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#SaveOurArches

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Mr Jo Johnson MP
Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR

GUARDIANS OF THE ARCHES PROPOSALS FOR DISPOSAL AND MANAGEMENT OF NR COMMERCIAL ESTATE

Dear Mr Johnson,

We are writing firstly to thank you for taking the time to meet us on 18th July and for asking senior representatives from Network Rail to attend as well. We appreciated the opportunity to set out some of our concerns both around the current management of the commercial estate and the circumstances surrounding its sale.

In our meeting, you committed to considering our proposals for the management and disposal of the estate in the future. We have set out our proposals below, but first we feel it is important to make clear the principles which sit underneath them.

A. Tenant involvement

Our discussions with railway arch tenants around the country confirm that there is a long history of poor landlord-tenant relations on the estate. Many railway arch tenants have longstanding concerns about the way they are treated by the landlord, with distrust building up over many years. The Guardians of the Arches has been formed in part to represent railway arch tenants and ensure tenants are meaningfully involved in the management of the estate in the future. We want to make sure that communication between landlord and tenant is significantly improved and that there is a meaningful role for tenants in the management of the estate.

B. Transparency

One of the issues which has sown the seeds of distrust between landlord and tenants is a severe lack of transparency, particularly surrounding the means of determining rent levels. For instance, there are many examples of the landlord being seemingly deliberately opaque about comparators for setting rents, in some cases using different comparators for identical arches of the same use class in the same location. Leases have been altered to inaccurately represent the sizes of the properties in order to achieve a higher comparable, and Non-Disclosure Agreements have been enforced in some instances to prevent the sharing of comparable data. To achieve a better relationship between the tenants and any future landlord, transparency must be prioritised.

C. Fairness

We represent the thousands of business owners around the country based in railway arches. As business people, we do not expect to be given unfair advantages over others. We simply want to ensure there is a fair and level playing field so that our businesses and the communities we serve can have a chance to thrive.

D. Strategic importance of the arches

You will be aware there is a crisis of affordable workspace in many places in the UK and a severe lack of space for creative, messy and light-industrial enterprise. The nation's railway arches have historically played an important role in providing the kind of affordable and flexible workspace that these industries need. We want to ensure that the future management of the estate is carried out with acute awareness of the strategic importance of railway arches for the health and sustainability of local and regional economies all over the country.

With these principles in mind, we make the following proposals for the future of the Network Rail commercial estate. These stipulations should hold no matter who owns the estate. In the event that there is a new single commercial owner, we want to see these proposals baked in as conditions of sale. In any other event we ask you to ensure that the landlord commits to these stipulations and enacts them without delay.

1. Guardians of the Arches to be recognised formally as a tenants' association

Guardians of the Arches (GOTA) is a non-profit organisation which is representing the concerns and voices of railway arch tenants nationally. We ask that both the freeholder and leaseholder of the estate formally recognise GOTA as such, provide the same rights attributed to any non-commercial tenants' association by law, and permit the sharing of tenant contact information to work with us to be of assistance and reassurance to tenants during this transition.

2. Allow interested parties to submit expressions of interest for purchasing discrete parts of the estate

The Mayor of Hackney, Philip Glanville, has already written to the Secretary of State expressing an interest in purchasing the arches in the borough, and other local and regional authority leaders are preparing to make their own offers. There are also existing tenants and groups of tenants interested in purchasing their own premises on long leases if that were an option. We believe the one-off sale of the entire commercial estate, making the new owner the largest landlord for small businesses in the country at a stroke, is misguided. It means missing out on the chance to manage the estate in a way which provides for sustainable and inclusive growth in towns and cities all over the country. We ask that you delay the sale so that expressions of interest can be gathered.

3. A 'year zero rent audit' to be conducted

The lack of transparency around how rents are set needs to be addressed if tenants are going to have confidence in their landlord. We want to see a full audit of rents across the estate, setting out the level of rents in all arches and the comparators used for setting these rents. This must be conducted by an independent body and with maximum transparency to ensure tenants retain trust in the rent-setting process. Data from this audit should be published for all tenants to view. The audit should be repeated every ten years to ensure a level playing field is maintained. It should be a legal requirement that any new landlord or landlords must base rent reviews on the results of these audits.

4. Landlord to consult with GOTA on estate management and any development or alteration plans

There are many cases in which the structural condition of the railway arches has become very challenging for the tenants to maintain, with the landlord failing to resolve issues causing business continuity issues for the tenants. With the potential of management being shared between the freeholder and leaseholder, tenants are greatly concerned that these issues will worsen as each party wishes to defer any costs involved. We need clarity on the detailed contractual obligations of both the leaseholder and freeholder in the maintenance and management of the properties we occupy. As a tenants' association, to protect the interests of our tenants and ensure transparency and fairness, Guardians of the Arches should be notified and consulted on any plan to alter the use, condition or development of the railway arches.

