

REBUTTAL

of

MR BEN GOMEZ-BALDWIN

On behalf of:

SEGRO (PERIVALE PARK) LIMITED

In relation to:

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

Date:

4 MAY 2021

1 INTRODUCTION

- 1.1 I have described my role and responsibilities at SEGRO in my Proof of Evidence submitted in these proceedings dated 20 April 2021 (my "**Proof**").
- 1.2 This rebuttal should be read together with my Proof. For ease, I have adopted terms in this rebuttal, which I defined in my Proof.

2 SCOPE OF REBUTTAL

- 2.1 My rebuttal relates to the Proofs of Evidence submitted on behalf of MOPAC in these proceedings.
- 2.2 My rebuttal comprises the following sections:
- (a) Section 3 sets out my rebuttal of the evidence provided by Mr Simon Warren;
 - (b) Section 4 sets out my rebuttal of the evidence provided by Mr David Mathieson;
 - (c) Section 5 sets out details of certain offers made by SEGRO to MOPAC since my Proof was submitted to the Planning Inspectorate; and
 - (d) Section 6 sets out my conclusions.
- 2.3 It has come to my attention that there is an error in the property description of one of the properties listed in Appendix 10 of my Proof of Evidence. The sixth property in the table is described as "*Herbert Road, Tottenham*" and should instead be "*White Hart Lane, Tottenham*". All other details in respect of that property are correct.

3 PROOF OF EVIDENCE PROVIDED BY MR SIMON WARREN DATED 20 APRIL 2021

MOPAC'S Site Searches

- 3.1 I note from paragraph 3.1 of Mr Simon Warren's Proof ("**SWP**"), that he states Knight Frank ("**KF**") searched for alternative sites "*in the London Area*". This is an unclear description of their site search and it is difficult properly to understand the geographical range of the search for alternatives which was undertaken by MOPAC. Subsequently in SWP, there are references to West London (as noted below) which indicates to me that MOPAC's geographical approach to alternative sites lacked focus.
- 3.2 At paragraph 3.2 SWP, it is noted that the alternative site search was for "*long term industrial land*". This is also an unhelpfully vague description, particularly the reference to 'long term'. I believe the lack of clarity shown by Mr Warren's evidence surrounding the search requirements was likely to be a contributing factor as to why MOPAC did not receive many responses to their requirements sent to agents.
- 3.3 As outlined in my Proof (paragraph 7.30), MOPAC should in my opinion have undertaken a much broader land search, including manufacturing and industrial as well as alternative land uses which may have needed planning permission to authorise MOPAC's proposed use. This

would have been an obvious and effective approach. It appears to me that MOPAC was looking for a 'perfect' site and then too readily discounted sites which would have met MOPAC's requirements if, for example, it had been prepared to secure planning permission for a change of use, or secure vacant possession.

- 3.4 At paragraph 3.2 SWP, it is said that KF was "*instructed to keep a watching brief on industrial land availability, which it has done ever since*". The extent of the 'watching brief' instruction has not been explained in SWP. On this basis it is reasonable to conclude that that no active search was continued - a strategy which I cannot understand if this was a genuine site search. A 'watching brief' is passive and lacks the proactivity that is needed to unearth opportunities which are not readily on the market. One very good example of this is the approach described in Alex Kington's Rebuttal in relation to adjoining sites at Northolt, other such examples include Car Giant's proactive off-market targeted land acquisitions also as described in Alex Kington's Rebuttal.
- 3.5 My Proof appends evidence which makes it very clear that there were opportunities in the market which I consider would have met MOPAC's requirements and which would have been acceptable alternatives to acquiring the Order Land, had MOPAC looked effectively enough.
- 3.6 Paragraph 3.2 SWP concludes "*Over that period, there have been few subsequent industrial opportunities on the open market particularly on sites of over five acres in West London*". This is not consistent with the site search criteria of "the London Area" (paragraph 3.1 SWP), furthermore it reinforces that only industrial sites were considered. My Proof demonstrates that there have been opportunities for MOPAC to acquire sites, currently with non-industrial uses, in areas that would be convenient for MOPAC.
- 3.7 Paragraph 3.3 SWP describes why sites were rejected for various reasons, including because they "*were...fully occupied*". As set out in my Proof, KF/MOPAC should have considered sites which were occupied on short-medium term basis, as this would have given MOPAC more site options and would have produced some short-medium term income whilst it obtained vacant possession – and MOPAC could reasonably have extended its occupancy of the Order Land by agreeing the short-term leases as discussed with Hermes, and latterly SEGRO.
- 3.8 Paragraph 3.3 SWP explains that sites were rejected as they would not be available "*this meant vacant possession was not obtainable within the required timeframe given the impending 2021 lease expiry at Perivale*". In other words timing was considered a constraint. Now that SEGRO has offered MOPAC leases of five or ten years' term, I believe that MOPAC has ample time to find an alternative site and obtain vacant possession (if necessary).
- 3.9 Paragraph 4.2 SWP refers to KF/MOPAC failing to find any alternative sites "*in West London*". This underscores the lack of clarity around the geographical search for sites which has been undertaken. The SWP does not, for example, mention the search findings for North London, where I understand a large number of the vehicles using the VRES come from.
- 3.10 Paragraph 4.2 SWP asserts that MOPAC was in effect at a disadvantage because agents have in Mr Warren's view preferred to deal with parties other than MOPAC on the basis that to transact with investors and funds would give "*any Selling Agent two lots of fees and often the letting fees are more substantial than the original sales fee*". There have been a number of transactions in London in recent years involving owner-occupiers where there would be no

