

Public Accounts Committee

Oral evidence: [Network Rail's sale of railway arches](#),
HC 2230

Monday 17 June 2019

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Members present: Meg Hillier (Chair); Shabana Mahmood; Nigel Mills; Anne Marie Morris; Bridget Phillipson; Lee Rowley; Gareth Snell; and Anne-Marie Trevelyan.

Gareth Davies, Comptroller and Auditor General; Linda Mills, Parliamentary Relations Manager, National Audit Office; Gregor Botlik, Audit Manager, NAO; and Marius Gallaher, Alternate Treasury Officer of Accounts, HM Treasury, were in attendance.

Questions 1-124

Witnesses

I: Andrew Haines, Chief Executive of Network Rail; Nick Joyce, Director General for Resource and Strategy at the Department for Transport; Charles Roxburgh, Second Permanent Secretary, HM Treasury; and Jeremy Westlake, Chief Financial Officer of Network Rail.



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Report by the Comptroller and Auditor General Network Rail's sale of railway arches (HC 2137)

Examination of witnesses

Witnesses: Andrew Haines, Nick Joyce, Charles Roxburgh and Jeremy Westlake.

Chair: Welcome to the Public Accounts Committee on Monday 17 June 2019. Our witnesses, from my left to my right, are Nick Joyce, Director General for Resource and Strategy at the Department for Transport; Charles Roxburgh, Second Permanent Secretary at the Treasury; Andrew Haines, Chief Executive of Network Rail; and Jeremy Westlake, Chief Financial Officer of Network Rail.

Mr Haines, you are fairly new in post, but this is not your first time in front of us. Mr Westlake, I think this is your first time.

Jeremy Westlake: It is, yes.

Chair: Mr Joyce, have you been in front of us before?

Nick Joyce: I haven't.

Q1 **Chair:** Welcome to the two new witnesses. I am sure you will have a fun time—that is what we are all about, after all.

We are here to ask you some detailed questions about Network Rail's sale of railway arches. In fact, Network Rail sold 5,000 properties, of which the bulk—70%—were arches. They were sold on a 150-year lease for £1.46 billion. That was because Network Rail needed to plug a funding gap and did a deal with the Treasury and the Department for Transport, which was able to agree certain terms of sale—hence the 150-year lease—so that that money could be reinvested back in the railway.

The sale went quite well technically, although we will be interested to know more about it. However, I want to focus today on the long-term implications of a sale of this nature for future policy making and financial income targets, and for those who are most affected—in this case, the tenants and the communities in which they are based.

Let me ask you first, Mr Haines, and then I will ask Mr Joyce for the Department's point of view: what was it that motivated you to sell this? Obviously, there was a funding gap—was that the only motivation, or was there anything else?

Andrew Haines: I believe it was. In 2014-15, three things came together. There was quite an ambitious enhancement plan—probably the biggest that we had seen for several generations.

Q2 **Chair:** It was paraded heavily by the then Prime Minister as a major achievement.



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Andrew Haines: I was not in the industry, but that sounds familiar. There was also a recognition by the regulator that, because of the nature of fixed control periods, not all the schemes were fully developed, so there was a mechanism to adjust for the cost of those schemes. Of course, then came reclassification towards the end of 2014, which meant that that mechanism was no longer available.

Q3 **Chair:** You couldn't borrow money from the markets.

Andrew Haines: We couldn't borrow money from the markets, so as the true full cost of those schemes emerged, there was a gap. Network Rail looked to see what it could do about that gap. The chair, Sir Peter Hendy, working with colleagues, identified that one opportunity would be the sale of the arches, which had been considered previously in the last control period.

Q4 **Chair:** So it had been considered previously, you are saying.

Andrew Haines: It had been considered previously, but I think it had been discounted because there was no burning platform to do it and it is a relatively complex transaction.

Q5 **Chair:** And the complexity is because you need to retain the freehold.

Andrew Haines: And there are so many different properties, as you said: 5,200-plus properties were eventually disposed of, all with individual leases. It was a detailed, complex transaction, plus which we need long-term access to protect the railway and the safety and security of passengers.

Q6 **Chair:** Mr Joyce, from the Department's point of view, what motivated you to encourage or support this sale?

Nick Joyce: As Andrew said, the funding gap was identified. Following reclassification, we looked at the value held by Network Rail in the property estate and identified that, through the sale transaction that was taken forward, that value could be released to meet the funding gap.

Q7 **Chair:** So it had been considered before, but presumably it was not so pressing then, whereas the reclassification suddenly meant that that funding gap was a real gap in terms of what the Treasury or you would have to pay out.

Nick Joyce: With a genuine opportunity cost, therefore, of that shortfall.

Q8 **Chair:** So suddenly it became more appealing.

Nick Joyce: Yes.

Q9 **Chair:** So what will you sell next time, Mr Haines? What is left to sell if there is another gap in funding?

Andrew Haines: The situation has changed fundamentally now, in that the revised way in which we budget for enhancements means that we do not have a regulatory settlement that includes the detailed provision. We have an enhancement pipeline arrangement with the Department for



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Transport and the Treasury, so we only get funds released as schemes get developed. It is done through the individual stages: we get approval for money to design, then to develop and eventually to deliver.

- Q10 **Chair:** The normal public sector requirements, then—not like before, when you could just go and borrow private money to plug the gap.

Andrew Haines: Yes, because we are very clear that we have to live within a headroom now, and if for whatever reason a scheme overruns, we have to fund that money from within our headroom.

- Q11 **Chair:** Have you got any other property like this that you could sell if you wanted to?

Andrew Haines: Not of this scale. The team looked at properties such as light maintenance depots that the train operators use to maintain their facilities, but there are additional complexities there, and there is not a huge amount of value. There are certainly parcels of land that we will continue to look to dispose of for development, as we have done for a long time.

- Q12 **Chair:** Do you have any other tenanted properties?

Andrew Haines: There may be a small number that we have retained that we think might need but we don't need, but I would be talking about a very, very small number—low millions on an annual basis, as opposed to a £1.4 billion transaction.

- Q13 **Chair:** Mr Roxburgh, we touched on this a bit last week, but clearly there are wider Government policy issues when you are considering a sale of this nature. This receipt counted towards the £5 billion of publicly available land for sale towards the targets that we talked about last week, but you had not actually included that in that public land sale valuation at the very beginning of the planning of that, had you?

Charles Roxburgh: No. As we discussed last week, the origins of that £5 billion of release of public land came out of the review that Sir Bob Kerslake did, and he identified £4.5 billion; that was an estimate, and then we added the stretch target on to that to make £5 billion.

At that stage, Network Rail was not part of the public sector, so as I explained last week, there were some areas where we did not achieve the original targets and some where we over-achieved. That looks like it will come in broadly on target for the £5 billion over time.

- Q14 **Chair:** You can say you over-achieved on this from a financial point of view, but as you had not even expected it to be in the frame because it had been discarded as an option—it wasn't classified as public sector at that point—you were not expecting this £1.46 billion to be included in that £5 billion portfolio. Really, it rescued that target, didn't it?

Charles Roxburgh: Indeed. Without this £1.46 billion in that target, that target would have fallen short. As we explained last week, some of the properties that had been thought—some of the options were taking longer



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to develop and proving more difficult, so those will come through our longer timescale.

- Q15 **Chair:** Mr Joyce, was this a consideration when you were discussing with Network Rail how to plug its gap? Were you also looking at how to plug the gap in policy that MHCLG was leading on—this £5 billion for property sales in the public sector?

