

Ian Biggar
Access Policy Adviser
Email stationsanddepots@orr.gov.uk



BY EMAIL ONLY

27 February 2025

Gareth Williams
General Secretary
Eurostar International Limited
6th Floor, Kings Place
90 York Way
London
N1 9AG

Dear Mr Williams

APPLICATIONS BY EVOLYN AND VTE HOLDINGS LIMITED FOR DIRECTIONS UNDER SECTION 17 OF THE RAILWAYS ACT 1993

1. Thank you for your letters dated 25 September 2024, 13 November 2024, 21 November 2024, and 17 December 2024, setting out Eurostar's initial written representations and further written representations in respect of the applications for directions submitted by Evolyn and VTE Holdings Limited (VTE) (together 'Eurostar's representations').
2. Evolyn responded to Eurostar's initial representations and further representations in letters dated 5 December 2024 and 13 December 2024 (together 'Evolyn's representations'). VTE responded to Eurostar's initial representations and further representations in a letter dated 17 January 2025 ('VTE's representations'). Those responses have been disclosed to you and published on ORR's website. [Depot access applications and decisions | Office of Rail and Road](#)
3. In its initial and further representations, Evolyn indicated that the primary purpose of its application at this stage was to obtain information about the capacity at TMI. We therefore sought clarification from Evolyn as to how it wished ORR to proceed with its application. Evolyn responded confirming that it wishes to proceed with its application under section 17. A copy of ORR's letter to Evolyn dated 31 January 2025 and Evolyn's response dated 6 February 2025 will be published on our website.

Overview

4. We have carefully considered Eurostar's representations, together with Evolyn's and VTE's representations. The purpose of this letter is to address various preliminary matters raised by Eurostar in its representations. We are addressing these now so that there is no doubt about the process that ORR will follow in dealing with the applications. Please note, however, that we are still in the process of gathering information and a decision on the applications is not imminent.

5. We acknowledge that Evolyn and VTE have submitted separate applications for directions, and we will consider each application on its own merits. We have previously indicated, however, that we will, where possible, aim to minimise sending multiple letters where they cover similar issues. Eurostar has made similar points in its representations in respect of both Evolyn's and VTE's applications. We have therefore drawn these points together in this letter and set out our response below. We have also collated the points raised by Eurostar into themes, rather than responding separately to each paragraph of Eurostar's correspondence.

6. We will publish this letter on ORR's website in line with our usual processes.

Application of section 17 of the Act

7. At the outset, we wish to be clear on the application of section 17 of the Railways Act 1993 (the 'Act') to Temple Mills International Depot (TMI).

8. TMI has not been exempted from the Act. While section 20 of the Act provides for the Secretary of State, by order, to grant specific exemptions to the application of section 17, no such exemption has been granted in respect of TMI. This was most recently clarified in our [Guidance for international rail operators starting rail operations into Great Britain](#), where it was stated that access to TMI is regulated under the Act (see paragraphs 6.3 and 6.45).

9. ORR has statutory functions under the Act and – when required to do so – we must exercise those functions in relation to TMI.

10. Eurostar suggests that ORR is not in a position to make a direction under section 17 and should not therefore take forward the applications.

11. We agree that ORR is not, at present, in a position to make a direction under section 17 in respect of either application because we do not yet have all relevant information. For example, there are a number of technical issues (such as available capacity), which have not yet been clarified, and it is likely that we will need to seek further information from Evolyn, VTE and Eurostar before making a decision on the applications. Paragraph 3(3) of Schedule 4 to the Act provides that ORR may request or invite further information from the applicant[s] or the facility owner.

12. We do not consider that the fact that further information is needed before we can make a decision on the applications prevents us from considering the applications under section 17 and Schedule 4, because the process allows us to gather that information.

Preliminary matters raised in Eurostar's correspondence

TMI Service Facility Description

13. In its representations Eurostar states that:

- a. The appropriate primary process for considering access to TMI is set out in its Service Facility Description (SFD) for TMI, in compliance with the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the Regulations).
- b. Eurostar also contends that the process set out in the SFD should not be 'bypassed' in favour of the section 17 process and asserts that the applicants have not identified any reasons for urgency underlying their applications.

14. Where section 17 of the Act applies (as it does in this case), it enables ORR to issue directions on the application of any person. Schedule 4 to the Act sets out the process for dealing with such applications. There is no requirement set out in the Act (or elsewhere) that parties must first have exhausted all other options for reaching agreement before an application can be made to ORR under section 17 of the Act. Nor is there any requirement that an application has a specific degree of urgency.

15. As ORR's guidance [Criteria and procedures for the approval of depot access agreements](#) indicates, an application can be made whenever there has been a failure, for whatever reason, to reach agreement on the terms of access. Section 17 of the Act is designed to provide parties with a route to securing access rights in such a situation.

16. As we made clear to Eurostar in previous correspondence, the submission of a section 17 application to ORR does not prevent the facility owner continuing to engage with an applicant. In respect of TMI, the section 17 applications do not prevent Eurostar continuing to engage with Evolyn and VTE, including in accordance with the terms set out in the SFD for TMI. The submission of a section 17 application need not mark the end of negotiations.

17. Eurostar raises a number of other points, which include (not intended to be an exhaustive list):

- a. Compatibility of rolling stock to access and be maintained at TMI;
- b. Availability of capacity at TMI;
- c. Costs associated with the maintenance of rolling stock;
- d. Requirements for a train operator's licence and safety certification; and
- e. Securing access to the high-speed network and related infrastructure (in the UK and Europe).

18. This list is indicative of the range of matters that Evolyn and VTE Holdings Limited must ensure will be resolved before they are able to operate trains on the high-speed rail network and/or access TMI.

