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30 November 2012

Dear colleague

ORR's regulation of land disposals by Network Rail

I am writing to ask for your views on how you think the arrangements for regulating Network Rail's land disposals have worked over the last two years and to propose some improvements.

We last revised our arrangements in October 2010, at the same time as the *Rail Value for Money Study* was in progress. The Study recommended that we review Network Rail's land disposal obligations to see if they could be streamlined or improved. Since then, we have reduced our casework turnaround times from about ten weeks to about four weeks on average. We have also considered how to make further improvements. In the annex attached to this letter we propose to change our general consent to remove the need for some of Network Rail's transactions to be referred to us.

Be assured though that our overall objective remains unchanged. We will continue to protect land that has a reasonably foreseeable use in the future development of the railway network and are not proposing to amend the text of Network Rail's licence condition.

We think our processes are more efficient and effective than ever - consistent with our aims for continuous improvement and with the aims of the *Value for Money* recommendations - while continuing "to protect the interests of users of railway services", in accordance with our duties. We will, however, be interested to receive your views on any aspects of our regulation of Network Rail's land disposals. We will take into account any comments before updating and publishing our land disposal guidance. Please can you therefore let me have any comments by Friday 18 January 2013.

Yours faithfully

A handwritten signature in blue ink that reads 'Les Waters'.

Les Waters



Consultees

Network Rail

Passenger train operators

Freight train operators

Association of Train Operating Companies

Rail Freight Group

Freight Transport Association

Department for Transport

Transport for London

London TravelWatch

Passenger Focus

Welsh Government

South West Wales Integrated Transport Consortium

Transport Scotland

Regional Transport Partnerships

Scottish Council for Development & Industry

Integrated Transport Authorities and/or the Passenger Transport Executive Groups:
Centro, Merseytravel, Metro, Nexus, South Yorkshire, Strathclyde

Local planning authorities (via the Local Government Association)

Association of Community Rail Partnerships

British Transport Police

Introduction

Network Rail's land disposal licence condition¹ is drafted widely and could mean that we are notified of a huge number of land transactions, many of which would not have any effect on the future development of the railway. Our oversight of such transactions would place an unreasonable administrative burden on both Network Rail and ORR and would produce no benefit. To avoid this we have issued a general consent that allows Network Rail to dispose of land in specified circumstances without seeking clearance from us in advance.

We have identified below some changes (**marked in red**) that we propose to make to the general consent that would allow Network Rail to make some additional types of transactions and which should not weaken the existing safeguards, so that they will continue to "*protect the interests of users of railway services*", in line with our duties under section 4 of the Railways Act.

Our most significant proposal is a new general consent clause 1(q). The aim is to allow Network Rail to dispose of land for public transport interchanges without consulting us but only where stakeholders agree with Network Rail's proposals. Other changes are more minor and there are several instances where we have deleted the wording "the grant of" simply to clarify that the stated objective of the lease/licence etc should be for the duration of the arrangement.

Please let us have your views by **18 January 2013**.

General consent under Condition 7 of Network Rail's network licence

1. ORR directs that for the purposes of condition 7 of the network licence, Network Rail may dispose of land by entering into any of the following ~~transactions~~ arrangements without giving prior notice:
 - (a) ~~the grant of~~ a lease, which incorporates the Station Access Conditions, of all or part of a station to a passenger train operator providing railway services under a franchise agreement with the appropriate franchising authority or under a concession agreement with a Passenger Transport Executive or Transport for London (or its successors). The lease must be capable of termination on or before the termination of the relevant franchise agreement or the concession agreement. For the purpose of this paragraph a franchise agreement or a concession agreement shall not be treated as being terminated if, when it comes to an end, it is replaced by an agreement between the passenger train operator and the appropriate franchising authority, or a Passenger Transport Executive, ~~or~~ Transport for London, or Docklands Light Railway (or ~~their~~ successors), on similar terms;
 - (b) ~~the grant of~~ a lease or licence of part of a station of which Network Rail is the station operator to a train operating company for the purpose of providing services relating to railways;
 - (c) ~~the grant of~~ a lease or licence:
 - (i) of all or part of a light maintenance depot (LMD) to any person for the purpose of providing services relating to railways; or

¹ See Condition 7 of Network Rail's network licence at www.rail-reg.gov.uk/upload/pdf/network_licence.pdf

