

**John Trippier**  
**Senior Executive, Access and Licensing**  
Telephone: 020 7282 2122  
Email: john.trippier@orr.gov.uk



Robert Williamson  
Customer Relationship Executive – Freight  
Network Rail Ltd  
1 Eversholt Street  
London  
NW1 2DN

Ian Kapur  
Head of Capacity Planning  
GB Railfreight Ltd  
3rd Floor  
55 Old Broad Street  
London  
EC2M 1RX

13 November 2020

Dear Rob and Ian

**Direction of the 15th Supplemental Agreement to the Track Access Contract dated 11 December 2016 (the TAC) between Network Rail Infrastructure Limited (Network Rail) and GB Railfreight Limited (GBRf) (the Parties)**

1. The Office of Rail and Road (ORR) on 13 November 2020 under section 22A of the Railways Act 1993 (the Act) directed the Parties to enter into the GBRf 15th Supplemental Agreement of the TAC. This letter explains the evidence and reasons for our decision, as well as wider issues which surfaced during that process.
2. Based on the evidence provided by Network Rail, ORR has concluded that Firm Rights with 1-hour windows will be directed, on the terms requested by the applicant. The body of this letter provides the background and detailed assessment of this case, a conclusions summary from page 5 of this letter.

**Background**

*GBRf application*

3. GBRf is seeking four new Firm Rights for traffic between the Port of Southampton and Trafford Park Euro Terminal, via Oxford and the West Coast Main Line.
4. The proposed rights, with 60 minute windows at origin and destination, are required to support new and on-going “just-in-time” intermodal services, which are particularly time-sensitive and part of a long logistics chain. The services are currently running six days a week.
5. GBRf was unable to agree terms with Network Rail. The application was formally submitted to ORR on 18 August 2020.

### *The Castlefield Corridor*

6. The services concerned are routed via the Castlefield Corridor. In April 2019 the Castlefield Corridor was declared congested by Network Rail under The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016<sup>1</sup> (the Regulations). As Network Rail referred to the declaration and associated access policy in their representations an understanding of the ORR position is needed.
7. A declaration of congestion made under the Regulations, in isolation, is not a reasonable justification for a blanket policy of not selling new access rights. The adoption of such a policy should not be considered an alternative to access applications being considered on a case by case basis, with decisions being supported by evidence. As part of ORR's regular engagement with Network Rail, this has been communicated to the System Operator and North West and Central Region. It is also consistent with the North West and Central Train and Freight Performance Review (see Annex A).
8. As reflected in Network Rail's letter to ORR (of 16 April 2019), a declaration does not mean that infrastructure is equally congested at all times, or locations. For the reason set out above, ORR expects Network Rail to consider all applications for additional access rights on their individual merits and following a detailed consideration of whether capacity is available to fulfil requested rights without an unacceptable impact on wider performance. Network Rail's decisions should be supported by evidence.
9. Network Rail set out its position for the post-declaration sale of access rights on the Castlefield Corridor in two letters, one to the ORR on 16 April 2019 and a second to industry on 30 July 2019. ORR's view is that these two letters are not consistent or clear in their approach to access:
  - a. The 16 April 2019 letter to ORR stated: "This declaration does not mean that all new requests for access on the designated infrastructure will be automatically rejected, because the route is not equally busy at all times of the day or week."
  - b. The 30 July 2019 industry letter stated: "Until this [capacity] analysis is completed, we feel it would be fairest to all parties that we renew expiring Track Access rights on a contingent, six-month basis. No additional access rights will be sold on the Corridor during this time. Once the report has been concluded, and a way forward agreed by industry, Network Rail will revise this position in line with the report outcome."

