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Railway Markets and Economics  
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1 October 2018

Company Secretary  
Network Rail Infrastructure Limited  
1 Eversholt Street  
London  
NW1 2DN

## **Network licence condition 7 (land disposal): Manchester Arena**

### **Decision**

1. On 4 September 2018, Network Rail gave notice of its intention to dispose of land at Manchester Arena, above Victoria station, Manchester (the land), in accordance with paragraph 7.2 of condition 7 of its network licence. The land and the disposal is described in more detail in the notice (copy attached).
2. We have considered the information supplied by Network Rail. For the purposes of condition 7 of Network Rail's network licence, ORR consents to the disposal of the land in accordance with the particulars set out in its notice.

### **Background**

3. This disposal forms part of Network Rail's 'Project Condor', the disposal concerning its commercial estate business.
4. Network Rail's property holding includes many sites that do not have an operational railway role and the company has a long history of gaining income from their commercial letting. Under Project Condor, Network Rail is to dispose of the majority of its rental business through a single lease to a winning bidder, but in doing so it will retain the rights needed to support the operation of the railway. Normally, Network Rail would conduct its land disposal transactions under the general consent of Condition 7 of its network licence, where such transactions include materially unfettered rights for it to 'step in' for the benefit of the railway.

### **Reasons for decision**

5. In its land disposal notice, Network Rail described how the long-term headlease for Manchester Arena (let in 1995), gives the tenant the ownership and repair responsibility for the whole of the 'raft' structure above the railway. The headlease does not give Network Rail any step-in rights.
6. The proposed disposal, by way of an intervening lease, is of Network Rail's right to receive rent from its Manchester Arena lease. Network Rail has confirmed



to us that the transaction would have no impact on current or future railway operations. Only its right to receive a rental income stream is affected. However, since Network Rail cannot reserve any meaningful step-in rights for railway purposes in the transaction - there being none in the headlease to reserve - it cannot qualify for our general consent. Therefore, our specific consent must be granted for the disposal to proceed.

7. Network Rail informed us of the potential disposal prior to formal notification. We have recognised that in this case there are no property rights being relinquished that would affect other railway stakeholders. We confirmed to Network Rail that, in these circumstances, it would be appropriate to submit its formal notification to us without having consulted its usual stakeholders as we would normally expect and as set out in our land disposal arrangements document<sup>1</sup>. Network Rail did, however, consult the Department for Transport for its views and it confirmed that it had no concerns with the proposal.

8. We consider this departure from normal procedure to be appropriate, as requiring a wider consultation with stakeholders would create an administrative exercise for Network Rail and its consultees without benefit. We have, however, conducted our own internal review of the proposed disposal and based on the evidence we have received, we consider that there are no issues for us to address under Condition 7 of Network Rail's network licence.

9. We have had regard to our decision criteria in *Land disposal by Network Rail: the regulatory arrangements, December 2013*,<sup>1</sup> and balanced our section 4 duties given to us under the Railways Act 1993. In doing so we have given particular weight to our duty to exercise our functions in a manner which we consider best calculated to "protect the interests of users of railway services".

10. We have concluded that the proposed disposal is not against the interests of users of railway services. In light of that and our understanding of the transaction as set out above, we grant our consent to the proposed proposal of the land.

## **Les Waters**

### **Duly authorised by the Office of Rail and Road**

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<sup>1</sup> Available from [www.rail-reg.gov.uk/server/show/nav.150](http://www.rail-reg.gov.uk/server/show/nav.150)

# Proposed Property Disposal

Application by Network Rail Infrastructure Limited to dispose of land in accordance with the Land Disposal Condition of the Network Licence - [Manchester Arena](#)

