

**IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT**

**BETWEEN:**

**THE QUEEN**

**On the application of**

**BLUE GREEN LONDON PLAN (as GRAHAM STEVENS)**

**Claimant**

**-and-**

**THE SECRETARY OF STATE FOR THE DEPARTMENT OF  
ENVIRONMENT FOOD AND RURAL AFFAIRS**

**-and-**

**THE SECRETARY OF STATE FOR THE DEPARTMENT OF  
COMMUNITIES AND LOCAL GOVERNMENT**

**Defendants**

**-and-**

**THAMES WATER UTILITIES LIMITED**

**Interested party**

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**SKELETON ARGUMENT of BLUE GREEN LONDON PLAN  
(For hearing on 15-16 January 2015)**

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**Introduction**

1. This is Blue Green London Plan's ("BGP's") skeleton argument in support of its application for judicial review of the Secretaries of State's ("SsoS's") decision dated 12 September 2014 ("the DCO") for a Nationally Significant Infrastructure Project ("NSIP"), the Thames Tideway Tunnel ("TTT"), under the Planning Act 2008 ("the 2008 Act") to comply with the Urban Waste Water Treatment Directive ("UWWTD"), the Environmental Impact Assessment Directive ("EIA") and other UK and EU law.

## Summary of submissions

2. Permission to apply for judicial review should be granted as:

- (i) the law requires it under the particular circumstances of submission
- (ii) sufficiently serious arguments are made to permit a judicial review

### (i) Application acceptance

3. (i) ‘The very essence’, of BGP’s argument is that its application ought to be accepted. The SsoS and the Examining Authority invited non-lawyer Londoners to wait until the DCO decision had been decided before coming to court with their rights to object to the decision. But the SsoS failed to give a ‘clear and precise’ time in their invitation for any Interested Party (“IP”) Claimant to exercise those rights, as, unlawfully, the State had specifically designed a new court to ‘make it practically impossible or excessively difficult to exercise rights conferred by EU law’ (B88 para18 2nd para, B85 paras6-10, B85 para5, B86 para12-15, B87 para ‘48’)

(a) by taking away ‘an individual’s rights under EU law governing similar domestic actions’: ‘absent some power in primary legislation:(1)*the time limits in the CPR do not apply to that period* (B28 para27, B44 para9)

(b) by relying on the public’s normal perception of time creating an added difficulty in accessing justice by inserting a special, legally formulated calculation of time unlikely to be known or found by the public. ()

4. If this is the case, the UK has failed to design the Planning Court to transpose or comply with EU law and, with permission, is an added 5th ground for judicial review.

5. In his Order of 10 December, the learned judge followed the strict statutory provision of the act, without considering the particular circumstances of the case, had he done so under the equitable law of the EU, he would have been bound to accept the application.

### 6. Relevancy of EU law

“where it is clear that the statutory provision which creates the discretion was passed in order to bring the domestic law into line with the Convention, it would be.... perverse to hold that, when considering the lawfulness of the exercise of the discretion, the court must ignore the relevant provisions of the Convention” *R v Secretary of State for the Home Department, ex parte Norney* (1995)7 AdminLR 861, 871C-D

7. BGP had a legitimate expectation to be given a clear and precise invitation “ no difficulty with the proposition that in cases where government has made known how it intends to exercise powers which affect the public at large it may be held to its word irrespective of whether the claimant has been relying specifically upon it. The legitimate expectation in such a case is that is government will behave towards its citizens as it says it will”, *R v Department of Education and Employment exp Begbie* [2000] 1 WLR 1115,1133E approved in *R (Wagstaff) v So S Health* [2001]1 WLR292, 314C

## **(ii) Grounds for Reconsideration, Substantive Argument**

8. The Claimant has had the opportunity to read the companion Thames Blue-Green Economy (“BGE”) skeleton argument, which could not hoped to be bettered by a Litigant in Person (LIP). It is therefore repeated here to show common ground and extended to include further arguments as necessary.

9. In summary it presents legally argued errors of law in the SsoS Decision, and is therefore sufficient in law for Blue Green London Plan also to be given permission to judicially review the SsoS’s DCO.

10. The central question in this claim is whether the Examining Authority, and subsequently the Defendants, erred in law in concluding that issues relating to the need for, and strategic alternatives to, the TTT were “*beyond its remit*”. (Para 16.25 of the Examining Authority’s Recommendation Report (“ExAR”) Public bodies must take into account relevant considerations *Padfield*.

11. BGE and BGP’s case is that the ExA and SsoS erred in law in failing to consider alternatives to, and the need for, the TTT before deciding to grant the DCO. This was contrary to articles 6(4) and 8 of Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”) (AB/1459-1463)

12. The Claimant has identified a number of serious and arguable errors of law in the process and substance by which the Defendants and Interested Party have developed their project since 2000, principally:

(1) In not seeking out or taking advice on the Best Technical Knowledge Not Entailing Excessive Cost (BATKNEEC) to enable the UK to comply with UK and EU law under the UWWTD, misleading the Court of Justice of the European Union that a lawful decision had been made to select the Tunnel solution without first obtaining the informed consent of the public.

