Appendix B

Department for Transport

Martin Woods
Head of the TWA Orders Unit
Department for Transport
Zone 1/14-18
Great Minster House
33 Horseferry Road
London SW1P 4DR

Enquiries: 020 7944 3293

Our ref: TWA/13/APP/04
Your ref: Y059072

Web Site: www.gov.uk/dft/twa

12 May 2016

Bircham Dyson Bell
Solicitors and Parliamentary Agents
50 Broadway
London
SW1H 0BL

Dear Sirs,

TRANSPORT AND WORKS ACT 1992:
APPLICATION FOR THE PROPOSED LEEDS TROLLEY VEHICLE SYSTEM ORDER AND DEEMED PLANNING PERMISSION

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to say that consideration has been given to the report of the Inspector, Martin Whitehead LLB BSc (Hons) MICE, who held a public local inquiry between 29 April 2014 and 31 October 2014 into the application made by your clients Leeds City Council and the West Yorkshire Combined Authority ("the applicants") for—

a) the Leeds Trolley Vehicle System Order ("the Order") to be made under sections 1, 3 and 5 of the Transport and Works Act 1992 ("the TWA"); and

b) a direction as to deemed planning permission for the development provided for in the Order, to be given under section 90(2A) of the Town and Country Planning Act 1990 ("the planning direction").

2. The Order would authorise the applicants to construct and operate a trolley vehicle system between Leeds City Centre and Stourton via Belle Isle in the south and between the City Centre and Holt Park via Headingley in the north, with associated park and ride sites near to the M621 (at Stourton) and the Leeds Outer Ring Road (at Bodington). The proposed system, known as the Leeds New Generation Transport scheme, is referred to in this letter as "the NGT scheme".

3. Enclosed with this letter is a copy of the Inspector's report. His conclusions on this application are set out in section 9 of the report and his recommendations are in section 10.

Summary of Inspector's recommendations

4. The Inspector recommended that the Order not be made and that the planning direction not be given.

Summary of Secretary of State's decision

5. For the reasons given in this letter, **the Secretary of State has decided not to make the Order and not to give the planning direction**. In separate letters being issued today, the Secretary of State for Communities and Local Government has decided not to give the various listed building and conservation area consents required for implementation of the NGT scheme.

Secretary of State's consideration

6. Careful consideration has been given to all the arguments put forward by, or on the behalf of, the parties. The Secretary of State's consideration of the main issues in the Inspector's report is set out in the following paragraphs. All paragraph references, unless otherwise stated, are to the Inspector's report ("IR"). With regard to the legal submissions considered by the Inspector at IR 3.1-57, the Secretary of State considers it is unnecessary for him to come to a view on the implications of Competition Law for the operation of the NGT scheme or of State Aid rules for the funding of the scheme given his decision not to authorise it. In other respects, he agrees with the Inspector's conclusions on the legal submissions in relation to the disclosure of legal advice (IR 3.58-69), conservation of biodiversity (IR 3.70-83) and the legality of the appropriation of public open space (IR 3.84-101) for the reasons given by the Inspector.

7. In coming to his decision on this application the Secretary of State has, like the Inspector, considered whether in the light of all the evidence, the public benefits of the NGT scheme would outweigh the harm that it would be likely to cause so as to justify making the TWA Order and giving the planning direction. In doing so he has taken into account, among other things, the decision of the Department for Transport ("DfT") on 19 July 2012 to confirm Programme Entry funding approval for the NGT scheme. He notes, however, that the decision to allocate funding for the scheme was based specifically on an assessment of the value for money, affordability and deliverability of the scheme and did not involve consideration of its wider planning merits. The funding decision was, furthermore, conditional on any necessary statutory powers for the scheme being obtained and was made without prejudice to this decision whether to authorise the scheme for planning purposes.

Need, aims and objectives for the NGT scheme

8. The Inspector accepted that there was a strong need to improve public transport in Leeds to attract a modal shift, including along the NGT scheme corridor much of which was congested during peak times. He was similarly satisfied that the applicants had identified appropriate aims and objectives for the NGT scheme which were based on relevant planning, economic and transport policies and were directed at ensuring continued economic growth and prosperity for Leeds. He was not, however, convinced that the NGT scheme would be a cost-effective way of meeting that need or was the best way to meet those objectives (IR 9.4-6, 9.19).

