lease

That SEGRO is seeking to "push" MOPAC into a lease feels unnecessarily emotive in this context. However, it is no secret that SEGRO would prefer to lease, rather than sell, the Order Land. SEGRO has offered a generous proposal to MOPAC which represents a genuine alternative to CPO – in fact SEGRO has at times had to negotiate against itself, offering revised terms to MOPAC following the barest of verbal feedback on previous offers.

In your email, you note a lack of substantial progress on certain key areas and I am pleased to have the opportunity to present SEGRO's position on the issues which you raise throughout your message. We consider our proposals should satisfy MOPAC's concerns but welcome constructive dialogue with you.

1. Term – SEGRO maintains its position, offering a 15 year lease, renewable at MOPAC's election, and within the protection of the 1954 Act. We strongly feel that the lease term provides MOPAC with sufficient certainty along with time to find alternative premises. SEGRO is not proposing any Tenant breaks but would be pleased to engage with MOPAC if it has particular concerns to raise. I have said previously that I'm confident SEGRO would be open to discussing a surrender as and when MOPAC are in a position to relocate.
2. Rent – you asked about the advice that SEGRO is obtaining in relation to rent levels and when it might be available to the Inquiry. The advice has not been received yet and it may well be the case that Inspector would not find expert evidence on rental levels particularly helpful – not least as I suspect that MOPAC would find a way to argue against it, whatever its content. SEGRO considers that the rent that it originally proposed to MOPAC, and then subsequently reduced following feedback, is fair and reasonable and justified by the evidence I have provided. However, to avoid debate and to remove any lingering question as to whether the lease offer that SEGRO has made is fair and therefore a genuine alternative to CPO, SEGRO proposes that the rent could be set by an independent third party expert. The question of rent would therefore be out of both parties' hands; and the independent expert would set the rent at what they considered to be the open market rent, based on representations put forward by landlord and tenant. As you will appreciate, if the Court were to determine lease terms under the 1954 Act, rent would be set in a similar manner. Our preference has always been to agree terms by traditional negotiation well in advance of an adjourned Inquiry but given how far apart we are on rent (& rent free) along with limited land comparables, SEGRO feel the appointment of an expert now will settle the differences. In our view we have given on all other key terms fairly requested by MOPAC and we are now down to the rent and rent free.

3. Rent-Free - you note that in your experience a long lease tends to come with a lower rent and a larger rent free period (particularly where there is a substantial covenant). I agree that this is often the case for buildings, but there is no evidence to support this for long term lettings of hardstanding as freeholders do not tend to lease sites for long periods without breaks (I have covered this point with you in our meeting and subsequent correspondence). As suggested with the rent above, an independent expert could consider this and as I've stated previously, often no rent free is granted on a lease renewal.
4. Option to Renew – we have explained that a perpetual right to renew does not work in law. MOPAC has, in recent history, sought leases of 3 and 10 years prior to their request for a 15 + 15 year lease (with security of tenure) so SEGRO feels they are offering a lease term that more than meets MOPAC's needs.
5. Alterations - MOPAC has requested flexibility on alterations so that it can react to operational needs. SEGRO is content in principle with a wider alterations clause and we have already confirmed to you that SEGRO is comfortable with MOPAC's request to be able to change use and carry out relevant alterations subject to compliance with relevant planning requirements.
6. Pre-emption – SEGRO recognises MOPAC's concern and will therefore offer a right of pre-emption to MOPAC in the event that SEGRO sells the Order Land. The pre-emption would not apply in the event that SEGRO sold the Perivale Park Estate, including within which the Order Land. However, please do not interpret this offer as a suggestion that SEGRO has any intention in the short, medium or long term of selling its asset – SEGRO is a long-term investor and is offering the pre-emption because MOPAC has requested this and SEGRO is willing to accommodate this in order to find a leasehold solution prior to Inquiry.
7. Tenant works – I think we have made our position clear in this respect. In any event these matters go to rent, which we propose would be set by an independent expert.

In your email, you asked for the leases which SEGRO's solicitors prepared and which were sent to MOPAC on 26 May 2021 by SEGRO, to be updated to enable you to understand the flexibility that SEGRO has offered. MOPAC has not given any comments on those leases in the three months that you have had them and the issues here are not so complex as to only be understood in legal drafting. SEGRO will happily provide a further draft lease once MOPAC has confirmed satisfaction with the proposals in this email.

SEGRO is disappointed that you may consider that it may be best for MOPAC to 'push on' with the CPO – that does not seem to be a reasonable approach. I remind you that you and I have only had one meeting on lease terms, and that MOPAC failed to share its position on the long lease offer (made on an open basis in May, following WP long lease offers some time before that) in advance of that meeting. That is not negotiating fairly, and so it is disappointing that you suggest that SEGRO has been 'a brick wall' in negotiations. I say that SEGRO has been fair and considerate and made a number of concessions which no landlord would reasonably be expected to offer if this were a regular lease negotiation not under threat of compulsory acquisition.

Redevelopment

You have asked SEGRO to provide details of its redevelopment plans at Perivale Park and to share plans and drawings. This is a distraction and unnecessary. The proposals are in their infancy and do not affect the Order Land. We would much prefer MOPAC to focus its attention on lease terms rather than concern itself with what is happening elsewhere on Perivale Park. SEGRO has withdrawn its objection to a renewed leases under the 1954 Act and has offered MOPAC a long lease of thirty years with 1954 Act protection – that would indicate to any reasonable party that SEGRO has no plans to redevelop the Order Land

Next Steps

As you are aware, since you sent your email, the Inspector has set a revised Inquiry date. The parties have approximately two months in which to progress discussions and explore the possibility of reaching agreement on lease terms. I trust that MOPAC will engage in good faith – I confirm that SEGRO will do the same and will certainly not act as a 'brick wall'.

As ever, if you would like to meet to discuss the parties positions, I would be pleased to do so. Our last meeting was less productive than it could have been as I was not aware of MOPAC's position in advance. For a future meeting to have real value, I would need your response first please.

Regards

Alex