

Ryan Holt
Access Executive



8 December 2023

Robert Neep
Customer Relationships Executive
Network Rail Infrastructure Ltd
Waterloo General Office
London
SE1 8SW

Chris Matthews
Timetable Strategy and Rail Industry Manager
Freightliner Heavy Haul Ltd
The Lewis Building, 35 Bull Street
Birmingham
B4 6EQ

Dear Rob and Chris

Approval of the 18th supplemental agreement to the track access contract between Network Rail Infrastructure Limited and Freightliner Heavy Haul Limited dated 11 December 2016

1. 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 letter explains the reasons for our decision.

Summary

2. This letter directs the approval of contractual rights for Freightliner Heavy Haul (FLHH) to operate trains, at the time slots requested, moving bulk material (mainly construction aggregates) from Mendip quarries. ORR's decision is based on our analysis of the network's capability, performance, and operational aspects. We accept the case made by Network Rail and FLHH as to why these rights should be granted, despite the concerns raised by some passenger train operators (TOCs). The key reasons for our decision are:
 - Network Rail has demonstrated it has considered operational performance and the impacts the new train plan will have on other operators and rail users.
 - The improved train plan has been shown to be more resilient to delays and with better performance than before.
 - The Mendips traffic and the re-introduced freight corridor linking the quarries to London and the Southeast is of strategic importance to the UK's construction industry.

- Some of the objections raised by TOCs are due to potential clashes with aspirational services in the future. We are not convinced that the concerns raised during industry consultation justify the denial of access rights to FLHH. The provision of contingent or time-limited rights is not a suitable solution as it does not provide long-term stability for the train plan.

Purpose

3. The purpose of this agreement is to provide FLHH with the access rights that form a significant part of the major recast of Mendip traffic. We are approving FLHH's application to amend 77 existing rights (where the paths and characteristics remain broadly as per those already in place), add 77 rights (where significantly different from today or not currently supported by firm rights) and discontinue 59 rights (where paths are amended significantly) in its Rights Table. FLHH is also replacing two existing historic notes from its rights table with a new note relating to access rights policy for Heavy Axle Weight (HAW) traffic on the Southern and Anglia Routes.
4. This large scale and business critical rights application will support FLHH's operation of Mendip Rail services between Quarries in the Southwest with London and the Southeast. The new train plan has been rewritten to better spread departure times for direct trains at the Quarries. Network Rail and FLHH stated that the changes will deliver a positive step change in performance and timetable resilience, particularly on the Western route and support growth in the aggregates market.
5. The recast train plan has been designed to optimise performance and reliability of operational moves. Without new rights to support the re-cast plan, FLHH might have to resort to bidding for paths covered by historic rights, meaning a reversion to the current sub-optimal plan.

ORR's role

6. ORR is the independent safety and economic regulator for Britain's railways. For track access, we make sure that both passenger and freight train companies have fair access to the rail network and that best use is made of capacity. Our [Guidance on the statutory and contractual framework](#) sets out how we do this.
7. If a train operator wants access to the railway network, it must apply to Network Rail for access rights, which then requires our approval. Any subsequent agreed amendments to a contract also require our approval under section 22 of the Act. Section 4 of the Act lists the duties which we must consider in exercising our functions under the access regime.
8. We carefully consider any application submitted to us including the impact of any changes not just on the parties involved but also other operators and rail users.

Therefore, we ask that any outstanding objections are declared so we that we may review them as necessary.