Nick Joyce: Two things come together. First, we are always looking at whether there are asset sales that we could bring forward that are good value for money, particularly at times of spending reviews and so on, when we look at the balance sheet that we have and see which assets are capable of realisation. However, the timing here was particularly driven by Network Rail's funding problems.

- Q16 **Chair:** Mr Haines, when did you realise that you could not deliver both the safety objective and the deficit reduction objective? It took longer to do this than you had thought, and you had to have the 150-year lease agreement. Can you just talk us through the process that made you have to make those decisions?

Andrew Haines: I can try. It might be better if Mr Westlake did, because he was there at the time, all through that iteration.

Jeremy Westlake: I think it was pretty well known near the beginning that we would prefer a leasehold sale, because it provides so many more protections for us.

- Q17 **Chair:** Could you even do a freehold sale? Did you seriously consider that?

Jeremy Westlake: We did seriously consider it, and we considered it very seriously with Treasury as well, to see whether there were ways to view the void within the arches and the land underneath it, rather than the structures. We did look at it at quite some length, and it was one of the reasons why the process took a bit longer than we expected it to, because we were evaluating the right structure that would protect the railway and provide the right fiscal effects.

- Q18 **Chair:** Are there any examples anywhere in the world where the void and the land below it have been sold as freehold?

Jeremy Westlake: No, but I think there are other examples within commercial property where you can own the freehold underneath a structure and the structure above has a different structure, as well.

- Q19 **Chair:** At what point did it become evident that for various reasons, including safety particularly, that you couldn't do that? Was safety the top concern?

Jeremy Westlake: It definitely was, yes. One of our top four critical criteria for the sale was to make sure that we could always access the railway when we needed to. It was extremely early on in the transaction when we realised that freehold was going to be very difficult, and therefore achieving the fiscal effects would be challenging.



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Q20 **Chair:** How many did you hold back that you didn't sell for safety or operational reasons, Mr Haines?

Andrew Haines: The total portfolio is 7,000, so it is about 2,000 properties, either because of potential separate development or where we think there is an opportunity in due course for a railway development. I am not aware of any that we took for purely safety reasons; it was mostly those other factors that meant we retained a subset of the portfolio.

Q21 **Chair:** Of course, under the deal that was sold to The Arch Company in the end as the successful bidder, you have the right to go in and give compensation to The Arch Company—either rent or rent forgone, if it is a permanent takeover. How many have you ever had to go into in recent years and actually take over from existing tenants?

Andrew Haines: Sorry, I did not quite—

Chair: How many arches have you had to take over from existing tenants for operational reasons in recent years?

Andrew Haines: It tends to be temporary. It is tens of properties, or maybe 100 properties, a year—that sort of low number. We have to do that for anything more than a short visit.

Q22 **Chair:** Can you give us a rough timeframe for how long—

Andrew Haines: For operational reasons, it tends to be fairly short.

Jeremy Westlake: We took out about 800 arches that we thought we would need for future railway—

Q23 **Chair:** So you have tried to mitigate that with The Arch Company. How many in recent years have you had to go into? Hundreds, but for short periods of time, is what we are hearing.

Jeremy Westlake: Yes.

Q24 **Chair:** When you say short periods of time, is that weeks, months—

Andrew Haines: Weeks or a couple of months, unless we are doing a fundamental redevelopment. Clearly, if you are doing a long scheme like London Bridge, that will be for several years.

Q25 **Chair:** How many do you expect to take back temporarily or permanently over the 150-year lease? Have you done any projections on that?

Jeremy Westlake: We haven't predicted that in detail. We deliberately excluded everything we could see for CP6 and going into CP7. That was 800 arches, more or less. The reality is that it depends on the nature of the project. Most of the arch estate where there is real value sits in certain parts of London. We have already executed most of the major enhancement schemes that we can see for now. Right now, I can't see many more that are coming forward that we didn't identify, so I think we are protected for the next five to 10 years.

Q26 **Chair:** So you have not done any estimation of the potential cost to



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Network Rail and the taxpayer of taking back rental spaces?

Andrew Haines: The cost will not be the cost of taking back the property, because we will have lost the rent in the first instance.

Q27 **Chair:** But you will pay compensation to the new owners.

Andrew Haines: Yes.

Q28 **Chair:** So you haven't done any estimate of that?

Andrew Haines: We haven't been able to do an estimate because it is dependent on two things: first, a need that is not yet defined, and, secondly, the incremental value that has been attained by the current leaseholder in between. There would be a loss of income anyway. If we were to take over a tenanted arch currently, we would lose that income in the development. Those are two very nebulous things, so we weren't able to come to a clear view on that.

Q29 **Chair:** So you are planning that, in each control period, you will look at this, and if you need, for example, to go to Dawlish or Hackney and take over some arches to do some work, you will build that into—

Andrew Haines: Into the value of the project at the time, yes.

Q30 **Anne Marie Morris:** Mr Haines, Dawlish is clearly an area where there is going to be an awful lot of work, in terms of supporting that sea wall and that railway line right out to sea. I have seen a map, but it is not clear exactly where the arches are. Are they anywhere close to the work on the sea wall, and therefore might you have to take them back or might they be at risk of any work?

Andrew Haines: My understanding is that that is one of the top priority schemes for CP6.

Anne Marie Morris: Glad to hear it!

Andrew Haines: We have factored those into the retained portfolio, because it is a committed scheme so we are very clearly going to do something about it. The difficult thing is, what if in 10 years' time we want to take back some arches for a scheme that is not currently well developed? You would have to guess where the scheme was and how much the value had increased over that period.

Q31 **Anne Marie Morris:** Are there any other arches in areas where there is a similar sort of risk? This is a peculiar railway, because it is right at the edge of the coast. Presumably there might be others where similarly, because of their geological or geographical positioning, you might have to fundamentally reconstruct—

Andrew Haines: Yes. In the areas where we have a particular coastal risk, there aren't very many arches. Part of the problem is that they tend to form the sea wall, rather than being elevated. I am not aware of any of those.

Anne Marie Morris: Thank you.



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- Q32 **Chair:** One of the concerns that some of us had when this was being sold was that it happened at a pace, although in the end it was slightly longer than expected. You made a decision to sell it as a single portfolio, not to sell it to the existing tenants or to any local landlords. Can you explain why you made that decision?

Andrew Haines: I believe that that decision was taken in the interest of value. This is 5,200 different tenancies, and the transaction costs of selling it to 5,200, or a subset of that, would have been very significant. Our advisors told us that the value that we would have been able to generate would have been considerably less if we had broken it up into many pieces. It is not as if we let arches to big tenants currently. Most of our arches are individual tenants.

- Q33 **Chair:** My next question, though, is: did you do any analysis of whether existing tenants even had the money or opportunity to raise the funds to buy their own arches? Was that a consideration?

Andrew Haines: My understanding is that the board received very strong advice to get best value for the taxpayer for this sale, then sell it as a portfolio. Maybe Mr Westlake—

- Q34 **Chair:** Mr Westlake, did you give any consideration to breaking it up into several large chunks? We are hearing about the individual issue.

Jeremy Westlake: We looked at a number of aspects. One was: if you could sell it piecemeal, would you achieve a greater value overall? The answer was actually the reverse—that you would get a portfolio effect by bundling all the properties together. Certainly across the country, you would get a read-across of some of the value uplifts that had been seen in London and other parts of the country as well. It looked like the most valuable way to sell the estate.

