

**Jonathan Rodgers**  
**Senior Executive, Access & Licensing**

6 February 2018



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Dear Carew and James

**Approval of the 5th supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and West Midlands Trains Limited (WMT) (jointly “the parties”)**

1. We have today approved the above supplemental agreement submitted to us formally on 2 February 2018 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. The purpose of this letter is to set out the reasons for our decision.
2. This application was originally submitted by London & Birmingham Railway Limited (London Midland). On 10 December 2017, West Midlands Trains Limited (WMT) took over the running of the West Midlands Franchise. For simplicity, I will refer to the train operator as WMT for the rest of this letter, even when referring to matters that took place before the franchise change.
3. We received the informal submission of this application on 13 October 2017 and the intended start date of the services was 10 December 2017. Although this was an agreed application, the access rights requested relate to a constrained part of the Network and stakeholder engagement would have indicated that it was very likely to be contentious. Subsequently, three consultees raised a significant number of concerns, most of which remained unresolved. Our guidance on access applications says that twelve weeks should be allowed for our consideration of contentious applications. In the circumstances, we would have expected an earlier informal submission of this application.



## **Purpose of the application**

4. The application is to provide WMT with firm rights to operate an hourly shuttle service running between Coventry and Leamington Spa, calling at the new Kenilworth Station. The rights sought were intended to take effect from 10 December 2017 and remain for the duration of the contract (until the Principal Change Date 2018). The service will be operated by one Class 153 Diesel Multiple Unit (DMU).

5. In 2013, the Department for Transport (DfT) awarded a grant from the New Stations Fund to Warwickshire County Council for the development of a new station at Kenilworth and a supporting train service. As detailed in the application, the capital cost of the station is £13.2 million and 275,000 passengers are expected to use it per year at full demand.

6. Performance modelling has been undertaken in order to quantify any potential impacts and recommend any necessary interventions and mitigations. The modelling showed that capacity existed to run an hourly service, with a small modelled performance impact on XC Trains Limited (XCTL) services. There was also a much smaller modelled performance impact on Virgin Trains and Freight paths and a negligible impact on The Chiltern Railway Company Limited (Chiltern) services.

7. It was intended that the station would be operational from the start of the December 2017 timetable but, on 4 December 2017, Warwickshire County Council said that the opening of the station had been delayed. The expected start date of train services is now 19 February 2018. It was initially intended that the new services would consist of 17 round trips between Coventry and Leamington Spa on weekdays, 16 on Saturdays and 13 on Sundays. However, WMT subsequently withdrew its request for rights for Sunday services.

## **Industry Consultation**

8. Network Rail conducted an industry consultation on the application between 10 July and 10 August 2017. Responses were received from Transport Focus, GWR, Virgin Trains, Chiltern, XCTL and Freightliner.

9. Transport Focus supported the application. GWR asked to see performance modelling results regarding southbound XCTL and freight trains heading for Oxford and, in response, WMT provided the requested information. Virgin Trains had some queries regarding station staffing and future service plans. WMT provided explanations regarding these queries. There was no further correspondence from either GWR or Virgin Trains and the issues they raised were considered to have been resolved.

10. Freightliner responded to the consultation, saying that it had serious concerns about the impact of the proposed service on freight services in the Leamington Spa to Coventry corridor, in particular the ability of freight operators to run 775m long freight trains on the route (as part of the Southampton to West Midlands Freight Train Lengthening scheme).

11. Freightliner said it was also concerned by the lateness of the application and what it considered to be a lack of engagement with freight operators. It expressed concern about

the extent of the performance modelling that had been undertaken. It further commented that a more efficient use of the available capacity would be to stop the existing XCTL service at Kenilworth or that ORR should only grant the rights for the proposed service for one year while further timetabling work is carried out in order to “understand the optimal use of this limited infrastructure”.

12. XCTL said that it had concerns about the application, although it understood the importance and benefits of introducing the new service. It said that the impact would be wider than suggested by performance modelling undertaken by Network Rail and WMT. It asked what mitigations and contingency plans would be in place to minimise performance impact and also asked a number of other questions about the accuracy of some information provided in the application. It had particular concerns about the impact of the proposed Sunday services.

13. Chiltern also said that it had concerns about the application, although it was supportive of the new station and introduction of the new service in principle. It queried some of the information in the application form. It had concerns regarding compliance with timetable planning rules relating to turnaround times. It also had concerns around the overall performance impact of the new services and the ability of the proposed rolling stock to cope with potential overcrowding at Leamington Spa.

### **Post-consultation discussions**

14. Following the end of the industry consultation. On 25 September 2017, WMT met with the three respondents who had expressed objections, in order to discuss their concerns. It followed this up by writing to them individually in early October 2017.

15. On 6 October 2017, WMT wrote to XCTL, saying it hoped to address the challenges and concerns that it had raised. It discussed the extent and limitations of the performance modelling that had been undertaken. WMT went on to say that it had been agreed at the 25 September meeting that further performance modelling would not add any further value.

16. With regard to the specific performance concerns XCTL had raised, WMT set out the performance mitigation measures that would assist in managing the impact of any potential delays, which included infrastructure enhancements to support the operation of the new service. WMT went on to say that it would be impossible to commit to XCTL's performance not being affected but said that it was confident that every attempt to minimise the impact had been examined.

