Dear Chair,

Re: Public Accounts Committee hearing on Network Rail’s sale of railway arches

During my evidence to the Public Accounts Committee on Monday 17th June, there were a number of issues which I committed to write back on to clarify and provide further information. I have taken these in the order in which they were discussed at the hearing.

Q49 – how often have you had to go through the courts in recent years to get a tenant to move for essential railway maintenance or safety work?

Q54 – how many times you have had to have that urgent access and a tenant has refused it?

As stated in the committee, it is thankfully very rare that we request urgent access and a tenant refuses it. In recent years, we have initiated court proceedings twice where a tenant has refused access which was required for railway purposes.

More broadly, we have had and continue to have a general policy that occupational leases should be contracted out of the Landlord and Tenant Act 1954. This is because Network Rail has to consider that this land may at some point during the next 150 years be needed for the repairs, renewals or enhancements to the railway. Contracting out of the Landlord and Tenants Act means that we can recover relevant parts of the portfolio without court proceedings that involve additional statutory grounds to be satisfied and a potential extra 18 months to get the unit back.

This is based on previous experience. For example, we experienced difficulties in the delivery of a viaduct for the Northern Hub project when a tenant refused to leave premises required for the new viaduct, which resulted in protracted court proceedings.
Q61 – were your rent negotiators and your property people on any bonus payment for an increase in the value of the estate?

No Network Rail staff were individually incentivised for an increase in the value of the estate. There is a general bonus scheme for all members of Network Rail including the property division (the commercial estate team was part of the property division).

The general bonus scheme for property division employees is made up of two elements. First, the performance of Network Rail as a whole as determined by the corporate scorecard. Second, the performance of the entire property division as determined by the property scorecard. The split between Network Rail and property division scorecards is 40:60.

There were no specific targets in the scorecard for our commercial estate. Nonetheless, the commercial estate (which included the arches estate) clearly contributed to the overall performance of the property division.

The financial measure in the property scorecard accounted for only 30% of the total property scorecard bonus measures, with commercial estate performance contributing approximately one third of the financial measure, i.e. 10% of the total.

In addition, the disposal programme (total cash proceeds), of which the sale of the arches was the largest element, made up a further 20% of the property division bonus.

More broadly, we continued to run the commercial estate business as normal with our approach to rent reviews remaining consistent. We established a separate team to progress the sale of the arches while ensuring the commercial estate management team were left to operate in their usual manner.

Q97 – when Network Rail was the landlord, was it the policy of Network Rail to routinely allow for mitigation of rent payments for the period of a closure as a result of an HGV knocking into a bridge?

Q99 – I am trying to establish whether Network Rail’s responsibilities from when you were in control have been passed on to the new owners.

Network Rail did not have a specific policy around rent mitigation as a result of bridge strikes. As stated in the Committee, Network Rail has previously engaged with individual commercial estate traders faced with access disruption where railway works impact the highway and in some specific instances provided assistance based upon the nature of, and length of, the access disruption.

There is no specific provision relating to this in the headlease under which the arches estate was sold and it is therefore for ArchCo to determine its policy on these matters.

I understand from colleagues on our LNW route, that they have been in regular contact with Ms Mahmood on the specific incident in her constituency at Landor Street. This includes a meeting on Friday 31 May attended by Network Rail, Birmingham City Council and Ms Mahmood with affected
businesses to discuss the efforts being made to get the bridge fixed and get Landor Street reopened. I will write to Ms Mahmood with further clarification in the coming days.

**Q114 – Do you have any understanding of what is going to happen to existing motor repair businesses in the arches?**

In 2011, Network Rail introduced a new policy to tackle the issue of acetylene and the use of similar dangerous gases in arches to maintain the safety of the railway. Of the businesses in the arches, motor repair businesses are the primary users of this equipment and so they were most affected by the policy. The policy was not directly targeted at them but at these dangerous gases and the associated risks. For example, acetylene requires a 24 hour exclusion zone of around 200m if it catches fire, effectively shutting the railway down and resulting in financial penalties for Network Rail.

As a result of this policy, only a small number of acetylene users have been transferred to ArchCo as part of the sale. In these instances, the occupational tenants had legal rights in their leases to keep the acetylene and were required to demonstrate that they had effective safety measures in place.

The headlease in place following the sale prohibits the use of acetylene, other than the limited situations where this existed at the date of sale. Once the tenant vacates in each of these circumstances, a new lease with acetylene use cannot be granted.

More broadly, all uses in the estate are subject to the prohibited use restrictions and estate regulations. Certain motor repair uses are currently considered high risk but, this simply means additional notification and risk assessment by the tenant. There is no ability for Network Rail to block high risk uses.

I hope this provides helpful clarity and please don’t hesitate to get in touch if I can provide any further information to inform the Committee’s report.

Yours sincerely,

Jeremy Westlake
Chief Financial Officer
Network Rail