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26 October 2006

Iain Coucher Esq  
Deputy Chief Executive  
Network Rail Infrastructure Limited  
40 Melton Street  
London  
NW1 2EE

Dear Iain,

**Condition 26: unauthorised disposal of land at East Grinstead**

Paul Plummer wrote to me on 18 September 2006 advising me of a land disposal at East Grinstead which did not gain our consent under Condition 26. Our Board has considered the position and I am writing to let you know the outcome.

We consider that the disposal constitutes a breach of network licence Condition 26 because Network Rail did not dispose of the land in accordance with the Condition. Therefore, in line with our published enforcement policy and penalties statement, we have considered whether an enforcement order is appropriate and whether to impose a financial penalty.

On the basis that you have provided evidence and assurance that there is not a systemic problem, which would represent a prospective or continuing breach of the Condition, and in view of the steps you said you would take to ensure that such an unauthorised disposal will not occur again, we consider that an order is not appropriate.

We have also considered whether we should impose a financial penalty. Having taken into account the key mitigating factors of this case, which are that: (i) Network Rail's actions were based on an erroneous misinterpretation of an earlier ORR decision about the land concerned; (ii) no profit was sought from the land disposal; and (iii) you informed us of the situation voluntarily, we have decided not impose a penalty.

Nonetheless I must emphasise that the Board regards any licence breach as a serious failure by Network Rail to meet its governance obligations, and as such it affects the confidence we are able to have in the company.

We are disappointed that the breach has occurred in an area where we are examining ways for Network Rail to take greater responsibility, with regulation as a backstop. As





you have recognised, Network Rail needs to inspire confidence, not only at ORR but throughout the industry, in its ability to manage such responsibility.

Unfortunately there have been several cases over the past two years which have not promoted such confidence. We raised our concerns about these cases as they arose, writing to Bryan Kirby (on 11 February 2005) and Ian Marlee (7 September 2005). Most recently, the proposed sale of Exmouth Junction Yard ended with Network Rail withdrawing the submission.

Clearly, there are still problems in your Commercial Property department's processes, and we therefore welcome the steps you are taking to tighten your internal arrangements for evaluating, checking and authorising proposed land disposals.

We will continue to work at reducing regulatory involvement in this area. We believe that the Reporters can play a role in providing us with the assurance we need that Network Rail has sound processes for land disposals and can adhere to them. Accordingly, we are planning to instruct them to conduct regular audits of the processes concerned. We would welcome any suggestions Network Rail would like to make on the scope of a remit.

We are committed to giving Network Rail greater responsibility in this area, but it must manage that responsibility effectively, and we will take action if it fails to deliver.

I am copying this letter to Jim Cornell and Paul Plummer.

Yours sincerely

*Michael Lee*

**Michael Lee**

A long, horizontal, slightly curved line drawn in black ink, extending from the left margin towards the right, positioned below the printed name 'Michael Lee'.