

Jonathan Rodgers
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Dear Mark and Malcolm

Approval of the 40th supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and London North Eastern Railway Limited (LNER) dated 3 March 2017

We have today approved the above supplemental agreement submitted to us formally on 16 October 2024 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration.

ORR's approval of this application, and the consequent extension of the expiry date of the contract, provides passengers, LNER and the Department for Transport (DfT) with more certainty regarding future services. This letter explains the reasons for our decision. It also explains ORR's position on the concurrent applications that LNER have submitted in accordance with section 22A of the Act.

Concurrent section 22A applications

On 24 April 2024 ORR [wrote to industry](#) to set out a process for access applications for the December 2024, May 2025 and December 2025 timetable changes. In that letter we asked industry to comply with a deadline of 20 May 2024 for applications for additional rights (or amended rights that change capacity parameters) for these timetable changes that met specific criteria. LNER submitted five such applications on 20 May 2024.



In reaching a decision on this supported 40th supplemental agreement, it is important to clarify that:

- ORR has reached its decision in the full knowledge of LNER's concurrent section 22A applications;
- LNER's section 22A applications remain "live" and we continue to try to progress them. However, ORR cannot reach a decision on those applications as Network Rail has not yet completed its analysis. We continue to press Network Rail to complete its analysis as quickly as possible; and
- most importantly, the approval of the 40th supplemental agreement ensures that passengers, LNER and DfT have more certainty and stability regarding services and access rights going forward.

Purpose of 40th supplemental agreement

The purpose of the 40th supplemental agreement is to extend the current expiry date of the track access contract from Principal Change Date 2025 to Subsidiary Change Date 2027. This aligns with the contract between LNER and DfT. The application explains that the extension will enable the expected continuation of LNER services on the East Coast Mainline.

Industry consultation

Network Rail undertook the usual industry consultation. Northern had some minor queries which were clarified and resolved by Network Rail. No concerns were raised by other consultees.

ORR review

Our review of the application raised no operational, performance or economic concerns. We identified some minor drafting issues and these were resolved. The length of the extension to the expiry date of the contract is consistent with our guidance.

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 DfT 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

Jonathan Rodgers