

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

BLUE GREEN LONDON PLAN

Claimant

-and-

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

-and-

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

Defendants

-and-

THAMES WATER UTILITIES LIMITED

Interested party

STATEMENT OF GROUNDS AND FACTS FOR JUDICIAL REVIEW

A INTRODUCTION

1. A joint decision was taken on 12 September 2014 by the Secretary of State for Communities and Local Government, together with the Secretary of State for Environment, Food and Rural Affairs, ('**the SsofS**') to approve a development consent order ('**the DCO**') for the construction and operation of the Thames Tideway Tunnel ('**the TTT**'), claimed by its proposers as the largest development in Europe. The DCO may be called the most significant environmental policy decision for London, the UK and Europe to enable, - or not, adaption, mitigation and reversal of Global Warming to fulfill the UK's Climate Change obligations. It would be undemocratic in itself if the legal right to impose such an enormous and far-reaching change to all aspects of London's

environment for generations were not judicially reviewed to distinguish political power from legal right.

2. 'Blue Green London Plan', is a name to represent the aim of the action for all those preferring a Blue Green solution to TWUL's Tunnel, and seeks permission to judicially review the Secretaries of State's DCO Decision and make it plain that the unlawful action has no legal effect. The remedy being to replace the Tunnel Application with a Blue Green London Plan in order that that which ought to have been done is done.

3. Permission is sought under the name by Graham Stevens, a climate scientist known for 'Desert Cloud'[1974], a film of first solutions to Global Warming. After Thames Water's first public promotion of their Tunnel in December 2010, Justine Greening MP asked he be Chair of her Thames Tunnel Working Group-Technical Subsection (JGMP's TTWG-TS) to respond to Thames Water's public consultation in her constituency, he joined Thamesbank for a year and also developed the Technical Subsection into the Blue Green Independent Expert Team BGIET with its website bluegreenuk.com, which now provides free advice from leading experts worldwide and aims to have all evidence showing that a significant consensus of global experts consider a Blue Green solution complies with the UWWTD and UK Climate Change Act, with significantly greater benefits outweighing any of TWUL's proposed Tunnel. BGIET is not, however, a legal entity and has no knowledge of this application. I am seeking permission to proceed with my claim for Judicial Review as an individual IP under the Planning Act 2008.

4. It is the expert knowledge of the significance of the new water industry that is at the heart of the application. The website receives in the order of 50,000 hits/month, indicating substantial interest in a previously obscure and specialist field. Had the ExA and SsofS properly considered this evidence as the various groups endeavoured over 3 years of attempting to join the public consultation, they would have understood its significance and made different or changed the March 2012 National Policy Statement on Waste Water (the NPS). NASA has recently issued a report identifying those in power as those least likely to understand or act to keep global temperatures under 2oC as they are too wealthy, comfortable and enjoying a nice life which they are incapable of imagining is beginning to be swept away by environmental disasters.

5. Thamesbank, under advice from BGIET, have held Ministerial briefings, Houses of Lords and Commons expert presentations, Engineering Institute symposiums, consulting with Thames Water (for which they offered to pay), and other public meetings over time led to establishing the fact of a significantly different and new industry that is replacing Sir Joseph Bazalgette's Victorian, centralised, 'end of pipe' underground system with decentralised, multiple, localised, surface rain and storm water collecting, storage and useful production systems.

6. Persistent, unreasonable or irrational refusal to act on this growing Blue Green movement, already, with the Olympic Park, Victoria BID, Imperial West Campus, etc..., and the recent realisation that city infrastructure is the key to reversing Global Warming, has led us to consider a general bias of decision-makers against sustainable economic market growth with innovation as the key, to favour private monopoly finance profits. This is politically acceptable to the limits of democratic powers, but unlawful when policy is created or interpreted against UK and European Treaty law developed over 900 years into our Constitution, becoming a policy to break the law and our European Treaty.

7. In order to cover relevant arguments, permission is being sought by more than one applicant. The individuals include those of Thamesbank, an NGO also seeking judicial review under a different name who's arguments the applicant concurs with. The Director of Thamesbank Lady Dido Berkeley has worked on environmental issues in relation to sustainable water management for the Thames River Basin for many years. She and other supporters of Thamesbank participated in the examination of the TTT. She is well known in the legal and environmental fields for her seminal case on environmental impact assessment *Berkeley v Secretary of State for the Environment* [2001] 2 AC 603.

