

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

Enquiries: 020 7944 2487
Fax: 020 7944 9637
Email: transportandworksact@dft.gov.uk

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

Our Ref: TWA/11/APP/02
Your Ref: 10114/30922623

5 December 2011

Herbert Smith LLP
Exchange House
Primrose Street
London
EC2A 2HS

Dear Sirs,

**TRANSPORT AND WORKS ACT 1992
APPLICATION FOR THE PROPOSED RIVER TYNE (TUNNELS)
(MODIFICATION) ORDER**

1. I am directed by the Secretary of State for Transport to say that consideration has been given to the application made on 6 September 2011 by your clients, the Tyne and Wear Integrated Transport Authority ("the Authority"), for the River Tyne (Tunnels) (Modification) Order ("the Order"), to be made under sections 3, 4 and 5 of the Transport and Works Act 1992 ("TWA").

2. The Order, if made, would modify the River Tyne (Tunnels) Order 2005 ("the 2005 Order") so as to extend by one year the time allowed by the 2005 Order for the Authority to set the toll for vehicles using the Tyne Tunnels during the operation of the tunnels by a concessionaire ("the concession toll"). The 2005 Order currently requires the Authority to set the concession toll by 25 August 2012.

3. As the Order does not include any development requiring planning permission, the Authority has not submitted an environmental statement nor sought a planning direction from the Secretary of State.

Summary of the Secretary of State's decision

4. For the reasons given in this letter, the Secretary of State has decided to make the Order.

The Order application

5. In making this application, the Authority has complied with the publicity requirements of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. This included serving copies of the application and the accompanying documents on those specified in those Rules and making the documents available for public inspection. As also required by those Rules, the Authority has published notices giving information about the application and how to make representations. The Secretary of State has received no objections to the proposals. The application is therefore unopposed.

Purposes of the Order

6. The Authority explained in the documents which accompanied the Order application that the purpose of extending the time allowed for setting the concession toll was to avoid the unfair consequence on one class of vehicle (which included Heavy Goods Vehicles) that would arise if the Authority followed the requirements of the 2005 Order. Extending by one year the time prescribed for setting the concession toll would enable the Authority to implement a further transitional toll, thus allowing for lower increases in the toll for Heavy Goods Vehicles in 2012 and 2013 before the concession toll is set. This would be consistent with the Authority's approved toll strategy.

7. The Authority also explained that the process of raising tolls towards the level of the concession toll had been delayed with the result that the process could not now be completed in the way envisaged by the Authority's approved toll strategy before the deadline for setting the concession toll under the 2005 Order. The delay had resulted in part from a High Court challenge to the 2005 Order, but also from the Authority's wish not to raise tolls above the levels set in 2007 before users received the benefit of the New Tyne Crossing project authorised by the 2005 Order.

Secretary of State's consideration

8. The Secretary of State has noted the Authority's reasons for wanting to extend the period before it is required to set the concession toll for the Tyne Tunnels. She is satisfied that in all the circumstances it is appropriate to allow an additional year before the Authority is required to set the concession toll. In particular, she considers that it is reasonable to adjust the requirements of the 2005 Order so that the Authority can implement its approved toll strategy, including lower transitional increases in tolls for Heavy Goods Vehicles.

Secretary of State's overall conclusions and decision

9. For the reasons given above, the Secretary of State has concluded that it is appropriate to modify the 2005 Order in the way proposed by the Authority. She has therefore decided to make the Order, subject to a number of minor drafting amendments which would not make a substantial change in the proposals such as would require notification to affected persons under section 13(4) of the TWA.

10. This letter constitutes the Secretary of State's notice of her determination to make the Order, with modifications, for the purpose 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 decision

11. The circumstances in which the Secretary of State's decision may be challenged are set out in the Annex to this letter.

Yours faithfully,

Martin Woods

ANNEX

RIGHT TO CHALLENGE ORDERS MADE UNDER THE TWA

Any person who is aggrieved by the making of the Order may challenge its validity, or the validity of any provision in it, on the ground that –

- it is not within the powers of the TWA, or
- any requirement imposed by or under the TWA or the Tribunals and Inquiries Act 1992 has not been complied with.

Any such challenge may be made, by application to the High Court, within the period of 42 days from the day on which notice of this determination is published in the London Gazette as required by section 14(1)(b) of the TWA. This notice is expected to be published within three working days of the date of this decision letter.

A person who thinks they may have grounds for challenging the decision to make the Order is advised to seek legal advice before taking any action.