

Rob Plaskitt
Head of Access & Licensing

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Dear Katharine and Rob

Seventh supplemental agreement to your track access contract

1. The Office of Rail and Road (ORR) rejects the seventh supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and First Greater Western Railway Limited (GWR), submitted to us on 2 February 2017 under section 22A of the Railways Act 1993 (the Act). The purpose of this letter is to explain the reasons for our decision.

Purpose of the application

2. GWR applied for firm rights to stable three HSTs each night in Paddington Station from the Principal Change Date in December 2017 until the end of its track access contract in December 2019. GWR said that it needed an alternative stabling facility because the capacity of Old Oak Common Light Maintenance Depot, where they were currently stabled, was being reduced and the depot will eventually be closed. It also said that, apart from Paddington Station, there was no suitable overnight stabling capability with spare capacity in reach.

Industry Consultation

3. GWR consulted the industry on this application between 18 January and 1 February 2017. Transport Focus, Heathrow Express, Rail for London and MTR Crossrail responded. Transport Focus supported the application. Heathrow Express said it was reluctant to agree to the application and had a number of questions and comments. Both MTR



Crossrail and Rail for London said that they were not content with the 12-hour duration of the stabling right GWR was seeking but would support a shorter time-period.

4. The Department for Transport wrote to us on 14 February 2017 in support of GWR's application. It referred to the stabling at Paddington as being critical for achieving the decommissioning and closure of Old Oak Common depot and hence the HS2 programme.

Network Rail's representations

5. As required by the Act, on 3 February 2017, we sought Network Rail's representations. It replied on 24 February 2017 that it did not support the granting of firm stabling rights at Paddington Station as it believed the existing provisions in the track access contract provided sufficient comfort for GWR, that stabling would be provided at Paddington when possible and at other locations when not. Network Rail noted that GWR did not have any firm stabling rights at any location. It also said that GWR's exact requirement had not been confirmed, which meant that it did not know whether there was sufficient capacity at Paddington. Network Rail said it was happy to continue working with GWR and other operators to manage and plan for the staged closure of Old Oak Common depot and its impact on rolling stock.

6. Network Rail explained that it had previously only looked at capacity for overnight stabling on Saturdays. In 2016 a sub-group of the Industry Planning Group (IPG) attended by GWR, Crossrail and Heathrow Express had reviewed the impact of stabling three HSTs at Paddington from midnight to 0700. The output suggested that this was achievable but would require Heathrow Express to agree to operate using only one platform instead of its contractual right to two. However, Network Rail said it was important to note that the profile of usage at the station was different for every weekday due to service variations and variations to maintenance access. Network Rail said that in the time since receiving GWR's application, and with the detail provided, it had been unable to carry out a detailed exercise to quantify exactly whether the capacity at Paddington would be sufficient. It suggested that the IPG sub-group should meet again to discuss stabling capacity for the December 2017 timetable.

GWR's representations

7. On 24 February 2017, we invited GWR to comment on Network Rail's representations and it replied on the same day. It said that Network Rail's representations were seen as being helpful and that there had been constructive dialogue throughout. GWR said it was requesting firm rights for stabling at Paddington in order to avoid the risk (however small) of its services being flexed away from that needed to meet commercial and franchise needs. It said that facilities at Paddington would be developed to create and maintain a robust servicing and cleaning operation in the platform and that GWR did not wish its HSTs to have to go to alternate and differing locations. It also said that in light of feedback from the industry consultation it was reducing its application to a stabling window of 0100 to 0420 Monday to Saturday and 0001 to 0700 on Sunday mornings.

Further industry discussions, leading to an agreed stabling protocol

8. On 3 March 2017, we explained to the parties that, even if we were minded to agree to GWR's request, we would first need to be confident that sufficient capacity existed for Network Rail to accommodate the stabling without breaching any other existing contracts but we had no evidence that this was the case. We could not therefore decide the application by 3 March 2017, which was the Priority Date for the December 2017 timetable.

9. However, we said we were encouraged by the positive responses from Network Rail and GWR and expected them, together with other users, to continue discussions to ensure the optimal use of capacity at Paddington. We said we strongly supported Network Rail's suggestion of reconvening the IPG sub-group, looked to Network Rail to take it forward as quickly as possible and hoped the sub-group would be able to identify a solution that was acceptable to all. At GWR's request, we agreed to keep the application open.