We looked at splitting the estate into several parcels, but we were concerned about cherry-picking. Therefore you would not get the same portfolio effect. The strategy was to go for one single portfolio, because it would attract the biggest investors that had the most funding available.

- Q35 **Chair:** You talk about cherry-picking, but you were in control of the sale. If you, for example, parcelled together a low-value bit of the estate with a high-value bit of the estate, it was you who decided those parcels. Given the restrictions on any future owner sub-letting and selling on, which they can't do, wouldn't you have been able to mitigate that if you had taken a slightly different approach?

Jeremy Westlake: No; I think we genuinely believed that we were going to get an uplift, and that the averaging up would have worked in our favour.

- Q36 **Chair:** Mr Joyce, and maybe Mr Roxburgh, in terms of wider Government policy, which is about place-making, creating value and building the economy in certain areas, did you consider that there may be some drawbacks to having one large company own a portfolio and run it across the whole of the country, rather than having some understanding and



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connection of place? As a private company, they had no obligation to engage at all, if they didn't choose to, with local residents, local bodies and local economies.

Nick Joyce: The consideration that we gave collectively, certainly at the outline business case stage and initially at the strategic outline business case stage, was to look at some of those broader objectives. We felt that the single owner would be able to bring more capital to bear, and the benefits that we saw were bringing back into use arches or sites that were currently unoccupied and the ability to invest in the quality of the estate. That would have positive benefits for the communities and the local economies.

- Q37 **Chair:** London has quite a mix. There are some in Ms Mahmood's constituency; there is quite a concentration there. If Birmingham Council, for example, had bought the ones in Birmingham, I would have thought that they would have had the wherewithal and the interest in investing capital in those because they had a strong sense of place. If you look at some of the developments in Birmingham city centre around the waterways and canals, for example, that was a good, strong sense of place. That is an example of where a council can make a difference. Did you look at that at all anywhere in your Department, or did you talk to any other Government Departments about that?

Nick Joyce: We certainly spoke to Network Rail at length about the sales structure and the pros and cons of single sale versus a disaggregated sale.

- Q38 **Chair:** But that was purely financial. Obviously, we are the Public Accounts Committee and we are keen to get value for the taxpayer, but there is more than just cash value for the taxpayer, potentially. Did you consider any non-cash benefits to parcelling this up differently?

Nick Joyce: Yes, we did. In the business case—I think the NAO noted this in the Report—we looked in a qualitative sense at the non-monetary benefits as part of the economic case, which, as I said, referred back to the investment in the estate and the bringing into use of those vacant sites. When you combine that with the point that Mr Westlake has made about the overall value achievable through a single portfolio sale, that is how we were supportive of the structure taken forward.

- Q39 **Chair:** The group that was really left out of this process, and all these early high-level discussions, were the tenants themselves, and the understanding of what they contributed to this. Why were they only thought of so late in the process, Mr Joyce?

Nick Joyce: I think it is fair to say that Network Rail did engage with the tenants at the point before the sale process started. There was significant engagement activity.

- Q40 **Chair:** Not when it was first being mooted. It was not something that there was really engagement on until quite late. The NAO Report highlights this as well.



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Nick Joyce: I will let Mr Westlake talk about the engagement that they did specifically at the beginning, but given the strength of feeling that became clear through the process, we would certainly reflect on whether, if we had our time again, we could have done further engagement earlier.

Q41 **Chair:** Is that a small apology to the tenants that you did not involve them sooner?

Nick Joyce: We do believe that the protections in the arrangements that were put in place in the leases protect the tenants and the position they hold in those arches, but in terms of that strength of feeling and the engagement with them, I would accept we could have done more.

Q42 **Chair:** It's great that you listened to their strength of feeling, but one would have thought, given that there were over 5,000 tenanted properties for sale—well, nearly all of them were tenanted—and so there were 5,000 or so tenants out there, that they would have an interest in this. Normally it would be politic, if not essential, to talk to the people with a vested interest in the places that you are selling. Was it the case that you had made the decision on the money terms and it was easier just to get on with it, rather than trying to do the difficult and messy job of dealing with tenants up and down the country?

Nick Joyce: Network Rail did engage with the tenants. They wrote specifically to all the tenants and they put in place engagement teams and other methods by which they could engage with the tenants; and this was at the start of the process.

Q43 **Chair:** You say that Network Rail did that. Obviously, that is more their job than yours, but your job in Government is to make sure, when someone says they are engaging, that you check exactly what form that engagement takes. A letter is engagement, but a letter saying, "Your place is about to be sold" is a different thing from engaging with people who know about the area they are working in and who might have concerns and, as we have picked up even with the new company, issues that they can feed in that will make for better management and a better sale. Did you consider asking Network Rail any of those questions when you were examining their engagement with tenants?

Nick Joyce: As I said, the strength of feeling from the tenants became clear later in the process. Certainly we were satisfied with the initial engagement that Network Rail were leading because, as you say, they have those relationships with the tenants. We weren't aware of any problems with that until later in the process, at which point we discussed this with Network Rail and took further steps.

Q44 **Chair:** Mr Haines, or perhaps Mr Westlake, as you were there at the time, how would you characterise your engagement with tenants, and when did you start engaging?

Jeremy Westlake: First of all we recognised, as Mr Joyce has said, that our engagement was sub-optimal as the process progressed. When we started out, we looked very closely at what actually would change for the tenants in terms of the protections that they already had. We were

actually very clear in our own approach to this that we didn't want to see the tenants disadvantaged in any way, so we looked closely at the leases and made sure that all the rights and protections and mechanisms that they have when issues arise for a tenant—for example, during rent review processes or something like that—would also apply under any new ownership. What we reflected on over time was that actually SMEs have a need—

Chair: Small and medium-sized enterprises—we try not to use acronyms.

Jeremy Westlake: Small and medium-sized enterprises have a need for more information, and we could have been clearer with them about that—more explicit about what it meant and what it didn't mean for them.

Q45 **Chair:** How do you characterise Network Rail's engagement with tenants when you were the landlord?

Jeremy Westlake: I would say we were a commercial landlord. That is how we ran the estate. We ran it professionally. We ran it in a way that ensured that we achieved best value for taxpayers, because the income that comes from this estate ultimately goes and funds the railway.

Q46 **Chair:** I love your trust in the teams who were out there doing this, because we have heard—certainly in my constituency of Hackney South and Shoreditch, and particularly around London Fields, where I have hosted a number of meetings about this—about contract work being paid for but not carried out, poor-quality assessment of work done and poor maintenance of the arches. There was quite a litany of problems, and one can only hope that the new owner will do better—I don't think, in some instances, they could do much worse. Did you ever visit any of the arches?

Jeremy Westlake: Yes, I have visited them; yes, of course.

Q47 **Chair:** So you're happy to say that it was all good.

Jeremy Westlake: No, I wouldn't say it was all good. Any organisation can have difficulties at times, and when you have such a big estate—it was vast—occasionally we will make mistakes. All I can say is that when we have been maybe less than understanding when looking at rent reviews, we should have engaged differently. So one of the things that we are doing is this: we still have a retained estate, and we are reviewing our procedures and processes to see how those should be updated this year to make sure that, for the retained estate, we will manage them better in the future.