1. Site	
<b>Site location and description</b>	<p>ORR is aware of the proposal to dispose of a portfolio of properties by the grant of an overriding lease for a term of 150-years known as project Condor. We have negotiated a standard form of lease which is LC7 compliant and ORR has previously confirmed agreement with Network Rail's approach to rely upon the provisions of ORR's Land Disposal General Consent, by virtue of the terms of the lease.</p> <p>One of the assets within the portfolio is Manchester Arena as shaded blue on the Plan attached to this application. Manchester Arena is very much a standalone and individual building constructed on a raft above tracks /station infrastructure and was sold by way of a long lease to Vector Investments (the current tenant is "MIF Managing Trustees") in June 1995. The arrangements between NR and the now owner are governed by the complex provisions of a lease that demised a term of 199 years and allocated ownership and repair responsibility for the whole of the raft structure below the buildings to the tenant .</p> <p>It is proposed that NR grant a intervening lease (i.e. a lease between NR and MIF Managing Trustees) to the Condor NewCo of 150 years so that for that time period the Condor NewCo will be in receipt of rents ( circa £500k pa) payable by MIF Managing Trustees, not NR. The new Intervening Lease will generally be on the same terms and conditions as the existing Manchester Arena Lease to MIF Managing trustees save that no annual rent is reserved.</p> <p>The existing Manchester Arena lease does not give NR any break rights comparable to those referred to at paragraphs 1-4 above (replicating ground c(i) of the licence condition 7 General Consent issued by ORR (please see Annex B below). It is of no practical value to NR to insert such provisions into the arrangement with the Condor NewCo because even if NR exercised the break right, it would simply not bite as against MIF.</p> <p>Manchester Arena was included within the perimeter of land for Condor that went through an appropriate business clearance process reflecting the usual Network Rail policy but customised to take account as to the size and scale of the portfolio contained in the LC7 compliant wording into the proposed overriding lease, as any such rights could not effectively be exercised until the Headlease came to an end.</p>
<b>Specific ORR consent</b>	Given this analysis above, NR is seeking specific ORR consent

<b>required</b>	<p>for the disposal of this specific asset on the basis that:</p> <p>(1) it is legally not possible to make a break right effective retrospectively against existing tenants by the insertion of the break right higher up the chain of ownership.</p> <p>(2) Manchester Arena was included within the perimeter of land for Condor that went through an appropriate business clearance process reflecting the usual Network Rail policy but customised to take account as to the size and scale of the portfolio. See below.</p> <p>(3) it in fact does not for practical purposes form part of its railway asset base having been sold in 1995. For further information please see Paper Guidance Note -Condor-Manchester Arena.</p>
<b>Plans attached:</b> (all site plans should be in JPEG format, numbered and should clearly show the sites location approximate to the railway)	1. Manchester & Salford_MCV02600.pdf
<b>Clearance Ref:</b>	Business Clearance CR/30585 dated 15 November 2016 Technical Clearance CR/ 30585 dated 16 November 2016
<b>Project No.</b>	Project Condor OP/152447
<b>Ordnance survey coordinates</b>	Easting (X): 383942 Northing (Y): 399079 Post Code: M3 1AR
<b>Details of attached photographs (as required)</b>	None
<b>2. Proposal</b>	
<b>Type of disposal</b>	Leasehold disposal (150 year lease)
<b>Proposed party taking disposal</b>	Selected Condor Bidder after an appropriate tender process
<b>Proposed use / scheme</b>	As existing – Manchester Arena leisure facility and car park

<b>Access arrangements to / from the disposal land</b>	As existing pursuant the existing long lease to MIF Managing Trustees.
<b>Replacement rail facilities (if appropriate)</b>	Not applicable as no rail facilities will be lost by the proposed disposal.
<b>Anticipated rail benefits</b>	Part of Project Condor to funding Network Rail's CP5 Railway Upgrade Plan.
<b>Anticipated non-rail benefits</b>	None
<b>3. Timescales</b>	
<b>Comments on timescales</b>	Project Condor is anticipated to Exchange in September 2018 and Complete in October 2018.
<b>4. Railway Related Issues</b>	
<b>History of railway related use</b>	The Manchester Arena property is situated on a raft structure above Manchester Victoria station. The property was developed between 1992 and 1994.
<b>When last used for railway related purposes</b>	Not railway infrastructure but raft above
<b>Any railway proposals affecting the site since that last relative use</b>	No.
<b>Impact on current railway related proposals</b>	None.
<b>Potential for future railway related use</b>	Both the North West and Northern RUS have been reviewed and neither has revealed any strategic plans that require use of the disposal property.  Other than what has been set out above, there are no other known schemes which would require use of the disposal property; it has also been confirmed that it is not required in connection with the Northern Hub.