---

<sup>1</sup> <https://www.legislation.gov.uk/uksi/2016/645/made>

10. As of 16 April 2019, Network Rail's stated position was that it would consider new applications on their merits and may be willing to sell new rights on the basis of available capacity. The position was modified on 30 July 2019, so that no new rights would be sold until the Capacity Analysis (as required under the Regulations) had been completed.
11. Network Rail also referred to a way forward being agreed by industry. We note that the Regulations set out that, within six months of publication of the Capacity Assessment, Network Rail should publish a Capacity Enhancement Plan. The latter has not yet been published. ORR is considering this separately, so it is not the purpose of this letter to address that matter.
12. Network Rail must comply with the relevant legislative and regulatory requirements for declarations of congested infrastructure. Although the Capacity Analysis referred to was completed and published in September 2019, Network Rail's representations to ORR (received during our consideration of this application) demonstrate that it did not then revert to the access policy of 16 April 2019. The access policy of 30 July (to decline the sale of all new rights) was maintained without that policy being shared with either industry or ORR.
13. ORR considers that the access policy operated by Network Rail from July 2019 was not clear or consistent with the need to consider applications on a case by case basis. Therefore, this approach must not be maintained or repeated. To support a Network Rail access policy, evidence is still required on applications. We encourage Network Rail to publish a revised access policy.
14. Network Rail should be transparent and take reasonable measures to publicise its access policies in a timely fashion. As a minimum, such matters should be communicated to applicants, and, published on its website and the Network Statement updated where appropriate.
15. Separate to this application, ORR is considering Network Rail's approach to congested infrastructure. We welcome Network Rail's commitment to: provide improved information on its website for declarations of congested infrastructure, including a register which communicates the reason for each declaration, the stage in the process for that declaration and outputs from each stage. Network Rail has also said that it will provide interested industry parties the opportunity to comment on its Code of Practice for the management of declarations of congested infrastructure.

### **Industry Consultations**

16. An industry consultation was conducted by Network Rail between 2 July and 2 August 2020. Responses were received from Transport Focus, Freightliner, West Yorkshire Combined Authority (WYCA), and Transport for Greater Manchester (TfGM).

17. WYCA noted that it would not wish to object to GBRf having reasonable access to the Corridor provided that it can be shown that the risk of adverse performance implications on passenger services is minimal.
18. The initial consultation response of TfGM stated that the Manchester Recovery Taskforce considered the Castlefield Corridor to be highly congested, and requested that all rights be granted on a “conditional basis” (contingent rights). TfGM stated the objective of this was to give the greatest possible opportunities for the development of solutions to improve capacity constraints.
19. GBRf responded to TfGM on 23 July and highlighted that the services in question had been running daily since September 2019, and in its view would not require additional capacity. GBRf further noted that the services had been running between 22:30 and 23:30 heading towards Trafford Park, and between 02:00 and 03:40 departing Trafford Park – times which it suggested were not as busy as others. Following this exchange TfGM confirmed (on 12 August 2020) that it supported the application. Freightliner and Transport Focus supported the application.

#### **Parties’ representations**

20. In line with the statutory process for consideration of applications under section 22A of the Act, ORR consulted Network Rail on 24 August, seeking its response by 14 September 2020.
21. In its formal representations of 14 September, Network Rail set out:
  - a. Network Rail is willing to support access rights over the Castlefield Corridor on a contingent basis for a period of 6 months. This was described as being in-line with the ‘Declaration of Congested Infrastructure’ letter sent to ORR on 16 April 2019 (with effect from 23 April 2019), alongside Network Rail’s letter ‘Network Rail Access Rights Position: Castlefield Corridor 30 July 2019’.
  - b. Train service “4M51” was noted as being currently recorded in the Train Planning System (TPS) as 75C66S14 but it notes that the application is for 75C66S16. Network Rail advised it could not support this as the increase of tonnage would make the timings unfeasible but would support the application at 75C66S14.
22. The representations did not provide evidence of insufficient capacity to facilitate the sale of the rights sought. ORR offered Network Rail an additional opportunity to provide further representations, and specifically ORR asked it to explain why the rights sought by GBRf could not be accommodated, and to identify any conflicts that would be created in doing so.
23. Network Rail’s further representations of 2 October (letter dated 5 October) set out that:

- a. Network Rail does not feel it appropriate to make Access Rights decisions for the long-term, and as such the fairest position is to maintain consistency by offering all operators contingent rights on a 6-month basis. This includes any Firm Rights which expire and need extending. Once the enhancement study and industry work-stream has been concluded then this position will be reconsidered.
  - b. The services relating to these rights are currently accommodated in the timetable.
  - c. This application has been reviewed on its own merits and Network Rail believes supporting Contingent Rights for six months is consistent with how Network Rail has supported other Access Right applications from both passenger and freight operators and recognises that the services are already part of the Working Timetable.
  - d. There are established freight paths in the timetable at a frequency of one freight path per hour and that there are currently 27 freight paths per day, which have approved Firm Rights. It noted that specific hours such as 1500-1600 or 2200-2300 have four and three Firm Rights respectively.
  - e. Network Rail is concerned that a deviation from this approach may cause an inconsistency in the sale of rights. Additionally, it may also lead to an unintended increase in unsupported applications. Firm Rights, if granted, may constrain and indeed undermine the ongoing work to address capacity and performance issues in the Manchester area.
24. Network Rail concluded: “The TSS post-December 2021 is currently being progressed which is due to report to the Department for Transport in October 2020. Network Rail’s aim for supporting Rights on the Castlefield Corridor is to retain maximum flexibility to support the production of future timetables.”
25. On 9 October 2020 ORR wrote to Network Rail stating that it did not consider the representations of 2 October provided sufficient evidence to support Network Rail’s position. On the basis of the evidence provided, ORR stated that it was minded to direct all rights sought as Firm and with 4-hour windows. Network Rail responded on 13 October and no additional arguments were presented.

