

Property Development Proposals on Network Rail Land

‘Guidance for prospective development partners and
land purchasers’

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Introduction

The following guidance is to give you an introduction to some of the processes you may encounter when working on Network Rail land.

This note is not intended to be exhaustive or definitive but is designed to provide you with key information, which will enable you to work closely with Network Rail to deliver your proposed development safely and successfully. It is recommended that you seek independent legal advice.

As a confirmed land purchaser or developer, you will be working with a surveyor from Network Rail's Property team. Part of their role is to be your point of contact in Network Rail and to help you navigate your way through the process of developing near railway infrastructure.

You will be expected to confirm:

- details of the land you wish to acquire as advertised on our website
- proposed use of the land
- any temporary or permanent rights to be required
- details of any works required on the land

Please note that our website will make clear, where necessary, any Clearances and Consents that have already been obtained and therefore where timescales will be adjusted accordingly.

In general, Network Rail will be required to market its land openly. This will usually involve external consultants in addition to Network Rail's own website. Network Rail will usually only consider off-market transactions where combining Network Rail's land with that of an adjoining owner would add demonstrable additional value.

Fees

The sale of railway land involves technical investigations, which are required to ensure the safe and efficient running of the railway. Due to the number of enquiries we receive and the level of abortive costs that can arise out of such investigations, we will require an initial cost undertaking, followed by **non-refundable** payments in advance at each stage to cover costs incurred by Network Rail Property. Costs detailed below:

Item	Fee
<p>Business and technical clearance: an application for internal permissions. This is an internal Network Rail procedure to consult relevant business units and ascertain whether there are any internal business or technical objections to what is proposed.</p> <p>Clearances are typically secured within 12 weeks from application. Clearances are valid for two years and may be granted with conditions restricting the use of the land or with obligations to be attached to the land. Your surveyor will share the key information with you. If there are internal objections, which cannot reasonably be overcome, then Clearance will be refused.</p>	<p>£1500.00</p>
<p>Buried services survey: a survey to determine if there are any cables, conduits, drains, etc. which are integral to the operation of the railway. In many cases, we are obliged to undertake a survey as a condition of Business and/or Technical Clearance. The survey can take 10 weeks from the date of instruction.</p>	<p>£2000.00</p>
<p>Surveyors costs: Network Rail's internal surveyors costs for managing the transaction. There may be additional costs payable for commissioning an external Surveyor to undertake a report and valuation within three weeks from instruction.</p>	<p>£1500.00</p>
<p>Legal costs: Network Rail's legal costs involved in documenting the transaction, whether or not the matter is completed.</p>	<p>Once the transaction is known, a detailed estimate will be provided.</p>
<p>Commercial fee: Network Rail's commercial fee is dependent on the value for the specific piece of land in question. Under the HM Treasury principles of Managing Public Money, Network Rail is obliged to achieve 'best value'. The Managing Public Money principles can be found here.</p>	<p>The report and valuation provide a fee guide.</p>

Regulatory Processes

Network Rail is a regulated company, regulated by the Office of Rail and Road (ORR), an independent regulatory body. Network Rail must comply with any legislation applicable to it and its activities. In terms of other external commitments, Network Rail must comply with the following:

Network (and Station) Licence: sets out the parameters of Network Rail's operations and restricts Network Rail from disposing of land interests without the consent of the ORR.

Our Contracts: particularly those with Network Rail's customers, which are regulated and contain obligations relating to access to track and access to those stations which are managed by Network Rail. Track access contracts incorporate the Network Code (contains further obligations).

This section gives an overview of the relevant regulatory procedures. You should note that not all of these may be applicable in every development scenario, and the actual timeframes may vary depending on the type of disposal. Your surveyor will be responsible for confirming which consents are required and will help obtain them but will need your input and full support to do so.

Station Change

Where the sale, lease or development of land affects a station, its facilities or the rights enjoyed by it, the regulated position in relation to that station needs to be considered.