<b>Any closure or station change or network change related issues</b>	No.
<b>Whether disposal affects any railway (including train operator) related access needs, and how these are to be addressed</b>	N/A
<b>Position as regards safety / operational issues on severance of land from railway</b>	<p>The disposal does not include any requirement for new fencing of the boundary, because its location or the nature of the disposal is such that the boundary demarcation is not needed.</p> <p>. The disposal is without prejudice to Network Rail's safety obligations, with which Network Rail will continue to comply.</p>
<b>5. Planning History and Land Contamination</b>	
<b>Planning permissions / Local Plan allocation (if applicable)</b>	Existing Use to continue at this location.
<b>Contamination / Environmental Issues (if applicable)</b>	No specific issues known relevant to this application.
<b>6. Local Authorities</b>	
<b>Names &amp; Email Addresses:</b>	<p>✂  Policy and Strategy Manager  Manchester City Council  Chief Executives Dept  Town Hall  Manchester  M2 5DB  Tel: ✂</p>

<b>Local Transport Authorities:</b>	<p>Transport for Greater Manchester ☒</p> <p>Tel: ☒</p> <p>Given there is no change to the status of the subject property as a let investment building, it is not considered necessary to consult the LTA</p>
<b>Other Relevant Local Authorities:</b>	None.
<b>7. Internal approval to consult</b>	
<b>Recommendation:</b>	<p>By proceeding to consult I am:</p> <ul style="list-style-type: none"> <li>recommending that Network Rail consults with DfT on the terms of disposal</li> <li>confirming that I have read and understood Network Rail's Code of Business Ethics and policy on Interests in Transactions</li> </ul>
<b>8. Consultations</b>	
<b>Internal consultation</b>	Network Rail internal land clearance (Business & Technical) has been secured CR/30585.
<b>Summary of position as regards external consultations</b>	Given the exceptional circumstances of this case there are no consultees who we would identify as being 'key' to determining whether it is appropriate to dispose. We have consulted with DfT in line with your previous recommendation and are pleased to attach an email confirming that it supports the proposed disposal.
<b>Analysis of any unresolved objections together with recommendation by Network Rail as regards a</b>	None.
<b>9. Internal approval to dispose</b>	
<b>Recommendation:</b>	Based on the above, I recommend that Network Rail proceeds with the disposal.
<b>Declaration:</b>	I have read and understood Network Rail's code of Business Ethics and Policy on Interests in Transactions.
Proposer's name:  ☒	Proposer's job title:  <b>Development Manager</b>

Signed.....	Date.....
Authorised by (name):	Authoriser's job title:
Signed.....	Date.....

# Guidance note-Condor -Manchester Arena

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ORR is aware of the proposal to dispose of a portfolio of let properties by the grant of an overriding lease for a term of 150 years at a capital premium known as project Condor.

We have negotiated a standard form of lease (the **Standard**) which is LC7 compliant and ORR has previously confirmed agreement with Network Rail's approach to rely upon the provisions of ORR's Land Disposal General Consent by virtue of the terms to be contained in the Standard.

One of the assets within the portfolio is a reversionary interest in land and buildings above Manchester Victoria Station being The Arena, City Room, car park and offices, Victoria Station, Manchester (the **Property**). The Property is in part constructed on a raft over Manchester Victoria railway station and track serving the station.

The Property is let for a term of 199 years from 24 June 1995 by a lease (**Headlease**) dated 29 December 1995 made between Railtrack plc (1) and Vector Investments Limited (2).

That part of the Property comprising the Arena (the **Arena**) is underlet by a lease (**Underlease**) dated 15 June 2010 between GE Capital Corporation (Manchester Arena GP) Limited and Capital & Regional Manchester Arena (GP) Limited (as General Partners for Manchester Arena Complex LP) (1) and SMG Europe Holdings Limited (the **Undertenant**) (2).

By an agreement dated 18<sup>th</sup> October 2013 and made between NRIL (1) MEN Arena GP Limited (as then tenant) (2) and the Undertenant (3) NRIL agreed to undertake various building works to the Property and:

1. NRIL and MEN Arena GP Limited (as predecessor in title to the Tenant) agreed to enter into a deed of variation to the Headlease. and
2. MEN Arena GP Limited and the Undertenant agreed to enter into a deed of variation to the Underlease

conditional on the works being substantially completed.

The Headlease is now vested in MIF I Managing Trustee No.1 Limited (a company registered in Jersey whose company registration number is 113763 and whose registered office is at 44 Esplanade, St Helier Jersey JE4 9WG) and MIF I Managing Trustee No.2 Limited (a company registered in Jersey whose company registration number is 113764 and whose registered office is also at 44 Esplanade, St Helier, Jersey JE4 9WG) (in their capacity as trustees of the MIF I Unit Trust).

