

Louise Beilby
Senior Access Executive



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Sid Ali
Franchise & Access Manager
Network Rail Infrastructure Ltd
1 Puddle Dock
Queen Victoria Street
London
SE1 0NS

Mia Kirkpatrick
Track Access & HS1 Contracts Manager
SE Trains Ltd
4 More
London Riverside
London
SE1 2AU

Dear Sid and Mia

Approval of the 99th supplemental agreement to the track access contract between Network Rail Infrastructure Limited and SE Trains Limited dated 6 December 2007

1. We have today approved the above supplemental agreement submitted to us formally on 18 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

2. The purpose of this agreement is to grant SE Trains the rights necessary to operate its proposed May 2023 timetable. This entails the reintroduction of peak, off-peak and Saturday services between Charing Cross and Dartford which were removed during the December 2022 timetable, and have been reinstated following stakeholder feedback. The rights are to commence on the Subsidiary Change Date (SCD) 2023 and will expire on the Principal Change Date (PCD) 2023. This is a change from the original informal submission, which did not place a time limit on the rights.

Industry consultation

3. Network Rail undertook the usual industry consultation. One comment in agreement was received from Transport Focus.

ORR review

4. ORR did not receive the informal submission of this application until 12 May, one week before the date on which the planned services were to commence. This has left ORR in a difficult position when making the decision whether to approve or reject the amendments, as we have had very little time to review the application to a standard that gave us confidence that the proposed services would be operationally sound.
5. ORR's guidance highlights that we usually expect application reviews to take between 6 and 12 weeks depending upon the complexity. However, given that timetables should be published 12 weeks before a change date, access rights applications should also be completed at that point. This is to align with the timescales specified in the current Network Code, something we have previously communicated to Network Rail and industry. Failure to adhere to these timescales increases the risk of adverse outcomes for passengers and industry. It also reduces the time available for ORR to work with applicants to resolve queries and weigh the consequences of its decision.
6. On reviewing this application, we had a number of performance-related concerns which required clarification; in particular, the level of performance analysis that had been carried out prior to the authorisation of the application at the Sale of Access Rights panel. We also noted that the reintroduction of rights seems to directly contradict the stated aim of the PCD 2022 timetable recast, which was to simplify and streamline SE Trains' services in order to move to an On Time performance metric and to increase reliability. We would expect Network Rail and SE Trains to have undertaken significant performance analysis and for evidence of this to be included in the application to ORR. Insufficient evidence was provided in the initial stages of the application and, on enquiring, we were told that a very limited performance analysis had been done due to the timescales involved. It was therefore not clear to us what evidence Network Rail had used as the basis of its support of the application.
7. We asked the applicants to submit evidence that would assure us there was an adequate governance process in place. The information that was subsequently provided seemed to refer to the improved efficiency and performance of the timetable from December 2022 onwards, but we did not see any data predicting the impact on performance that may result from the reintroduction of these services.

ORR lacked confidence that there would be either a positive or neutral effect in light of the limited assurance we have been given, and we consider that there may well be a negative impact due to increased interactions with freight and other passenger paths. We now understand from communications with senior managers at SE Trains that it has carried out substantially more performance analysis than ORR has seen, but the details of this were not included on the application, nor were we made aware of it in time for it to influence our decision.

8. It should be noted that ORR has considered outright rejection of this application, which would have placed the relevant services outside of contractual protections had they continued to run. However, we are also aware that, at this late stage, rejection would have led to a disruption of the planned timetable and the cancellation of train services, which would not ultimately be in the interests of the users of those services.
9. We have concluded that we will approve the proposed amendments for one timetable period only, with an expiry date of PCD 2023. If the contract parties wish to apply for these same rights to be extended beyond PCD 2023, they must submit a fully-evidenced application to ORR in good time for us to make an informed decision. Failure to do this is likely to lead to a rejection of the application.

Our duties under section 4 of the Act

10. We have concluded that approval of this supplemental agreement with the abovementioned time-limited rights 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

11. 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

12. 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