

Sole Reference Submission to Timetabling Panel

Abellio East Anglia Limited

TTP2139

Hearing Date: Tuesday 17th January 2023

1 DETAILS OF PARTIES

1.1 The names and addresses of the parties to the reference are as follows:-

- (a) Abellio East Anglia Limited whose Registered Office is at 18-20 St Andrews Street, London, EC4A 3AG "Greater Anglia" ("the Claimant"); and
- (b) Network Rail Infrastructure Limited whose Registered Office is at 1 Eversholt Street, London NW1 2DN "Network Rail" ("the Defendant").

1.2 Arrival Rail London (London Overground), MTR Crossrail (Elizabeth line) and Trenitalia c2c (c2c) may be affected by the outcome of this Dispute, subject to the result, although they themselves do not intend to be a party in this Dispute.

2 THE CLAIMANT'S' RIGHT TO BRING THIS REFERENCE

2.1 This matter is referred to a Timetabling Panel ("the Panel") for determination in accordance with Condition D4.6 of the Network Code

3 CONTENTS OF REFERENCE

This Sole Reference includes:-

- (a) The subject matter of the dispute in Section 4;
- (b) A detailed explanation of the issues in dispute in Section 5;
- (c) In Section 6, the decisions sought from the Panel in respect of
 - (i) legal entitlement, and
 - (ii) remedies;
- (d) Appendices and other supporting material.

4 SUBJECT MATTER OF DISPUTE

4.1 This is a Dispute regarding a formal Decision for Restriction of Use (RoU) possessions between Liverpool Street platforms 1 to 4 and Bethnal Green West Junction on the weekends of Weeks 45 and 47 to 03 during the Engineering Access Statement (EAS) year of 2023, in relation to the timescales of the Decision relative to planning timescales. The specific Decision title in Dispute is "DECISION: WEEKS 45, 47-03: TTY2023: EA1010 LIVERPOOL STREET TO SEVEN KINGS - BISHOPSGATE TUNNEL", published on Thursday 22nd December 2022.

4.2 This Dispute arises over the interpretation of the Decision Criteria as detailed in Part D Clause 4.6.2 of the Network Code.

4.3 Murphy's Infrastructure Specialist, operating on behalf of Network Rail, require significant disruptive access between Liverpool Street and Bethnal Green West Junction over the Down and Up Suburban Lines in order to carry out strengthening and repair work to the Bishopsgate Tunnel structure. This has culminated in a Decision

for 3 x all-weekend; 4 x Sunday-only; and 3 x Saturday-only additional RoUs Decisioned at late notice for spring 2023 (Weeks 45 and 47 to 03). For ease of viewing, these are shown visually on engineering work map extracts in **Appendix H**.

Greater Anglia has been working with Network Rail and other Train Operating Companies (TOCs) in order to provide sufficient access for the work to be carried out. However, Network Rail-led discussions have been few and far between and spread over many months, resulting in the aforementioned access being Decisioned well after the publication of Confirmed Period Possession Plans (CPPPs) which is the Network Rail-produced engineering work documentation that operators' Train Planning teams are required to prepare revised timetables against.

Network Rail first made Greater Anglia aware that access was required for Bishopsgate Tunnel structural work during a meeting hosted by Joanne Weaving, Network Rail Access Planning Manager, on Tuesday 01st June 2021. Details regarding specific access requirements were limited at this stage, although a presentation showing work requirements was provided, extracted in **Appendix B**. At this point in time, the discussion was in view of securing access during 2022. Note that even at this very early stage, Greater Anglia had pointed out that access on Saturdays was (and remains) an issue. This is circled in **Appendix C**, meeting minutes from 01st June 2021. A follow-up meeting was held on Monday 23rd August 2021, but Greater Anglia is unable to locate any meeting minutes supplied.

From Greater Anglia's records, it appears that the next meeting did not take place until nearly ten months later on Friday 10th June 2022, focussing on both Liverpool Street roof and Bishopsgate Tunnel work. By this point, focus appeared to have moved away from possible access in 2022, and instead targeted 2023 dates. The access ideas brought forward by Network Rail during discussions included a three-week blockade, Weeks 46-48 2023, catering for both projects. This blockade strategy was subsequently written out of the plan after operator objections on capacity grounds.

