

David Reed
Senior Executive, Access & Licensing



24 April 2023

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Dear Richard and Rob

Approval of the 88th supplemental agreement to the track access contract between Network Rail Infrastructure Limited and First Greater Western Limited dated 4 March 2016

We have today approved the above supplemental agreement submitted to us formally on 21 April 2023 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

This supplemental will provide First Greater Western Limited (“GWR”) with additional access rights related to Metro West enhancements and Elizabeth Line changes. It will also provide the rights necessary to extend five existing London Paddington – Swansea return services to start/terminate at Carmarthen (with associated start and end day Bristol Parkway – Carmarthen positioning move services). The additional rights will run to the expiry date of GWR’s current track access contract at the Subsidiary Change Date in 2026, with the exception of extensions to Carmarthen which will expire at the Principal Change Date in 2024.

Industry consultation

Network Rail undertook the usual industry consultation in February and March 2023.

Amey Infrastructure Wales and CrossCountry supported the proposal.

Transport for Wales (TfW) and Grand Union Trains (GUT) both supported the application but made specific comments on the Carmarthen extensions. TfW advised that it did not wish to prevent or delay the introduction of the services to Carmarthen but it believed that it would have a negative revenue impact on its own services between Swansea and Carmarthen. GUT welcomed the introduction of the services, but noted that as the extensions to Carmarthen compete with an existing service provided by TfW, whose funding is provided by the Welsh Government, ORR should carry out the Not Primarily Abstractive (“NPA”) Test.

Following the Industry Consultation, we contacted the Welsh Government, which confirmed that it supported the services but recognised that there will be a revenue impact on TfW which TfW will raise and discuss directly with the DfT.

ORR review

We raised a number of operational questions with GWR and Network Rail, particularly regarding the Carmarthen extensions. We have no operational or performance concerns for the duration of the access rights applied for. However, based on the responses to our queries regarding the Carmarthen extensions, we have not yet been convinced that the full level of service could continue to operate alongside the additional Grand Union Trains London Paddington-Carmarthen services which have access rights from the Principal Change Date in 2024. In light of this, our usual policy of a strong presumption of the continuation of existing rights will not apply for the GWR Carmarthen extensions beyond the Principal Change Date in 2024.

We had no other operational or performance concerns with the application.

Our [Guidance on the Not Primarily Abstractive Test](#) (“NPA test”) states that we would expect to carry out the test on “a new franchised service which would compete with an existing franchised service, where we would expect to focus the test on areas where the competing franchised services are operated on behalf of different funders or where for some other reason there are particular concerns over the impact on a funder’s budget”. The GWR Carmarthen extensions are funded by the Department for Transport (DfT) and will compete with existing TfW services funded by the Welsh Government. Based on this, and the comments made by TfW, GUT and the Welsh Government, we concluded that these were competing services on which we should carry out the NPA test to inform our decision-making.

We undertook the NPA test on the Carmarthen extensions. This included reviewing revenue modelling submitted by GWR. Following review and our own analysis of the proposal, we concluded that the application passes the NPA test, with an NPA test ratio of 0.61:1 and an absolute abstraction of c £0.95m per annum.



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)), promoting competition for the benefit of users (section 4(1)(d)), having regard to the funds available to the Secretary of State (section 4(5)(c)) 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. 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. I am copying this letter to Ian Yeowart at Grand Union Trains, James Arden at Welsh Government and Chris Dellard at Transport for Wales.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Reed', is written over a light blue horizontal line.

David Reed