8. This is an Aarhus Claim as it concerns environment and public participation in the application of environmental law.

With leave of the Court, all these applications may be heard together to shorten court time and expense. If permission is given the applicant would continue to seek Counsel representation in court.

B GROUNDS for challenge:

9. **Ground 1.** The DCO breaches the Direct Effect of the EIA Directive in that the EIA submitted in the Application of TWUL was wholly defective in not disclosing environmental impact according to the UWWTD with which it sought to comply, thus defeating the purpose of both the EIA and UWWT Directives. The environmental impact of constructing the tunnel are to be found only by comparing the submitted EIA with scattered documents, as in *Berkeley*, of objectors lodged against granting the DCO.

10. Ground 1.1 The EIA for 'Alternatives' in the Application at Box 15 Folder A page 3 is wholly misleading; containing statements of factual errors derogatory to the new water industry; making the EIA clearly and radically wrong. *Greenpeace* [2007] EWHC 311. Misrepresentations of the new 'Blue Green' technologies include:

1. 'London's clay makes it unsuitable for SuDS'

Evidence at bluegreenuk.com SAT04: 'How can rainwater penetrate London Clay'
Click London geology for British Geological survey map (then "City of London" then "Geology Key").

2. 'There is not enough room for SuDS in London'

London is one of the greenest cities, with 40% of its surface area made up of publicly accessible green space. bluegreenuk.com News, July 2013

3. 'SuDS cannot be implemented as quickly as the Tunnel'

4. 'SuDS is far more expensive than the Tunnel'

5. 'SuDS is more disruptive than the Tunnel to construct.'

11. No 'Blue Green London Plan' has been carried out using the best technical knowledge not entailing excessive cost (BTKNEEC), as required by the UWWTD and held in Case C-301/10 *Commission v United Kingdom* [2012]. All available evidence, however, indicates statements 3, 4,

and 5 are false, certainly if 'SuDS' is changed to 'Blue Green'. bluegreenuk.com ACA08, slide 10, a Venn diagram showing Blue Green includes SuDS, but is far more inclusive and integrated as a water collection system under Paragraph A of Annex 1 to the UWTTD. BTKNEEC refers to the design process, necessary for an EIA of the proposal and alternatives before public consultation.

12. Ground 1. 2. On the Principle of Proportionality for a decision directly effecting all environmental measures, the new Blue Green technologies must be examined and considered in balance with tunneling technologies for a fair hearing, the NPS of March 2012 was unlawful in preventing this. Article 191 TFEU s.(1) and Article 4 of TEU as submitted to ExA on 2 December 2013, unique reference number 10018433, to be found at infrastructure.planningportal.gov.uk/legislation-projects-London. (all the applicants submissions may be found by applying the filter for 'Graham Stevens')

13. Also extensively argued, with approval by Sir Ian Byatt, former Director General of Ofwat, who also contributed a paper: 'Thames Tunnel - A critique of a flawed project' at bluegreenuk.com PPL05: Request for a Review of the National Policy Statement for Waste Water concerning the Thames Tideway Tunnel under S.6 of the Planning Act 2008. The political mechanism for implementing a quashing order is simply for the Minister to recall the NPS as he may do at any time for review, and mandate a "Blue Green London Plan" as ought to have been done between 2005-2010 to accelerate the 'Green London Plan' of London's Mayor, which, if integrated by blue technologies would obviate the need for The tunnel.

14. Ground 1. 3. Again, as the NPS is dated March 2012, it predates CJEU Judgment Case C-301/10, (PPL02) of 18 October 2013, which thereby over rules the reasoning of the NPS. Para 88 of the Judgment holds:

'In order to establish whether.. the UK has failed to fulfill its obligations arising from Articles 3, 4 and 10 of, and Annex 1(A) to, Directive 91/271, the examination envisioned in paragraph 73 of the present judgement should again be carried out.' Para 73 being to ... 'establish whether the UK has been able to demonstrate that the conditions for applying the concept of BTKNEEC were met.' as submitted to ExA on 4 Nov 2013 under ref. 10018433. bluegreenuk.com PPL02