5. Audit of all leases and implementation of standard lease terms

There are many cases nationally of railway arch leases containing clauses which are unfair and do not abide by the standard RICS principles: for example, 'upward only clauses' which lock in the principle that rents can only increase and not decrease; leases which contain redecoration clauses which require the tenant to return the property in a more favourable condition than that which they have found it; and leases which are ambiguous as to the purpose of deposits giving unfair advantage to the landlord over the tenant. We want an independently conducted audit of all leases including the setting out of standard lease terms. All clauses and terms which are identified as being unfair should be deemed invalid and the new standard lease should be uniformly used at the earliest possible opportunity.

6. All tenant leases to be brought back under the auspices of the Landlords & Tenants Act 1954

In many cases the current landlord has made it a policy to issue all new leases and all lease renewals 'outside' of the current legislation of the Landlord & Tenants Act 1954. Tenants have been told that they must waive their legitimate rights to security of tenure in order to renew their leases or obtain new leases. This leaves tenants at the mercy of their landlord's whim and is an imbalance which urgently needs to be addressed. Any tenants where protections under this Act have been removed by waiver should be offered a lease amendment without cost implication to return their security of tenure and the legal protections afforded to them under the existing law.

7. An end to rolling three-month contracts, with six-year leases the norm

Throughout the sale process, Network Rail has sought to reassure tenants by saying the new owner will abide by the terms of all existing contracts with tenants. This is little comfort to the increasing number of tenants who have only been offered three-month rolling contracts and who are out of contract on a regular basis. For businesses to thrive on the estate, they need to be able to plan more securely for the future by being offered six-year leases, with appropriate break clauses as agreed by tenants.

8. Rent increases to be restricted to 20% per three-year term

Our consultation with tenants in railway arches has identified 20% as the maximum threshold of affordability within a three-year period. Where rents are also being raised on an annual basis linked to RPI, 14% is the maximum. We recognise that values rise and rents go up, but we want to ensure that no arches tenant is exposed to the unreasonable demands (as high as 345%) many have experienced in recent years.

9. Historical rent reviews to be banned

Many tenants have been severely impacted by back-dated rent demands owing to the fact that rent reviews have not been carried out in a timely manner and rents have been reviewed long after the due date for review or lease renewal. This is intrinsically unfair. No rent increases should be claimed retrospectively and all rent reviews or lease expiry negotiations should be commenced a minimum of 90 days in advance of a review or expiration date.

10. Pause all rent reviews and lease renewals until the ownership of the estate is decided

There are rent reviews and lease renewals currently in progress which do not comply with the fundamental requirements of transparency and fairness. Any such negotiations should be put on hold without any risk or financial detriment to the tenant until the future ownership of the estate is made clear and the stipulations requested herewith are adopted and implemented.

11. No automatic rent increase to be imposed without active acknowledgement by the tenant

There have been cases of tenants being unaware that automatic increases have been imposed. The landlord should confirm that the rent notice is received and understood prior to enacting any automatic increase. In order to protect diversity and inclusiveness in the estate, allowances for any language barriers or other reasons for communications not being received or understood should be made.

12. No arch should cost more than 80% of an equivalent conventional commercial space

Arches are not normal commercial spaces. They have constant noise overhead and even those which have had large sums invested in them (usually by tenants, incidentally) retain problems of darkness, dampness, leaks, flooding and often infestation. While there may well be a case for investing in and improving parts of the estate, it should be explicitly recognised that arches are unconventional spaces – and therefore highly suitable for many of the enterprises on which communities in cities and towns all over the country rely. We want to see the strategically important unconventionality of arches recognised in the rents, so that no arch costs more than 80% of an equivalent (ie same use class and location) conventional commercial space.

13. The landlord to commit to ensuring a mix of use classes within a given location

The arches currently play an important role in providing relatively affordable and flexible workspace for creative, messy and light-industrial enterprises. The management of the estate must be conducted with a view to ensuring that there is no discrimination against types of usage within the estate and the strategic role for the arches within their local economies is not lost. We want to see any new landlord work with Guardians of the Arches and local authorities to put in place stipulations which guarantee a healthy mix of use classes on the estate, with a commitment to ensure that all use types exist where there is demand within each locality.

Once again we would like to thank you for hearing our case and promising to consider these proposals. We are releasing this letter to the press and publishing it online so that it can be publicly understood what we, as arches tenants, want to see happen.

In our meeting on the 18th July, you asked us to present these proposals in advance of any further meeting with you. We therefore ask that you meet us again as soon as possible to discuss these proposals. We hope and trust that we can work with you to secure a decent future for the arches businesses and the communities which rely on them.

We look forward to your response.

Yours sincerely

Eleni Jones

For and on behalf of
Guardians of the Arches Limited