It is widely accepted by Network Rail and TOCs alike that access for Bishopsgate Tunnel work is best taken when the Great Eastern Main Line (GEML) 4-track section between Bethnal Green and Shenfield is closed as it significantly reduces the number of services using Liverpool Street, thus opening up options to block approach lines and platforms as is required by this work without the need to remove essential train services. This provides reasoning as to why Network Rail has Decisioned this access for Weeks 45 and 47 to 03 as a lot of these weekends already have GEML 4-track closures in place. Indeed, during the 10th June 2022 meeting, Greater Anglia colleagues made such a suggestion as can be seen in **Appendix E**, and excerpted here as follows: "*Due to all line possessions in weeks 45 -50 on the GE it may pay to have longer disruptive possessions on these weekends and look to move the blockade out of these weeks just a thought?*".

Justin Cross, Network Rail Project Manager, also held a follow-up meeting with operators on Friday 08th July 2022, but only Liverpool Street roof project work was discussed; Bishopsgate Tunnel access was not.

It was not until the next meeting held on Tuesday 08th November 2022 by Francesca Ali, Network Rail Lead Planner, that access ideas to align Bishopsgate work with GE 4-track closures in spring 2023 were put forward by Network Rail; a good deal of time after CPPP's were published (see dates on timeline; **Appendix A**). Greater Anglia once again agreed that aligning such access with GEML 4-track closures in the spring of 2023 was the right way to do it 'on paper', but now it was November 2022 so timetabling work for most of the weeks that the project was looking to affect had already been planned and bid to Network Rail. Greater Anglia therefore made it clear that it would unlikely be able to support the majority of the required access changes; the key issue being a lack of surplus planning resource to replan already completed timetables which would require potentially hundreds of platform and line code alterations for each instance. Much of Greater Anglia's timetable planning resource was already tied up with replanning timetables due to industrial action, as well as several other Network Rail late notice access changes that Greater Anglia had previously compromised on and accepted (bullet-pointed two paragraphs below). Greater Anglia did state that if Network Rail Access Planning was prompt in formally issuing access changes, some of the later weeks *may* be acceptable as timetable planning work would not yet have commenced. No meeting minutes were provided by Network Rail for this meeting as far as Greater Anglia is aware.

From this point, Greater Anglia cannot locate any further correspondence material from Network Rail on this subject until said access was formally Proposed for Weeks 45 and 47 to 03 (spring 2023) without warning on Wednesday 07th December 2022. Because there was a large time delay of almost one month between the meeting on 08th November and the formal Proposal on 07th December, Greater Anglia was then unable to support *any* of the required access change as by that point, timetable planning work had been completed for all affected weeks.

On Friday 09th December 2022, Greater Anglia promptly submitted a formal objection to the Weeks 45 and 47 to 03 Bishopsgate access Proposal. **Appendix G** details this response. Amongst other points raised, Greater Anglia listed a number of recent Network Rail late notice access requests that had been collaborated on and agreed to. These items coupled with industrial strike action timetable re-planning had increased the workload of Greater Anglia planning teams significantly already and had pushed planning resources to the maximum (and in some cases beyond, with staff having to work evenings and weekends to keep on top of workload). These have been excerpted and listed as follows:

- *Week 35 27hr block of the Southminster branch (on top of all the other emergency Southminster branch access) [Decided 14/11/22]*
- *Week 41/42 Nazeing New Road bridge renewal 6-day blockade [Decided 14/09/22]*
- *Week 49 WA-G possession extension for a double-tamp of Cheshunt Jn [Decided 04/11/22]*
- *Additional 2 x 5-day blockade of the RBY in spring 2023 (pending, including Week nos.) [later Decided 14/12/22 for Week 46 and 47]*
- *Week 50 and Week 06 NOL blockade cancellations [Decided 29/11/22 & 06/12/22]*
- *Week 52 removal of Lea Valley all-weekend closure [Decided 26/08/22]*
- *Week 01 Audley End – Cambridge possession move to Week 04 and extension of the WA-G in Week 07 to become a 27hr possession [Decided 28/11/22]*

The above bullet points are key in demonstrating that Greater Anglia has shown significant willing and compromise when it comes to late notice access requests recently, but as stated in the formal response to the

Bishopsgate access Proposal in **Appendix G**, “...the below Proposal represents a step too far, and the health and wellbeing of colleagues really needs to be factored into Network Rail’s Decision on late notice items at the moment.”

