

## **The Mayor's Office for Policing and Crime (Perivale) Compulsory Purchase Order 2020**

**Rebuttals to Proof of Evidence Updating Statement  
Prepared by Alex Kingston of Altus Group on behalf  
SEGRO**

**Simon Warren, Partner at Knight Frank  
LLP, London**

**Logistics and Industrial**

**14<sup>th</sup> September 2021**

## Contents

- 1. DETAILS OF WITNESS, ROLE AND RESPONSIBILITIES**ERROR! BOOKMARK NOT DEFINED.
- 2. ADJOURNEMENT** ..... ERROR! BOOKMARK NOT DEFINED.
- 3. ENGAGEMENT WITH MR WARREN AT KNIGHT FRANK**ERROR! BOOKMARK NOT DEFINED.
- 4. SUMMARY AND CONCLUSIONS** ..... ERROR! BOOKMARK NOT DEFINED.

## **1. Details of Witness, Roles and Responsibilities**

- 1.1** I Simon Edward John Warren of Knight Frank LLP have reviewed the Proof of Evidence - Updating Statement prepared by Mr Alexander Edward Kingston.
- 1.2** I have described my role and responsibilities at Knight Frank in my Proof of Evidence submitted for this Inquiry.
- 1.3** For ease I have addressed Mr Kingston's statements made in his Updating Statement in the same numbered paragraphs of this Rebuttal to it.

## **2. Adjournment**

- 2.1** I have not commented on Mr Gomez-Baldwin Updating Statement.
- 2.2** I note that Mr Kingston states his instructions from Segro (Perivale Park) Limited ("**SEGRO**"), in respect of the acquisition of the freehold of the Mayor's Office for Policing and Crime's ("**MOPAC**") Vehicle Recovery and Examination Service ("**VRES**") Perivale site (the "**Order Land**") have been limited to negotiation of terms for a long lease. He has never had instructions from SEGRO to liaise with me over a freehold sale of the Order Land. It has been incredibly frustrating that offers to purchase and any attempts to negotiate the acquisition of the freehold have been completely rebuffed. SEGRO have merely pushed the case that suits their and their shareholders best interests, namely leases incorrectly stating that "this is MOPAC's preferred option". This is clearly not the current position.

### **3. Engagement with Mr Warren at Knight Frank**

**3.1** I requested a meeting with Mr Kington to discuss his leasing proposals. I thought it was important to explain face to face the history of the Order Land and the issues MOPAC faced as it was clear to me that SEGRO had not done their due diligence properly on the purchase of the Perivale Estate in respect of MOPAC's position. Furthermore, Mr Kington did not understand the extent of the issues, and the previous discussions with Hermes on the Order Land. I had had one short conversation with Mr Kington in June 2020 when he was advising SEGRO (on the acquisition of the Perivale Estate) before the Estate was purchased where I categorically told him MOPAC were considering a compulsory purchase of the Order Land. This fact clearly either was not relayed to SEGRO or if it was it was not considered seriously in their due diligence on the purchase. Most organisations purchasing a property would have done a full due diligence and engaged with MOPAC or their agents to understand the MOPAC position. I found it surprising that SEGRO did not contact me or MOPAC directly at the time given their obvious aspirations for developing the Order Land as detailed in their press release issued on the completion of the purchase. Other prospective purchasers of the Estate contacted me to ascertain MOPAC's intentions. If SEGRO had undertaken this elementary due diligence step they may not have been in the position they are now facing a compulsory purchase order and/or having to rewrite their business plans for the Perivale Estate to accommodate MOPAC. I have asked SEGRO to share their development plans for the Estate and the Order Land both the original plan and the current. This information has not been forthcoming from SEGRO and I think needs to be set out at the Inquiry.