'repeat business' for the agent on letting fees – eg data centres and retailers, such as Amazon. KF is a national agency, well known in the market, with a dedicated London Investment Team and it would therefore be in a position to learn about each and every opportunity be it land or investment. I would expect that nearly every single investment opportunity would have been sent to KF.

- 3.11 Paragraph 4.2 SWP states that the agents acting on the sale of the Perivale Estate "*merely marketed it to a select number of institutional investors and developers "off market". We only became aware that it was being marketed in March 2020 due to a tip off from my investment team at Knight Frank and subsequent coverage in the press*". I understand from discussing matters with Roddy Mackay at ACRE Capital Real Estate LLP who acted as agent for Hermes, on the sale of the Perivale Estate, that there were at least 33 prospective buyers to whom the opportunity was marketed, including SEGRO. I further understand that KF was advising some of those prospective bidders. The marketing of Perivale Estate was not a soft marketing exercise or undertaken 'under the radar' as is inferred by SWP.

Long Lease Offer

- 3.12 I note at paragraph 5.3 SJW that Mr. Warren states "*I was instructed to revert to JLL seeking a new ten-year lease without break on both Parcels 1 and 2.*" and further that "*securing a 10-year lease of Parcel 1 without Parcel 2 was not viable for the operation*". I have assumed from this that MOPAC did not proceed to lease the properties on the basis that the landlord (Hermes):

- (a) did not offer a lease of both Unit 16/17 and the Bilton Centre; and/or
- (b) was seeking a landlord break right (noting Mr Warren's comments that his instructions were to have no break).

As outlined at paragraph 5 below, SEGRO has recently made an offer for a ten year lease for the entirety of the Order Land and only MOPAC would have a right to break the leases (the right to break falling at anytime with 12 months' notice). SEGRO is offering what MOPAC has recently sought and therefore there is no compelling case for the compulsory acquisition of the freehold of the Order Land.

SEGRO's Knowledge

- 3.13 I note throughout SWP that reference is made to SEGRO's alleged knowledge of MOPAC's intentions to use compulsory purchase powers. I have made clear the extent of SEGRO's knowledge in my Proof.
- 3.14 The implication appears to be that MOPAC's intention to use compulsory acquisition powers should have been heeded and SEGRO should have reacted in some way to avoid MOPAC's later actions. It would clearly not have been appropriate for SEGRO to discuss matters with MOPAC whilst SEGRO was negotiating with Hermes to acquire Perivale Park – in fact our confidentiality duties to Hermes would have made this impossible and it is not market practice for bidders to engage with existing tenants when acquiring sites.
- 3.15 SEGRO was aware that MOPAC had threatened to exercise compulsory acquisition powers, but it had also been in discussions regarding 3 and 10 year leases. SEGRO assumed that

MOPAC's intentions were not crystallised and that there would be an ability to reach a reasonable resolution. It is undeniable that SEGRO acquired the Perivale Park prior to the CPO being made and SEGRO should not be expected to have second-guessed what actions MOPAC might have taken in future. SEGRO's knowledge of MOPAC's compulsory acquisition strategy which can of course only be justified as a matter of last resort has no sensible bearing in my view on the strength of MOPAC's justification for the CPO.

