From the Permanent Secretary

Meg Hillier MP
Chair of the Public Accounts Committee
House of Commons
London
SW1A 0AA

[sent via email to committee clerk]

Dear Meg,

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

We welcome the Committee’s report of 12 September 2019 on the sale of Network Rail’s railway arches, particularly its conclusion that the sale was professionally managed and achieved a fair price. Nonetheless, we recognise that the Committee remains concerned about the effect on current and future tenants.

The Government will consider carefully and respond fully to the report’s recommendations in the next Treasury Minute. This letter is in response to the following recommendation under conclusion 2:

*The Department and Network Rail should write to us within one month setting out what it can and will do to ensure that, when leases are due for renewal, existing tenants are able to do so on reasonable terms without being essentially forced into contracting out of the Landlord and Tenant Act unless they pay disproportionately higher rents. If they have left themselves in a position where no such reassurances can be offered to existing tenants, then they should at least be open about acknowledging that.*

It may be helpful if we first clarify Network Rail’s position under the Landlord and Tenant Act 1954 (The Act).

**Landlord and Tenant Act 1954**

Where existing tenants opt out of the Act, that exclusion only applies in relation to security of tenure (i.e. sections 24 to 28). All other protections afforded to business tenants under the Act will continue to apply to their tenancies. Network Rail has always acted in accordance with the Act, which expressly provides a mechanism to exclude security of tenure provisions from rental agreements. This is only possible with the mutual agreement of both the landlord and the tenant at the start of the lease. In these instances, tenants receive a notice advising them to seek professional advice on the effect of exclusion, in compliance with Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003. Rent is then negotiated, reflecting the position.

As we explained at the Committee hearing, for some time before the sale was contemplated, Network Rail had sought to negotiate new tenancy agreements without the
security of tenure protection to provide appropriate and prompt availability for railway works. This supports Network Rail’s ability to carry out its core responsibilities of running a safe and reliable railway as set out in the Railways Act 1993, enforced under the Office of Rail and Road’s Network Licence. The deal structure codified this existing requirement in relation to new tenancy agreements to support one of Network Rail’s fundamental sale objectives (that the sale would not adversely affect the safety, function or operation of the railway).

Renewal of leases

All existing tenants with security of tenure at the time of the sale will continue to be protected by the Act’s renewal rights. When their leases are renewed, they will be entitled to the same legal rights as set out in their existing agreement, including security of tenure; rents will be reset to market level, which will be set independently by the court if there is a dispute. Only existing tenants who have already opted out, and new tenants, will have leases outside the security of tenancy provisions of the Act.

We hope this clarifies Network Rail’s position in relation to the Act and the renewal of existing tenants’ agreements. If the Committee requires further information on this issue we will be happy to write to you.

Yours sincerely,

Andrew Haines
Chief Executive
Network Rail

Bernadette Kelly CB
Permanent Secretary
Department for Transport