**3.2** In paragraph 3.2 of Mr Kington's Updating Statement he sets out his recollections of the meeting I attended with him on Friday 1<sup>st</sup> July in which I was accompanied by Tom Adamson (from Knight Frank). The issues discussed at that meeting were:

a) Site Condition - As SEGRO was not party to the original lease in 2005 I set out the position relating to the condition of the Order Land as I understood it from my client at lease commencement in 2005. At that time it comprised a site with existing buildings which needed significant works including removal of buildings and foundations etc. I also detailed the resurfacing and drainage works completed to the Order Land in 2009 (under the Licence to Alterations in 2009) that would be categorically disregarded in setting the rent under any statutory lease renewal as tenant improvements. Whilst Mr Kington (at paragraph 3.2(a) of his Updating Statement) states many industrial/hardstanding sites are let in a similar condition and upgraded by the tenant during the term he also mentions (at paragraph 3.4 of his Updating Statement) that there is a lack of comparable evidence of comparable leases (I assume meaning long leases). Therefore the comparables he provides do not appear to reflect the circumstances that MOPAC are in. For example the MOPAC VRES site in Charlton was fully surfaced, fenced and all buildings refurbished at the landlord's expense prior to the original lettings and I am aware of other similar longer term lettings of storage land on a similar basis.

b) Value for Money - I disagree with Mr Kington's statement at paragraph 3.2(b) of his Updating Statement, that 15 years is "extremely long". Unfortunately, it hasn't proved long enough as on expiry the previous landlord Hermes and then SEGRO originally objected to the grant of a new lease for redevelopment necessitating the need for MOPAC to make the Compulsory Purchase Order. Whilst MOPAC have been offered a 15 year lease term plus 15 year lease on renewal by SEGRO, this is still not long enough as it does not allow MOPAC to invest in the Order Land. It is likely that new buildings and development will be needed to the site to meet the anticipated changes in MOPAC VRES needs. Developing a site which one does not own does not provide value for money for the taxpayer. Whilst Mr Kington mentions that SEGRO would take a surrender at any time should the site no longer be required (hence showing yet again their keenness to get

the site back to allow for a redevelopment as originally planned) we have seen no full proposals of how this would work. From the discussions I have been involved in for several years with the MPS I cannot see any need for MOPAC to vacate the Order Land in the foreseeable future. Indeed a CPO would not be being pursued unless there was a long term need for VRES at the Order Land. On exit of a lease MOPAC would have to undertake full dilapidation to the Order Land at extra cost. The value of any improvements made to the Order Land by MOPAC such as buildings would need to be written off as there would be no compensation for them and there would no asset for MOPAC to sell. For these reasons a lease does not provide value for money compared to a freehold acquisition.

- c) Alienation - I explained to Mr Kington at our meeting a long lease with a restricted alienation (i.e. MOPAC had to offer the lease back to SEGRO if it wanted to dispose of all or part of the Order Land) would be worth less than a lease that is freely alienable in whole or in part) and this is a basic valuation point that has not been reflected in the offers made to date. SEGRO have subsequently now stated they will remove this obligation but this is the position under the current leases which MOPAC are entitled to renew under anyway. Therefore this does not offer MOPAC anything other than the current lease position.
- d) Pre-emption - SEGRO have made it clear that they would not offer a pre-emption clause for MOPAC to purchase should SEGRO wish to sell all or part of the Perivale Estate. To avoid any misunderstanding and for the record MOPAC would only be interested in securing the freehold of the parts of the Estate it currently occupies (the Order Land) and not the whole Estate (as they don't need the 30 odd industrial units to perform their statutory functions). A pre-emption of part or a separate sale of part has not been offered by SEGRO despite the fact that the Order Land is separately accessed and is to one side

of the Estate and thus could be relatively easily separated off and sold from the rest of the Estate.