9. With regard to the objectives of supporting the sustainable growth of Leeds and its economy, the Inspector said that the NGT scheme would deliver improvements on a relatively small part of the Leeds transport network and could result in poorer public transport services in other parts of the City. He found little evidence to show that the

scheme would serve the areas of Leeds that were most deprived, or improve connectivity between the City Centre and areas of highest unemployment, or improve access to regeneration areas. Since many areas of development and existing employment, commercial and leisure facilities were already well connected, the Inspector was not convinced that the scheme would make a significant contribution to facilitating future employment and population growth (IR 9.6-10, 9.13).

10. As for improving the efficiency of the City's transport networks, the Inspector said that, although the NGT scheme would be likely to provide a quicker alternative to existing bus services, the applicants had not shown that it would result in any significant improvements in congestion or any increase in active modes of transport such as cycling (IR 9.11). As regards emissions of CO_2 and other greenhouse gases, the Inspector said that these were predicted to increase overall taking into account the generation of electric power and increased waiting times for other vehicles due to junction priority being given to trolley vehicles. In relation to the scheme's quality of life objectives, the Inspector found that it would harm the built and natural environment as a result of the introduction of over-head wires and additional street clutter, and the loss of trees and green spaces. He said also that the scheme would not significantly improve access to jobs because of the fewer stops provided, the limited locations it would serve and the relatively poor integration with other public transport (IR 9.14-16).

11. The Secretary of State agrees with the Inspector that there is a pressing need to improve public transport provision in Leeds in order to address the problems caused by congestion and to support sustainable growth. However, on the basis of the evidence submitted to the inquiry, he shares the Inspector's concerns about the extent to which the NGT scheme would achieve the objectives that have been set for it. He agrees with the Inspector that the applicants have not demonstrated that the scheme would meet key objectives of supporting significant economic growth, reducing congestion and greenhouse gas emissions, or enhancing the quality of life in the area it would serve.

Justification for the NGT scheme

12. With regard to the anticipated transportation benefits of the NGT scheme, the Inspector said that as the trolley vehicles would share significant sections of the route with other traffic, they could be vulnerable to congestion and other delays making journey times less reliable than predicted by the applicants (IR 9.24-25, 9.34). He considered that the likely high proportion of people having to stand in peak times would be a deterrent to passengers; and noted that surveys indicated a strong preference for new double-decker buses over articulated vehicles or trolleybuses (IR 9.12, 9.28-29).

13. The Inspector found that the design of the scheme would do little to make the route more attractive for cyclists and that it would result in insufficient improvements in pedestrian facilities and safety to encourage walking. He considered that the NGT scheme would not be fully integrated with other public transport as trolley vehicles would not use the same stops as buses and would not access the bus station; and since the scheme would abstract patronage from existing buses it would compromise the commercial sustainability and efficient use of the existing network of services (IR 9.30-32, 9.35).

14. The Inspector identified various concerns about the reliability of the data used and assumptions made by the applicants in forecasting the scale of the NGT scheme's

transportation and socio-economic benefits, which he considered had not been adequately tested. For example, he had very little confidence in the method used by the applicants to make patronage forecasts for the scheme based on the Stated Preference survey results; he considered that the demand for the proposed park and ride sites had been over-estimated; and he was unconvinced that over-head wiring should be regarded as a positive feature that could influence investment decisions in the area by its appearance of permanence. The Inspector concluded that the justification for the scheme was not as strong as claimed by the applicants. (IR 9.36-51).

15. The Secretary of State agrees with the Inspector that, on the basis of the evidence examined at the inquiry, the ability of the NGT scheme to deliver the level of transportation and socio-economic benefits that the applicants have predicted has not been substantiated. For the purposes of assessing the overall merits of the scheme, he considers that the likely improvements to park and ride provision, shorter journey times and better punctuality need to be weighed against the less convenient journeys by car, possible reductions in bus service frequencies in areas that would not be served by the NGT scheme, and the environmental harm which the scheme would cause.

