IN THE COURT OF APPEAL (CIVIL DIVISION) **CASE No.**
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

BETWEEN:

THE QUEEN

(On the application of

BLUE GREEN LONDON PLAN (as GRAHAM STEVENS))

Appellant

-and-

(1) SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS
(2) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

Respondents

-and-

THAMES WATER UTILITIES LIMITED

1st Interested Party

-and-

SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE

2nd Interested Party

SUMMARY GROUNDS OF APPEAL FOR JUDICIAL REVIEW
ON BEHALF OF BLUE GREEN LONDON PLAN

Introduction

1. The Claimant seeks to challenge the decision of the Secretaries of State dated 12th September 2014 to make the Thames Water Utilities Limited (Thames Tideway Tunnel) Development Consent Order 2014 (the "Order" or "DCO").

2. The Order grants development consent under the Planning Act 2008 (the "2008 Act" Nationally Significant Infrastructure Projects ("NSIPs")) for the construction and operation by the

Interested Party ("Thames Water Utilities Limited" ("TWUL")) of a waste water scheme in London known as the Thames Tideway Tunnel (the "TTT") at a cost in excess of £4.1Billion (2011 prices), to be completed some time after 2023.

3. Permission to apply for judicial review was refused as both the SsoS and the IP claimed the Application must be dismissed as:

(i) the claim form had been filed out of time and

(ii) it is unarguable.

4. It is only the first argument the Appeal is against, as it will necessarily lead to considering the second. The judge held he only had jurisdiction of the Planning Court to find on the first question. In his Judgement on 15 January, delivered after lunch, he found the UK had made an error of law in not properly transposing and following the Aarhus Convention in the newly created Planning Court. The SsoS informed the Court it had immediately corrected Planning Court procedure during lunch, following the morning arguments.

5. The Planning Act currently reads that the claim form must be:

'filed during the period of 6 weeks beginning with ... the day on which the order granting development consent is published'.

The Criminal Justice and Courts Bill, which is almost at the point of Royal Assent, will amend the deadline in Planning Act (and several other acts). Section 91(4)(c) will change the above text to the claim form. It must now read:

'filed before the end of the period of 6 weeks beginning with the day after ... the day on which the order granting development consent is published'.

6. It was held that this did not help the claimant as the SsoS's error of law in not following the Aarhus Convention did not allow the judge to accept the arguments on the particular circumstances of the case made by the claimant under UK, EU and ECHR law, as argued by the initiating Judge under *Barker.*

Ground 1 of Appeal

7. Ground 1 of Appeal is that had he done so at the oral hearing during argument, the judge, by referring back to the LIP's earlier lodged arguments and reconsidering them, would have been able to find he had the jurisdiction to make a judgement on the particular circumstances of the case, as the unlawfulness of the procedural rule of the Court had been identified. The SsoS and the IP would have been bound to accept and withdraw their first ground, allowing their second ground, that the claim was unarguable, to be heard.

8. R (Greenpeace) v SoS for Trade and Industry [2007} EWHC 311 (Admin), [2007] Env LR 29 is distinguished, as the *" decision was of ...preliminary nature...not just clearly and radically wrong,.. to require the intervention of the court at this stage ...the error of law could be remedied at a later stage"* as could not have been the case in the court system with "day on" having to be immediately replaced with "day after".

9. The DCO being made for an application is the last chance to object. The SsoS knew or ought to have known as he had "shut his ears" to the law requiring comparison with Blue Green technologies, therefore had not satisfied the legal requirements of balancing the benefits of the dictated Tunnel against chosen Blue Green solutions. Not properly considering public rights or less public rights or even practically impossible rights to enforce, while under the Direct Effect of the EIA Directive is *"...Different if the failure relates to what I described in arguments as a 'show stopper' that is a policy or factual consideration which makes the proposal so obviously unacceptable that the only rational course would be to abort it altogether without further ado.. failure to reopen consultation on new aspects of Climate Change was not a show stopper..." 'bad faith or manifest absurdity is." note108 para 54*

10. The advantage to the Court in allocating time and resources in relation to the importance of the case under the CPR , the relevant parts of which now have to be law in the Planning Court, is that the UK would not have to be declared to be refusing to apply EU law under the Treaty, as under Subsidiarity, the UK court has the jurisdiction to judge the particular circumstances in this case and grant permission to seek Judicial Review.

11. Refusal to follow EU Treaty law *In Re McFarland [2004] UKHL 17 [2004] 1 WLR 1289 at [7]* Lord Bingham "Just as the courts must apply acts of parliament whether they approve of them or not, and give effect to lawful official decisions whether they agree with them or not, so Parliament and the executive must respect judicial decisions whether they approve of them or not, unless and until they are set aside"

12. On the allowing of this Appeal under his European rights, the Claimant will continue with his substantive arguments on the errors of law in the SsoS's DCO.