e) Rent Review - It is agreed the rent review level is 3% in the existing leases

**3.3** Mr Kington states in his Updating Statement at paragraph 3.3 that he is very disappointed with the delays which MOPAC had allowed to arise. But the reality of the delays have been due to SEGRO refusing to discuss the sale of the Order Land, opposing any new lease, and only changing their position on a short lease shortly before the start of the Inquiry. The further delays to the Inquiry timetable have been at their request trying to make the position meet their own requirements. It should be self-evident to them that the leasing scenario they appear to be trying to shoehorn MOPAC into to meet their original business plan of redeveloping the Order Land (and promises to their shareholders) on acquisition of the Perivale Estate in 2020 do not meet MOPAC's requirements for long term VRES facility service delivery. These are best delivered by securing the freehold interest in the Order Land which would allow unfettered long term use of and investment in the Order Land. Whilst it is agreed by MOPAC that a 15 year plus 15 year lease is more generous than a court would award on a lease renewal, these terms I would say have only been offered due to the alternative prospect of a compulsory acquisition and do not provide for the long term requirement.

**3.4** I note Mr Kington agrees there is a lack of comparable evidence for similar long leases of storage land and yet without evidence he is arguing that the tenant should pay more for the additional security the lease offers compared to shorter leases. If this approach were to be accepted (difficult to accept in the light of any compelling comparable evidence supporting this) this would of course just inflate the rent. This would not provide value for money over the long term of the lease to the taxpayer compared to a purchase of the site. It only assists SEGRO and their shareholders.

**3.5** My recollection of the closing of the meeting was that there were some fundamental points

that needed to be resolved before a lease could be considered

- 3.6** I note at paragraph 3.7 of Mr Kington's Updating Statement, that following the meeting he was expecting me to provide minutes and proposals. However, clearly post meeting I had to discuss the contents of the meeting with my clients and take their instructions. In the public sector decisions are not as quick as in the private sector. Nevertheless I was able to respond with MOPAC's instructions within 12 days.
- 3.7** I can confirm Mr Kington did write to me on Thursday 8<sup>th</sup> May with the landlords comments on what was discussed at the meeting. At that time I forwarded on the email to my clients with a response that I would get back to him after the weekend on Monday 12<sup>th</sup> July by which time I would hope to have got my clients feedback. I responded one day later on 13<sup>th</sup> July with what Mr Kington acknowledges (paragraph 3.8 of Mr Kington's Updating Statement) was a detailed response.
- 3.8** In paragraph 3.8 of Mr Kington's Updating Statement, he states that my proposal back to SEGRO was very far off what a landlord or court would award under the 1954 Act and had been designed not to reach an agreement. I do not believe this to be the case and my responses to his specific points are in paragraph 3.10 of this Statement below. Mr Kington's statement also fails to appreciate that the negotiations are not under the Landlord and Tenant Act but as an attempt to resolve compulsory purchase proceedings.
- 3.9** Paragraph 3.9 of Mr Kington's Updating Statement states that SEGRO conceded on some of the points in my email. However, none of the points SEGRO conceded on are substantial. The substantial points being a requirement for a long uninterrupted term to provide security of operations on the site, a pre-emption to purchase and rent and rent free period.
- 3.10** In relation to the more substantial points raised I comment as follows



Mr Kington Says	Mr Warren Responds
<p>The maximum term a court can provide on a 1954 Act renewal is 15 years, so SEGRO was already going well beyond that by offering MOPAC the potential of a guaranteed 30 year term inside the Act, so with the prospect of at least a further 15 years. I copied advice from SEGRO's solicitors that a right to renew in perpetuity may make the right to renew void.</p>	<p>The fact regarding a 1954 Act renewal are agreed. However, this is not a 1954 Act renewal this a compulsory purchase. It is not surprising when faced with a Compulsory Purchase the landlord has sought to offer a longer lease than a court can grant to show they are being "reasonable". However, as is evident throughout Mr Kington's Proof and Updating Statement SEGRO are developers and eventually they will want the Order Land for redevelopment. At the end of 30 year term, it is significantly likely that MOPAC will be squeezed out. A 30 year lease does not allow long term investment in the site and does not provide long term value for money. A freehold offers unfettered use of the site and the</p>