Main alternative options considered

16. With regard to the assessment of alternative options in the Business Case Review submitted to the inquiry, the Inspector considered that the applicants had not properly taken into account evidence that other forms of technology were progressing, while trolley vehicle technology had not been widely adopted in recent years; nor had they given significant weight to the environmental harm caused by over-head wiring compared with other modes of propulsion (IR 9.52-54). He considered that, since the cancellation of the Supertram scheme in 2005 and in the more recent re-examination of options, the applicants had not fully examined whether there were more suitable corridors for a rapid transit system to meet the scheme's objectives, nor whether better or more cost-effective ways to improve public transport were now available taking into account, for example, the higher infrastructure costs of trolley vehicles or issues concerning integration (IR 9.56-60).

17. The Secretary of State shares the Inspector's concerns that the various assessments of alternative options in terms of modes and technology have not convincingly demonstrated that the applicants' proposals represent the most appropriate means of meeting the objectives set for the scheme. While recognising that no detailed alternative set of proposals has been put forward, like the Inspector he considers that with the latest advances in bus propulsion technology many of the environmental and performance benefits claimed for the NGT scheme could be achieved by measures which involved less environmental harm and at lower cost.

Consistency with national and local planning, transport and environmental policies

18. The Inspector accepted that significant weight should be attached to support for the NGT scheme in the Urban Development Plan and the recently adopted Core Strategy for Leeds; and that the scheme would support some of the National Planning Policy Framework ("NPPF") objectives. He noted, however, that while the Core Strategy was subject to an examination by a planning Inspector there was nothing to show that the merits of a trolley vehicle system, or whether the policy objectives could potentially be met by other public transport measures, had been examined. The Inspector considered that the policy

support for the NGT scheme at national and local level had to be weighed against the harm which the scheme would cause to heritage assets, green space and biodiversity which contravened other national and local policies (IR 9.61-68).

19. The Secretary of State agrees with the Inspector's assessment of the policies that are relevant to this decision. He agrees that in deciding this application, it is necessary to come to a conclusion on whether or not the policies which support the scheme should prevail over those which do not.

Impacts on the public, businesses and the environment

20. The Inspector considered that with mitigation there would not be any significant problems from noise, dust, vibration or disturbance during construction or operation of the scheme. He was, however, concerned that although trolley vehicles would provide a carbon efficient means of transport per journey which was better than a hybrid bus, the impact of the scheme in operation on overall air quality including carbon emissions would be negative due to the impact on other traffic and the use of grid electricity (IR 9.69–77).

21. As regards landscape, townscape and visual amenity, the Inspector found that the NGT scheme would result in significant harm to much of the route, particularly where it would be in or near to conservation areas, listed buildings, substantial areas of public open space and vegetation. This would be as a result of the loss of trees and open space and an increase in street clutter. He considered that any beneficial impacts on the character and appearance of areas to the south of the route would not compensate for the severe harm to the character and appearance of conservation areas and listed buildings in the north. While the design and precise location of the over-head line equipment were unknown at this stage, he noted that it would be more extensive than for trams and considered that it was likely to have an adverse effect on the character and appearance of buildings and their setting (IR 9.79-87).

22. The Inspector considered that construction of the NGT scheme would have significant effects on land use over a long period of time due to disruption from road closures, diversions, construction traffic, noise and construction compounds in areas where there were high levels of commercial, educational and leisure activity. He concluded that the viability of some businesses was likely to be harmed by implementation of the scheme. He noted also that there would be a reduction in the overall area of open space as a result of the scheme, some of which he considered was difficult to justify against the likely benefits of the scheme (IR 9.88-100, 126-127).

23. The Secretary of State agrees with the Inspector's assessment of these impacts which will need to be weighed in the balance against the benefits of the NGT scheme.

Impact of the NGT scheme on public transport and other traffic

24. The Inspector considered that the need for separate NGT stops from other bus stops would make it less convenient for people to use public transport and that some bus journeys would be slower as a result of the scheme. Since the NGT scheme was predicted to take much of its patronage from existing bus services, he considered that this could result in a reduction in bus services in the corridor and elsewhere; but that if bus operators competed with NGT, this could threaten the viability of the NGT scheme. He concluded that while

there could be some benefits for existing bus services as a result of the scheme, these would be offset by the likely harm due to competition and changes to the location of bus stops (IR 9.104-110).

