

Point 1.

The following is a chronological timeline and background of events from GBRf perspective:

8th February: GB Railfreight bid 14 test paths to Network Rail Capacity Planning using the Short-Term Planning process.

12th February: Network Rail Engineering Access set up possession in the Possession Planning System (PPS). The possession was created 4 days after the GB Railfreight bid. There was no communication of this entry from Network Rail prior to it being set up in PPS nor any Late Notice Possession Request.

20th February PM: Network Rail Capacity Planning identified conflict with the services; 5Q80 (MTWo), 5Q81 (MTWo), 5Q85 (FSx) and 5Q86 (FSx) as bid against week 51 possession 3993572. There was no communication of the possession which is what has caused confusion.

21st February AM: GB Railfreight made enquiries at 11.19 with the Wessex Area Access Planning Manager (Bryan Davey).

21st February at 13.56: Bryan Davey replied and advised the reason for the possession (note - this was not to fix emergency defects). The possession was to carry out track renewal works they needed to complete prior to the end of the current CP6 period (ending 31st march 2024). The advice goes on to state that 'no advertised traffic' was due over the infrastructure in question (Sheepcote Curves) and that '[NR] has failed to include GBRf on the notification for which I can only apologise'.

21st February at 15.54: GB Railfreight responded with an instruction to remove the access as the correct process had not been followed, therefore it is not a legitimate use of the Late Notice Possession process. This process is summarised as follows:

- Network Rail should propose/request a Late Notice Possession to all rail participants.
- Following receipt of the request, operators should have 2 weeks to respond.
- If the access is acceptable by all rail participants Network Rail will issue a Decision Notice.
- Affected operators bid accordingly around the access published in the Decision Notice.

21st February at 16.57: GBRf escalated the matter to Network Rail's Freight Team to co-ordinate and assist in resolving the matter. GBRf has requested final response by Close of Play 29th February 2024 to give Network Rail 6 working days to look to resolve the matter satisfactorily.

28th February at 15.03: GB Railfreight submitted its Notice of Dispute.

GBRf is disputing the matter as Network Rail has failed, by its own admittance (see correspondence 21st February 13.56), to fully and properly consult all likely impacted timetable participants.

GBRf's track access contract allows it to operate ad-hoc services, at any point, over Network Rail infrastructure and it regularly runs into/out of Waterloo with passenger charter trains, infrastructure monitoring services and bespoke rolling stock movements. This means GBRf is permitted to bid at short-term "Day A for Day C" timescales, and also VSTP (<48 hours to time of running) timescales and any disruption to that ability is deemed disruptive.

Therefore Network Rail has failed to properly consult a Restriction of Use to a likely impacted Timetable Participant and has not followed Part D as is Network Rail's legal requirement. It is, therefore, not possible for Network Rail to even look to apply the Decision Criteria as consultation has not been undertaken. The Network Code requires that before a Restriction of Use is planned there is consultation by Network Rail of all timetable participants likely to be affected, viz:

3.4.4 The procedure referred to in Condition D3.4.3:

(a) must require that no amendment to the Rules may be made unless Network Rail has consulted with all Timetable Participants likely to be affected by such an amendment;

and that the Decision Criteria must be applied.

Point 2.

GB Railfreight is seeking the removal of the access or the curtailment/amendment of the access to allow the test trains plan to run unimpeded. GBRf customer cannot allow for programme slippage as this test train plan is on the critical path for GWR's programme of work for the upcoming HS2 Old Oak Common blockade.

Point 3.

GBRf believes Exceptional Circumstances do apply in this instance and, as per D5.3.1 (a), that GBRf is seeking that general directions are given to Network Rail to allow GBRf to run the services unimpeded. In GBRf's view, Exceptional Circumstances apply because;

- GBRf has not been consulted and this represents a breach of contract by Network Rail .
- GBRf's customers are committed to a critical path on which this test train plan is dependent.
- The tests, if not taking place, would adversely impact industry preparations for significant HS2 blockades on the Western Route.
- Network Rail has been routinely warned to fully consult all likely Timetable Participants that are affected.
- Network Rail is continuously abusing its Late Notice Possession process across all bar 2 routes (EM/ Wales) to undertaken routine maintenance, renewals and enhancements that have not been properly planned.
- Network Rail has not, and does not, face any consequences to these disruptive, costly and commercially-impacting decisions which is significantly eroding customers' confidence in railfreight.
- Network Rail's behaviours are not changing as they continually hide behind 'the cost of xyz block' because of the lack of consequence. (I think this repeats the above bullet point).

Point 4.

GBRf is happy to agree to a brief summary of the proposed determination.