The Underlease remains vested in the Undertenant.

The Deed of Variation was completed on 10 July 2018.

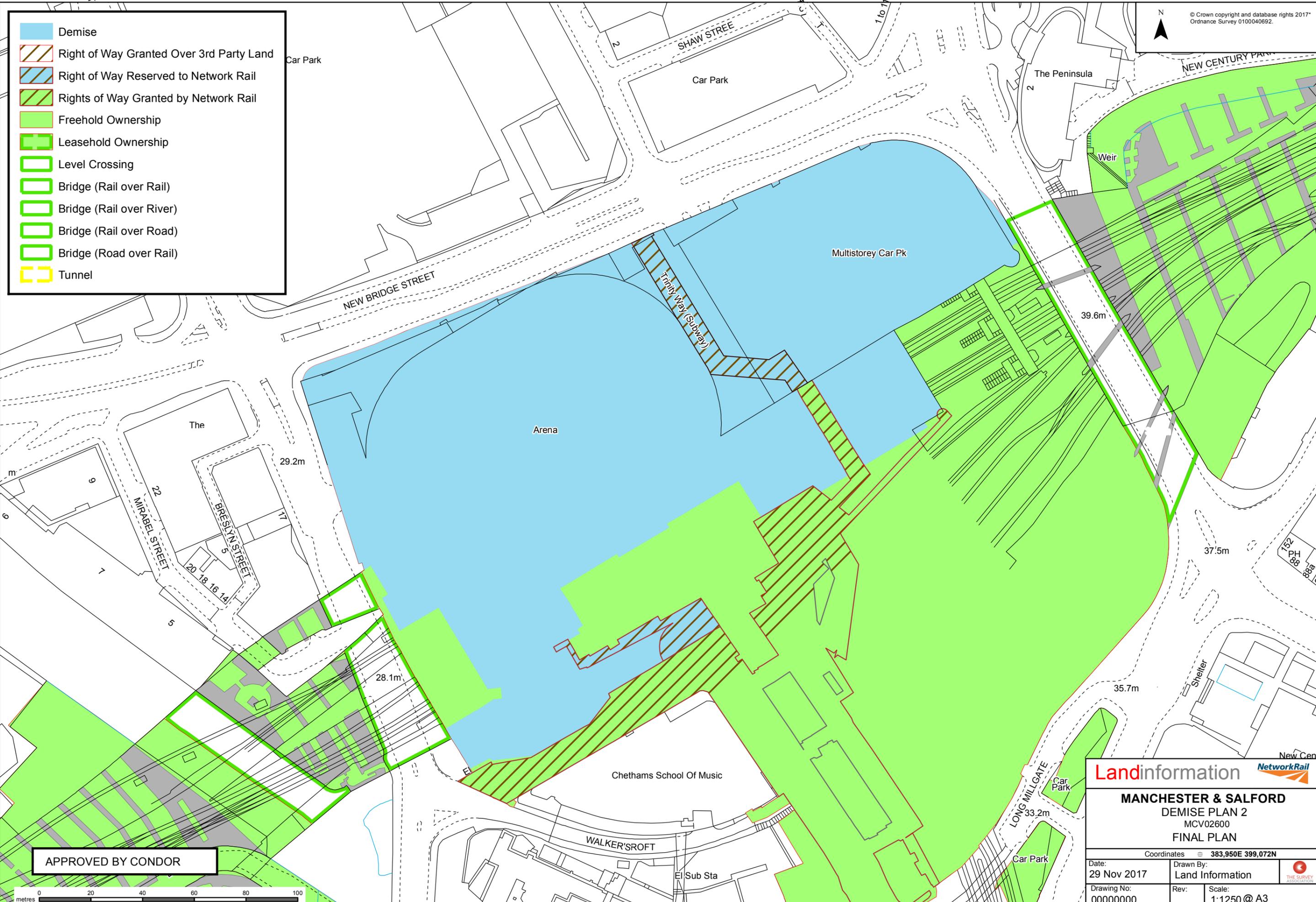
The Headlease is on discrete terms containing detailed provisions for, amongst other things, the maintenance of the raft and protection of the railway. The Headlease imposes primary obligations on the tenant to maintain the raft and the railway and does not give NRIL as successor in title to Railtrack any significant rights of entry let alone rights comparable to the break rights specified in LC7.