25. The Inspector noted that the level of congestion would not be improved by the NGT scheme, with some junctions having greater queue lengths and an increase in the overall distance travelled annually by cars. He had concerns about the accuracy of the modelling used to predict the overall effect of the scheme on traffic at junctions and to predict the use of the park and ride sites. He considered also that the reduction of parking and other traffic restrictions along the NGT corridor could affect the viability of businesses (IR 9.111-9.115, 9.126-127).

26. The Inspector found that the effects of the scheme on pedestrians would be mixed, with some improved facilities. However, he had concerns about the parts of the route that would be shared with pedestrians which would result in either trolley vehicles not being able to travel at their design speeds or else a risk to pedestrian safety. He considered also that cycling facilities had not been one of the main priorities in designing the scheme and that some design standards had been compromised in favour of motor vehicles and trolley vehicles, putting the safety of cyclists at risk (IR 9.118-119).

27. Overall, the Inspector considered that there was a significant level of uncertainty about the full effect on road safety of implementing the NGT scheme given the considerable number of changes that were proposed. He was unconvinced that the A660 corridor was particularly suitable for articulated vehicles and considered that the scale of standing by passengers on the trolley vehicles would be a safety concern. He concluded that the benefits to other road users would be very limited and that the modelling used was not able to forecast accurately the full extent of any likely harm (IR 9.120-125).

28. The Secretary of State agrees with the Inspector that, on the basis of the evidence submitted to the inquiry, there are several aspects where the likely effects of implementing the NGT scheme on users of the public highway are uncertain and possibly harmful. Taking into account the range and nature of the risks identified, he is not persuaded that the overall effect of the scheme on traffic and public transport would be beneficial.

Mitigation measures

29. The Inspector considered that, pending the results of further survey work, the effectiveness of the proposed compensation and mitigation measures in relation to ecological impacts could not be fully determined, although he did not see any valid reason why licences in respect of European Protected Species would not be granted by Natural England (IR 9.129-131). In other respects, the Inspector accepted that the applicants were proposing tried and tested methods for mitigating construction impacts, but limited details were available to assess accurately their likely effectiveness. As for mitigation of the scheme's operational effects, he considered that the loss of trees, green space and the impact on the historic environment would not be adequately mitigated (9.132-137).

30. While the Secretary of State considers that it was not unreasonable for the applicants to leave some design details of proposed mitigation measures to be finalised at a later stage, he agrees with the Inspector that as a result some of the operational mitigation measures had not been proven to be feasible or effective. He agrees, further, that a number

of significant adverse environmental impacts arising from the operation of the NGT scheme would be likely to remain after mitigation, particularly in relation to impacts on heritage assets and the loss of mature trees and open space along the route.

Adequacy of the Environmental Statement

31. The Inspector considered that, although the Environmental Statement ("ES") submitted with the application was inadequate, with the addition of further information provided by the applicants to the inquiry, the relevant legal requirements had been met (IR 9.138-144). The Secretary of State is similarly satisfied that the requirement to carry out an environmental impact assessment of the NGT scheme has been fulfilled by the totality of the environmental information submitted as part of the application and during its consideration. He accordingly considers that he has sufficient environmental information for the purposes of making this decision and confirms that, in reaching his decision, he has complied with the requirements of paragraphs (a) to (c) of section 14(3A) of the TWA relating to the consideration of the ES.

Whether the NGT scheme is reasonably capable of attracting the necessary funding

32. The Inspector said that, as regards Government funding for the NGT scheme, he had not examined whether the DfT's decision to grant Programme Entry was right, but had looked at the basis on which the applicant's Business Case had been put together to justify the level of funding that had been sought. While recognising that, in preparing the Business Case Review, the applicants had relied on inputs from the Leeds Transport Model ("LTM"), as requested by DfT, and from other sources used for the Programme Entry Business Case, the Inspector had a number of concerns about the robustness of their forecasts. He considered, for example, that the Business Case should have included a monetised estimate for construction phase impacts which in his view were likely to be significant. He said that very little evidence had been provided to prove the reliability of the LTM in forecasting demand, and considered that reliance on the Stated Preference research was a weakness in the evidence supporting the applicants' forecasts of patronage. He considered further that the assumed journey times were optimistic and that insufficient evidence had been provided to substantiate them (IR 9.155-165).