According to Network Code, operators have ten working days to submit their response to Proposals. Greater Anglia’s submission in just two working days was in part to give Network Rail colleagues as much time as possible to review the issues raised and to respond / converse with Greater Anglia. No formal response was forthcoming.

The access was Decisioned on Thursday 22nd December, again without warning or prior correspondence. By rights, Network Rail had until Friday 30th December to Decision this access. From experience, it is very unusual for access on the Anglia Route to be Decisioned early when there are strong, unresolved objections. It is also extraordinary for no attempt to be made to formally respond to an objection, at least to the key elements. Neither point is essential or written into Network Code, but from Greater Anglia’s perspective, it does show a lack of willingness from Network Rail to engage and try to resolve the situation.

It is worth highlighting that Network Rail have detailed in the Proposal / Decision for weeks up to and including Week 50 to be bid at T-2 weeks to then be Offered back to operators at T-1 week. This leaves little margin for error, especially as Network Rail have provided no instruction or plan for which platforms each operator is to use. TOCs would therefore be bidding ‘blind’ with the possibility that Network Rail Capacity Planning may find that the combined timetable plan does not work, and trains may have to be removed with almost no notice. London Overground voiced a similar concern in their response to the access Proposal.

For noting, Network Rail had indicated that for the earlier weeks included in the Decision (up to Week 50), Capacity Planning could undertake the re-timetabling work on behalf of operators. Unfortunately, this would have still been problematic for Greater Anglia as all timetable alterations would need to be replicated in its own Voyager Plan software to ensure that data was correct for train crew diagram publication. Data must also be accurately replicated between Network Rail and TOC systems to ensure that information is synchronised correctly. However, this offer for Capacity Planning to undertake the work for early weeks was not included in the formal Proposal / Decision, so for the purposes of this Dispute, it has limited relevance.

There is an added complication with regards to Week 03 weekend where there is no concurrent GEML 4-track closure. Network Rail is acutely aware that there is insufficient capacity at Liverpool Street on a Saturday to close platforms if there is not a GEML 4-track closure as too many platforms are required for the base service level. Sundays are less of an issue because less platforms are utilised in the base Working Timetable (WTT), so it is possible to shut platforms 1-4 on a Sunday *without* a GEML 4-track closure. Again, Network Rail have neither acknowledged nor responded to this key point in Greater Anglia’s objection to the Proposal. No timetable / capacity study has been provided to allocate capacity to each respective TOC. However, this Week 03 issue remains a relatively minor issue against the key focus of this Dispute, unless the Chair rules in favour of Network Rail upholding this access Decision; at which point a capacity / timetable study would be required.

It is likely to be highlighted that other TOCs that serve Liverpool Street have not objected to these RoUs, but it is very important to bear in mind that the impact on other operators is significantly lower. In the case of c2c and TfL Elizabeth line, this access imposition has almost no effect due to the concurrent GEML 4-track closures in many of the affected weeks. London Overground is affected more notably and have also voiced concerns over this late notice Proposal, although have not formally Disputed it.

To a lesser extent, it should be considered that Greater Anglia has been highlighting some of the Liverpool Street area access possibilities for spring 2023 since EAS 2023 V1; the response to which was submitted to Network Rail on Friday 26th November 2021 (**see Appendix D**). The responses detailed general access opportunities for the central or east side platforms as there was already access in place for those areas of the station in some of the relevant weeks, but Network Rail could have elected to take west side access instead to cover the Bishopsgate Tunnel area. That option would have been reasonably obvious to access planning experts, and, bearing in mind that access discussions regarding Bishopsgate Tunnel work commenced in June 2021, it is clear that the structural issues were already known about.