	ability to invest in the site to meet operational needs. SEGRO's solicitors actually comment that a right to renew after 60 years is an issue not 30 years.						
SEGRO was prepared to accept MOPAC's position on alienation	This is agreed but is a concession on a minor point. Acquisition of a freehold would provide no constraints on alienation whatsoever.						
SEGRO was prepared to accept MOPAC's position on permitted user to flex with MOPAC's future needs	A concession on another minor point. Acquisition of the freehold would provide no landlord constraints on use or operation						
In relation to rent, I provided Mr Warren with a number of comparables which are significantly in advance of SEGRO's and MOPAC's proposals	<p>Mr Kington's comparables are simply not comparable - he himself admits there isn't a lot of comparable evidence.</p> <p>I comment that the parties position on rent and rent free is as follows</p> <table><tr><td></td><td><b>Landlord Offer- March 2021</b></td><td><b>Tenant Offer- July 2021</b></td></tr><tr><td>Building</td><td>£351,000</td><td>£312,000</td></tr></table>		<b>Landlord Offer- March 2021</b>	<b>Tenant Offer- July 2021</b>	Building	£351,000	£312,000
	<b>Landlord Offer- March 2021</b>	<b>Tenant Offer- July 2021</b>					
Building	£351,000	£312,000					

		5 months rent free	15 months rent free
	Land	£1,490,000  5 months rent free	£1,200,00  15 months rent free
	<p>SEGRO have not made any counter offer to my proposal and have simply not moved their position regarding rent or rent free periods since their offer made in March 2021. As can be seen from the above table it is misleading to state that MOPAC and SEGRO are miles apart on rental levels as Mr Kington does in paragraph 3.8 of his Updating Statement.</p>		
<p>In relation to the works undertaken by MOPAC during the current lease term, I noted that the works carried out were undertaken under an express obligation to the landlord under the original Agreement for Lease and so would be regarded on a renewal (as opposed to disregarded). I provided a number of examples of lease incentives- Mr Warren commented on these being in</p>	<p>This statement is again misleading. There are two phases of work MOPAC undertook to the site</p> <ol style="list-style-type: none"> <li>1) The initial fit out work- costed at approximately £4 million (£6 million equivalent today) which the tenant funded with an apparent £25,000 contribution from the landlord. A further £1M was invested in 2010 (£1.5M today) to further improve the drainage and improve the flatness of the hardstanding areas. Our stance is only that element relating to the</li> </ol>		

<p>excess of the 5 months rent free MOPAC have been offered but these are new open market lettings with incentives to partly cover fit out costs. In the case of a lease renewal often no or little incentives are provided- the tenant is already in situ of course and net effective rents (taking into account incentives granted on open market lettings) are used as evidence.</p>	<p>landlords contribution (clearly insignificant) is disregarded and in any event at any statutory lease renewal all tenants improvements whether or not with landlords consent are disregarded.</p> <p>2) Work subsequently carried out to the site including resurfacing the predominantly hardstanding site with tarmac/concrete and drainage. This work is categorically disregarded in assessing the rent as it is covered under a 2009 Licence to Alter</p> <p>In terms of lease incentives in my experience you get more rent free period the longer the term certain of the lease. So on this basis you would get a longer rent free period for a 15 year lease without break than for a 5 year lease period. All Mr Kingstons comparables offered circa 3-6 months rent free for circa 5 year term certain leases. Therefore on a lease 3 x as long you would expect to get a longer rent free period hence my 15 months rent free.</p> <p>In my experience on negotiated lease renewals some are agreed at a lower rent factoring in a rent free period, some are at a higher rent with a rent free period albeit it is agreed if it goes to court a court can only grant a net rent reflecting all rent free periods</p> <p>In conclusion in this case MOPAC have invested large amounts of monies over the</p>
---	--

