

Gareth Clancy
Head of Access & Licensing



19 May 2023

Akaash Bhandari
Franchise & Access Support Manager
Network Rail Infrastructure Ltd
Baskerville House
Centenary Square
Broad Street
Birmingham
B1 2ND

Bevis Thomas
Head of Train Planning
The Chiltern Railway Company Ltd
Banbury Integrated Control Centre
Higham Way
Banbury
Oxfordshire
OX16 4RN

Dear Akaash and Bevis

Approval of the 1st supplemental agreement to the track access contract between Network Rail Infrastructure Limited and The Chiltern Railway Company Limited (Chiltern) dated 7 October 2022

1. Today we have approved the above supplemental agreement, submitted to us formally on 19 May 2023 under section 22 of the Railways Act 1993 (the Act). The approval is for one timetable period (until Principal Change Date 2023) rather than the Subsidiary Change Date 2026 originally in the draft agreement requested by the parties on 5 May 2023.
2. This application was submitted very late (within 10 working days of the 21 May 2023 timetable coming into effect) and is related to the West Midland Trains 16th supplemental agreement, which was also submitted late. The absence of robust evidence on performance in the application meant it required considerable effort by ORR to assess the likely performance implications of the requested changes. Important performance evidence was only provided on 16 May. It has highlighted ORR's wider concern over the risks industry and funders have introduced into capacity planning and performance on the rail network through their late decisions. For these reasons we did consider whether this application could be approved at all. This letter explains the reasons for our decision in more detail.

Purpose

3. The purpose of this agreement is to grant Chiltern the rights necessary to operate its proposed May 2023 timetable, entailing the addition of new rights and the withdrawal of some others. Chiltern will relinquish a number of unused access rights and add new services between Banbury and Oxford, as well as between Oxford and London Marylebone. This will constitute a net service reduction of 81 services. The rights commence on the Subsidiary Change Date (SCD) 2023 and expire on the Principal Change Date (PCD) 2023. To receive contractual rights beyond PCD 2023 Chiltern will need to reapply and clearly set out the performance evidence which supports approval.

Industry consultation

4. Network Rail undertook the usual industry consultation. Comments in agreement were received from Cross Country, East West Rail, Greater Western and West Midlands.

ORR review

5. ORR received the informal submission of this application on 5 May, two weeks before the date the services were planned to commence. This put pressure on the ORR review, which protects industry and passengers in line with our duties. An important part of an ORR review is ensuring the proposed services are operationally sound, and detailed performance evidence was only submitted on 16 May.
6. ORR's guidance highlights that we usually expect application reviews to take between six and twelve weeks, depending upon the complexity. However, given that timetables should be published twelve 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 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 consider the implications of its decision.
7. On reviewing this application, we had a number of performance-related concerns which required clarification. These included the extent of performance analysis undertaken and assurance of that analysis prior to the authorisation of the application at the Sale of Access Rights panel. The Form P stated that "the timetable for May 2023 is a complete recast". In a case of this apparent scale, we

would expect Network Rail and Chiltern to undertake performance analysis and for evidence of this to be included in the application to ORR. No such evidence was provided in the initial stages of the application and, on enquiring, we were told that this had not been done due to cost and timescales. It was therefore not clear to us what evidence Network Rail had used as the basis of its support of the application. We asked the applicant to provide evidence of the performance analysis and relevant assurance work as well asking Network Rail what analysis and assurance process it used.

8. The evidence that was subsequently provided on 16 May did provide greater clarity. Our analysis of this information, in the time available, suggests that the risks of rejecting the application are greater than a time limited approval because some of our concerns have been addressed. As the information was so late, we have been unable to assess the long-term implications of approval in our decision making. We therefore still have insufficient confidence that embedding these services in future timetables will improve efficiency and performance.
9. It should be noted that ORR has considered outright rejection of this application, which would have placed the relevant services outside of contractual protections if they did 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.
10. 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

11. 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. Of particular relevance are those duties 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

12. 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 Louise Beilby (louise.beilby@orr.gov.uk).

Public register and administration

13. 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 'G Clancy', is written over a light yellow rectangular background.

Gareth Clancy