Shortage of Industrial Land

- 3.16 With regard to the Keep London Working report ('the **KLW report**') and the reliance placed on it by Mr Warren to demonstrate that there are shortages of industrial land in London and that this will only continue or worsen, I note that there are in fact only three references to a shortage within it. The first reference, at paragraph 7.25, refers to the east and the East and West sub-regions of London which "*appear to have a good balance of the proportion of London's share of industrial land and the population within the corresponding boroughs, in reality these industrial locations will also help to meet the urban logistics demands of populations and businesses in the Central, North and South sub-regions which have a shortage of industrial land compared to population*". The other two references to "shortage" are in relation to a shortage of quality warehouse space as opposed to industrial land. Paragraph 8.9 of the KLW report states there is a "*shortage of quality warehouse space with capacity in prime locations expected to be particularly scarce over the coming years.*" and at Appendix 6 it states again the main challenge facing the industry is "*the shortage of capacity of good quality and inexpensive warehouse space*" not industrial land.
- 3.17 To that end, Mr Warren has seemingly misread or failed to understand the KLW report. In any event his reliance to make his argument on behalf of MOPAC is misplaced.
- 3.18 As is clear in my opinion from the KLW report, its aim was to highlight a major concern that industrial land was being lost at a rate far greater than the GLA had predicted/recommended and to encourage planning authorities to deploy protective policies of such land more effectively. This is not the same as concluding there is a shortage of such land.

MOPAC Offer

- 3.19 Paragraph 5.10 of SWP states that SEGRO did not respond to MOPAC's offer to purchase the freehold of the Order Land made on 20 July 2020. As my Proof and the associated appendix make clear, this is simply incorrect.

4 PROOF OF EVIDENCE PROVIDED BY MR DAVID MATHIESON DATED 20 APRIL 2021

The Strategic Outline Case and Outline Business Case

- 4.1 I note from paragraph 3.4 of Mr David Mathieson's Proof ("**DMP**"), that the Metropolitan Police Service and MOPAC agreed a Strategic Outline Case ("**SOC**") for the VRES Scheme in September 2018 and the Outline Business Case was not finalised until October 2019. This was only a relatively short time prior to the relevant lease expiry dates for the Order Land.
- 4.2 Given the evident length of time that it would likely have taken to

- (a) thoroughly investigate alternative site availability (which should have included a broad range of options in terms geography, existing use and occupational tenants);
 - (b) identify and engage with potential freehold sellers, bid on sites and transact the site;
 - (c) secure planning permission and vacant possession; and
 - (d) relocate the VRES Facility,
- 4.3 I do not consider that MOPAC gave itself sufficient time to investigate alternatives with the necessary vigour that it should have. It appears to me that MOPAC had somehow assumed that 'everything would somehow work out in its favour without hiccup and failing this, it could rely on its compulsory acquisition powers.
- 4.4 Whatever its reasons for doing so it is clear that MOPAC started far too late to address the impending issue. As a result of its late start to its site search, coupled with the feeling perhaps (as implied in the evidence) that the market is either against it, or unwilling to engage with it, MOPAC has been left short of time, and as a result, has felt compelled to engage its compulsory powers of acquisition. Again, this in my view does not justify confirming MOPAC's CPO powers now.
- 4.5 Paragraph 4.1 of DMP asserts that "*MOPAC spent a considerable period of time in 2018 and 2019 trying to reach an agreement with the then Landlord of the Perivale site (Hermes) to secure a new long term lease on the Order Land*". This however contradicts the evidence in SWP which states:
- (a) Paragraph 5.2 SWP "*In September 2018, after having no luck with our initial site searches for a replacement site to relocate the VRES facilities from the Order Land, I was appointed by MOPAC to negotiate an extension to the leases past September 2021 on a short term basis to allow time for Northolt to be redeveloped for the VRES use. JLL were instructed by the landlord of the Order Land*"
 - (b) Paragraph 5.2 SWP "*From September 2018 to December 2018 I attempted to negotiate a three-year lease extension on the site*"
 - (c) Paragraph 5.3 SWP "*By the end of 2019.....I was instructed to hold any discussions on a three-year lease extension in abeyance and instead I was instructed to revert to JLL seeking a new ten-year lease without break on both Parcels 1 and 2*"
- 4.6 It is apparent that MOPAC and KF are unclear as between themselves what MOPAC's property strategy was and when short and long leases were under negotiation, which casts into doubt the notion that MOPAC had exhausted all options before making the CPO..