Ground 2 of Appeal

13. In making their first argument the SsoS had no longer observed the Constitutional Separation of Powers that the LCJ Woolf had warned of and the LIP Interested Party argued in court. The Planning Court had been incorrectly designed to be an instrument of the SsoS, taking away the Claimant's CPR rights and giving the judge no jurisdiction to find against the SsoS, an error of law under the Direct Effect of the EIA Directive, which places reliance in the Treaty on each Member State maintaining its separation of powers.

14. This is the 'show stopper', as it allowed the SsoS to make a decision in bad faith and which was clearly a manifest absurdity in the context of the ever greater urgency to apply Parliament's Climate Change Act. Only an unbalanced or biased mind denying the disbenefits of Climate Change could refuse the far greater benefits of Blue Green technologies in their 2 stage balancing procedure of the SEA, ExA under the NPS and the SsoS DCO decision. Blue Green technologies can reverse Global Warming.

15. The SsoS's Decision to object to the Court hearing the Claimant present the expert advice is perverse in the Wednesbury sense. No reasonable person would prefer not to hear cost benefits of a demonstrated proportion of a new $10 Trillion market for Blue Green technologies compared to £180m, Prof Binnie's estimate of the tunnel's benefits.

16. *R v HM Treasury, ExParte Smedley [1985] QB 657, 666C-D* Sir John Donaldson MR " it is a constitutional convention of the highest importance that the legislature and the judicature are separate and independent of one another, subject to ultimate rights of Parliament.....I would hope and expect that Parliament would be similarly sensitive to the need to refrain from trespassing upon the province of the courts"

17. In these circumstances the LIP would ask the court to dismiss the SsoS's first argument as an error of law, or, in the alternative, void and a nullity as not being given in a properly constituted court.

Evidence

18. Further extensive evidence for the SsoS using the Planning Court as an unseparated instrument of Parliament can be found in the conduct of the SsoS's with the IP TWUL from the inception of the Project in 2000, as argued in the Claimant's substantive arguments. This is now also put in evidence for the unlawfulness of essential legal aspects of the decision making process from 2007, corrupting the design and operation of the Planning Court and it's decisions, specifically:

19. The unlawful decision to announce a solution to the CJEU before consulting the public,

20.throughout the design and timing of the consultation to omit meaningful consultation with the public to enable them to properly consider the alternative of a Blue Green London Plan, persuading them to wait until the opportunity for Judicial Review to make the arguments in a court.

21. Designing the EIA to omit informing the public of the Climate Change Act context of high air pollution with PM10 and 2.5 and greenhouse gases, omitting quantifying information on blue green technologies demonstrating superior benefits in reducing such pollution.

22.With the oxymoron of only one choice of a Tunnel for the public to choose in the 2 public consultations,

23. omitting integration of the public consultation for the NPS on Water with Justine Greening MP's Thames Tunnel Working Group, from 2011 on.

24. Designing the NPS specifically to exclude the significant change in the water industry; Blue Green technologies.

25. The refusal of the SsoS to call in the NPS by 'shutting his ears' to leading expert advice worldwide that a new water industry had arrived,

26. with economic benefits for local authorities, London and the national economy far outweighing any from the Tunnel.

27. In persistently refusing to take legal advice from the CJEU on how to comply with the UWWTD using BATNEEC, accepting SecondBATKNEEC.

28 In “Shutting their ears” to comparative Blue Green BATKNEEC from Philadelphia, New York, Portland, Singapore, Copenhagen and worldwide implementation of Blue Green technologies generally.

29. In refusing to release information held by the Environment Agency that the Thames was already compliant with the UWWTD, subsequently released by Prof Chris Binnie and Lord Berkeley.

20. Refusing to follow design advice contained in the EU Commission ‘Blueprint for Water’.

31. In summary, setting up courts to ‘Shut their ears’ to the Blue Green Independent Expert Team and other’s advice to compare and balance the benefits of BATKNEEC applied to a Blue Green London Plan under the Planning Act, under, for example, s104(7).

32. The SsoS had embedded bias into the decision making procedure of court procedure and their balancing exercise of the dictatorship of infrastructure verses public participation in the design of legal and water systems, and so was able to refuse acceptance of an application for permission to judicially review the SsoS’s DCO.

33. On dismissal of the SsoS and IP’s first argument the court would then be able to hear the substantial arguments for Permission under the **original 4 Grounds** .

34. In the alternative the Claimant renews his Request for a Preliminary Reference to the Court of Justice of the European Union (CJEU), made to the Examining Authority (“ExA”) included in the Bundle at B68 but without answer before the DCO.

35. For the high importance of the arguments expressed above, however inadequately formulated in legal terms under the Aarhus Convention, and with apologies for the odious task of wading through a LIP’s arguments, Blue Green London Plan humbly asks for the consideration of the Court.

36, The intention of the Blue Green parties is to seek a case management conference to best decide how to combine arguments of all parties making application for permission in the wider public interest.

Graham Stevens LIP IP

Wednesday, 21 January 2015