

Ryan Holt
Access Executive

14 July 2023

Prologis (DIRFT Rail) Limited
Prologis House, Blythe Gate
Blythe Valley Park
Solihull, West Midlands
B90 8AH

Royal Mail Group Limited
185 Farringdon Road
London
EC1A 1AA

Dear Prologis and Royal Mail Group

Approval of the Connection Contract in respect of the connection between the DIRFT III common rail network and Royal Mail Group's sidings.

1. We have today approved the terms of the above connection contract submitted to the Office of Rail and Road on 28 June 2023 under section 18 of the Railways Act 1993 (the Act). The connection contract relates to a rail connection within the Daventry International Rail Freight Terminal (DIRFT) and sets out the contractual arrangements for the connection between Prologis (DIRFT Rail) Ltd and Royal Mail Group Ltd (Royal Mail). Please find enclosed a copy of our directions notice, directing the parties to enter into the contract. This letter sets out the reasons for our decision.

Background

2. The Prologis group of companies is the freeholder of DIRFT, including the common rail network and the various rail connected warehouses. Royal Mail is a tenant of one of the rail-connected warehouses and has certain rights and obligations under its lease to use the rail connections at DIRFT to access its warehouse. The lease between Prologis and Royal Mail provides rights of access and egress by rail to the connected facility. In order to ensure it has a rail connection to the common rail network recognised under the Railways Act 1993, Royal Mail is required to enter into a connection contract to join the common rail network in DIRFT III.
3. The land at DIRFT has been acquired by Prologis over a period of years as the site has been developed. This means that ownership of the land which is used for the rail

corridor is not within a single company. The land for the DIRFT I rail corridor is held by Daventry Rail Port Limited and the land for DIRFT II and DIRFT III corridors is held by Prologis (DIRFT Rail) Limited. This connection contract, alongside another approved by ORR in 2015, ensures that the three sections of the common rail network at DIRFT can be operated as a single network.

Industry consultation

4. Addleshaw Goddard LLP conducted an industry consultation on behalf of Prologis (DIRFT Rail) Limited and Daventry Rail Port Limited from 31 October 2022 to 14 December 2022. The consultation was in relation to the connection contract and accompanying facility access contracts between Prologis and Royal Mail, as well as access agreements for other tenants on the DIRFT network. There were two formal responses to the industry consultation, there are no outstanding objections to the Royal Mail Connection Contract. Although the consultation was some months ago, we were reassured that no new issues have arisen in the meantime.

ORR review

5. The terms of the connection contract, submitted on 28 June 2022, reflect that the parties are not required to use the Network Rail model template, and the charging regime and other arrangements are specific to this site. The right to use the connection and wider DIRFT network forms part of an overarching lease between the two parties. This is reflected in the nominal fee in the contract charged for the use and maintenance of the connection. There are also some other departures from the model contract to reflect the bespoke set of legal and financial arrangements:
 - A number of definitions have been deleted from the model contract that are no longer relevant due to the contract charge being a nominal amount whilst maintenance costs are recovered through a service charge payment under the lease. For example, 'Adjustment Factor Formula' and the associated Schedule 3 has been deleted. 'CPI' has been replaced by 'RPI' for indexation calculations and the definition used matches the terms used in the corresponding lease. 'Lease', 'NR Network' and 'Network Rail Connection Contract' have been added as new definitions.
 - The right for either party to give 3 months' notice of termination to the other under 'Clause 8 – Termination' has been deleted so that termination rights for the connection contract complement the lease terms. Both parties intend that, subject to any default by either party, their connection contract is to continue for as long as Royal Mail occupies the site or Prologis is able to provide the Prologis Rail Network.

- 'Clause 15 – Payment' reflects that a nominal sum of £1 each year is paid for the connection itself, this is because the lease includes service charges to be paid by Royal Mail for the upkeep and maintenance of the premises and common parts of the DIRFT estate including the common rail line and rail connections to the relevant facilities. The division of the common charge is based on the percentage area that their facility covers compared to the total area of facilities on the DIRFT Estate which have access to the common rail network and is not related to any specific connection. It also reflects the arrangements specific to the site about how the network is managed and operated, for example, the signalling controls.

ORR considers that the differences to the model template, mentioned above, are satisfactorily explained by reference to the separate lease and the particular nature of this site. Both parties understand the implications of these arrangements and agree to them. We see no reason to object to the connection contract submitted. ORR's decision is in relation to the connection contract submitted and does not concern any of the underlying arrangements contained in the lease.

6. Also, good plans are needed for the long-term functioning of a connection contract. The plans initially provided to us, which had been embedded into the contract, were not easily readable and we requested separate versions. Plans should be clear of a reasonable size and reflect the contract. ORR recommends the use of OS coordinates or other geographical markers, and the parties may want to consider the applicability of these to any revisions of these plans or others to be submitted to us (see our guidance).

Our duties under section 4 of the Act and our decision

7. This application is under section 18 of the Act and therefore is agreed between the parties, who are prepared to enter into the agreement.
8. In making this decision, we are satisfied that this decision reflects our duties under section 4 of the Act, in particular:
 - (i) to protect the interests of users of railway assets;
 - (ii) to promote the use of railway network in Great Britain for the carriage of passengers and goods and the development of that railway network, to the greatest extent ...economically practicable;
 - (iii) to promote efficiency and economy on the part of the persons providing railway services; and
 - (iv) to enable persons providing railway services to plan the future of their



businesses with a reasonable degree of assurance.

9. Under clause 18.2.3 of the connection contract, Prologis is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and Royal Mail Group. We look forward to receiving the conformed copy.
10. In line with their directed contract, we remind the parties that relevant disputes must be referred for resolution in accordance with the ADRR. The Access Disputes Committee is responsible for the operation of the ADRR. Please contact secretary@accessdisputesrail.org to sign up to this dispute resolutions regime if you have not already done so.
11. In entering any provision on the register, we are required to have regard to the need to exclude, as far as is practicable, the matters specified in section 71(2)(a) and (b) of the Act. These sections refer to:
 - a. any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the ORR, seriously and prejudicially affect the interests of that individual; and
 - b. any matter which relates to the affairs of a particular body of persons, whether corporate or incorporate, where publication of that matter would or might, in the opinion of the ORR, seriously and prejudicially affect the interests of that body.
12. Therefore, when submitting the copy of the signed agreement would you please identify any matters that you would like us to consider redacting before publication. You will need to give reasons for each request explaining why you consider that publication would seriously and prejudicially affect your interests. Please also provide copies of documentation in a readily accessible format so that it can be published on our website and register.

A handwritten signature in black ink, appearing to read 'R. Holt', with a long horizontal line extending to the right.

Yours sincerely

Ryan Holt