10. On 26 May 2017, we asked Network Rail how matters were progressing. Network Rail explained that following a further meeting of the sub-group the previous week, GWR was putting together its rolling stock requirement which would then be assessed against capacity.

11. On 24 August 2017, GWR provided us with a signed Paddington Protocol document which had been agreed between Network Rail, GWR MTR Crossrail and Heathrow Express and was the output of the IPG sub-group discussions. The document explained it provided a process by which stabling within platforms at Paddington may be planned and executed.

12. On 4 September 2017, we emailed Network Rail and GWR noting the purpose of the protocol but also noting that it said:

- stabling at Paddington should not be considered the norm, rather a solution to capacity constraints during exceptional circumstances;
- firm stabling rights should not be inferred; and
- there was no guarantee that stabling would be available.

13. We also noted that GWR's application went well beyond what was agreed in the protocol. We asked GWR if it was still seeking firm rights to stabling or was content to rely on the protocol. We also asked Network Rail to confirm if it was still objecting to the request for firm rights.

14. On 14 September 2017, GWR confirmed it was still seeking firm rights and on 22 September 2017, Network Rail conformed it still objected to the firm rights.

15. On 30 October 2017, GWR sent us a draft copy of a platforming study which had been undertaken by Network Rail in order to determine how much capacity might be available for GWR to stable at Paddington based on the May 2017 timetable.

16. On 20 December 2017, GWR confirmed that its stabling requirements for the December 2017 timetable had been met satisfactorily.

Our consideration

17. We reviewed the application, taking into account the information provided by the parties and others during the industry consultation, the statutory consultation and the following discussions regarding stabling capacity.

18. ORR is generally supportive of Network Rail's Access Rights policy.¹ In respect of stabling, the policy is only to agree firm rights to stable at specific locations in exceptional circumstances. Firm stabling rights have been gradually reduced or removed entirely as track access contracts have come up for renewal. This allows Network Rail to make the best overall use of available capacity in accordance with the decision criteria in Part D of the Network Code. GWR's track access contract does not currently have any firm rights to stable at any specific locations. As with other operators, it relies on the standard provisions in the contract which require Network Rail "*to use all reasonable endeavours to provide such Stabling facilities as are necessary or expedient for or in connection with the provision of the Services in accordance with the Working Timetable.*"

19. We appreciate GWR's concern about certainty over stabling but we are also mindful that GWR's firm rights to its passenger services means that if Network Rail cannot find suitable stabling at Paddington it must provide suitable stabling elsewhere together with ancillary moves which allow GWR to operate its passenger services. If GWR is not satisfied with the stabling being offered it can appeal to the Timetable Panel of the Access Disputes Committee and ultimately to ORR.

20. We are pleased with the positive engagement between Network Rail, GWR, MTR Crossrail and Heathrow Express since this application was first submitted. The Paddington Protocol, the platforming study and satisfactory stabling arrangements agreed for the December 2017 timetable should give confidence that Network Rail is doing what it can to meet GWR's and other users' requirements at Paddington in a fair way in accordance with Part D of the Network Code.

21. Under section 22(4)(b) of the Act we cannot issue directions to Network Rail to amend an access agreement if performance of the access agreement as amended would necessarily involve Network Rail being in breach of another access agreement. Our policy is therefore to approve access rights only where we have confidence that they can be exercised and delivered alongside all existing access rights.

¹ [Network Rail Access Policy 23 June 2016](#)

22. Part of the solution to enable GWR to stable at Paddington involves Heathrow Express agreeing to use fewer platforms than it is contractually entitled to, but there is no indication that Heathrow Express would be prepared to give up the relevant access rights. Also, whilst the platforming study shows the capacity that may be available for stabling in various scenarios and satisfactory stabling has been agreed for the December 2017 timetable, this does not demonstrate that sufficient capacity will always be available to meet GWR's requirements there.

23. For the reasons explained above, we have concluded that we should reject GWR's application.

24. 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 rejection of this agreement is consistent with our section 4 duties, in particular those relating to:

- protecting the interests of users of rail 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;
- enabling persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

25. Copies of this letter will be sent to Keith Merritt at DfT, Peter Craig at Network Rail, Jonathan James at MTR Crossrail, Warren Johnson at Heathrow Express and placed on our website.

Yours sincerely,

A handwritten signature in black ink that reads 'Robert M Plaskitt'.

Rob Plaskitt