4.4 A timeline of key events and communications, with their associated Appendices, is summarised in **Appendix A**.

5 **EXPLANATION OF EACH ISSUE IN DISPUTE AND THE CLAIMANT'S ARGUMENTS TO SUPPORT ITS CASE**

5.1 Network Rail included a 'Decision Consideration' document attached to the Bishopsgate Tunnel access Decision email on 22nd December. Against **Decision Criteria 4.6.2 (a) maintaining, developing and improving the capability of the Network**, Network Rail states that "The works will assist the Performance of the asset..." which can likely be justified, but then continues "...Strengthening each beam and cross girder giving the asset the strengthening required for land sale and building commencement on top of the asset". This is extracted in **Appendix L**. Greater Anglia therefore contests the motive driving the urgency of this late notice access. Is it to remedy critical structural issues or the desire to complete the work because of land sale / building work? If the key driver is the latter, this supports Greater Anglia's Dispute and that the access could be re-planned to more realistic timescales.

5.2 The Week 03 element of the Disputed Decision entails an all-weekend Liverpool Street platform 1-4 to Bethnal Green West Junction closure. Greater Anglia believes that is in direct contravention to **Decision Criteria 4.6.2 (b) that the spread of services reflects demand**. **Appendix K** demonstrates Liverpool Street platform occupancy for a 'standard hour' on a Saturday and shows that all platforms are utilised, thus blocking four platforms and the Suburban Lines up to Bethnal Green West Junction would require some train services to be removed. It is fair to point out that the Crossrail services shown in blue in platforms 16 and 17 on the graph now serve Liverpool Street low level platforms for the majority of the day which effectively 'frees up' these platforms for other operators to use. Unfortunately, the vast majority of other services that use Liverpool Street are formed of c240m length trains. Platforms 16 and 17 are c205m of useable length and are therefore of limited use. ARL services could physically be accommodated in these platforms, but this would cause further timetabling issues as they would have to traverse all tracks between the Suburban and Electric Lines, creating timetable conflicts. An existing concurrent GEML closure between Chelmsford and Marks Tey in Week 03 will help the situation slightly

by potentially vacating one platform at Liverpool Street with no intercity services operating between Liverpool Street and Chelmsford. However, this does not give enough additional network capacity to close four platforms at Liverpool Street and the Down / Up Suburban. Network Rail is very aware that Saturday Liverpool Street platform blocks are not possible without either a) other concurrent engineering work that significantly reduces the number of services using Liverpool Street (such as a GEM 4-track closure) or b) allocating capacity to operators and dictating which services can / cannot operate. No capacity / timetable study was included with the Decision to determine this despite the concern being pointed out by both Greater Anglia and London Overground in responses to the access Proposal.

The Week 02 Sunday element of the Decision also represents a potential concern due to a concurrent Forest Gate Junction to Romford closure of the Electric Lines. The interaction with the Bishopsgate Tunnel closure creates a timetable 'unknown'. Network Rail has not supplied any planning / bidding instruction for this week.

Network Rail evidences in its 'Decision Consideration' document that "Without intervention, additional unplanned disruptive access will be required on an already heavy EAS 2024 plan which would cause further disruption and delay to the operators and our passengers." This suggests that the work could potentially be moved into EAS 2024 and therefore again undermines the notion that it is critically urgent work. The document goes on to state that "With this work is required to take place before January 2024.", again suggesting that it could be delayed beyond spring 2023 where it currently sits. **Appendix L** details this. This sentence does not appear to make total sense on its own, and it must be noted that some of the punctuation and grammar used in this Network Rail document makes it quite difficult to discern information in several places.

Greater Anglia notes that a presentation on Bishopsgate Tunnel was received in June 2021 which mentions the "last assessment in 2016" (**see Appendix B**). The presentation also states that surveys were undertaken in Christmas 2020. Whilst the evidence tallies that there are structural issues with Bishopsgate Tunnel, the urgency does not stand out. Greater Anglia is not aware of any survey being carried out after this point in time.

- 5.3 The potential performance impact on the route in order to shoehorn in this access must not be overlooked. As can be seen in **Appendix J**, delay minutes caused by the Greater Anglia Train Planning department have ballooned in recent months as colleagues 'fire-fight' industrial strike action changes and late notice access requests. There have been more delays caused by time-constrained planning between Period 04 and Period 10 (from roughly June 2022 - when industrial strike action began - to December 2022) than were caused in the previous seventeen Periods combined. That equates to over five hundred delay minutes in the last seven Periods. It is a similar story with regards to full cancellations, with eight caused by Greater Anglia Train Planning between Period 04 and 10. That is the same amount as the previous twenty-four Periods combined. The re-planning of timetables for industrial strike action has correlated with a lot of additional late notice requests from Network Rail; in fact (and understandably), some have been caused as a direct result of industrial strike action due to lost work. Greater Anglia therefore contends that **Decision Criteria 4.6.2 (c) maintaining and improving train service performance** has not been fully considered at this stage. Network Rail will likely highlight that if the work does not go ahead, performance is also at risk. Once again, however, Greater Anglia is not arguing against the necessity of the work; just the timescales at which it is being imposed at.