Q48 **Chair:** It is worth noting that the new owners are promising a tenants' charter. Obviously, it will not be legally binding, but at least, if we all hold their feet to the fire on it, that's a good start, I would hope, compared with how things happened before. You talked just then about thinking very carefully about the impact on tenants and their future, but the new landlord cannot pass on secure tenure on new leases, can it? It has to be outside the Landlord and Tenant Act 1954.



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Jeremy Westlake: That is correct, yes.

Chair: Do you want to explain that a little bit more, and why you have said, on the other hand, you were trying to make sure you protected tenants?

Jeremy Westlake: Yes. For some time, actually, Network Rail has been looking to opt out of the 1954 Landlord and Tenant Act, simply because it gives us much faster access to the railway when we need it. We can go in without the risk of a tenant not wishing to move, and us therefore having to go through courts, so it is purely from a safety—

Q49 **Chair:** So how often have you had to go through the courts in recent years to get a tenant to move for essential railway maintenance or safety work?

Jeremy Westlake: I couldn't answer that question. I would have to get back to you.

Q50 **Chair:** Mr Haines? Perhaps you could write to us on that. That is a major consideration—trying to opt out of an Act of Parliament set up to protect tenants in this situation. You don't know how many people have gone to court: how long would it take to go through the court process to get someone out who was so recalcitrant that even though there might be a safety problem above them, they would actually refuse to move? How long would it take, roughly?

Jeremy Westlake: It could take weeks. Therefore, if you have got a critical safety issue on the railway, I don't think that would be acceptable.

Q51 **Chair:** Remind me—is it three months, the notice period for getting access?

Andrew Haines: Yes.

Chair: So you wanted it to be quicker than three weeks.

Andrew Haines: Absolutely.

Q52 **Chair:** Had you thought of lobbying Government, as you are quite big players, to look at maybe amending the Landlord and Tenant Act to keep certain protections, but perhaps asking for quicker access in certain clearly defined circumstances? I would think in Dawlish it would frankly be almost impossible not to, just for practical reasons. If you needed to get into an arch in Dawlish you would have to have done it just then and there for safety—

Andrew Haines: I don't believe we have, but it has been very clear to me that the only logic of this position was for that safety mechanism. I don't think the company believed there was any risk to the tenants, because the only purpose of carving that out was the safety obligation.

Q53 **Chair:** So that was enough for you to think about riding over an Act of Parliament designed to protect tenants.



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Andrew Haines: Because it could be an absolutely urgent situation, and to find ourselves in a situation, however unlikely—

- Q54 **Chair:** I think we need to have information about how many people have actually refused access in an extremely urgent situation. Frankly, just thinking for a moment, if I were a tenant under an arch where there was an extremely important safety issue, or there was seawater washing through my premises, I think I might be out quicker than you would get there, actually, because I would not want to be there. I would certainly want to collaborate and work with you.

Andrew Haines: But it might be that the tenant is part of the issue, in certain circumstances, or it might be that the nature of what the tenant is doing is causing it. The idea that because it happens infrequently—

- Q55 **Chair:** But then you surely have health and safety law. I am really quite puzzled by this, because health and safety law would surely override a tenant saying, "I am squatting here because I don't want to be kicked out."

Andrew Haines: There are limits to being able to move on very rapidly. I think that was the logic of the proposition.

- Q56 **Chair:** I think you will find if it was very urgent—with some emergency things, the fire service has quite strong grounds to go in on almost anything if there is a fire risk, or a flood risk.

Andrew Haines: If it was a third-party health and safety issue, I don't believe, for an operational issue—clearly, if there was the ultimate extreme scenario of needing to be in there now, this moment, then we could call upon that; but this felt like reasonable protection.

- Q57 **Chair:** Okay, I think you need to write to us and tell us how many times you have had to have that urgent access and a tenant has refused it. I would be really interested, so could you write to us on that as soon as you can after this hearing?

Andrew Haines: I am very happy to write to you on that.

- Q58 **Chair:** Has the effect on family succession planning been taken into consideration? If you have got a family business where someone could succeed, did you consider that when you were selling on the portfolio, Mr Westlake?

Jeremy Westlake: Not explicitly, no. I don't think we did. We looked at security of tenure for tenants and lease terms and the average lease term remaining, and so on, but any lease that comes up for renewal would be viewed sympathetically if there was a desire to carry the business on in those premises.

- Q59 **Chair:** You could have written in that family succession is something you have done before and you would want the new landlord to consider, but you didn't do that, I think, in this.



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Jeremy Westlake: No, I don't think so. I think that most commercial landlords view having a sitting tenant as a good thing—it is revenue generating—as long as the tenant is in conformity with their lease and is prepared to pay the market rent.

Q60 **Chair:** So you considered it, but you didn't need to be explicit about it. You considered that was implicit in any good landlord's management of a portfolio.

Jeremy Westlake: It is. One of the things, looking at the incentives for the new landlord, was what they would be likely to do. They can only price at market rents anyway, and they would much prefer to have a tenant sitting who is paying rent than a vacant property, so I am not sure that the succession risk exists in isolation. It might exist if a business could no longer afford to pay the rent in the area because the rents had gone up, but I don't know that it would have made much difference. I think tenants have the security to stay where they are, generally.

Q61 **Chair:** One of our concerns is that we noticed locally that rents were going up when leases were being extended—quite considerably, in some cases. My constituency is perhaps a bit different from Dawlish or even Birmingham, where the land values are very high and different types of businesses are coming in so rents locally are generally going up, but were your rent negotiators and your property people on any bonus payment for an increase in the value of the estate?

Jeremy Westlake: No, I don't believe they were.

Q62 **Chair:** You don't believe they were?

Jeremy Westlake: I don't believe they were. I can check, but I don't think the incentives were associated in any way with rent uplift.

Q63 **Chair:** Your property people must be on some bonus arrangement; that would be fairly normal.

Jeremy Westlake: Yes, they will be on the standard corporate incentive scheme.

Q64 **Chair:** Could you explain that?

Jeremy Westlake: It is based on a national scorecard and a property scorecard in terms of the general returns and meeting budget for the business, but I don't think it would have been the case that they were incentivised to get very specific rents up.

Q65 **Chair:** Sorry—you just said returns for the business. A good return for the business would be an increased rent on the portfolio that we, as Members here, represent. You are saying that, if the rents had gone up across the portfolio, they would get an increased bonus?

Jeremy Westlake: Yes, they would certainly be encouraged to ensure that we are getting the market rent in any area, but you cannot charge more than the market rent, or you will lose tenants and overall your income will go down. They were working to a process, and a well-



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documented process, about how to undertake a rent review, but at the end of the day we want to ensure we are charging the market rent for these areas.

- Q66 **Chair:** Was there a change in Network Rail's executive pay structure at any point during this process? I think in 2011 there was some change, wasn't there?

Jeremy Westlake: That would have pre-dated this, so no, there was no specific incentive around the sale of the railway arches as a business, and no individual would have received any direct compensation directly related to it.

- Q67 **Chair:** Mr Joyce, did you look at the value? Obviously, you considered the sale of the portfolio, or it had been considered by Network Rail before this sale. Did you look at any changes in the value of that and ask any questions of Network Rail about why the value had gone up?

Nick Joyce: We looked at the business case. We looked at the retain case and the estimated sale case. We did not, in doing that, identify any out-of-market change in rents. I think the NAO also did not find any evidence of any kind of directional or intentional change in rental policy. As Mr Westlake said, the agreements allow Network Rail to charge commercial rents. That is something that we support in the interest of taxpayers and fare-payers, and there are protections there for the tenants through arbitration, and so on, if they feel that that is not what is being followed.