Aims and benefits

9. Extensive investigation into the root cause of delays led FLHH to the conclusion that the only way to solve many of these historic issues, inherited from the previous incumbent operator, was to start from scratch and to develop a new train plan with Network Rail. This new Rights Table will reflect FLHH's current operations, provide clarity to train planners, and provide greater stability and consistency. The core objectives of this workstream were to:
- Significantly improve performance across the service group.
 - Increase the volume of traffic by rail that can be reliably moved by providing a more efficient and resilient train plan.
 - Reflect FLHH's revised operational practices by establishing current operational locations of Hanwell and Wembley.
 - Surrender redundant rights and establish firm access rights that reflect current operations to provide stability and embed customer confidence in modal choice.
 - Better spacing of schedules, which is often the root cause for late starts, to reduce congestion at the Quarries and ensure that ground staff can cover all train movements.
 - Improving Train Planning Rules (TPRs) and Sectional Running Times to provide better quality schedules that reflect performance of trains and improve journey times.
 - Ensuring capacity is available for future growth and to prevent the requirement for short notice planning of additional services which typically cause performance issues.

Capacity improvements

10. The rights in this SA ensure that the core train plan required to operate the Mendip Rail contract is supported by access rights. It also brings it in line with our guidance that freight schedules should not rely on running as Train Operator Variation Requests (TOVRs) for more than 12 months. Network Rail and FLHH have undertaken a significant exercise to understand the workings at the Quarries, which currently struggle with congestion and are unable to recover in the event of even minor disruption. Thus, this SA removes the 'bunching up' of services and spreads departures out over the day to significantly improve overall performance. Work has also

been undertaken to ensure robust times are provided at all discharge terminals to prevent issues such as late starts or returning loaded wagons when trains get caught up in network disruption.

11. The review of TPRs resulted in wholesale changes to timing locations, sectional running times, headways, and junction margins on the route between the Quarries, Westbury, and Reading, as well as changes between Reading and London to improve the accuracy of planning and unlock performance benefits.
12. Network Rail has shared with us numerous sources of evidence showing that engagement and input was achieved with the relevant Route Teams impacted by these changes. For example, through various collaborative 'Deep Dive' sessions with the Routes and TOCs to review the re-cast changes from a performance perspective, a timetable change readiness overview document that tracks key themes and actions, as well as weekly 'pulse check' meetings.
13. FLHH has also introduced various measures to assist with improving performance including additional stabling facilities, reducing reliance on third party owned infrastructure (where delays can be outside its control), and setting up new ways of working that reduce the number of shunt movements required for each journey.

Context

Mendip Rail contract

14. The Mendip Rail contract is the largest bulk haulage in the UK and consists of flows of aggregate between Merehead and Whatley Quarries in Somerset, Machen Quarry in South Wales, and receiving terminals across Southeast England. The traffic is important to the UK economy, supporting many varied construction projects, including HS2. Annually more than 7 million tonnes of mixed aggregate are moved with a typical service quantum of 150 trains per week.
15. To ensure efficiency and best use of capacity on the constrained route to and from London, these trains run as "Jumbo" services with trains bound for two destinations coupled together, before splitting in London and proceeding to their destination. Access rights are essential to protect arrival and departure windows from the splitting and joining locations, as all associated paths need to align to allow this plan to work reliably.

Timeline

16. FLHH was awarded the Mendip Rail haulage contract and took over services from DB Cargo in November 2019, although this traffic has been running since the 1970s. On taking on the commercial contract FLHH identified that the access rights transferred to it did not always reflect the services actually running or in the working timetable. Many

services were running as TOVRs and so FLHH sought to update its Rights Table to reflect the services' actual timings and train characteristics.

17. FLHH identified nearly 200 paths that were not underpinned by firm contractual rights. The majority of these were contractualised in April 2021 through the 9th SA however around 40 rights were not supported by Network Rail due to RA10 and performance concerns, which became the subject of the 10th SA submitted to ORR under section 22A of the Act.
18. We directed that the parties enter the 10th SA as applied for by FLHH, except that we determined that the expiry date for the contested new rights would be SCD 2023, rather than at the end of the TAC in 2026. This allowed for the parties to further review the issues, namely improving performance, and assessing network capability.
19. On 14 August 2023, Network Rail and FLHH informally submitted its 16th SA, which would remove the expiry date for some of those rights contained in the 10th SA where performance has improved and extend them through to PCD 2026. The 18th SA, which represents a recast of the whole Mendip Rail plan replaces those rights contained in the 16th SA.