For example, Exeter St David's Station is owned by Network Rail but is leased to and directly operated by Great Western Railway, which is known in regulatory terms as the Station Facility Owner (SFO). Around 2500 stations are let to train operating companies in this way. Network Rail itself directly operates 20 stations as Managed Stations where it discharges the role of SFO. Additional train operating companies ("beneficiaries") can be granted Station Access Agreements (SAA), which permit them to enjoy access to the station facilities and operate train services serving the station.

The SAAs contain a range of obligations and incorporate Station Access Conditions (SAC), which are a set of regulatory access rules including the Station Change procedure. This is a regulatory process, which is required for approval of physical changes to the station or contractual changes to the SAC and may be required to facilitate the development.

Your surveyor will guide you through the Station Change process, though you should expect to provide plans and narrative for the submission. You may be invited to participate in presentations and discussions with Train Operators, and other bodies such as Transport Focus, where appropriate.

Under the Station Change procedure a change proposal can be promoted by either SFO, the Developer as a station investor (if they meet certain criteria), or Network Rail (with prior SFO approval). The latter is more common in property-led proposals. It involves consultation by the party promoting the change with the other Beneficiaries and generally also the Department for Transport (DfT) and ORR.

Majority of Station Change proposals require unanimous consent or lack of objection on the part of the beneficiaries. If this cannot be achieved by negotiation, a disputes resolution process is available. In most cases, the proposer is also required to offer the beneficiaries an indemnity against certain qualifying costs that they may incur either during or after the development has taken place.

The DfT is a consultee and is not required to provide consent under the Station Change procedure. However, it should be noted that the franchise agreement with the Train Operators is likely to have controls over them consenting to Station Changes.

Where the change proposal requires modification of the access conditions applicable to the station, approval by the ORR is needed. The ORR has given general limited approvals in advance for certain types of changes. If the general approvals do not apply, a specific approval will be needed. This is required before any works commence on site.

Station change for a major development should be run in parallel with the planning process and will likely require similar information to a detailed planning application.

In terms of timescale, it is estimated that Station Change will be obtained following a further **four months** beyond the date of detailed planning consent. This is an estimate and assumes an early start is made on the necessary consultations. The indicative timescales also depend on the scale and complexity of the project. You should seek advice from your surveyor, who will advise of the recommended time for the project, and the type of costs and compensation that may arise from the proposal.

Accessibility

Any scheme interfacing with a station must be compliant with the Code of Practice for Design Standards for Accessible Railway Stations, which states that facilities must be fully accessible. A copy of the Code can be found [here](#).

Accessibility requirements should be factored into any scheme from the outset to avoid breaching the Disability Discrimination Act 1995. Network Rail accessibility consultants are available to provide advice.

Network Change

Under the network code, Network Change is the procedure by which changes can be made to the network, which are likely to have a material effect on its operation. If your proposal involves changes to the track (or to sidings, which have not been formally removed from the network), Network Change will be required.

Your surveyor will guide you through the Network Change process. Plans and narrative for the submission may be requested, and you may be invited to participate in presentations and discussions with various parties.

The processes for proposing, consulting on and, where relevant implementing a Network Change are contained in Part G of the Network Code. It also details the associated compensation and appeals procedures. Your Surveyor will engage with a Network Change coordinator to ascertain timescale as this will depend on project complexity. It is recommended that it will take between **three to six months** to obtain Network Change.

Closure

Closure is a statutory procedure governing the discontinuance of usage of network and stations or any parts of them. It ensures that the “public interest” in retention of these facilities is safeguarded and having regard to railway passenger services. If you wish to remove parts of the network or stations, including removal to replace on a different footprint, ask your surveyor whether the closure procedure applies and what to do.

Your surveyor will guide you through the Closure procedure. Plans and narrative for the submission may be requested, and you may be invited to participate in presentations and discussions with various parties.