- Q68 **Chair:** Did you look at the issue about the Landlord and Tenant Act 1954? As I understand it, the new owner cannot extend an existing lease that is currently protected by the Landlord and Tenant Act; they have to give a new lease that is not covered by that Act. As a Department, did you sanction that? Is it Government policy to basically rip up an Act of Parliament and say that you can only let properties outside that Act?

Nick Joyce: We did not get involved in the specifics of that policy choice by Network Rail. The way that Network Rail contracts with the market on things such as property is not something that we typically—

- Q69 **Chair:** Except that you are a Whitehall Department and, believe it or not, the fact that we here are all elected is a job creation scheme for people such as you, because without Parliament there would not be law for you to enact. Did you engage at all with that fact? It is quite a major issue that an Act of Parliament is effectively being ripped up in a sale so that a new landlord is not applying it to new tenants. That is quite a big policy change, and I would have thought that your Department would have had some input into that, or at least would have noticed what was happening and run it past Ministers.

Nick Joyce: I don't think Network Rail are doing anything that is illegal. They have made choices, as Network Rail have outlined, in terms of the—

- Q70 **Chair:** I am not saying it is illegal; I am just saying it is an Act of Parliament effectively being ripped up, because it is not going to be applied in future.



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Jeremy Westlake: We have been doing this for many years, in fact. This is not something new—that we have been encouraging tenants to opt out. We have done that by offering other flexibilities as well. This kind of lease would be under what we call a solutions business lease, which gives great flexibility to tenants, especially those who only want to commit for an open-ended period. They have a right to remain, but they can always give us notice of three months. They get index-linking to their rent reviews and extended periods of time when we look at market rents. It provides as much certainty for tenants as they generally want. The solutions business leases, which now represent half of it—we have been doing this for many years—are seen as very attractive by many of our tenants.

Q71 **Chair:** So you are saying that there are pros and cons.

Jeremy Westlake: Absolutely. It is not just a one-sided opt-out.

Q72 **Chair:** Did you discuss this with tenants before putting it into the—

Jeremy Westlake: As I say, this was custom and practice for Network Rail as a commercial landlord for many years before we sold the business. This is not something new. The only thing that is new is our expectation that the new owner will lease out under these terms.

Q73 **Chair:** Exactly. That is quite a big difference. The new owner will be expected to do it under those terms, rather than you taking perhaps one option on this particular lease and another on another lease. To be clear, are you requiring The Arch Company to take—

Jeremy Westlake: It is a condition of the new head lease.

Q74 **Chair:** Exactly. You drove that change through, but Mr Joyce, your Department—that is quite a big potential policy issue, isn't it? It is a big policy change.

Nick Joyce: I understand the point you are making, but as Mr Westlake said, Network Rail had been pursuing this for a considerable period of time. It was not something that they particularly sought to introduce.

Q75 **Chair:** But they did require the new owner to do only that option, rather than boxing it into different things. That was a major change. Did that increase the value of the estate, Mr Westlake? What was the rationale behind doing that?

Jeremy Westlake: No, I wouldn't imagine that it would.

Q76 **Chair:** I am puzzled as to why you made it an absolute requirement, rather than saying, "You have a choice. You can negotiate with the tenant and not use the Landlord and Tenant Act 1954, or you could use it."

Jeremy Westlake: It has been a long-standing preference of Network Rail to move on to this basis, and it is something we have been promoting for years. It was not a sudden shift in our approach to dealing with tenants, and we were finding ways to make it as interesting for them as possible.



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Q77 Chair: At paragraph 3.16 on page 34, it states: "Around 18% of the current leases"—that is therefore the Network Rail ones, as was—"are outside of the Landlord and Tenants Act 1954". You are saying that you were making it custom and practice, yet only one in five, roughly, of your tenanted properties were in that bracket and you imposed it on the new landlord. I am puzzled. I cannot work out what the rationale was. Can you try again to explain it to me? You say it was custom and practice, but that does not mean you need to impose it on the new landlord. You say there was no financial gain, so I cannot see what the incentive was.

Jeremy Westlake: There would not have been a financial gain for Network Rail to impose it, but Network Rail's primary objective was to ensure the safe operation of the railway. We wanted to do this because we thought it would enable us to get in quicker if we needed to, to maintain the business.

Q78 Chair: In one fell swoop, you could wholesale, by selling to the new landlord under those conditions, have faster access to the sites. That really was the rationale, was it?

Jeremy Westlake: I don't think we viewed it as particularly contentious at the time.

Q79 Chair: It is interesting that a lot of tenants have been unaware of this, some of them until the new landlord has had to explain it to them, perhaps when their lease is coming up. That seems to me to be another failure in engagement with tenants. You do not think it is significant, but for them it is a big change.

Jeremy Westlake: It is largely to enable emergency access only. I am not sure that it is in the tenants' eyes as what they would view as a likely event.

Q80 Chair: In the next 150 years, which is the ownership of this portfolio, it will be the case that none of these properties will be under the Landlord and Tenant Act 1954. One would hope that in 150 years' time that will have been updated from 1954 to something a bit more recent, but none of them will be under that in 150 years' time. Isn't that right?

Jeremy Westlake: That is right, if you look at the run-out of the leases.

Q81 Chair: So you pushed through a change and your Department, Mr Joyce, seemed to just sit back and allow that to happen. At some point, surely the Department engaged and said, "What are the pros and cons of this? What is the impact on tenants? What is the impact on place? Do we need to talk to any other bits of Government about this?" You seem to have just sanctioned what Network Rail wanted to do.

Nick Joyce: I think what is important is what Mr Haines described about why it was introduced from the railway perspective. One of the core sale objectives was ensuring protection of the railway and the ability to meet the needs of the railway over time, and access—particularly safety-critical access—is a key part of that, so we would certainly expect Network Rail, in



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looking at the terms of its property engagements, to make sure that it could discharge that responsibility.

I certainly have not seen any evidence or any suggestion that doing this increases the value of the estate. I think this change it is purely around the operational needs of the railway.

Q82 Chair: Do you know if Ministers made a decision on this, or were advised of this?

Nick Joyce: I am not aware; I can look into that.

Q83 Chair: If you can get back to us on that, that would be helpful.

Mr Westlake, I just wondered about the buyers. We have looked at other asset sales and, just to recap from the NAO Report, in this case, extraordinarily, there were 145 original indications of interest, 35 indicative offers and then five final bidders. You need to tell the Department for Transport your secret, because it does not work for franchising, although that is maybe a slightly unfair sideswipe at Mr Joyce. Certainly, in other areas it has been more challenging.

Why do you think you had so many bids? Secondly, how did they react when the tenants' voice was being heard and you suddenly had to swerve and think, "We'd better make sure the tenants are involved a bit more in this sale"? Did it have an impact on the bids? Did some of them drop out, or did others embrace it more as a result?

Jeremy Westlake: There were several questions in there. The first one was: why was the competitive tension so strong? This is the largest estate of small and medium-sized businesses in the UK. Therefore, this is a very attractive investment opportunity for a big investor, who not only sees the value of the existing estate but how they can develop it.

In terms of creating this as a portfolio and bringing in big players, what we were looking for as well was that the new investor would be able to develop the estate where Network Rail was no longer able to do so, because we had had to cut back our investment in the estate considerably over CP5, because of the funding difficulties that we talked about.