19. ORR does not disagree with Eurostar that the matters listed in paragraph 17 (along with others highlighted in its representations) will need to be addressed and/or in place for international passenger services to operate. Some of these matters (e.g. rolling stock compatibility and capacity at TMI) may emerge as part of ORR's consideration of the applications. Others (e.g. licences, safety certification and access to the high-speed network) will be for Evolyn and VTE to address in due course. However, there is nothing in the Act that stipulates the order in which these matters must be addressed. Further, we do not consider that it is a pre-requisite for all of those arrangements to be in place prior to consideration of an application under section 17 for access to TMI.

20. If at any point the operational maturity of the proposals were to become a relevant consideration, ORR would take this into account in reaching its decision on the applications.

Validity of the section 17 applications

21. Eurostar also questions the validity of the applications under section 17 of the Act and suggests that ORR should decline to take them forward on the basis that section 17 has not been engaged. For the reasons set out below, we do not agree with the position set out by Eurostar in its representations and consider that Evolyn's and VTE's applications satisfy the requirements under section 17 of the Act.

22. The Act requires that any application for directions must be made in writing and must:

- a. contain particulars of the required rights;
- b. specify the terms which the applicant proposes should be contained in the required access contract; and
- c. include any representations which the applicant wishes to make with regard to the required rights or the terms to be contained in the required access contract.

23. We are satisfied that the requirements outlined above have been met in respect of both Evolyn's and VTE's applications. In particular:

- a. Both Evolyn's and VTE's applications are in writing.
- b. Evolyn and VTE have provided particulars of their required rights in their applications, including providing specific details about their access requirements at paragraph 2.2 of both applications.
- c. Evolyn and VTE both specify that the terms of the standard ORR model Depot Access Agreement should form the basis of any agreement for access to TMI that they may enter into with Eurostar. Both parties acknowledge that the model contract would require amendments to reflect the specifics of TMI. We would note that Eurostar also points to the ORR standard model Depot Access Contract as forming the basis of an access contract for TMI. Further, Evolyn and VTE have both argued that they require more information from Eurostar in order to make further specific proposals regarding the terms of

any proposed access agreement. We do not believe that the absence of such information being provided should be a barrier to a party making an application under section 17.

- d. There is currently no template depot access contract for TMI. Eurostar has indicated that this is because no third party has previously sought access to TMI. We are of the view that the absence of a template depot access contract for TMI should also not be a barrier to a party being able to be making an application under section 17.

Appropriateness and suitability of ORR's criteria and procedures

24. Eurostar submits that ORR's existing processes are not suitable for considering access applications relating to proposed international services and that ORR should consult on bespoke guidance for a new process dedicated to high-speed international passenger trains. Eurostar does not, however, set out in detail why the existing processes are unsuitable.

25. Eurostar does point to various arrangements necessary for an international passenger service (such as access to Channel Tunnel and European infrastructure, and specific security arrangements) and argues that access to TMI must be considered alongside those related requirements. Eurostar also submits that ORR's existing processes are designed for access to depots on the conventional mainline rail network and associated rolling stock.

26. We consider that ORR's existing processes are suitable for considering the applications:

- a. ORR has published guidance, [Criteria and procedures for the approval of depot access agreements](#) dated 5 March 2024. This sets out the criteria and procedures ORR expects to follow in exercising its functions under, amongst other matters, section 17 of the Act; the guidance applies to TMI. That guidance sets out the expectation that 'relevant facility owners' follow the procedures outlined in that guidance. ORR has followed these procedures in previous cases and reached evidence-based decisions on directing access, including under section 17. The process is iterative and allows ORR to seek further information as necessary. Further, ORR's existing process and procedures contain sufficient flexibility to allow us to consider each application on its merits in a manner that is appropriate, taking into account the particular circumstances of the case.
- b. Schedule 4 to the Act establishes certain mandatory elements of the process for applications under section 17 and ORR's guidance supplements that statutory process. ORR's processes are appropriate for consideration of all applications under section 17.

Directions in respect of heavy maintenance activities

27. ORR agrees that any directions it may issue in respect of an application under section 17 in relation to access to TMI must be limited to light maintenance services.



Process and next steps

28. For the reasons set out above, we will progress the applications in line with the process set out in Schedule 4 to the Act and ORR's criteria and procedures for the approval of depot access agreements.
29. As set out above, further information will be required to progress the applications. Paragraph 3(3) to Schedule 4 to the Act allows ORR to request or invite further information, clarification or representations from the applicant or the facility owner. We will write to the parties separately about this.
30. As you know, ORR has commissioned independent consultants to conduct a study of available capacity at TMI. The study is ongoing and has not yet concluded. While our view is that the study was necessary regardless of any decision we make on the applications, available capacity is one of the issues raised in the applications and Eurostar's representations. We will consider the outcome of the study before deciding whether to issue directions.
31. Paragraph 4 of Schedule 4 to the Act requires ORR to invite interested persons (as defined in the Act) to make written representations. We will write to you separately regarding the formal process for consultation of interested persons.
32. We may also commence a wider consultation of appropriate interested parties. Any such consultation is likely to take place when we have considered the outcome of the capacity study.
33. In line with paragraphs 3.70 to 3.72 of ORR's criteria and procedures for the approval of depot access agreements, our consideration may also involve a hearing. We have not yet decided whether a hearing is necessary in this case.
34. We are copying this letter to Evolyn and VTE and will publish it on ORR's website in line with our usual processes.
35. If you have any questions in the meantime, please do not hesitate to contact me.
- Yours sincerely

pp Ian Biggar

cc Antonio Urda, Project Director, Evolyn
Philip Whittingham, Consultant, VTE Holdings Limited