

Ryan Holt
Access Executive



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Dear Sarah and Ian

Approval of the 33rd supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and GB Railfreight Limited dated 11 December 2016

We have today approved the above supplemental agreement submitted to us formally on 4 July 2024 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 grant GB Railfreight Limited (GBRf) the rights necessary to support HS2 materials-by-rail traffic. The services are for conveying tunnel segments from the Isle of Grain (Thamesport) to HS2 terminals at West Ruislip and Willesden Euroterminal, as well as spoil from the HS2 tunnelling area at Willesden Euroterminal to Cliffe in Kent. In the covering email to the application, Network Rail confirmed that the proposed access rights do “not interact with any of geography or future aspirations identified by Network Rail and the ORR letter of 24th April [inviting competing and/or complex track access applications]”. The rights are to commence on approval and expire PCD 2026.

Industry consultation

Network Rail undertook the normal industry consultation from 22 March to 24 April 2024. Arriva Rail London raised an issue regarding available capacity and the potential impact



on network performance. Although Network Rail assured Arriva Rail London that the trains have been offered validated time slots in the Working Timetable for over a year and have been running with no significant performance impact on other network users, the application was submitted with Arriva Rail London's issue unresolved. The parties committed to continue to try and resolve Arriva Rail London's concerns however due to the volume of Section 22As that were being prepared for submission (following our letter issued 24th April regarding competing and/or complex track access applications), the parties thought it optimal to submit the application so that we could begin our assessment.

Following our review and questions subsequently put to the parties, Network Rail confirmed that changes had been made to the two services that Arriva Rail London had concerns about and that their objection had been withdrawn.

ORR review

Network Rail has assured us that the proposed rights all have had validated train slots in the current and previous working timetables and have had no significant negative performance impact for the 12+ months they have been running. Although Network Rail could not provide Arriva Rail London with performance data due to commercial sensitivities, it confirmed that the services met all industry targets for freight performance measures including FOC on Other operators. Network Rail sees little risk the proposed rights will negatively impact other operators as the rights represent no change to current running.

The application was informally submitted on 2 May and in the cover letter Network Rail confirmed that the application does not interact with any of the locations specified in our letter of 24 April. On 30 May, we put some questions to the parties including on whether the two services that Arriva Rail London had concerns about were TPR complaint or not around the Clapham Junction area as well as whether both parties were satisfied that the supplemental agreement is compatible with the recent performance issues on the Isle of Grain branch.

On 7 June Network Rail confirmed that changes had since been made to the two services and that Arriva Rail London's objection was subsequently removed. Network Rail and GBRf explained why the services would be compatible with the ongoing situation at Grain and that both short-term and long-term solutions had been found that negate the need for speed restrictions. Network Rail has consistently assured us that the data confirms that these services have not negatively impacted performance and therefore we see no reason to not award GBRf firm access rights to run these services.

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 in Great Britain for the carriage of passengers and goods (section 4(1)(b)), contribute to the development of an integrated system of transport of passengers and goods (section 4(1)(ba)), and enable persons providing railway services to plan the future of 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 Freight 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](#) and copies of this letter and the agreement will be placed on the ORR website.

Yours sincerely

Ryan Holt