Dear Chair

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

During my evidence to the Public Accounts Committee on Monday 17 June, I undertook to write to the Committee about whether Ministers were consulted on the decision to require the new owner to make new tenancies outside of the Landlord and Tenant Act 1954.

As Mr Westlake explained in his evidence and further set out in his letter of 24 June, Network Rail’s approach has been, and continues to be, that occupational tenancies should be contracted out of the 1954 Act security of tenure provisions given the potential for properties to be needed to support repairs, renewals or enhancements to the railway. Provision 38A of the 1954 Act allows for a landlord and tenant choosing to exclude security of tenure rights by agreement. However, there are strict procedures around this. The tenant must have a clear opportunity to consider its position before entering into the arrangement to contract out and the law requires the landlord to give to the future tenant a warning notice about the impacts of agreeing to ‘contract out’ of the provisions before the tenant takes on the premises. The tenant must then confirm that he /she has read the notice and accepted the terms.

As this is a long-standing practice and was not introduced as part of the sale process, it was not specifically drawn to the attention of ministers as part of the development and approval of the sale. As I said to the Committee on 17 June, I think it is right, in any case, that Network Rail takes the view ultimately about how it can best discharge its responsibilities in respect of the safe operation of the railway and the improvement and enhancement of the network. In the context of the sale, the contracting out requirement will only apply to new tenancies - it does not apply in respect of renewals where an existing tenancy is protected by the 1954 Act security of tenure provisions.

While Sections 14 & 15 of the Railway Regulation Act 1842 authorise Network Rail, subject to Department for Transport oversight, to enter property adjoining the railway to
carry out necessary works for the purpose of ensuring public safety, they are not comparable to the railway protective provisions and break rights inserted into the Condor Lease and historically in occupational arch tenancies.

I hope this answer is helpful.

Yours Sincerely

Nick Joyce