

Louise Beilby
Senior Access Executive



16 May 2023

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Franchise and Access Manager
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Mia Kirkpatrick
Track Access and HS1 Contracts Manager
SE Trains Ltd
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Dear Sid and Mia

Approval of the 95th supplemental agreement to the track access contract between Network Rail Infrastructure Limited and SE Trains Limited dated 6 December 2007

We have today approved the above supplemental agreement submitted to us formally on 16 May 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

The purpose of this agreement is to grant SE Trains with two additional rights between Faversham and Ashford Western Junction, and between Gravesend and Maidstone West, by converting Empty Coaching Stock moves to passenger services. These amendments follow a recent rewriting of SE Trains' base timetable for the December 2022 timetable, which saw the removal of a number of rights, and has been instigated to reflect passenger feedback on school travel period service provision. The rights are to commence upon ORR approval and will expire on the Expiry Date or earlier termination of SE Trains' track access contract.



Industry consultation

Network Rail undertook the usual industry consultation. No queries or issues were raised.

ORR review

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

ORR notes that these services first started operating in early January and were put in place on a contingent basis by means of a 90-day General Approval, with the intention that the 95th supplemental agreement would make the rights permanent and firm. The expiry date of these services should, therefore, have been on 9 April; however, we understand that they have been running in the period between the stated expiry date and the approval of this supplemental agreement. There is a considerable operational and contractual risk in allowing services to run without having the corresponding rights in the access agreement, and we strongly discourage the parties to the contract from allowing such situations to occur. ORR advises that, in future, the process for submitting a full supplemental agreement is entered into promptly so that we can approve it before the General Approval expiry date.

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. 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'. The signature is written in a cursive style with a long horizontal stroke at the end.

Louise Beilby