	<p>years in the Order Land with little or no financial contribution from the landlords and when it comes to a lease renewal it seems the tenants improvements and expenditure is not reflected by SEGRO in offering in a lower rent. Again acquisition of the freehold will remove this argument at either renewal or in the case of the building at any rent review.</p>
<p>In relation to pre-emption I advised Mr Warren that SEGRO was unable to accept this. In all likelihood SEGRO would not sell the Order Land in isolation from the rest of Perivale Park, but if it did a pre-emption right would almost certainly depress value as any bidders would be put off by knowing that MOPAC could trump them to the death. I did offer that SEGRO would commit to keeping MOPAC informed of future sales. I also reminded Mr Warren that a Court would not offer a right of pre-emption in a renewal lease and it is extremely rare for a tenant to negotiate a pre-emption.</p>	<p>Mr Kington states that in all likelihood the MOPAC land would not be sold in isolation. However, there is no reason why it should not be sold in isolation, the MOPAC land is separately accessed and self contained and to one extremity of the estate which would make it easy to carve off. A sale of this land should not adversely effect the value or usage of the rest of the Perivale Estate. It is merely SEGRO's preference to keep their options open to sell the whole Perivale Estate or parts. As stated MOPAC are not interested in the 30 odd units on the Estate only the land they occupy. They would not as such want a pre-emption on the whole Estate only the areas they occupy but this would mean SEGRO may have to commit to sell the</p>

	<p>Perivale Estate in two parts. As such I see no reason why a pre-emption cannot be offered on the MOPAC part of the Estate only.</p> <p>A non legally binding notification for sale is worthless. For example the Order Land and the Perivale Estate was sold by Hermes to SEGRO from under MOPAC without MOPAC/ Knight Frank being told despite our offer to purchase the Order Land at the time. Furthermore, SEGRO announced their plans for the Perivale Estate to the press on completion of the purchase (the redevelopment of the Order Land) without even enquiring beforehand with MOPAC about their plans.</p> <p>It is agreed on a renewal lease a pre-emption is not common but I have seen this before in leases and if SEGRO really want to retain MOPAC on a lease this is something that they should be able to commit to. MOPAC VRES need certainty and in the absence of a pre-emption this is best looked after by MOPAC owning rather than leasing the Order Land. That way MOPAC are in charge of their own destiny.</p>
--	---

**3.11** The content of my email noted at paragraph 3.11 of Mr Kington's Updating Statement is correct.

**3.12** In respect of Mr Kington's comments contained in his aggressive email of 29<sup>th</sup> July 2021 (which he has noted in paragraph 3.12 of his Updating Statement and I again comment

using his numbering and lettering) I comment as follows:

- a) Freehold Offers: I have already addressed these points in my original Rebuttals but suffice to say the most recent offer to purchase the Order Land was made is in line with the value SEGRO apportioned to the Order Land on its purchase as reported to HM Land Registry. In respect of their comments on value for money as this case has developed and factors have arisen it has become abundantly clear a long term lease does not offer security of the Order Land past 30 years and in the long term a lease on the terms they are proposing is going to be significantly more costly than purchase. Furthermore, a 30 year lease does not support capital investment in the Order Land to reflect likely changes in VRES service needs. With a purchase MOPAC would have an asset they can use and develop - a lease is just a financial liability.
- c) Long Lease - Mr Kington's comments need to be reviewed in the context of events at the time.
- i) Yes MOPAC did spend a lot of time in 2018 and 2019 seeking to agree terms with Hermes. At that time MOPAC were only being offered a 3 year lease extension outside the Landlord and Tenant Act and all longer leases were rebuffed by Hermes. This was before MOPAC appreciated it had Compulsory Purchase powers and before any approval was given to use them, so a 10-15 year lease without break was it agreed seen as 'long' compared to the 3 year lease we were being offered at the time. These comments need to be reviewed in this context.
- ii) Yes we did consider 15 year + lease options.
- iii) As stated these comments need to be viewed in relation to the comments in c) i) above.
- iv) As stated again 10 years was seen as long at the time compared to a 3 year lease. Furthermore, a 15 year lease in the notice was requested as this is the maximum length term for a lease a court can award under the Landlord and Tenant Act 1954. If we could

have requested a longer lease I believe we would have done. Mr Kington has taken the comments on long lease out of context.