33. As for the element of local funding required to construct the NGT scheme, the Inspector considered that this was by no means certain to be made available, particularly if the costs of the scheme escalated. In this respect, he considered that insufficient detail had been given to verify the applicants' cost estimates and to provide assurance that they were unlikely to be exceeded (IR 9.166-170).

34. With regard to the operation of the NGT scheme, the Inspector said that he had not been given any comparative figures to show that the sums allowed for the costs of running the system were realistic. As for passenger revenue, he was concerned about the way in which the methods of calculating patronage had been applied and the extent to which the assumptions had been tested to ensure the robustness of the predictions. In particular, he considered that the effects of a number of factors such as the quality of vehicles and stops and the level of competition from other public transport providers could have significant effects on the patronage forecasts with serious consequences for the revenue generated (IR 9.171-178).

35. While noting the applicants' assurances as to the availability of funding and the strong Benefit Cost Ratio for the NGT scheme in the Business Case Review, the Inspector considered that some of the assumptions underlying its funding bid were optimistic. He noted also that it would be the responsibility of the applicants to fund any increases in the scheme costs, and that some of this funding would need to be secured by borrowing from a commercial borrower. Given his concerns that the costs of the scheme could escalate and that insufficient revenue would be generated, the Inspector concluded that there was a realistic possibility that the scheme would not attract the necessary funding to maintain it, even with the commitment that had been made to fund its construction should the Order be made (IR 9.179-182).

36. The Secretary of State accepts that, regardless of the decision in 2012 to grant Programme Entry for the NGT scheme, the Inspector's concerns about the reliability of the forecasts in the Business Case Review would have required careful consideration before a final decision on funding was made if, in other respects, the case for authorising the scheme had been favourable. He notes, however, that despite these concerns the Inspector did not conclude that the scheme was unlikely to secure the funding required for its construction, which as regards the element of Government funding would have depended on future assessments by DfT of the value for money of the scheme in accordance with relevant guidance.

37. The Secretary of State notes that the Inspector's concern was particularly focussed on the longer-term operational viability of the scheme, should the costs of the scheme escalate and the forecasts of patronage not be realised in practice. The result of this could be that revenue would not meet the running costs of the system, including repayment of the prudential borrowing which would have been required as part of the funding package for constructing the system. The Secretary of State agrees that, on the basis of the evidence submitted to the inquiry, there is a significant degree of uncertainty about whether the scheme would be operationally viable, in part due to factors beyond the control of the applicants such as competition from other bus operators. While this risk might not have prevented the applicants from securing funding for construction of the NGT scheme, he considers that in his overall assessment of the public benefits of the scheme, the uncertainties over its future viability are a relevant consideration.

Justification for compulsory acquisition powers

38. The Inspector was satisfied that the Order (if made) would authorise the acquisition of no more land than would be necessary to implement the scheme; that the applicants had a clear idea of how the land would be used; that budgetary provision had been put in place; and that no land would be acquired ahead of time. However, he considered that a compelling case in the public interest had not been demonstrated for the NGT scheme, since the evidence did not provide strong enough support for implementing the scheme taking into account the extent of its likely transportation and socio-economic benefits. He was also not convinced that cheaper options requiring less compulsory acquisition of interests in land would not be more effective in addressing the aims and objectives of the scheme. He therefore concluded that the proposed compulsory acquisition powers were not justified having regard to the policy on compulsory purchase in ODPM Circular 06/2004 (IR 9.183-188).

39. The Secretary of State agrees with the Inspector that on the basis of the evidence submitted to the inquiry the compulsory acquisition powers applied for are not justified.

Alternative options suggested by the objectors

40. The Inspector noted that none of the alternatives that had been suggested by objectors had been fully developed or costed and that some of the options such as tram or underground were more expensive than the NGT scheme, or their feasibility had not been demonstrated. The Inspector considered that, if implemented, the alternative proposals advanced at the inquiry by First West Yorkshire would introduce modern hybrid buses which, combined with improved bus stops, signal prioritisation and segregated bus lanes, could offer a noticeable improvement in the quality of public transport and greater flexibility than the proposed NGT scheme, at lower cost and less environmental harm. He noted further that, as an interim solution, existing bus services could be improved with a quality partnership scheme (IR 9.195-196).