Network Rail accepts in its 'Decision Consideration' document that there will be a "short-term negative impact on service performance" (see **Appendix L**), but does not explain why. From a Greater Anglia point of view, if the possessions are redated and planned to industry standard timescales, then timetables will be written that are robust; in line with Train Planning Rules, and not a performance risk.

- 5.4 For the majority of works contained within the Disputed Decision, **Decision Criteria 4.6.2 (d) that journey times are as short as reasonably possible** does not apply. However, it is relevant for the Week 03 possession as Network Rail would need to dictate for certain services to be removed due to capacity in the Liverpool Street area. This would needlessly increase journey times of some customers when access could take place on Sundays only which would not require services to be removed due to the lower base service levels (noted also in Section 5.3 in relation to Decision Criteria (b)).

Network Rail accepts in its 'Decision Consideration' document that there will be a "short-term negative impact upon journey times" (see **Appendix L**), but does not explain why. As Network Rail did not respond to Greater Anglia's Proposal objection, it is questionable if Network Rail colleagues have considered *how* this Decision may adversely impact journey times.

- 5.5 With regards to **Decision Criteria 4.6.2 (f) the commercial interests of Network Rail (apart from the terms of any maintenance contract entered into or proposed by Network Rail) or any Timetable Participant of which Network Rail is aware**, it could be that services require drastic alterations or even removal for one or more of the possessions once Network Rail Capacity Planning validate bids from operators (alluded to in Section 4.3 and 5.2 of this document). Greater Anglia is concerned that where Timetable Offers will not be remitted to TOCs until as late as T-1 weeks, customers will have little or no warning of service alterations and could lead to negative publicity towards Greater Anglia and the public's impression of the TOC(s) could be tarnished.
- 5.6 The Week 03 element of the Decision can also be linked with **Decision Criteria 4.6.2 (g) mitigating the effect on the environment**. As noted in Section 4.3 and 5.2, Network Rail will be required to allocate capacity to TOCs for the Saturday service, and therefore some service groups will not be able to operate. This could lead to customers using alternative transport including motor vehicles which are less environmentally friendly than rail modes.
- 5.7 Perhaps the most compelling argument in support of rescinding this access is in relation to **Decision Criteria 4.6.2 (j) enabling operators of trains to utilise their assets efficiently**. As explained, operators should plan to the Confirmed Period Possession Plan (CPPP) which is published at around T-26 weeks in advance. Greater Anglia had already completed the timetable planning work for Weeks 45 and 47 to 03 in accordance with this. It is therefore an extremely inefficient use of planning resource to then be expected to replan timetables at late notice in accordance with this Decision. The average number of Greater Anglia schedules affected is estimated to be 240 per Saturday closure, and 150 for a Sunday closure, totalling nearly 2500 potential schedule amendments for all elements of this Decision combined. If planning resource was to be reallocated from other workstreams, these elements would end up at risk including Greater Anglia's Informed Traveller bidding compliance; a Network Rail target that operators are measured against. Greater Anglia accepts that late notice access change is sometimes required but argues that it should be by exception. It can be seen from the

aforementioned list of key access changes bullet pointed in Section 4.3 that in recent months, late notice disruptive access changes have become something of the norm on the Anglia Route.

It is recognised that Network Rail did work with operators to find the most agreeable access strategy, but Greater Anglia's view is that Network Rail's action on the subject of Bishopsgate Tunnel work has been tardy and has led to this access strategy being published at late notice which could have been avoided with more proactive and timely action. Again, Greater Anglia refers to the timeline shown in **Appendix A** to evidence this.

