

**Claire Brooks**  
Access Executive



23 November 2023

Lysette Rowley  
Franchise and Access Manager  
Network Rail Infrastructure Ltd  
Baskerville House  
Centenary Square  
Broad Street  
Birmingham, B1 2ND

Kate Oldroyd  
Track Access Manager  
Northern Trains Ltd  
George Stephenson House  
Toft Green  
York  
YO1 6JT

Dear Lysette and Kate,

**Approval of the 49<sup>th</sup> supplemental agreement to the track access contract between Network Rail Infrastructure Limited and Northern Trains Limited dated 3 March 2016**

We have today approved the above supplemental agreement submitted to us formally on 23 November 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 Northern Trains Limited (Northern) 49<sup>th</sup> supplemental agreement contains changes to facilitate the December 2023 timetable change. It is also seeking new access rights for the new Northumberland Line (Newcastle to Ashington). This line of route is not expected to be available until Summer 2024, but following best practice the parties are seeking access rights in advance of the commencement.

Northern carried out a review in line with industry guidance on unused rights and are relinquishing several rights in various service groups as part of this application.

**Industry consultation**

Head Office: 25 Cabot Square, London E14 4QZT: 020 7282 2000 [orr.gov.uk](http://orr.gov.uk)



Network Rail undertook the usual industry consultation in July and August 2023. Comments were received from GB Railfreight, Great Western Railway (GWR), London North Eastern Railway (LNER), Transport Focus, CrossCountry and West Yorkshire Combined Authority.

The concerns raised by GB Railfreight and West Yorkshire Combined Authority were resolved after further correspondence with the parties. GB Railfreight raised concerns about the access rights starting on the Newcastle – Ashington line while the infrastructure is not yet complete. Network Rail agreed with this and clarified that the rights only allow services once the line is completed. West Yorkshire Combined Authority queried the relinquishing of various rights on service groups where there is a clear aspiration to increase services. Network Rail advised that operators are required under Part J of the Network Code to surrender any unused rights where there isn't a reasonable expectation that these would be used in the future.

The application was submitted with outstanding objections from LNER and CrossCountry. LNER's objection related to the performance on the Newcastle – Ashington line at Benton Junction. LNER asked that further work be carried out in this area to enhance performance. Network Rail tried to engage with LNER to resolve this issue on multiple occasions. ORR has also contacted LNER to see if the objection has been resolved and has received no response. Network Rail has advised on the performance work it has undertaken and that it is content with the potential performance impacts of this proposal.

CrossCountry's main objections related to performance impacts, timetabling, conflicts with the East Coast Main Line Event Steering Group (ESG) timetable and platforming at Newcastle. A meeting was held with the parties on the 11 September 2023 to discuss the issues. Network Rail stated that Network Rail's Capacity Planning has said there is enough capacity for the quantum rights on the Northumberland line and would work with CrossCountry on timetabling conflicts. Network Rail also advised on the performance work that it had undertaken and that it was content with the potential performance impacts. Network Rail also noted that timetabling conflicts in the ESG have been resolved.

Network Rail also responded to further detailed objections from CrossCountry. CrossCountry has confirmed that it still has outstanding objections, particularly concerning timetable conflicts and limitations on the train lengths for any potential future services it plans to operate at Newcastle.

## **ORR review**

ORR reviewed the application, the comments and objections raised by consultees. We raised a number of further specific queries with the parties, which Network Rail provided



detailed responses to. These responses were reviewed and found to be satisfactory. In particular, we are satisfied with the performance assurances made by Network Rail regarding the proposals.

We note that CrossCountry has outstanding objections to this application, particularly regarding timetable conflicts and conflicts with its future aspirations to run longer trains at Newcastle. Network Rail has confirmed that there is sufficient capacity to run the services applied for by Northern and that any timetable conflicts can be dealt with through the usual timetable development process. Access rights do not guarantee specific paths and it is correct that Network Rail can flex paths within the timetable process set out in the Network Code to efficiently utilise capacity.

Regarding CrossCountry's objections related to its potential future aspirations to run longer trains at Newcastle, we agree with Network Rail's position that it should not refuse access rights to enable additional Northern services on the grounds of potential one-off bids or future aspirations to run longer trains by CrossCountry. We also note that access rights do not specify train length, but instead provide firm rights "to the maximum train length in metres which the Network can from time to time accommodate, subject to a right of Network Rail to vary the train length in cases where the Network cannot accommodate all Access Proposals and Rolled Over Access Proposals to operate to the maximum length".

#### **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

*C Brooks*

**Claire Brooks**