Therefore, investors could see this as a way not only to invest in a reliable income stream but to develop that estate as well. It is not something that we have talked about today, but we have set up an interface team with the new owners, with the specific objectives not only of facilitating the safe operation of the railway but to help them with expanding their estate. What we want to see is that estate grow bigger and stronger.

That is why the competitive dialogue was as good as it was; it was a great investment opportunity.

Q84 Chair: I might come back to that point that you have just raised. What about the late tenant request? Did that have an impact on those who were bidding to buy this?



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Jeremy Westlake: They responded very constructively to the tenants charter suggestion. When there was some uncertainty about what that tenants charter might cover, that prompted quite a lot of questions from the investors as well, but generally speaking, knowing that this was part of a qualitative assessment, they were also keen to show that they would take the tenants charter seriously and what they would do with it.

- Q85 **Chair:** Did you consider making it compulsory, or trying to get some statutory backing? That would have been challenging in the time available, but did you consider lobbying Government to get this written in more tightly into the contract? Or could you have done that yourself?

Jeremy Westlake: No, I don't think that we saw that that was necessary, in terms of either—

- Q86 **Chair:** So you thought that their honest word and a handshake was enough?

Jeremy Westlake: No, I think when you look at what is in the tenants charter, it largely makes explicit what we always felt was implicit at the beginning. When we talked earlier about how we could have engaged differently with tenants from the beginning, maybe we would have been better off going and saying, "Here's a tenants charter. This is what we are look to do with tenants in the future, and how it will operate, in terms of how you should be treated during the process of running your business and living with a new landlord." We did not do that, but I think that it is a useful addition actually to the running of that estate.

- Q87 **Chair:** Mr Joyce, if more sales are going to happen, do you think the Department has learned any lessons? You acknowledged earlier that tenants had not been engaged early enough, so do you think the tenants charter is a good model? Would you like to see it strengthened in future?

Nick Joyce: We certainly look at each case on its own merits, but particularly for this type of structure, where you have a large number of small tenants, I can see the value of a tenants charter, and doing that sooner would be beneficial.

- Q88 **Chair:** If a tenant's charter had been moved at the beginning, we might have had better engagement. You mentioned another point, which I said I would pick up on, can you remember what it was?

Jeremy Westlake: The development of the estate, perhaps.

- Q89 **Chair:** Yes. You are spending £1 million on staff. How many staff is that for?

Jeremy Westlake: It is a small team of 11 or 12 people.

- Q90 **Chair:** Eleven or 12 people from £1 million. They are helping to expand the portfolio of The Arch Company, is that what you are saying?

Jeremy Westlake: They will provide support, so that when The Arch Company wants to come and develop a new arch or business, we will work



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to facilitate that, to ensure the arch is ready for build-out and development, and that people can get in there quickly.

- Q91 **Chair:** Right, so it really is about operational access. You will align your operational work, so that it does not curtail The Arch Company's opportunity.

Jeremy Westlake: It is a little more than that. It will also encourage working between the two teams—the new team and our old team—to share experience, so that the knowledge we have about why certain tenants work well in certain locations is transferred. Some of that knowledge would not necessarily be in the team that has gone across. We are ensuring that we give The Arch Company all the information and knowledge that we had as the landlord, so that it can continue to develop the business.

- Q92 **Chair:** Okay, so would that mean more land being sold on to The Arch Company?

Jeremy Westlake: In time, I think that some of the arches that we have retained for railway development would be best managed within that business. Yes, in time, we probably would transfer those arches that we have retained over to it—when the time is right.

Chair: I know that the ones that are largely vacant are being used for operational purposes at this point.

Jeremy Westlake: Yes—by and large.

- Q93 **Chair:** Can I just ask about the final sale price? Mr Roxburgh, you might want to come in on this as well. Mr Westlake, the Government's valuation was £950 million. You sold it for a lot more than that. What were the factors? You mentioned that it was an attractive portfolio for investors. Are there any other factors that led to it going for £1.46 billion?

Jeremy Westlake: The £950 million didn't include the development potential of the estate, so it assumed that Network Rail couldn't invest further. That kept the value lower. There is a premium there for the opportunity that already exists, if you could have continued the investment we had in CP4. That is one element. The other element is the discount rate that was applied. Those were two of the factors.

Charles Roxburgh: The NAO Report makes it clear that this was a successfully run process, which attracted a lot of interest and investors, so we felt that there was good competitive tension and therefore the price realised was appropriate. On the valuation, as Mr Westlake has indicated, that is a mid-range of a set of possible values for retaining it and, as we have discussed before, we used the social time preference discount rate. In this case that came out to a mid-point of 8.5%. If you use lower ones, you get a higher value, but that 8.5% reflects the value of that money to the Government, given that we value these types of disposals on a social time preference rate, which gives value for the money being reinvested in benefits to society. That is why we use that rate.



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Q94 Chair: We could have a long discussion about social time preference rates and whether they are calculated correctly, but I think we might lose even some of the Committee members. We could have a whole discussion, which we might do a bit on Wednesday, about how the Government values their assets, when we look at the Whole of Government Accounts. In a moment I will pass on to Ms Mahmood on one important point, which is slightly disconnected to this, but is nevertheless about property. Will your monitoring team, costing £1 million, monitor the commitments that the new owners have made—the tenants charter, which came from the tenants and was incorporated into the idea of the sale—and whether they are adhered to?

Jeremy Westlake: Yes, they will be.

Q95 Chair: If they are not adhered to, what will the sanction be? To be fair to The Arch Company, which is not here to speak for itself, it has been very willing to engage in Hackney South and Shoreditch. It has been twice now, once before it took on ownership and once since, at least in my constituency. I am not suggesting for one minute that it will be a charlatan and tear up those commitments. One would hope not—there is me laying down my warning that it better not—but if it was a mad, bad and dangerous landlord, and decided to tear up those commitments to tenants, what would you be able to do about it?

Jeremy Westlake: Going back to what is in the charter, if they were doing that, they would probably be in breach of their lease anyway, so I think it is unlikely, but good landlords have good tenants. What they want to do with this business is expand it and develop it. Understandably, they will want to charge the market rent. That is normal, but if you try and charge too much or you do not look after your tenants, they will not stay. We noticed over the sale process that we managed to keep our occupancy rate really high all the way through. That is what a good business is about. Have you got your business filled and is it generating income? The natural incentives for them are to run the business as a good landlord, anyway. If they do not do that, probably the recourse is through the lease.

Q96 Chair: I don't disagree with some of what you say, apart from the idea that people will stay only if the landlord is good. Some businesses have carved out their niche in a place and need that physical location. Frankly, in my constituency, and I suspect in parts of Birmingham, it would be much more expensive to rent a similar property that is not in a railway arch, and, depending on the type of business, would they even get permission? Zoning and things have an impact. I think you would acknowledge that. I don't think the occupancy rate was always down to the brilliant management of Network Rail. I hazard to say that.

Andrew Haines: *indicated assent.*

Chair: Mr Haines is nodding. At least he has the humility to acknowledge that.

So no one is really holding them to account. Mr Joyce, if something went badly wrong, we will not be there in 150 years' time. Network Rail has



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changed from private to public. It has changed make-up. It might be broken up into regions. That is another debate we will have with Mr Haines in future. Ultimately, I think there will probably still be a Department for Transport in 150 years' time. Who will be guarding the interests of tenants in 150 years' time?

Nick Joyce: It might even be the 100th anniversary of the Department for Transport this year.