(2) In not informing the public of the environmental impact under the EI Directive in a manner and in time for them to give informed consent, in particular, of the more beneficial impact of a new range of technologies available ( Blue Green technology)

capable of reducing global warming and increasing health and the economic wealth of the UK.

(3) In ‘shutting their ears’ to any advice on better alternatives and refusing to call in the NPS for renewal when it became clear a significant change in the water industry had made the Tunnel no longer necessary, and blue green technologies had far greater benefits, particularly in achieving the UK’s carbon reduction targets committed to in the Climate Change Act.

(4) Breaching ECHR Article 2 right to life in refusing to consider how blue green technologies result in a decrease of London’s death rates from pollution and an increase in individual health and public property values.

### **NPS and the Climate Change Act 2008**

13. **Planning Act**; An NPS ‘must state how mitigation and adaption to climate change are taken into account(AB p1060.PA2008 para 8 )

14. **NPS for WW March 12 s3.6** ‘Climate change adaption

3.6.7... ‘latest projections’ (ABp1499)

3.6.9...d m consider impact as a whole

3.6.10 Decision maker serious radical changes to climate beyond

3.6.12 Adaption measures can be required to be implemented... where necessary..’

(1)

15. Climate Change Act 2008

Part 1 **The target for 2050**

1.It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 80% lower than the 1990 baseline.

(4)

28.**Procedure for regulations under section 26 or 27**

(4) The Secretary of State must consult the other national authorities—

(5)

(5)The Secretary of State must obtain, and take into account, the advice of the Committee on Climate Change before laying before Parliament a draft of a statutory instrument containing—

(a)the first regulations to be made under those sections, or

(b)regulations making provision of the kind described in paragraph (b) or (c) of subsection

### **16. IPCC5, SPM 3.3 Characteristics of adaptation pathways**

*Adaptation can contribute to the well-being of populations, the security of assets, and the maintenance of ecosystem goods, functions and services now and in the future.*

*Adaptation is place- and context-specific (high confidence). A first step towards adaptation to future climate change is reducing vulnerability and*

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*Adaptation can reduce the risks of climate change impacts, but there are limits to its effectiveness, especially with greater magnitudes and rates of climate change. Taking a longer-term perspective, in the context of sustainable development, increases the likelihood that more immediate adaptation*

*actions will also enhance future options and preparedness. {3.3}Summary for Policymakers IPCC Fifth Assessment Synthesis Report*

*exposure to present climate variability (high confidence). Integration of adaptation into planning, including policy design, and decision making can promote synergies with development and disaster risk reduction. Building adaptive capacity is crucial for effective selection and implementation of adaptation options (robust evidence, high agreement). {3.3}*

*Adaptation planning and implementation can be enhanced through complementary actions across levels, from individuals to governments (high confidence). National governments can coordinate adaptation efforts of local and subnational governments, for example by protecting vulnerable groups, by supporting economic diversification, and by providing information, policy and legal frameworks, and financial support (robust evidence, high agreement). Local government and the private sector are increasingly recognized as critical to progress in adaptation, given their roles in scaling up adaptation of communities, households, and civil society and in managing risk information and financing (medium evidence, high agreement). {3.3}....*

#### **Ground 4. Further ‘Developments since the start of the Claim’**

17. Blue Green technologies are the best solution to Global Warming. Further to ‘Developments since the start of the Claim’ submitted for this reconsideration, I have heard and read research at Cambridge University presented at the Royal Society last December by Dr Chris Hope. He has shown 'that approximately halving the uncertainty in the mean transient climate response has a mean net present value of about \$10 trillion'.

In other words, the economic value to the UK and Europe of learning how to comply with the Climate Change Act’s targets in bringing down the Keeling curve of CO2 emissions, is up to the order of \$10 Trillion for whoever establishes the information alone for Blue Green technologies.

18. MI5 recently informed me that they monitored my work, at least from when I was a founder member of the UK International Solar Energy Society at the Royal Institution in 1974, after they saw my film of inventions for solving Global Warming (B8 para3, B70 para12-14, B72 paras19,21-22), which went global in 1976. They considered it was 'against the economic interests of the country'. The Head of MI5 went on TV to apologize in 2003, as they had monitored around 5,000 others in the same way. She explained that as it was such a crazy thing to do, they destroyed the records.

19. There is simply no way the TT Tunnel can compete with such enormous benefits under s 104(7) of the Act. Leading experts around the world consider the decision of the SsoS perverse in the Wednesbury sense of ‘shutting their ears’ to the economic and environmental interests of the UK, against the intention and purpose of Parliament.

20. I would humbly ask the court again to accept my application and give permission to judicially review the SsoS’s decision.

Graham Stevens IP, LIP.

14 September 2015