15. In any event, after all the evidence of leading experts in the water industry, it is a complete misrepresentation for the NPS to hold the Tunnel is in any way a project in the public interest. It may have been when first thought of, but blue green technologies are expanding and improving at a pace mimicking the digital revolution, as submitted to an Ofwat consultation and included to the ExA on 29 November 2013 'Circumstances are bypassing the need for the Tideway Tunnel'

16. **Ground 2.** The public consultation was for the Tunnel only, with no alternative for meaningful comparison, in contravention of the Aarhus Convention and planning Act 2008. It was also significantly defective, as the Applicant failed to disclose the environmental impact or benefits of alternatives in time for the public consultation. Inhabitants had no basis on which to assess the environmental impact of radically differing solutions conceptually, rendering the consultation inadequate, meaningless and therefore unlawful. The cost/benefit analysis of TTT does not meet the test of Best Technical Knowledge Not Entailing Excessive Costs, thereby omitting the opportunity for the public to assess environmental impact. These grounds are continued in the application of Thamesbank.

17. **Ground 3.** The ExA have admitted, and the SoSs agreed in their statement of reasons, they are unaware of their ‘unlawfulness by any act’ (para 17) requiring comprehension of the Application being decided. The SsoS, in granting their DCO on the advice of the ExA, had insufficient awareness of the relevant law and insufficient understanding of the significance of recent changes in the water industry, by reason of their refusal to properly consider any consultation or independent expert advice, including the general public and the Environment Commissioner of the European Union in particular.

18. This is shown in correspondence with Ministers, their advisors and in public and private meetings, ending with the Minister’s letter to the applicant of 10 July 2014, shortly before being replaced. The new SofS could not possibly have had time enough to understand enough to gainsay her predecessor and order the NPS to be recalled, evidence of reason for her appointment. He replied:

“Thankyou for your email of 25 June offering to arrange a meeting with (the EU) Environment Commissioner, to discuss alternatives to the Thames TidewayTunnel. The government supports the use of what you refer to as ‘blue-green technologies where these can reduce surface water run-off into the sewers in London. However, we are clear that due to London’s current lack of sewer capacity, with the sewers operating very close to capacity at certain times of the day, they cannot on their own reduce sewer flows into the River Thames sufficiently to meet the environmental standards for the Tideway, and ensure compliance with the Urban Waste water Treatment Directive within a reasonable period. We are firmly of the view therefore that of all the potential remedies, a tunnel based solution represents the most cost effective, timely and comprehensive solution, coupled with an increased implementation of blue-green technologies in the future to compliment and enhance a tunnel’s sustainability.”

There is a need to ensure public bodies exercise their powers in order to further the statutory purpose for which the powers were conferred and do not act for an ... ulterior purpose. *Padfield v Minister of Agriculture Fisheries and food [1968] AC 997*. The ulterior purpose for granting the DCO is to support the Tunnel against all the evidence. With permission, the applicant would argue as Upjohn LJ held “all his disclosed reasons for refusing to (order a Blue Green Plan) do so are bad in law.”

19. Ground 3.1. The SofSs’ decision was thereby unlawful in not accepting or sufficiently reasoning its departure from the Examining Authority (‘**the ExA**’)’s conclusions as to environmental compliance with UWWTD. The ExA was statutorily biased in accepting the NPS instruction not to examine the Environmental benefits of Blue Green solutions to compare with the Applicant’s claims. The SsofS who dealt with the application were biased by public declaration. ‘We must stand up to these green bullies’ and ‘We listened to our experts. We should not have done so.’ This supports the bias test of a real danger the decision makers or Government disfavored Blue Green solutions in favor of unsustainable technologies *R v Gough [1993] AC 646*, making policy against law.

20. **Ground 4.** The proposals involve breaching the European Convention on Human Rights (ECHR), Article 1 right to life, Article 6 right to a fair hearing, Article 8 right to a family life, and Article 1 of the First Protocol rights to private property.