The procedure will be either for “full” closure or “Minor Modifications” depending on the circumstances. There are exemptions, which do not require you to follow the process. The Minor Modifications procedure is required where the use of part(s) of a station is to be discontinued. A part of a station could include, for example, toilets, waiting shelters, platform canopies or footbridges, car parks and even station approach roads.

A good initial working assumption is that if you disturb railway facilities, they should be replaced in a position of approximately equivalent convenience. Seek specific advice from your surveyor before you make assumptions about what can be removed or replaced.

The Minor Modifications procedure may be carried out in tandem with Station Change and a **similar timescale** should be allowed.

Land Disposal

Under the condition of our network licence relating to land disposal (licence condition 17), Network Rail must seek the consent of the ORR for a disposal of land. The objective of this licence condition is to protect land that may be required for future development of the railway, preventing disposal against the public interest. ORR has issued a general consent covering a number of generic dealings that would not operate to the prejudice of that objective.

The text of the licence condition, general consent and the ORR's related decision criteria are published in ORR's Regulatory Arrangements for Land Disposal, which are published on its website.

It is highly likely that an industry consultation process will need to be undertaken to assist in determining that the land has no foreseeable railway related use. Your surveyor will carry out the Land Disposal consultation procedure. Plans and narrative for the submission may be requested, and you may be invited to participate in presentations and discussions with various parties.

You should allow at least **four months** to secure consent for the disposal of land (to include any industry consultation and ORR consideration of an application to dispose). An application to dispose of land is typically not made until Station Change and Closure have been obtained.

Stakeholder Engagement

As the owner and operator of the national railway infrastructure, it is our responsibility to treat all of our stakeholders in a timely, efficient manner that is appropriate to their reasonable requirements. We also have a duty under our network licence to ensure that our engagement is transparent, effective, inclusive and well governed. A lot of the above regulatory processes include prior engagement with our industry stakeholders to make sure that their views are considered and represented appropriately.

Working on Network Rail land

When carrying out works on Network Rail land, you will be required to comply with Network Rail, ORR and Her Majesty's Railway Inspectorate standards. Therefore, appropriately qualified consultants are an essential part of the professional team who should be able to access and advise on current standards and procedures. It is essential that the personnel employed by you have the required experience and expertise.