5 CONTINUING NEGOTIATIONS: OPEN OFFERS BY SEGRO

- 5.1 On 27 April 2021, I sent an email to David Mathieson at MOPAC setting out three settlement offers proposed by SEGRO to MOPAC. I have attached the email at Appendix 1 to this Rebuttal and I summarise the offers (which are require MOPAC to not exercise its compulsory acquisition powers in relation to the Order Land) below:

- (a) Offer One – 5 Year Lease of the Order Land
 - (i) Term: 5 years outside the security of tenure provisions of the Landlord & Tenant Act 1954
 - (ii) Break Options: MOPAC to have the ability to break the least at anytime on 12 months prior written notice. SEGRO to have no right to break
 - (iii) Rent: £ (a rental figure this was set out in my offer letter but is confidential between the parties)
- (b) Offer Two – 10 Year Lease of the Order Land
 - (i) Term: 10 years outside the security of tenure provisions of the Landlord & Tenant Act 1954
 - (ii) Break Options: MOPAC to have the ability to break the least at anytime on 12 months prior written notice. SEGRO to have no right to break
 - (iii) Rent: £(a rental figure this was set out in my offer letter but is confidential between the parties)
- (c) Offer Three – Northolt Sale Combined with Order Land Long Lease
 - (i) SEGRO to acquire the freehold of MOPACs 5-acre Northolt site at market value
 - (ii) SEGRO to grant MOPAC a long lease of the Order Land (strictly subject to SEGRO acquiring MOPACs freehold development site at Northolt)
 - (iii) The lease of the Order Land to MOPAC to be contracted within the Security of Tenure provisions as set out in Part 2 of the Landlord & Tenant Act 1954
 - (iv) Financial details: parties to agree an appropriate market rental level and acquisition price (in the case of Northolt).

5.2 On 4 May 2021 MOPAC refused all three of the offers.

5.3 MOPAC's stated reasons for refusing the first two offers are in summary:

- (a) Due to the absence of Landlord & Tenant Act protection in relation to what are both described as “short term (5 and 10 year) leaseholds”; and
- (b) Due to the absence of the certainty of having identified an alternative site currently secure and with vacant possession to carry out the necessary works to develop such a site prior to the current lease expiry which means MOPAC will be unable to provide the VRES service;
- (c) MOPAC also consider based upon their efforts over the past 3.5 years and a review of the sites that Altus have identified, have no confidence that it is possible to find a

suitable site and a suspicion that it will be increasingly more difficult over forthcoming years based on its experience and its understanding of the Segro report on industrial land in London which puts at risk of failure the VRES service which MOPAC asserts is crucial to the ongoing protection of the safety of Londoners and the provision of wider services that the MPS is required to deliver by law

- (d) MOPAC cannot agree to any lease arrangement that prevents it from using the normal statutory and legislative rights to CPO to ensure it is able to continue to deliver our obligations to London's citizens.

5.4 MOPAC's reasons for refusing the third offer are in summary

- (a) because MOPAC considers the proposal to sell the freehold of Northolt to SEGRO (as part of the offer) to be an off-market transaction which would breach MOPAC's statutory duty to ensure transparency and obtain best value for money in its transactions; or
- (b) that the offer does not fall within the certain limited cases when a freehold transaction can be carried out off market;
- (c) SEGRO would have to demonstrate an unarguably high level of benefit for MOPAC to be justifiable politically, publicly and legally; and
- (d) MOPAC cannot agree to any lease arrangement that prevents it from using the normal statutory and legislative rights to CPO to ensure it is able to continue to deliver our obligations to London's citizens.

5.5 Whilst SEGRO will continue to negotiate with MOPAC, I disagree with the assessment that has been made as to the reasonableness of these offers. In particular I consider that the length of the offers would allow MOPAC with more than sufficient time to find an alternative site.

5.6 It is simply not credible or reasonable for MOPAC to assert that compulsory acquisition of another person's land can be justified now on the basis of their own failure to start their search process in a reasonable timeframe given the impending end of their lease when the offers provide them precisely with the extra time. It is also not credible or reasonable for them to rely upon their limited search process. I note that MOPAC does not wish to fetter its statutory powers; however SEGRO's offer only sought to 'disapply' CPO powers in the current circumstances and not permanently.

5.7 I note further the reference to MOPAC requiring an "unarguably high level of benefit for MOPAC" to justify it accepting third offer (which incorporates the sale of the Northolt site). I consider that MOPAC could argue that continuing the VRES on the Order Land was a compelling benefit to the public so as to justify the sale. I consider MOPAC's refusal of SEGRO's offers to be unreasonable.

6 CONCLUSIONS

6.1 The evidence submitted on behalf of MOPAC does, not in my view, justify MOPAC's approach to the Order Land. I understand that compulsory acquisition powers are a matter of last resort and should only be used where there is a compelling case to do so in the public interest.

MOPAC's evidence shows that it either ignored the termination position under its leases or made unreasonable assumptions about the likelihood of staying on the Order Land and then left it far too late to mount a full and proper search for alternatives.