Industry consultation

20. Network Rail undertook the normal industry consultation, which ran from 25 August 2023 to 25 September 2023. There were four issues raised during the consultation, which remained unsolved at the time of Network Rail and FLHH's informal submission to us. The TOCs that objected to FLHH's proposals were MTR Elizabeth Line trading as Crossrail (MTR), Arriva Rail London trading as London Overground (ARL), XC Trains trading as CrossCountry (XCT), and Chiltern Railways (Chiltern).

ARL's resolved objections

21. ARL raised various issues during the industry consultation, which following discussions with Network Rail were resolved ahead of formal submission. ARL challenged Network Rail's decision to support the train slots claiming that it has not considered the impact these would have on ARL's aspirations of running a shuttle service between Clapham Junction – Shepherds Bush from May 2026. Network Rail however confirmed that ARL's shuttle service aspirations have no access rights application in progress, in contrast with the Mendip recast.
22. ARL requested that performance analysis be undertaken on the West London Line to ensure there being no further deterioration of on-time performance. It also raised concerns that trailing loads more than 1600 tonnes regularly activate the SSBI clear run policy, which can cause significant issues to other operators. Network Rail stated that Capacity Planning had followed the correct due diligence and timetable development processes. Network Rail also made the point that by significantly

improving right time starts, through the Mendip recast, and by introducing a more standardised pattern of joining the Hanwell Bridge Loop, this would naturally improve performance across the West London Line.

23. Capacity issues on the West London Line are well-known and ARL raised concerns that this application would add further pressure on this infrastructure. ARL stressed that it voluntarily surrendered some of its access rights during the COVID-19 pandemic to prevent withholding capacity for other traffic flows. However, it is now ready to re-mobile this service group once demand picks up.
24. ARL accepted that the West London Line is a critical corridor for rail freight but questioned why Network Rail allocated capacity for freight during peak passenger times (particularly when there is spare capacity on the weekends). On this point, Network Rail responded that its preference is to run freight trains during the evenings and weekends so to avoid trains interacting with passenger services as much as possible. Freight trains running during 'peak' passenger periods are not common and are only run out of necessity typically due to operational constraints (terminal operating hours), long journey times, and to accommodate wider terminal plans.
25. FLHH agreed to amend one arrival window by 20 minutes. ARL confirmed that this had satisfactorily addressed its concerns in respect of West London Line capacity implications and later confirmed that its concerns around performance had also been addressed and was content to support FLHH's changes.

ORR review process

26. Network Rail engaged us on the application from an early stage and following industry consultation, it notified us of the outstanding concerns raised by XCT, MTR, ARL and Chiltern. Network Rail said that it intended to submit the application with outstanding objections, although they would continue to work with operators to resolve them.
27. Network Rail's application consisted of:
 - Form F
 - Supplemental Agreement
 - Schedule 5 Rights Table
 - Industry Consultation Responses with no issues raised
 - Industry Consultation Responses that had unresolved issues
 - Correspondence relating to ARL's unresolved issues (Annex 2A)

28. We engaged with Network Rail through various meetings and calls to clarify aspects of the application. We had operational questions particularly with those services that interact with the Hanwell Bridge Loop.
29. On 24 October 2023, Network Rail responded to our questions and provided further documents to evidence the work it has done with stakeholders to improve the Mendip train plan. Network Rail explained its rationale as to why it chose to conduct a desktop exercise to test performance rather than modelling, as well as the objectives it had achieved through the recast of the Mendips traffic. On 30 October 2023, Network Rail provided an update on ARL's objections, which had since been resolved and shared an updated version of Annex 2A to be considered as part of the application.
30. In addition to the core submission documents, Network Rail provided extensive consultation records, minutes from meetings with various stakeholders, and detailed evidence of and correspondence relating to performance analysis. This was sufficient evidence for us to understand the issues, operators' concerns, and Network Rail's position.