21. Ground 4.2. Article 1. The SoSs and the ExA accepted evidence that:

"Air pollution causes 29,000 early deaths a year in the UK and the World Health Organisation has confirmed that air pollution causes cancer. Poor air quality also causes heart attacks and children living near busy roads in the UK have been shown to grow up with underdeveloped lungs." It has recently been shown that 4,000 of these deaths occur in London, as posted on the website Bluegreenuk.com under 'News, Feb 14 20014'

22. . Ground 4.3. The SoSs and the ExA did not find significant that changes in the water industry substantially reduce water and air pollution, including PM 10 and 2.5. Constructing the Tunnel would therefore infringe a significant fraction of 4,000 London inhabitants of their right to life until best technical knowledge is implemented. Death rates for increased heat stress, hyperthermia, flooding, drought and high crime rates add to the numbers losing life.

23. Ground 4.4. Articles 6, 8 and Article 1 of the First Protocol,

The Thames Tunnel Disaster

Expert's Open Letter to Secretaries of State Elizabeth Truss MP and Eric Pickles MP on grant of a Thames Tunnel Development Consent Order on Friday 12 September.

To the editor:

We, the undersigned independent water and environmental science experts, are alarmed and disappointed at today's announcement, by the Secretary of State Elizabeth Truss MP, that the Government has made its Decision to grant an unconditional Development Consent Order to Thames Water Utilities Ltd (TWUL)'s Application to construct its proposed Thames Tideway Tunnel against all our considered advice and evidence freely given, dismissed and ignored over the past 3 years. We are alarmed at the Government's willingness to turn a blind eye to the Rule of Law for the environment.

In our view, the Decision is not only the least beneficial to London's inhabitants and environment, but will also be of significant detriment to London's future growth, international reputation and prosperity as it imposes its inevitable burden on the cost and standard of living that its alternative, which we have termed 'Blue-Green Plan for London', would have substantially raised, more quickly, at lower cost and with far greater multiple public benefits to the whole of London's environment.

We have heard and scrutinised all the evidence and arguments put forward by TWUL and found it a project par excellence of a government licensed monopoly company putting private profit for its shareholders above the primary, basic, public and essential need of its customers for clean air and water, by using the best available technical knowledge not entailing excessive cost, as required by UK and EU law.

Once the Lee tunnel and upgrades to the London sewage treatment works are co-operational within the next few months, it would appear that the Tideway could be made environmentally satisfactory with only a few minor works. The EU Urban Waste Water Treatment Directive requires spilling only to occur during unusual rainfall events.. This could almost certainly be achieved by a combination of measures, including blue green infrastructure, at a saving of several £ billion. Although a study of a combination is required by government, such a study has not been done.

There is no need for a Thames Tideway Tunnel; it is unnecessary and will cause extensive damage to the environment by losing the opportunity of a better solution.

Yours Sincerely,

Prof Chris Binnie, Independent chairman, Thames Tideway Strategy Steering Group, 2000-2005

Prof Richard Ashley, Author, original Wandsworth SuDS Study for Thames Water Ltd.

Sue Illman, Past President, The Institute of Landscape Design

Prof Cedo Maksimovic, Blue Green Dream, Imperial College, EU Climate KIC

Prof Colin Green, Flood Hazard Research Centre, Middlesex Univ. OECD author

Prof Dragan Savic, Exeter University Water Systems Centre

Prof Darren Woolf MEng PhD CEng MCIBSE MAPM

Martin Blaiklock, Infrastructure Finance Consultant.

The Blue Green Independent Expert Team at bluegreenuk.com

Leading independent experts, representing current water industry consensus, have heard and scrutinised all the evidence and arguments put forward by TWUL and found that there is no need for a Thames Tideway Tunnel; It is therefore unnecessary in a democratic society to compulsorily purchase London property or interfere with quiet enjoyment of the property and family life of Londoners, without a fair hearing of best technical knowledge under Annex 1 para A to the UWWTD.

24. On October 12 2014 The Sunday Telegraph front page headline quoted the Ex Secretary of State for Environment as saying: 'Let's rip up the Climate Change Act', and a page 4 headline: 'Stand up to bullies in green lobby'

25. On the facts and law stated above it is vital that the DCO decision of the Secretaries of State is judicially reviewed and the Thames Tideway Tunnel is replaced with a Blue Green London Plan in compliance with UK law and EU Directives, including the one issued this morning that all Member States reduce CO2 emissions to 40% of 1990 levels by 2030, "as a matter of survival".

This application seeks permission to do so.

Graham Stevens IP

24 October 2014