## **4. SUMMARY AND CONCLUSIONS**

**4.1** Mr Kington's comments on the timing and contents of the meeting and purported delays by MOPAC again need to be viewed in context. The Compulsory Purchase Order was made soon after SEGRO purchased the Perivale Estate in 2020 and it was only shortly before the Inquiry opening date, after a considerable delay that SEGRO presented a without prejudice lease offer which they then decided to unilaterally disclose just prior at the opening of the Inquiry as a mechanism for adjourning it. SEGRO throughout the Inquiry process have failed to discuss or negotiate a sale, only wanting to discuss a lease which they tell us (despite not knowing or understanding the VRES business) that a lease suits MOPAC and the VRES best. This is not the current position. In respect of Mr Kington's comments on timing post the meeting, he admits he had a "detailed" response from MOPAC within 12 days of the meeting. Given I had to discuss the outcome of the meeting and take instructions from a number of parties within MOPAC and the MPS this is a relatively quick turn around for a public sector organisation with the management structure that it has. It has been made clear that MOPAC need a mechanism that guarantees occupation of the Order Land for more than 30 years, a pre-emption to allows it to purchase the Order Land in the event it is sold and finally a sensible rent with sensible rent free period. These red lines have not been addressed/resolved in the leasing offer made by SEGRO albeit it is agreed SEGRO have offered some minor concessions on alienation and user.

**4.2** Mr Kington makes the subjective judgement that 30 years is long term and our comments to the contrary are not credible. As stated a 30 year lease does not provide long term certainty for MOPAC (in 30 years a redevelopment is likely to be pursued necessitating either another




CPO (if the laws permit at the time they may not) or a relocation. Given both, I and Mr Kington in his relocation search has struggled to find any viable deliverable properties for the VRES facilities to relocate to now, and industrial land continues to be displaced by residential and other uses within London, the position of industrial land scarcity in 30 years will be even more stark than now. In the meantime a lease does not provide value for money and does not support investment in the site which is needed to reflect likely changes to vehicles in London and consequential changes in the VRES facilities.

**4.3** Mr Kington states he has been proactive and timely and whilst he has accommodated some of MOPAC's concerns these are largely on more peripheral issues rather than the red lines of lease length, pre-emption and rent and rent free period. On the latter point their position has not changed since March 2021 despite our rental offer. At all stages I have invited Mr Kington to come up with solutions to the red line issues. Note for example my comments in respect of length of lease *"would be interested in any other proposals you may have to resolve this impasse"* (as quoted by Mr Kington in paragraph 3.12 of his Updating Statement). To date no proposals have been received from SEGRO.

**4.4** In conclusion there are two sides and two stories to every dispute. Whilst Mr Kington believes he and SEGRO have been flexible, patient and co-operative this has been only in relation to mitigating their position when faced with a Compulsory Purchase Order. They have failed to engage on all our approaches to purchase (Mr Kington confirms he has no instructions to discuss a purchase) and have merely engaged on a lease after the adjournment of the Inquiry. MOPAC have made it abundantly clear the leasing points that need to be resolved should a lease be taken and whilst there have been some peripheral concessions the fundamental points remain unresolved. A lease on the basis SEGRO propose would not meet MOPAC's VRES operational and public service requirements and as such the Inquiry needs to be held.

## **5. Expert Declaration and Statement of Truth**

- 5.1** I confirm I have made clear which facts and matters referred to in this Statement are within my own knowledge and which are not. Those that are within my knowledge I confirm to be true.
- 5.2** I confirm that I have complied with my duty to the Public Inquiry as an Expert Witness which overrides any duty to those instructing or paying me.
- 5.3** I can confirm that I am not instructed under any conditional or other success related fee arrangement.
- 5.4** I can confirm I have no conflicts of interest.
- 5.5** I confirm I am aware if and have complied with the requirements of the rules, protocols and directions of the Public Inquiry.
- 5.6** I confirm that my proof complies with the requirements set out in the RICS Practice Statement-Surveyors Acting as Expert Witnesses.

Signed  .....

**Simon Edward John Warren BA (Hons) Dip Est Man MRICS**

Dated 14<sup>th</sup> September 2021