Outstanding objections

MTR's objections

31. Various issues were raised by MTR during industry consultation including the level of performance analysis undertaken by Network Rail (see section 'Performance Modelling'). Like its recent objections to FLHH's 14th and 16th SA applications, MTR cited concerns over Network Rail's adoption of freight management and regulation policies, including the Concept of Operations guidance, as well as requesting that Network Rail updates its contingency plans and regulation policy.
32. MTR argued that it is difficult to assess the impact of each FLHH SA until it sees a final timetable from December 2023 including FLHH's 14th, 16th and 18th as well as DB Cargo's 69th SA, as it considers them all to be inter-related. MTR initially suggested that contingent rights should be put in place for all new freight services until it can be seen how the timetable will perform and a post-implementation review is delivered (including agreeing what success looks like).
33. Following discussions with Network Rail and FLHH, MTR supported contingent or time-limited access rights only for those services that interact with the Hanwell Bridge Loop during MTR's operating hours. These 25 services still make up a significant portion of the rights applied for.

Network Rail response

34. Network Rail says that it provided MTR with the detailed analysis conducted as part of the Recast work and confirmed that there would be little change to the paths between Reading – Acton West due to the volume of Elizabeth Line services.
35. Network Rail explained to MTR that the Hanwell Bridge loops (where trains are split up) was a key factor in assessing the viability of the Mendip train plan. Although Network Rail agrees that there is now more emphasis placed on the Hanwell Loop, its strategic importance and operational use is not new. Network Rail accepts that the Hanwell Loop is a risk area that needs to be monitored and has provided evidence of various workstreams to ensure that any issues are identified, and risks mitigated. Network Rail argued that a full performance modelling exercise was disproportionate, lengthy and resource draining whereas it was appropriate to take a risk-based approach.
36. The plan was shared with the Signalling Team at Thames Valley Signalling Centre who ran it through the signalling simulator to check for any issues. The outputs assured Network Rail and FLHH that, on the key stretch of railway between Southcote Junction near Reading and Acton Main Line, the revised train plan does not create significant issues interacting with other services.
37. Network Rail states that the 18th SA should be considered as completely independent from other recent applications. Network Rail says that the 14th and DBC 69th SAs have no dependency or involvement with the Mendip traffic and the 16th will be superseded by the 18th SA. FLHH already has firm access rights to deliver the Mendip traffic and understandably doesn't wouldn't want to give up this position. Network Rail confirms that the application has been reviewed and approved by the Western Route and although there is a quantum increase in the number of paths, the associated Rights Table does not represent an increase of access rights. Having inherited a train plan from DB Cargo in 2019, which had many paths with no underlying access rights, this SA aims to align FLHH's access rights with its actual Mendip traffic. The new train plan builds upon the foundations of the previous plan and uses some of the same pathing but with more consistent timings that should allow for more trains. Network Rail and FLHH continue to monitor rights through regular review meetings to ensure that access rights reflect actual operations.
38. FLHH promoted and worked with Network Rail and other industry stakeholders to undertake a full review of TPRs between Theale and Merehead/Whatley Quarries for the December 2023 timetable resulting in approximately 1500 corrections to the existing Sectional Running Times. Additionally, new timing loads were established for Mendip jumbo services across London and the South East based on modelled data and real-world observations, removing reliance on often-inaccurate historic data from the train plan.

39. Network Rail and FLHH have included additional margins for Hanwell that previously did not exist. This work was done to improve planning values between Paddington and Reading, giving confidence the TPRs are in a significantly better place than was previously the case on the core routes served by these trains.

XCT's objections

40. XCT set out its issues with the proposed timetable in a letter issued to Network Rail on 22 September 2023. XCT specified path 6A19 which would clash with a service it intends to run from May 2025 (1E32). XCT also cited its recently awarded National Rail Contract, which includes a step-up in service provision that will allow for an hourly Reading to Newcastle path.