## **Conclusions**

### *Quality of evidence provided by Network Rail*

26. ORR considers that the evidence provided by Network Rail did not address the specific impact of the rights applied for. More generally, the evidence provided did not explain the problems Network Rail considered would arise with accommodating the rights sought. Under such circumstances, it is particularly challenging for ORR to

assess the merits of an application for directions and reach evidence based conclusions.

*Consideration of the rights sought in this application*

27. ORR considers it to be significant that the rights sought in this application are currently operating in the timetable and are at times of day where the Castlefield Corridor is not congested.
28. Network Rail has not provided evidence to show that the rights in questions would cause operational issues either now or in the future. It has emphasised its objectives of ensuring a consistent and non-discriminatory approach, whilst also avoiding the creation of unintended precedents for future Rights applications which would compromise the outputs of ongoing work-streams.
29. Network Rail considers that its processes and decisions in this case have been led by its access policy for the Castlefield Corridor. As set out above, ORR does not think the practice followed was clear or consistent with the requirements to consider applications on a case by case basis.
30. ORR's consideration and decision in this case has focussed on evidence of available capacity and potential impact on performance. Prior to reaching the decision ORR asked Network Rail if it could accommodate 1-hour windows at the times the trains currently run. If it considered that windows in excess of 1-hour would be required, it was asked to provide evidence to support that. Network Rail accepted it could accommodate 1-hour windows and made no representations to seek larger windows
31. On the basis of the evidence provided by Network Rail, **ORR concluded that Firm Rights with 1-hour windows will be directed, on the terms requested by the applicant.**
32. We note that in May 2020 ORR published a review of North West and Central's (NW&C) train and freight performance. This decision is consistent with the recommendations of that report (see Annex A).
33. In considering the agreement and in reaching our decision, we have had to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Act. In making this decision, we have taken into account the following duties in particular:
  - to protect the interests of users of railway assets;
  - to promote the use of railway network in Great Britain for the carriage of passengers and goods and the development of that railway network, to the greatest extent ...economically practicable;

- to promote efficiency and economy on the part of the persons providing railway services; and
- to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

**Conformed copy of the track access contract**

34. Under clause 18.2.4 of the track access contract, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and the Train Operator. Please send the conformed copy to me at ORR.
35. Copies of the approval notice and the agreement will be placed on ORR's public register and copies of this letter and the agreement will be placed on the ORR website. I am also copying this letter without enclosures to the Regulatory Reform Team at Network Rail and Keith Merritt at DfT.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J. Trippier', written in a cursive style.

**John Trippier**

## Annex A

### Consistency of ORR Direction with North West and Central Train and Freight Performance Review

1. In May 2020, ORR published a review of North West and Central's (NW&C) train and freight performance<sup>2</sup>. The objective of this report was to identify whether NW&C Region could demonstrate it had recognised factors causing a sustained reduction in train and freight performance and whether it was doing everything reasonably practicable to address them.
2. The investigation found that poor performance in the Manchester area was attributable to various factors, including asset management, operational management, external and TOC factors. It concluded that the NW&C is doing everything reasonably practicable to address its train and freight performance issues, however, at the time, its plans for improvement were at an early stage. The region continues to update ORR.
3. The report made several recommendations. Of particular and ongoing relevance to this application is the recommendation that: "To support the development of timetables and the sale of access rights, Network Rail must be able to robustly assess capacity and performance in sufficient time to support decision making [...]".
4. ORR considers a robust assessment to be one where Network Rail can provide evidence either that access rights can or cannot be accommodated. In this freight application Network Rail could not provide evidence supporting its rejection, and when ORR followed up with more detailed questions it became clear that these particular rights could be accommodated without other train services being adversely affected.

---

<sup>2</sup> <https://www.orr.gov.uk/sites/default/files/om/north-west-and-central-performance-summary-report.pdf>