- 6.2 The approach adopted for an alternative site was narrow and lacked the necessary rigour or proactivity as described in Mr Kington's rebuttal. MOPAC's reliance upon the KIW report to show there are shortages of industrial land that may be suitable for MOPAC is misplaced.
- 6.3 The offers that SEGRO has made to MOPAC (as outlined above) were reasonable and would have permitted MOPAC sufficient time to find an alternative site for its VRES.
- 6.4 MOPAC reasons for rejecting SEGRO's offers as a solution to their problem (which appears to me to be of their own making at least in part) do not stand up to scrutiny.

Signed  4 May 2021

Ben Gomez-Baldwin

Rebuttal Appendix One – Offers Made to MOPAC on 27 April 2021

Ben Stansfield

From: Ben Gomez-Baldwin <Ben.Baldwin@segro.com>
Sent: Tuesday 27 April 2021 11:04
To: Ben Stansfield
Cc: Stephanie Murton; Alan Holland; Clive Chalkley; Michael Twining
Subject: FW: SEGRO Lease Offer - Unit 16 & The Bilton Centre

This message originated from outside your organisation. ben.baldwin@segro.com

All

FYI – offers now made as below.

Regards

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 @SEGROplc

SEGRO

From: Ben Gomez-Baldwin
Sent: 27 April 2021 10:58
To: David.Mathieson@met.police.uk
Cc: Vince.Fihosy@met.police.uk
Subject: RE: SEGRO Lease Offer - Unit 16 & The Bilton Centre

Hi David

As a follow up to my email below dated 23rd March which outlines our offer of a flexible five year lease, SEGRO wishes to now make a further offer to MOPAC on an open basis (i.e. without the protection of WP). I am also reconfirming other offers we have already made to MOPAC as these have previously only been made or responded to on a WP basis. Our offers remain subject to contract and are confidential.

I am conscious that the Statement of Common Ground is due to be submitted by 4pm today and we will want to refer to these offers in that. Ideally, the SOCG would include MOPAC's response; accordingly we would be happy to propose agreeing with you (and PINS) an extension of a few days to agree and submit the SOCG if this would assist MOPAC's being able to give full consideration to the offers

A summary of SEGRO's offers are set out below which outline a number of options for the grant of a new lease of Perivale to MOPAC of Unit 16 and The Bilton Centre Land. As a condition of the lease, MOPAC would need to agree not to exercise CPO powers over SEGRO's property, or in effect to revoke the CPO that it has made.

5-year flexi-lease - Unit 16 and The Bilton Centre Land

- Term: 5 years
- Outside the 1954 Act
- Break Options: Rolling Tenant only on 12 months prior written notice
- Rent: £[REDACTED] per annum (Unit 16: £[REDACTED] per annum / The Bilton Centre Land: £[REDACTED])

- Assignment & Sub-letting: Tenant can assign or sub-let the whole of the premises only. Sub lease must be excluded from the 1954 Act and at open market rent
- Rent Reviews: N/A

10-year flexi-lease - Unit 16 and The Bilton Centre Land

- Term: 10 years
- Outside the 1954 Act
- Break Options: Rolling Tenant only on 12 months prior written notice
- Rent: [REDACTED] per annum (Unit 16: [REDACTED] per annum / The Bilton Centre Land: [REDACTED])
- Assignment & Sub-letting: Tenant can assign or sub-let the whole of the premises only. Sub lease must be excluded from the 1954 Act and at open market rent
- Rent Reviews: rent to be reviewed at year 5 with review clauses to match the existing provisions set out in the leases for Unit 16 and The Bilton Centre land.

Northolt freehold purchase (SEGRO) / Perivale Leasehold (MOPAC)

- SEGRO to acquire the freehold of MOPACs 5-acre Northolt development site at market value
- MOPAC to be granted a long lease of both Unit 16 and The Bilton Centre land at Perivale (strictly subject to SEGRO acquiring MOPACs freehold development site at Northolt)
- MOPAC lease to be contracted within the Security of Tenure provisions as set out in Part 2 of the Landlord & Tenant Act 1954
- Rent: if this option is of interest then once lease term is confirmed we can then act quickly to agree an appropriate market rental level and acquisition price (in the case of Northolt).
- Assignment & Sub-letting: Tenant can assign or sub-let the whole of the premises only. Sub lease must be excluded from the 1954 Act and at open market rent
- Rent Reviews: rent to be reviewed at 5 yearly intervals with review clauses to match the existing provisions set out in the leases for Unit 16 and The Bilton Centre land.

I look forward to hearing from you

Regards

Ben

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