Chair: So young!

Nick Joyce: We will see what is happening in another 150. We must bear in mind also that Network Rail operates under a licence and has obligations with regard to protecting the assets, and therefore the role that Network Rail has on the head lease has to be protected. No matter how that organisation evolves, that is a really important thing for the protection of those assets as part of the railway system in this country. The tenants charter responsibilities and the stewardship of the occupancy of the assets will continue to remain alongside the management of the head lease.

Q97 **Shabana Mahmood:** Mr Westlake will be best placed to answer this. I want to ask about Network Rail's policy as a landlord in relation to rents and what happens when there is a bridge strike. Bridges get struck on a regular basis, as I have discovered in the last month after a bridge strike in my own constituency. Sometimes it requires the closure of the bridge or the road, and that affects the businesses in the arches. When Network Rail was the landlord, was it the policy of Network Rail to routinely allow for mitigation of rent payments for the period of a closure as a result of an HGV knocking into a bridge?

Jeremy Westlake: I would really have to come back to you on what our policy was. Normally, if a property is damaged in that way, rent would not be payable. In terms of business interruption, I imagine it would normally be the tenant's business interruption insurance that would need to cover that.

Q98 **Shabana Mahmood:** We would be glad for you to write to us. If it was the policy of Network Rail to say that rent was not payable in that period, is that a condition that has been passed on to the new landlords?

Jeremy Westlake: If you are denied access to a property that you rent, then generally speaking rent is not payable. It is the consequences for tenants that would worry them more than anything, because they would lose their income and not just their outgoings.

Q99 **Shabana Mahmood:** Because they are not able to get into their business, as it is either on a road that has been closed to allow for the fixing of the bridge or it is directly underneath it. I am trying to establish whether Network Rail's responsibilities from when you were in control have been passed on to the new owners.

Jeremy Westlake: I would have to check to make sure of that.



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Q100 **Shabana Mahmood:** I would be grateful if you could. It matters a lot to my constituents when bridge strikes happen.

Jeremy Westlake: Unfortunately, bridge strikes are a very common event. They are also a very difficult area in terms of liability. We have been working assiduously with the insurance market to make sure that this works for all parties. Can I come back to you on that one separately?

Q101 **Shabana Mahmood:** Yes. Trust me, Mr Westlake, I've become quite the expert on where the liabilities lie. I am interested in business insurance because most of the businesses in the arches do not have insurance that would cover them. They are micro-businesses and do not normally qualify.

Jeremy Westlake: Indeed. I can imagine that there would be quite some hardship cases. When Network Rail was the landlord, where there was hardship we would look carefully at hardship cases and ensure that tenants were not being unduly disadvantaged.

Q102 **Shabana Mahmood:** But you are not able to tell me today whether your approach on hardship is something that the new owners will take up.

Jeremy Westlake: I am afraid that I couldn't speak for the new company without checking with them first.

Shabana Mahmood: I would be grateful if you could write to us.

Q103 **Chair:** It sounds like Mr Westlake and Ms Mahmood are going to have a detailed discussion about liabilities.

I want to touch on a couple more points to finish off some issues around existing tenants, and to talk a little, Mr Roxburgh and Mr Westlake, about money. Mr Haines, what do you think the impact of the sale will be on the current tenants?

Andrew Haines: We would hope that they would see continuity, that they would see a constructive relationship with a professional landlord, and that some of them would benefit from the investment that that landlord is able to make that we were unable to make.

Q104 **Chair:** Mr Roxburgh, have you—the Treasury—done any analysis of the impact of the sale on the make-up of the tenants, of the economic impact on the area?

Charles Roxburgh: On the economic development of the area? No, we have not. Going back to one of your earlier points though, those sorts of broader economic analyses can be included in a business case. We take them into account if people put them into the business case for any proposal they bring to us.

Q105 **Chair:** But they weren't in this case. It was a very narrow sale purpose, wasn't it?

Charles Roxburgh: As Mr Haines said, it is largely continuity, other than the fact that the investor would be investing more because Network Rail couldn't make those investments—that would be the upside.



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Q106 Chair: More investment can be a good thing, but the flipside is it can mean that rents go up. For a commercial landlord, that is a commercial activity, and on one level it is fair enough, but it can have a very big impact on some of the tenants. I have met tenants from Gateshead, where there is a gin café—who'd have thought? Perhaps I am out of date with what is going on in Gateshead; it's a good job Ms Phillipson is not here to correct me. There are some small businesses trying to build the local area's economy and, in some areas, making some really interesting headway, yet if rents go up, some of them will be squeezed out.

These have been quite good incubator sites for a lot of small businesses—with multiple tenants in one, for instance. So if rents go up and you end up with corporates in there, has anyone done any analysis of the wider impact? Mr Roxburgh, my point really is that it is about this sale but also about future sales of such assets, where you are taking away the ability for Government or a public agency to control space and place and leaving it entirely in the hands of a third party that will have no real need, or rather no requirement—it might have a need because it thinks it's a good thing—to consider those issues.

Charles Roxburgh: I would separate out the two issues: whether the Government have a policy for place and for supporting small businesses versus whether we should embed the policies in a specific asset sale that affects 5,000 small businesses. This Government has a whole range of policies to support small businesses, through the tax system and direct Government support spending, so the challenge would be whether we are doing enough to support small businesses through the general policies rather than trying to have specific policies embedded in an asset sale. So I would say let's separate these two out. In this asset sale, the principle was that the businesses—tenants—had been paying market-based rents. They will continue to pay market-based rents, and we are not seeking to influence particular local policy through this particular sale.

Q107 Chair: So who do you think should be influencing the policy? Obviously there is the planning system, which plays a part, but do you think there is still an opportunity for local authorities to help to influence place making?

Charles Roxburgh: Place is one of the five pillars of the Government's industrial strategy. Much of that will, and should, be driven at a local level where local leaders, local businesses through the LEPs, and local authorities have the best sense of what the needs of that local area are. But there are initiatives that the Government can do nationally and which can provide funding to support local initiatives as well. That is the Department for Business, Energy and Industrial Strategy, and the Department for—

Q108 Chair: I realise that much of it is about the Department for Business, Energy and Industrial Strategy, but there is a lot of talk about the death of the high street. Interestingly, as we have heard from Mr Westlake and others, the arches up and down the country are a thriving microcosm, a wide range of small vibrant businesses that are doing a huge amount for their local communities, adding the richness that we have been losing in



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the high street. We have lost it in the high street because rents went up, business rates went up and people are shopping differently—it's a different experience of shopping they are requiring. With 150 years being handed over to a third party, did the Government give any consideration to what control it was losing over that kind of place shaping by Network Rail being allowed to sell it?

Charles Roxburgh: We did not see a change, because they had been charging market-based rents, and that was continuing.

Q109 **Chair:** But part of the reason for the sale—well, one of the several reasons for the sale—was that Network Rail could no longer afford to invest in its estate. One of the reasons why small, emerging business have been able to go into those properties is that bigger businesses have not wanted to go into a leaky old arch, to paraphrase it rather brutally; Mr Westlake might wince, but that is the truth in some situations.

By improving it—we see this up and down the high street—big corporates can come in. Costa Coffee can take over from the independent coffee shop, because it can afford the loss leader or the refurbishment, whereas a small, independent business cannot. In the arches, they still can, so I am just thinking that with the 150-year lease, there is an awful lot of control being given away.