Network Rail response

41. Network Rail confirmed that XCT's aspiration in its current state could not be accommodated due to clashes with the FLHH service but also with multiple other operators. XCT's proposed new service is an aspiration it has from May 2025 but there are currently no conflicts with the FLHH paths as of the December 2023 timetable. Network Rail stated that path 1E32 should be worked on as part of the Hydra Timetable Working Group established by XCT and the Network Rail Advanced Timetable Team (ATT).

42. Network Rail cites our guidance on [The Use of Capacity](#) in that it must take into account how firm the aspiration is and at what stage of the negotiation Network Rail is in with the operator. Network Rail notified XCT of its intention to informally submit the application to us and no further comments were raised by XCT.

43. Network Rail addressed XCT's concerns and sought confirmation that it was content but did not receive a reply. These issues were discussed, and Network Rail was satisfied that XCT's concerns had been resolved despite XCT not responding to acknowledge this. We note that Network Rail is engaging with XCT, through various timetable Working Groups, to accommodate its aspirational services. We support Network Rail's position that there is insufficient reason here not to approve FLHH's access rights.

Chiltern's objections

44. Chiltern had issues with specific FLHH services. Network Rail confirmed that one of the services, as suggested by Chiltern, had an incorrect arrival window which was subsequently amended. Chiltern also pointed out that there were no rights included in the Rights Table for path 6M57 Whatley Quarry to Banbury Road. It also asked Network Rail to confirm whether 6B11 would be routed via the Chilterns as it had concerns over performance.

Network Rail response

45. On 6M57, Network Rail confirmed that as the train would not be operating immediately (due to pending planning permission), it did not consider it appropriate to apply for firm rights. FLHH are also conducting a clean-up for services it doesn't yet have rights for, so Network Rail expects to submit another SA including more services that didn't make it into the 18th SA (including 6M57) in due course.
46. A performance review was conducted specifically on headcode 6B11 by NW&C as part of Internal Consultation and Network Rail confirmed that it had no concerns with the path and its specified routing into NW&C from December 2023. Network Rail has contacted Chiltern several times to confirm whether its response closes out Chiltern's concerns. Chiltern did not respond to Network Rail in this instance, or to any of its further attempts.
47. We are satisfied with Network Rail's actions in respect to Chiltern's concerns and consider these points concluded.

Performance Analysis

48. During the industry consultation some TOCs raised concerns on the level of performance analysis undertaken to assess the impact this new train plan will have on other operators. ARL had concerns that the FLHH freight paths would further deteriorate on-time performance on the West London Line.
49. MTR had concerns on the level of scrutiny the proposed access rights have had and suggested that a more thorough performance modelling exercise be undertaken. It also had concerns on how the December 2023 timetable would perform and on the proposed post-implementation review. MTR pointed out the recent TRENTO performance modelling it had to undertake to satisfy Network Rail's Sale of Access Rights panel. MTR is concerned that significant changes to the freight timetable are not modelled in the same way.
50. Network Rail's position is that this improved train plan has been developed over 18 months and has been designed to improve performance both for FLHH but also other operators who are affected by current delays. The plan has been extensively checked by Freightliner, Mendip Rail and Network Rail, with performance analysis conducted by the Performance and Simulation Team in Capacity Planning, accompanied by thorough review of schedules by operational colleagues within Network Rail.
51. Some rights requested run over the Brighton Main Line between Redhill and Gatwick Airport. This is declared as congested infrastructure primarily due to platform capacity at Redhill and Gatwick Airport stations. FLHH services do not stop at Gatwick Airport and Network Rail stated that these revised services do not contribute to the congestion. Network Rail says that it has identified suitable mitigations and used timetable analytics

to identify and quantify any additional risks that arise. FLHH has also committed to working with Network Rail to develop robust contingency plans to be applied at times of disruption.