41. The Secretary of State agrees with the Inspector that there are alternative options which may be capable of addressing the aims and objectives that were set for the NGT scheme. However, he considers that it is for the applicants in the first instance to assess the merits of those options in the light of his decision not to authorise the NGT scheme.

Post-inquiry correspondence

42. Since the close of the inquiry, the Secretary of State has received further representations from a number of objectors who appeared at the inquiry. He considers that nothing in those representations constitutes new evidence which needs to be referred to other inquiry parties before he decides this application, nor do the representations lead him to differ from the conclusions that he has reached on the basis of the Inspector's report.

Secretary of State's overall conclusions and decision

43. The Secretary of State accepts that the NGT scheme would be likely to address to some extent the need for public transport improvements in Leeds, for example, as a result of quicker journeys, better punctuality and an increase in Park and Ride provision; and that it would provide some support for sustainable economic development. He accepts also that there was significant policy support for the principle of the NGT scheme and the Park and Ride sites at the local level, and that the scheme would support some of the NPPF policy objectives.

44. The Secretary of State has weighed against those benefits the likely adverse impacts of the scheme identified by the Inspector and has had regard to a number of areas of concern and uncertainty which the Inspector considered had not been adequately resolved on the basis of the evidence submitted to the inquiry. In terms of the scheme's likely adverse impacts the Secretary of State has, in particular, taken into account the harm to heritage assets some of which would be substantial; the loss of trees and open space; the harm to the landscape, townscape and visual amenity; the overall negative impact on air quality and greenhouse gas emissions; the likely effects of the scheme on the provision of bus services; and the extent to which the heritage and environmental harm would conflict with local and national planning policies.

45. As for the unresolved areas of concern and uncertainty, the Secretary of State shares the Inspector's views on a range of matters where either the benefits claimed for the NGT scheme have not been adequately demonstrated, or where the likely impacts of the scheme remain uncertain. He has had regard, in particular, to the doubts about the extent to which the scheme would improve accessibility and connectivity and thus support growth; concerns about the relatively poor integration of the scheme with the rest of the public transport network; the uncertain effects of the scheme on road safety; the possible harm to local businesses as a result of implementing the scheme; the reliability of the forecasts in the applicants' Business Case Review in relation to the costs of the scheme and the likely level of patronage; and the risk that the scheme would not be operationally viable.

46. Weighing all these considerations together, the Secretary of State agrees with the Inspector that the Order is not justified and that a compelling case in the public interest has not been made for giving the powers required to implement the scheme. As regards planning policy considerations he considers similarly that, taking into account the scale of the harm identified by the Inspector and the uncertain level of benefits which the scheme would deliver, the policies which it would contravene should prevail over those which support provision of the NGT scheme.

47. The Secretary of State has accordingly decided that the Order should not be made and the planning direction should not be given.

Notice under section 14 of the TWA

48. This letter constitutes the Secretary of State's notice of his determination not to make the Order, for the purposes of section 14(1)(a) and section 14(2) of the TWA. Your clients are required to publish newspaper notices of the determination in accordance with section 14(4) of the TWA.

Challenge to decisions

49. The circumstances in which the Secretary of State's decisions may be challenged are set out in the note attached at the Annex to this letter.

Distribution

50. Copies of this letter are being sent to those who appeared at the inquiry and to all statutory objectors whose objections were referred to the inquiry under section 11(3) of the TWA but who did not appear.

Yours faithfully,

Martin Woods

ANNEX

CHALLENGES TO THE DECISION NOT TO MAKE THE TWA ORDER OR TO GIVE DEEMED PLANNING PERMISSION

There is no statutory right to challenge the validity of the Secretary of State's decision not to make the Leeds Trolley Vehicle System Order and not to give the associated direction as to deemed planning permission. Any person who is aggrieved by this decision may, however, seek permission of the High Court to challenge the decision by judicial review.

A person who thinks they have grounds for challenging the decision not to make the Order is advised to seek legal advice before taking action.