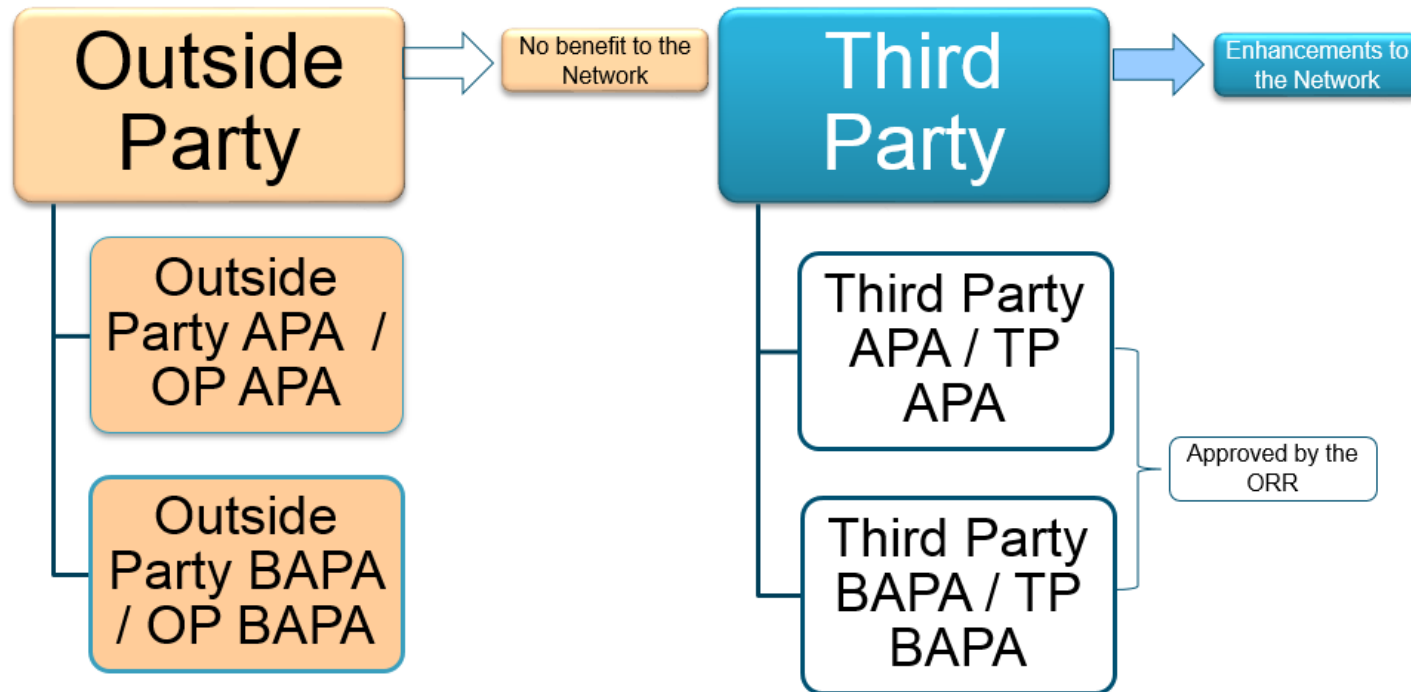
Asset Protection

Why do Network Rail use Asset Protection? - "Network Rail makes the safety of passengers and colleagues its number one priority and wishes to avoid any risks that could result in injury or loss of life to public, passengers and workforce".

An Asset Protection Agreement or Works Agreement may be required, which sets out the applicable rules for:

- Network Rail approvals;
- Works required to be carried out by Network Rail;
- Supervision;
- Insurance; and
- Bonding

The appropriate Asset Protection Agreement will be defined by the impact on the Network. Works that induce no benefit to the Network will be categorized as Outside Party Works and works that do benefit the Network will be categorized as Third-Party Works. The level of complexity of the works will determine whether an asset protection agreement (APA) or basic asset protection agreement (BAPA) is the correct agreement to use.



The Agreements do this by including clauses to cover;

- Funding of Network Rail staff to provide asset protection services
- Network Rail placing staff on site;
- Agreeing the methodology for undertaking the works;
- Providing clear definitions of roles and responsibilities including authorisations required to undertake the works;
- Superintending and monitoring compliance with the agreed method statements; and

- Intervening if the works could have an impact on the safe operation of the network.

If a risk materialises then the agreement seeks to mitigate the consequences of financial loss to Network Rail by providing;

- An indemnity from the developer;
- Ability to suspend works and not permit works to restart unless Network Rail's safety requirements are met.

You will work with Network Rail Asset Protection colleagues through the design and delivery of the project where it interfaces with the railway. It should be noted that there will be costs relating to approvals, supervision and Network Rail engineering services. The level of cost will be dependent on the scheme complexity and railway interface.

Once the nature of the development is known in more detail, Network Rail will agree with you the delivery mechanisms for any included rail works; i.e. whether all or part will be delivered by you or by Network Rail.

Network Rail have a suite of downloads and template agreements that are required for a variety of Asset Protection projects. These documents set out the respective parties' obligations and have been developed and revised following extensive consultation with industry, customers and stakeholders. They can be viewed [here](#).

How can you get further information?

Any aspect of your property development proposal can be discussed with your Network Rail surveyor who will be appointed at the outset of your dealings with Network Rail.

Further guidance on Network Rail's regulatory obligations can be obtained from the Regulatory Compliance & Reporting team:

- RegulatoryComplianceandReform@networkrail.co.uk

Further guidance on asset protection and opportunities for third parties can be obtained via the link below.

- <https://www.networkrail.co.uk/industry-commercial-partners/third-party-investors/network-rail-open-business/opportunities-for-third-parties/>