Given the term of the Headlease and the limited rights of access given to the landlord under the Headlease it was considered impractical to shoehorn the protective provisions contained in the Standard and LC7 compliant wording into the proposed overriding lease, as any such rights could not effectively be exercised until the Headlease came to an end.

You will note that the Headlease has been operating since 1995, the reversion does not fall in until 2194, the Property has been managed by an independent company since 1995 and the terms of the Headlease were negotiated well before the ORR came into existence and consent to sales was required. It should be noted that the residue of the term of the Headlease is longer than the Condor term (150 years).

It has therefore been agreed that the overriding lease should be in substantially the same form as the Headlease rather than the Standard.

-  Demise
-  Right of Way Granted Over 3rd Party Land
-  Right of Way Reserved to Network Rail
-  Rights of Way Granted by Network Rail
-  Freehold Ownership
-  Leasehold Ownership
-  Level Crossing
-  Bridge (Rail over Rail)
-  Bridge (Rail over River)
-  Bridge (Rail over Road)
-  Bridge (Road over Rail)
-  Tunnel



APPROVED BY CONDOR



Landinformation 

**MANCHESTER & SALFORD**  
 DEMISE PLAN 2  
 MCV02600  
 FINAL PLAN

Coordinates $\square$ 383,950E 399,072N	
Date: 29 Nov 2017	Drawn By: Land Information
Drawing No: 00000000	Rev: Scale: 1:1250 @ A3

**From:** dft.gov.uk  
**Date:** 3 September 2018 at 14:04:20 BST  
**To:** dft.gov.uk  
**Cc:** dft.gov.uk  
**Subject:** Condor - ORR Specific Consent: Manchester Arena and Southwark  
**Importance:** High

✂,

This exception of Manchester Arena and Southwark Vineopolis land sales from the standard General Consents process seems sensible. There's nothing here I can see that would concern us from a Network Strategy policy view. As a safeguard I'm copying this e-mail to ✂(Arena) and ✂(Vineapolis) who lead for us the geographic areas but unless you hear back from one of use, assume this approach works for Network Services.

Kind regards,

✂

**Rail Investment Strategy Manager, Rail Network Systems - L&SE, Department for Transport  
3/23 GMH**

**From:** dft.gov.uk  
**Sent:** 31 August 2018 13:43  
**To:** dft.gov.uk;  
**Subject:** FW: Condor - ORR Specific Consent  
**Importance:** High

✂

I think you are both aware that NR is planning to dispose of its commercial property. They have agreed with OPRR that the General Consent process can cover the majority of the properties in the sale, apart from two (see below and attached). However, for these two they have agreed with ORR that the usual process for specific consents need not apply in this instance.

As the LC& processes touches you in the Department, more than anyone else, I wanted to confirm that this approach works for you and to check that you are not aware of anyone else who may have an interest in this.

Thanks,

✂

**Programme Head, NR Asset Disposal Programme, Corporate Finance Directorate, Department for Transport  
5/28**

**Post to: Great Minster Hse, 33 Horseferry Rd, London, SW1P 4DR**

**From:** networkrail.co.uk

**Sent:** 31 August 2018 12:45

**To:** dft.gov.uk

**Cc:** networkrail.co.uk

**Subject:** Condor - ORR Specific Consent

**Importance:** High

✂

Earlier this week ✂ raised the matter of two Condor properties that require Specific Consent for disposal from the ORR.

The background is that we have agreed with ORR to follow the General Consent process for the disposal of the vast majority of the 5,244 properties in the Condor portfolio. However the two assets at (i) Manchester Arena and (ii) Thames House (Vinopolis), Southwark, don't fit with this approach. This is purely down to the slightly unusual terms of the existing legal agreements at each location.

As such we have agreed with ORR that we need Specific Consent for disposal of these two properties. Usually this involves consultation with TOCs and other stakeholders, however given the circumstances ORR have confirmed that this is not appropriate. Attached are the draft applications which explain the position in more detail.

In lieu of a wider consultation ORR have requested confirmation that DfT are aligned with this strategy. Once you have considered could you please provide a simple email of support, so that we can then submit the papers to ORR?

Should you have any questions then please do not hesitate to contact me.

Kind regards

✂

Transaction Lead – Condor (Property)  
One Eversholt Street, London NW1 2DN