17. WMT mentioned in its letter that it now intended that the Kenilworth shuttle would be operated by a Class 172 unit rather than the Class 153 unit referred to in the application. WMT stated that these units have better acceleration and braking and their operation on the line was likely to offer significant performance mitigation.

18. WMT accepted that the Sunday timetable was a significant challenge but it was committed to an access rights application for a seven day timetable.

19. On 6 October 2017, WMT wrote to Chiltern. It clarified the queries Chiltern had about the application, discussed the performance modelling and mitigation measures and mentioned the intention to use a Class 172 for the service and the benefits this would have.

20. On 10 October 2017, WMT wrote to Freightliner. WMT explained that it disagreed with Freightliner about the level of stakeholder engagement. It felt that it had been aware of the project for some time and had been offered the opportunity on a several occasions to make representations or raise concerns about the proposed services. WMT went on to say that it had been agreed at the 25 September meeting that further performance modelling would not add any further value. WMT also mentioned the intention to use a Class 172 for the services and the benefits this would have.

21. Regarding the Freight Train Lengthening scheme, WMT said that the impact of the new Kenilworth services on the scheme was probably overstated and the lack of previously planned infrastructure enhancements would have more of an impact on the scheme. WMT said that Freightliner's alternative suggestion of the existing XCTL service stopping at Kenilworth would need to be addressed to DfT, as the franchising authority. WMT also pointed out that the new station at Kenilworth formed part of baseline assumptions for the West Midlands and Chiltern Route Study and hence the industry's long term plans for that route.

### **Further developments**

22. On 17 November 2017, WMT wrote to ORR to provide an update on recent developments. It explained that it had not proved possible to secure the Class 172 DMU for the start of services that would have assisted with some of the performance concerns, particularly on Sundays. This means that WMT would have to revert to using the original Class 153 DMU. As a result, WMT and DfT had concluded that WMT would not progress with its application for Sunday services for the time being. A separate access application for Sunday services would be submitted at some point in the future once longer term rolling stock arrangements had been confirmed.

23. On 27 November 2017, WMT advised us that the station would not open on 10 December 2017 and it was now working towards a start date of 19 February 2018 for the new service.

24. On 21 December 2017, we wrote to XCTL, Chiltern and Freightliner to update them on WMT's decision regarding Sunday services and the delay to the start of services. We asked them if they had any comments on the postponement of Sunday services and to confirm if they considered that their earlier objections to the application had been resolved.

### **Our consideration**

25. We reviewed the application, taking into account the information provided by the parties and others during the industry consultation and the further discussions that took place afterwards.

26. We note that the investment in the new Kenilworth station has been significant, has been planned for several years and forms part of the base assumptions of Network Rail's West Midlands and Chilterns Route Study, which was published on 4 August 2017. The application explained the benefits to passengers in the area of the new service.

27. We also understand the importance of the Southampton to West Midlands Freight Train Lengthening scheme. It has also been planned for several years and involves infrastructure enhancements designed to increase the capacity of freight traffic on this route. We note that WMT and Freightliner disagree about the level of impact that the new service will have on the scheme. It seems clear to us that there will be some impact as a direct result of the Kenilworth services but it is also clear that the delay in necessary infrastructure investments will have a much more significant impact.

28. Clearly, more clarity around future infrastructure enhancements in this area is important and we expect stakeholders will want to discuss these issues further with Network Rail and DfT.

29. It is unfortunate that a Class 172 DMU will not be available immediately, given the contribution it would have made to mitigating any potential performance impacts of the new service. We note that, when it became clear that this better performing rolling stock would not be available, WMT withdrew its plans for Sunday services. We consider that this was a sensible and pragmatic decision and will contribute to the stability of the new service. We expect that the Class 172 DMU will be introduced at the earliest opportunity and will have a positive impact on performance.

30. We are mindful of the performance issues raised by the operators during and after the industry consultation. Some legitimate concerns have been raised but we do not consider that the performance impact on any operator will be significant to the extent that it should preclude our approval, especially when weighed against the significant investment in the new station and the benefits it will provide to passengers.

31. For the reasons explained above, we have concluded that we should approve this application. We expect discussions regarding mitigating performance impacts to continue with affected operators after services have begun operation.

32. In considering the agreement and in reaching our decision, we have had to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Act. We have concluded that approval of this supplemental agreement is consistent with our section 4 duties, in particular those relating to:

- protecting the interests of users of railway services;
- promoting the use of the railway network for the carriage of passengers and goods, and the development of the railway network, to the greatest extent that ORR considers economically practicable;



- promoting competition in the provision of railway services for the benefit of users of railway services;
- having regard to the interests, in securing value for money, of the users or potential users of railway services, of persons providing railway services or of the persons who make available the resources and funds and of the general public;
- and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance.

33. 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.

34. Electronic copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at Department for Transport and Peter Craig at Network Rail. 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

A handwritten signature in black ink, appearing to read 'Jonathan Rodgers', is positioned below the text 'Yours sincerely'. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

**Jonathan Rodgers**