Our focus—why we are looking at this and what we looked at last week—is what happens when the Government sell off these assets long term and what the long-term impacts are, and whether anybody tried to model those impacts over 150 years.

Charles Roxburgh: The Government would not be looking to Network Rail to implement local small business policy. We want Network Rail to run a safe and efficient railway. Under their ownership, as Mr Westlake said, they were charging market-based rent as a commercial landlord; they were not trying to promote local industrial strategies, so that has not changed. We have a different policy for promoting local industrial strategies, driven by the Department for Business, and they are working with local leaders, LEPs and local authorities to develop those local industrial strategies.

These are separate policy areas, and the best way to drive that local entrepreneurship is partly through the market—that is a critical driver of success—but also, where there is a role for Government, to encourage that and create the conditions for the market to succeed and be vibrant. It is the role of the Department for Business and the Ministry of Housing, Communities and Local Government to work with local leadership to drive those successful strategies.

Q110 **Chair:** I hear what you are saying, but I think what we are saying is that Network Rail is now a public body. We have a bit more leverage from Whitehall than you do with a private company—a private company that will own it for 150 years—and that is the point, isn't it? To use the old-fashioned phrase, it is selling off the family silver, and there are risks in that about losing a certain level of control, even though you were not



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directly controlling it.

Charles Roxburgh: I should let colleagues from DfT respond as well, but in general, the Treasury would want public bodies charged with a mission: in Network Rail's case, to provide a safe and efficient railway. We would want them to focus on that mission, not to be distracted by implementing a whole set of other Government policies. Now, they drive a safe and efficient railway in a way that—*[Interruption.]* They are not an instrument of local growth policy.

Q111 **Chair:** I would use as a parallel Transport for London, which was much easier to negotiate over arches' use because they were London-based and therefore focused on what was good for London. They could amend, adjust, and slightly tweak their policies in order to be supportive of a business that was important to London. I will leave it there, because I think we are not going to get very far with that.

Mr Joyce, what about you? Do you have any concerns, or does your Department have any concerns, about selling off assets for such a long period of time and losing that control? Whitehall loves having control. Don't you worry you have now lost some?

Nick Joyce: As I said earlier, we did look, and we see the positives in the sale from the investment and bringing those unoccupied arches into use. We see that as a positive benefit of this sale process compared to what might happen otherwise, and that should have a benefit for local communities in terms of employment and regeneration.

The reality is that in both a retain and a sale scenario, as Mr Roxburgh said, we would expect that Network Rail would otherwise have been charging a commercial rent, so the same commercial factors would come into play on the tenant mix. Again, as you suggested, we would look to the local authority to lead from a planning perspective.

Jeremy Westlake: What we found over many years was that the best businesses for the arches were small and medium-sized businesses. We experimented with chains, and it did not work very well, to be honest. What you have is the market working in a constructive way, and what it has created is something that we now value: that mix of tenants and what they bring in terms of innovation or local flavour. That has been the nature of the estate for many years. That might change over time—I am not saying it wouldn't—but certainly in terms of developing the estate, that is what I would expect to see happen as well.

Q112 **Chair:** We could go round and round on this, but let me ask Mr Haines and Mr Westlake about your policy to end the majority of tenancies for motor repair businesses. That was partly because it was high-risk. You had a report that came out in 2011, and you had a plan to close 70% of the garages located in the arches. Is that right?

Jeremy Westlake: I am not aware that that is right, but I certainly imagine that welding activities under railway arches, or other activities that could start a fire or even an explosion, would have caused us concern.



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Q113 **Chair:** Have you passed on that requirement, or that policy, to the new owners?

Jeremy Westlake: In terms of what uses are permitted within arches, yes.

Q114 **Chair:** Do you have any understanding of what is going to happen to existing motor repair businesses in the arches?

Jeremy Westlake: Not specifically, no.

Q115 **Chair:** It would be helpful if you could give us some detail about that policy, and then if necessary I can raise it with the new owners.

Finally, how will Network Rail offset the lost rental income for you, Mr Westlake? You have had £83 million a year coming in; I suppose in railway terms that is small fry, but it is still £83 million. What are you going to offset it with?

Jeremy Westlake: We have been well funded, actually, looking forward to CP6. Yes, losing £83 million of income a year is painful, but when our settlement was determined for the next five years, that was already factored in.

Q116 **Chair:** So basically you got the backfill from the Treasury.

Jeremy Westlake: Indeed.

Andrew Haines: The net sum is about half that. We had about £20 million of operating costs, and £20 million of the £80 million were reinvested as well, so it is a net £40 million—but that has been captured within the overall funding settlement.

Q117 **Chair:** So you are not worried about it.

Andrew Haines: As part of the funding settlement, we have to make considerable efficiencies. Mr Westlake and I have taken that very seriously, but the £40 million is a relatively small sum within the context of the efficiencies that we have to make.

Q118 **Chair:** Mr Joyce, how much of the proceeds were reinvested in the railway? Obviously, the Treasury cannot pay down the deficit because of the way in which it has been raised.

Nick Joyce: As the National Audit Office Report describes, Network Rail within CP5 retained £500 million of the proceeds; the rest was returned to the Consolidated Fund. As has just been described, the funding for CP6 reflects the fact that that rental income is no longer going to be there.

Q119 **Chair:** May I ask about one more important point? I think this will be my final point, unless anyone else would like to come in.

In terms of the ongoing management, there is a limit on how many parties they can sub-let to—I think it is 10. They cannot break up the portfolio, but they can sub-let to tenants. Theoretically, they could let to Ms Morris's council and on to my council if they wanted to, but it would only be up to 10.



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I am not quite clear about this—I don't know who would be the best person to explain it—but I believe that The Arch Company can sub-let, but the next level down cannot sub-let if it is a single. They can sub-let in large groups, but not to individuals. Is that right?

Jeremy Westlake: Yes.

Q120 **Chair:** Let's say for argument's sake that Hackney Council is sub-letting the Hackney ones. In that situation, it cannot sub-let further down—or can it? I just want it to be clear.

Jeremy Westlake: What you are talking about is not necessarily sub-letting, but parcelling up and selling on the estate, so it will be possible to transfer the lease to a new owner.

Q121 **Chair:** And that would be subject to the 150-year rule as well. Could they do that 50 years in?

Jeremy Westlake: The head lease would still apply, so it would be under the same terms and conditions.

Q122 **Chair:** So we could be in a situation where a future Public Accounts Committee is sitting here with future Mr Westlakes and Mr Joyces in 50 years' time, finding that this whole portfolio could have been broken up into 10 chunks and sold on to 10 other companies. Would they all then be subject to things like the tenants' charter and the same rules? The head lease would still be there, but would all the other conditions be required of those new owners?

Jeremy Westlake: Certainly, anything that was in the head lease would apply to the sale, because otherwise it would require renegotiation with Network Rail.

Q123 **Chair:** But there is nothing to stop a renegotiation with Network Rail potentially in 50 years' time.

Jeremy Westlake: No—and why wouldn't we look at it if it provided an opportunity for value for taxpayers?

Q124 **Chair:** So in 50 or 100 years' time there could be a future you, and a Network Rail, or whatever that body would be at the time, negotiating an extension to the 150-year lease.

Jeremy Westlake: There could be, yes.

Chair: Wow! I think we will leave that big thought there. Thank you very much indeed for your time. The transcript will be published on the website in the next couple of days uncorrected. We are hoping to get a short report out before we break for summer recess, which is about a month away. Thank you very much indeed.