- (ii) of land for the construction of an LMD provided that there are no plans to use the land for other railway purposes and the land is used only for such purposes as are permitted by the National Depot Access Conditions (December Standard) or such other depot access conditions as may be approved by ORR;
- (d) ~~the grant of~~ a reversionary or concurrent lease pursuant to an obligation contained in any such lease referred to in paragraphs 1(a) and 1(c) provided that the grant of the reversionary or concurrent lease does not interfere with or restrict the carrying on of railway services at the station or LMD;
- (e) ~~the grant of~~ a lease or a licence which contains a materially unfettered right permitting Network Rail to terminate the lease or licence if the land is required by Network Rail for the performance of its responsibilities as a provider of network services or for the purpose of the network business or for the purposes of railway and/or integrated transport related redevelopment;
- (f) ~~the grant of~~ a lease or licence of all or part of a building which will be used by the lessee as office accommodation;
- (g) the disposal of land which has no reasonably foreseeable use:
 - (i) for, or in connection with, services relating to railways; or
 - (ii) for any other public transport use, which would provide benefit for rail passengers, through better integration of public transport modes;
- (h) the renewal or extension of any lease where the renewal is required by operation of law;
- (i) ~~the grant of~~ a licence where ~~the grant that~~ would not have a material adverse effect on the ability of Network Rail, any network operator, any beneficiary or a holder of a licence under the Act or the Railway (Licensing of Railway Undertakings) Regulations 2005 to use or develop the land for the purpose of providing services relating to railways;
- (j) the grant of sub-surface or air rights that do not infringe on the space which may be needed to facilitate the provision of services relating to railways (major developments are excluded from such grant);
- (k) the disposal of any land made solely for the purpose of boundary rectification of land in which Network Rail has an estate or interest;
- (l) ~~the grant to a third party of~~ a wayleave, easement or servitude ~~where the grant which~~ would not have a material adverse effect on the ability of Network Rail, any network operator, any beneficiary or any holder of a licence under the Act or the Railway (Licensing of Railway Undertakings) Regulations 2005 to use or develop the land for the purpose of providing services relating to railways;
- (m) ~~the grant of~~ a lease or licence of a freight depot, freight terminal or freight sidings for the purposes of providing services relating to railways;

- (n) ~~the grant of~~ a lease or licence to a person providing network services for the purpose of providing services relating to railways;
- (o) any disposal of land to the extent it comprises a network or railway facility (or part of a network or railway facility) which has been the subject of a decision on closure under section 43(9) of the Act (or the effect of the provisions set out in sections 22-35 of the Railways Act 2005 is that it is permitted to be closed or its use discontinued) and that decision (or effect of those provisions) does not explicitly require that the licence holder does not dispose of the land; ~~or~~
- (p) the ~~dedication disposal~~ of land to a governmental or local authority, agency or department for the purposes of or in connection with a highway including approaches to level crossings, where such land does not form part of the operational rail network and where recent prior consultation with relevant train operators, passenger transport executives, Transport for London (or its successors) or Regional Transport Partnerships, as appropriate, has raised no issues; ~~;~~ or
- (q) the disposal of land wholly for a public transport use, which would provide benefit for rail passengers through better integration of public transport modes, and where:
 - (i) the disposal would not hinder Network Rail's ability to conduct its Permitted Business; and
 - (ii) prior consultation with all relevant stakeholders has not identified a competing railway or integrated transport use as reasonably foreseeable for the land or raised any other issues.

2. ORR may after consulting the licence holder modify or revoke this general consent if it appears to ORR requisite or expedient to do so by reason of any change of circumstances having regard to the duties imposed on ORR by section 4 of the Act.

3. In this direction:

“the Act”	is the Railways Act 1993;
“lease”	includes a tenancy;
“prior notice”	means a notice to ORR under condition 7 of Network Rail's network licence, or condition 28 of a station licence;
“Station Access Conditions”	means the National Station Access Conditions 1996 (England and Wales) lodged with ORR on 30 January 1996, or the National Station Access Conditions 1996 (Scotland) lodged with ORR on 4 March 1996 as appropriate, and in both cases, modified from time to time with the approval of ORR;
“Depot Access Conditions”	means the National Depot Access Conditions (England and Wales) or the National Depot Access Conditions (Scotland) lodged with ORR, and in both cases modified from time to time with the approval of ORR;

and any other words and phrases in this direction shall have the same meaning as in the Act or network licence.