52. Network Rail's position is that performance modelling in the traditional sense was not undertaken due to the difficulty of obtaining meaningful output as the Mendip Traffic stretches a wide geography and ran the risk of being lost in the broader, wider noise of London and Southeast England, which would have created unreliable data.
53. Network Rail explained that it would conduct a post-implementation review, following commencement of the traffic in December 2023 to understand how the services are running and look at possible mitigations. FLHH has committed to reviewing the relevant headcodes on a case-by-case basis and correcting any inefficiencies where applicable. Network Rail says that a Post Implementation Review will give the security of reviewing the services once the traffic has begun.
54. Network Rail highlighted the significant work undertaken to rewrite the train plan and reiterates that the alternative would be for FLHH to retain its existing firm rights associated with a defective plan that underpins the current, continuous poor performance of the Mendips flows.
55. We appreciate the extensive evidence of performance analysis undertaken by Network Rail and the impact the new train plan will have on the operational performance of affected operators. This included details of how the changes will affect traffic management arrangements and details around effective implementation of the changes primarily through the post-implementation review.

One-hour windows

56. All rights included in FLHH's 18th SA have one-hour windows. FLHH says that this ensures a stable train plan and allows both FLHH and other stakeholders to efficiently manage and optimise access to the network. Many terminals served by services included within this supplemental are located in urban areas and as close as possible to the locations where aggregates are required by the construction industry.
57. Space within these terminals is constrained. Without stable arrival times, there is potential for these sites to become heavily congested, leading to delays in loading wagons and departure times. Due to the nature of these quarries being located at the end of single-track branch lines, any delayed departure can have a knock-on effect to later arrivals, as well as creating delays to mainline services. ORR recognises that one-hour windows reflects standard arrangements and is in line with our [2016 decision letter](#).

ORR conclusions

58. Network Rail has provided significant evidence of the work that it has done to improve performance. The previous train plan was notorious for delays and MTR's suggestion of time-limited or contingent rights is not a suitable resolution here as most services are currently running and have firm rights. Our review of the operational impact is that the timetable recast should perform better to the benefit to FLHH and other operators through the better spacing of schedules at the quarries and improved TPRs and Sectional Running Times.
59. The Mendips traffic is important for the UK's construction industry and there are long standing expectations for the traffic to continue. Although the improved train plan represents a small increase in access rights, many of the services are already running, albeit with slight adjustments to timings. These adjustments however represent a more robust and stable train plan that is more resilient to delays, which ultimately will improve performance for TOCs and rail users. We have assessed the application, considered the outstanding objections but on balance recognise the benefits this new train plan will bring. Network Rail has provided sufficient evidence that it has taken into account operational performance and responded to operators' concerns with robust explanation or mitigations.
60. In some situations, access rights sought can constrain the aspirations of other beneficiaries. For this application, we have had regard to the firmness of other operators' alternative plans for the capacity but have not been convinced that the negotiations with the infrastructure manager are at an advanced enough stage to deny FLHH these access rights.
61. We have considered the impact on the overall resilience and integrity of the network and the delivery of specific national and regional performance objectives. We acknowledge that as part of its plans for CP7, Network Rail's System Operator is revising and re-introducing the concept of freight corridors, which is particularly important for its freight customers. The Western Freight Corridor for moving aggregates from the Mendip and Tytherington quarries to London and the Southeast across multiple boundaries is considered strategically important but with performance challenges. This new train plan is an important step in improving performance on the Western Route but also in the wider rollout of freight corridors across Great Britain.
62. We assessed the application and on balance we consider that the benefits of a recast timetable with better spacing of schedules outweighs the potential risk to performance a new train plan may bring. In reaching our decision, we have taken into account the performance analysis, the views and information provided by affected operators, and Network Rail.



Our duties under section 4 of the Act and our decision

63. 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

64. 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

65. Electronic copies of this letter, the approval notice and the agreement will be sent to Network Rail's Policy and Access Team. Copies of the approval notice and the agreement will be placed on ORR's [Public Register](#) and copies of this letter and the agreement will be placed on our [track access decisions webpage](#).

Yours sincerely

Ryan Holt

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