

Louise Beilby
Senior Access Executive



9 June 2023

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Network Rail Infrastructure Ltd
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Track Access Contracts Manager
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Dear Sid and Mia

Approval of the 98th 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 8 June 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 amend SE Trains' access agreement to include three additional Kent metro area peak services, which were introduced on a contingent basis by general approval in February 2023 and which have been running since then. The services were introduced at short notice as additional school services as a result of stakeholder and funder feedback. 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 comments or queries were raised.



ORR review

Our review of the application raised no operational, performance or economic concerns. However, we note that these services first started operating on 13 February and were put in place on a contingent basis by means of a 90-day General Approval, with the intention that the 98th supplemental agreement would make the rights permanent and firm. The expiry date of these services should, therefore, have been in early May; 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 blue ink, appearing to read 'Louise Beilby', with a stylized flourish at the end.

Louise Beilby