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3 November 2022

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Chris Hassall
Head of Commercial Contracts
First Transpennine Express Ltd
8th Floor, Bridgewater House
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Dear Erin and Chris

Approval of the 43rd supplemental agreement to the track access contract between Network Rail Infrastructure Limited and First Transpennine Express (FTPE) Limited dated 3 March 2016

We have today approved the above supplemental agreement submitted to us formally on 2 November 2022 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. This letter explains the reasons for our decision.

Purpose

The purpose of this agreement is to extend a number of firm and contingent rights on the Castlefield Corridor as driven by the Manchester Recovery Task Force workstream, and to support this initiative by introducing some new rights. This will entail the extension of the current services from Sheffield/Cleethorpes – Manchester Piccadilly/Airport to Liverpool Lime Street, replacing some withdrawn Northern Trains services, and the withdrawal of some services between Manchester Piccadilly and Manchester Airport. There will also be new contingent rights between Liverpool and Doncaster. The extensions to Liverpool from Cleethorpes are to commence on the Principal Change Date 2022, and those from Sheffield are to commence on the Subsidiary Change Date 2023, and all will expire on the Expiry Date or earlier termination of FTPE's track access contract.



Industry consultation

Network Rail undertook the usual industry consultation. Northern Trains asked why the proposal only focused on the part of FTPE's South Route that is affected by the MTRF workstream and not the North Route; NR replied that the services on the North Route only concerned temporary service suspensions and therefore did not need to be consulted. Northern was satisfied with this response.

London North Eastern Railway (LNER) raised an objection based on potential performance issues in the Doncaster area which may be worsened if the proposed FTPE services originate in Liverpool instead of in Manchester. Network Rail provided performance modelling data and advised that the scheduling from PCD 2022 would include an extra five minutes' pathing/dwell time at Manchester Piccadilly. LNER was not satisfied with this explanation and its objection was still outstanding upon informal submission.

ORR review

Our review involved further investigation of LNER's objection and the response provided by Network Rail. We agreed that the explanation as given was missing some detail and asked for further information about how the performance issues in the Doncaster area would be avoided. A comprehensive explanation was provided by the Head of Performance for the North West Route, in which he acknowledged that there is a risk of increase in average minute lateness. However, sensitivity testing has shown that, as a result of improved base timetable, less congestion and less reactionary risk as a result, the overall average minute lateness has been reduced from its previous value. There is also an increased dwell allowance on those calculated in May 2018. We are satisfied with this explanation and that sufficient mitigation has been put in place to minimise the impact of any increase in lateness.

Our review of the application raised no other operational, performance or economic concerns. We identified some minor drafting issues and these were resolved when the agreement was formally submitted.

Our duties under section 4 of the Act and our decision

We have concluded that approval of this supplemental agreement strikes the appropriate balance in discharging our statutory duties under section 4 of the Act; in particular, those relating to protecting the interests of users of railway services (section 4(1)(a)), promoting the use of the railway network for the carriage of passengers (section 4(1)(b)) and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g)).



Conformed copy of the track access agreement

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.

Public register and administration

Electronic copies of this letter, the approval notice and the agreement will be sent to the Department for Transport and Network Rail's Policy and Access Team. I am also copying in Malcolm Knight of LNER. Copies of the approval notice and the agreement will be placed on ORR's public register (website) and copies of this letter and the agreement will be placed on the ORR website.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Louise Beilby'.

Louise Beilby