- 5.8 As already established, Greater Anglia believes that this access Decision poses a direct risk to staff morale and well-being. This factor is not specifically measured against in relation to the Decision Criteria. However, there has been a lot of goodwill shown by Greater Anglia to Network Rail in recent months with a number of late notice access requests accepted and it is felt that a line must be drawn at some point in order to prevent an overload of work and staff burn-out.
- 5.9 For absolute clarity, Greater Anglia agrees that the Weeks 45 and 47 to 03 Bishopsgate Tunnel access mostly works 'on paper'. This Dispute is primarily brought about on the basis of timescales and the fact that Greater Anglia had already completed timetable planning work in line with the published CPPPs for Weeks 45 and 47 to 03 *before* this access was Decided by Network Rail. The timeline between the first discussions taking place between Network Rail and TOCs on 01st June 2021 and the Decision of the access on 22nd December 2022 is not insignificant. Greater Anglia fervently believes that Network Rail had more than ample time to ensure that access changes were Decided in a timely manner when the large voids in time between meetings and formal paperwork publication are considered.

6 DECISION SOUGHT FROM THE PANEL

- 6.1 Greater Anglia is seeking The Panel to determine that Network Rail has not fully considered the Decision Criteria and the detrimental impact on Greater Anglia's business and its customers as detailed in Section 5 of this Dispute paper. Greater Anglia asks that Network Rail are instructed to withdraw all Bishopsgate Tunnel RoU weekend disruptive possessions included in the Decision titled "DECISION: WEEKS 45, 47-03: TTY2023: EA1010 LIVERPOOL STREET TO SEVEN KINGS - BISHOPSGATE TUNNEL" as a result.

Greater Anglia believes that "**exceptional circumstances**" as defined in **Network Code Part D, Section 5.3.1 (c)**, apply to this case due to its exceptionally tight timescales. The first weekend affected by the Decision, Week 45, will commence on Saturday 04th February 2023, just thirteen working days following the Dispute Hearing on Tuesday 17th January 2023. As a result, it is Greater Anglia's view that the Chair has the right to instruct Network Rail to formally withdraw this Decision.

- 6.2 Greater Anglia requests that following a rescindment of said Decision, Network Rail is instructed by The Panel to discuss alternative access dating for this workstream with TOCs in line with the relevant Confirmed Period Possession Plan(s) timescales.

- 6.3 Greater Anglia asks that The Panel instructs Network Rail to review its processes and practices ahead of discussions on future workstreams to ensure that wherever possible, access changes are discussed, Proposed and Decisioned in a timelier fashion to avoid late notice requests and timetable rewrites.
- 6.4 Greater Anglia asks that The Panel instructs Network Rail to review its processes and practices regarding communication with operators ahead of discussions on future workstreams to ensure that concerns and issues are tackled at the earliest possible opportunity.

7 APPENDICES

7.1 The Claimant confirms that it has complied with Access Dispute Resolution Rule H21. A timeline of key discussions and communications, along with their associated Appendices, is summarised below:

- **Appendix A** – Bishopsgate Tunnel access timeline
- **Appendix B** - Extracts from Network Rail / Murphy / Arcadis Bishopsgate Tunnel presentation, received Wednesday 09th June 2021
- **Appendix C** – Bishopsgate Tunnel meeting notes from Tuesday 01st June 2021
- **Appendix D** – Suggestions for Liverpool St area access at EAS stage
- **Appendix E** – Network Rail’s meeting minutes from Friday 10th June 2022 (abridged for relevance to Bishopsgate work)
- **Appendix F** – Network Rail’s revised Bishopsgate access strategy, discussed at Francesca Ali’s meeting held Tuesday 08th November 2022
- **Appendix G** – Greater Anglia’s objection to the Weeks 45 and 47 to 03 Bishopsgate Proposal, sent Friday 09th December 2022
- **Appendix H** – Bishopsgate Tunnel access engineering work map extracts
- **Appendix J** – Delay minutes & cancellations attributed to Greater Anglia Train Planning by 4-weekly period ending 31st December 2022
- **Appendix K** – Liverpool Street platform occupancy on Saturdays
- **Appendix L** – extracts from Network Rail’s ‘Decision Consideration’ document

8 SIGNATURE

For and on behalf of Abellio East Anglia Limited

Signed:

D. Argent-Hudson

Print Name:

Dave Argent-Hudson

Position:

Assistant Engineering Access Manager