

SECRETARIES OF STATE SKELETON ON BLUE GREEN LONDON PLAN (as GRAHAM STEVENS)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Claim No: CO/4943/2014

BETWEEN:

THE QUEEN

(On the application of

BLUE GREEN LONDON PLAN (as GRAHAM STEVENS))

Claimant

-and-

**(1) SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL
AFFAIRS**

**(2) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL
GOVERNMENT**

Defendants

-and-

THAMES WATER UTILITIES LIMITED

Interested Party

**SKELETON ARGUMENT ON BEHALF OF THE SECRETARIES OF STATE
(For hearing on 15-16 January 2015)**

Introduction

1. Permission to apply for judicial review should be refused as:
 - (i) the claim has been brought out of time; and
 - (ii) it is unarguable.

2. The Claimant seeks to challenge the decision of the Secretaries of State dated 12 September 2014 to make the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (the "Order").

3. The Order grants development consent under the Planning Act 2008 (the “2008 Act”) for the construction and operation by the Interested Party (“Thames Water”) of a waste water scheme in London known as the Thames Tideway Tunnel (the “TTT”).
4. In summary, it is the Secretaries of State’s case that the present claim is both out of time and fails to identify any error of law, let alone any arguable one which could justify granting permission to seek judicial review of the decision to make the Order. The claim was brought one day outside the non-extendable six week time limit in section 118 of the 2008 Act. As such, it is out of time and the Court has no jurisdiction to entertain the claim. This is the basis on which permission was refused on the papers by Lewis J on 10 December 2014. As the learned Judge held:

“3. That statutory provision is clear. The claim form must be filed “during” a period of 6 weeks. The 6 week period under subsection (b)(ii) begins with the day on which the statement of reasons is published. The day on which the statement was published was 12 September 2014. If it were to be filed “during” a period of 6 weeks beginning with that date, it would have to be filed by 23 October 2014. If it were filed on 24 October 2014, it would have been filed within a period of six weeks and one day.
5. In paragraphs 4 and 5 of his order, Lewis J rejected the Claimant’s application to extend time, explaining that there was no jurisdiction to do so. In any event, he held that the Claimant had provided no satisfactory reason to extend time.
6. In view of his approach to the issue of timing, Lewis J did not consider the substantive merits of Mr Stevens’ claim. Accordingly, the Secretaries of State do not deal with them further here but rather continue to rely on paragraphs 37-56 of their Summary Grounds of Resistance. In short, the assertions made by the Claimant amount merely to an attack on the merits of the underlying policy framework under which the application was properly decided and/or an attack on the valid planning judgements reached by the Secretaries of State, neither of which are permissible within a claim for judicial review.
7. This Skeleton Argument uses the same abbreviations and terminology as the Summary Grounds of Resistance.

Policy Framework

8. The policy framework which is applicable to the present claim is set out in detail in the Secretaries of State’s Summary Grounds of Resistance, at paragraphs 5-8. In the

circumstances, it is not repeated here. The Court is respectfully referred to the Summary Grounds in order to understand the applicable policy framework.

Factual Background

9. Similarly, the relevant factual background is fully rehearsed in the Secretaries of State's Summary Grounds of Resistance, at paragraphs 9-13. It is not repeated here. The Court is respectfully referred to that part of the Summary Grounds in order to understand the background to the present claim. Since the filing of that document, the Claimant has an Application to Extend Time Limit Retrospectively, dated 25 November 2014. The Treasury Solicitor responded by a letter dated 26 November 2014. Mr Stevens responded in turn by an e-mail of 4 December 2014. Lewis J refused permission on 10 December 2014 in the terms indicated above. The Claimant renewed his application on 16 December 2014.

Legal Framework

10. Again, the legal framework applicable to the present claim and which concerns the determination of applications for development consent under the Planning Act 2008 (the "2008 Act") is set out in full in the Secretaries of State's Summary Grounds, at paragraphs 14-21, and is not repeated here.

Response to Claim

11. As indicated above, in light of Lewis J's approach to timing, the Secretaries of State do not here rehearse their response to the Claimant's substantive grounds of challenge. They continue to rely, in that regard, on paragraphs 37-56 of their Summary Grounds of Resistance.
12. The claim is clearly out of time. The statutory period for challenge under section 118 of the 2008 Act *begins with* the date of publication. That is, the first day of the six week period is the date of publication, not the day after. Consequently, where, as here, the publication took place on a Friday (12 September 2014), the last day of the statutory period for challenge was the Thursday six weeks later (23 October 2014). That approach is clear from the express terms of the statute and is consonant with the approach of the Court of Appeal to the synonymous term "*starting with*" in section 113 of the Planning

and Compulsory Purchase Act 2004: see *Barker v. Hambleton District Council* [2012] EWCA Civ 610, [2013] P.T.S.R. 41, at [14].

13. The claim was filed on Friday 24 October 2014 and so was one day out of time. The Claimant accepts at paragraph 3 of his application to extend time that this was a mistake. To the extent that he relies on an argument that the public's perception of time is different from that of the Court, this is plainly no reason to construe the time limit in section 118 any differently.
14. In his Grounds of Renewal, Mr Stevens also relies on rights under EU law, the Aarhus Convention and the ECHR. The substance of his arguments in this respect is that the construction of the six-week time limit which the Court has adopted does not provide an effective remedy. That is plainly wrong. The six-week period provides ample time for a challenge to be commenced. That is illustrated in the present context by the fact that two other claims, one of which is brought by an individual, were commenced within the time limit. Nor does the six-week time limit impair the very essence of the right of access to the Court. There is no ability to extend time and, if there was, no justification for doing so in this case. The Claimant relies on *Majski v. Croatia (No 2)* (app no. 16924/08, 19 July 2011) but ignores the fact that the applicant in that case had been misinformed as to his legal rights. His failure to institute the correct proceedings was, as the Court found at [71], "*through no fault of his own*". That is not the case here.
15. All that has happened is that Mr Stevens failed to consider what section 118 says about the time for bringing proceedings or if he did, misunderstood it. He chose to bring proceedings on what he thought was the last day, but miscalculated.
16. For these reasons, the claim is out of time and should not be entertained.

Conclusion

17. For the reasons set out above, which are explained in more detail in the Secretaries of State's Summary Grounds of Resistance, the claim is out of time. Permission should be refused for that reason alone. The Claimant's substantive grounds are, in any event, unarguable and do not justify the grant of permission.

RICHARD HARWOOD QC

DAVID BLUNDELL
6 January 2015

THIRTY NINE ESSEX STREET

LANDMARK CHAMBERS

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ADMINISTRATIVE COURT

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Treasury Solicitor's Department
One Kemble Street
London
WC2B 4TS

Ref: Z1426674/CLJ/B5
Claire Jones

Solicitor to the Defendant