

**IN THE COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION PLANNING COURT**

**CASE No.20152028A**

**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**

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**PERMISSION TO APPLY TO REOPEN FINAL APPEAL**

**GROUND OF APPEAL**

**Further Developments requiring a claim for Interim Relief under CPR 54.3.7**

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1. On 17 July 2015 Ofwat issued to the public a 'Consultation : Thames Tideway Tunnel ["TTT"]:  
Infrastructure Provider ("IP") Licence.' for responses by August 14th 2015. The Licence is to be  
"made" on August 21st, effective August 24th, 5 working days after closure of submissions under  
the Consultation.
2. As argued in 'REQUEST TO BE RECONSIDERED UNDER CPR 54.12(3)' of 16 December  
2014 at 27. 'Before the Hearing, the Claimant has the option, therefore, to issue a claim for  
Interim Relief to give effect to European Union law under CPR 54.3.7, as the court must have  
jurisdiction to grant interim relief in order to ensure the full and effective protection of directly  
effective rights derived from European Community law, by following the procedure held by the  
House of Lords in *R v Secretary of State for Transport Ex Parte Factortame (No.2)* [1991] 1 A.C.

603.' The directly effective rights in this case being protection from the environmental impact of the proposed Tunnel under the EIA Directive interpreted under the Aarhus Convention.

3. The language of the consultation indicates that the SsoS intend to proceed with their Decision dated 12 September 2014 to make the Thames Tideway Tunnel irrespective of its lawfulness, yet to be determined by judicial review.
4. With permission, I wish to put in evidence the response to Ofwat's 'Consultation: TTT IP Licence' by the independent infrastructure and energy project finance expert Martin Blaiklock ("OrMB") made on 31st July 2015, which is attached in my letter for the convenience of the court.
5. It is claimed here that Ofwat exhibits the same disregard of lawful procedure in issuing a public consultation as argued in the Appeal Court for the SsoS DCO of 12 September 2014, now under consideration to be sent back to the High Court: of having no intention that any response will stop construction of the Tunnel.
6. Ofwat setting a date of 14 August 2015 for response is in bad faith, knowing the circumstances outlined in Martin Blaiklock's response, (OrMB) and the SsoS's intention; Ofwat intends, under the guise of lawful issue of a license, the improper purpose of risking fiscal liability for its non issue or cancellation. Parliament in good faith has no intention of risking such liability.

### **Claim for Interim relief**

7. Under CPR 54.3.7 it is here requested the Court make an Order in the following terms:

In so far as the Secretaries of State intend to continue holding the UK in breach of the UWWT Directive by imposing a solution to that breach not based on best technical knowledge of urban waste water treatment but on one which entails excessively engineered and/or excessively costly technology unnecessary in a democratic society to dis-benefit UK and other Member State inhabitants, it is ordered that:

1. No construction work to make the Thames Tideway Tunnel is to be undertaken until judicial review of the SsoS's decision is determined.
2. No contract or licence is to be signed or issued for the making of the Thames Tideway Tunnel until judicial review of the claim for bad faith of the SsoS and manifest absurdity of the Thames Tideway Tunnel solution is determined.
3. Any reasonable request to Ofwat under CPR 31 for disclosure or inspection of documents be complied with.

Or words the court sees fit for compliance with CPR 54.3.7 under UK and Treaty law.

### **Interim costs**

8. It is in the public interest that an altruistic claim on behalf of all Londoners has a legal team of equal standing to that of the SsoS and TWUL, consisting as it does of more than 50 city lawyers.

9. Further, in the interests of justice, to create a level playing field under the Overriding Objective by presenting the case in a form to enable the court to deal with the case justly, it is requested that interim costs be awarded for the case up to the Hearing of 24 June 2015, with suitable subtractions to be argued by counsel for SsoS, TWUL and Blue Green London Plan.
10. It would be just for costs to be calculated as a wasted costs order for the SsoS and TWUL arguing from November 2014 that my claim form was out of time, when, with their experience, they knew or ought to have known of Lord Denning's ruling in the *Pritam Kaur* line of cases. With two leading Counsel and full legal team, the SsoS's and TWUL's procedural counterclaim wasted 8 months by blocking access to the court hearing substantive arguments.
11. LIP rate to be calculated on the CPR basis of 2/3 professional rate. It is to be noted that the BLP contract with TWUL alone is to the value of £5m p.a. of the total budget for TWUL's DCO Application of some £600m. The remedy being an equivalent for a Blue Green London Plan in compliance with the UWWT Directive. In the circumstances a wasted costs order of £2m would seem reasonable.

### **Request for Directions**

12. The judgement of Lord Justice Sales on 24 June 2015 has yet to be approved. BLP has kindly offered to assist by forwarding it by email on receipt. May I request notification by email of all communications.
13. Further to directions of Lord Justice Sullivan received on 23 June 2015, the reasoning for the claim to be arguable and extension of time for further submissions and amendment of the appellant's notice may be lodged within 7 days of receipt of the approved judgement. With an interim costs ruling, Counsel may be appointed to argue the case for permission to appeal or apply for judicial review in the most accessible form to enable the court to deal with the case justly.
14. I am writing to Ofwat for disclosure under CPR 31 of the list of documents suggested by Martin Blaiklock as being required for the public to make informed responses to their 'Consultation : Thames Tideway Tunnel: Infrastructure Provider Licence.'

'TW customers should have available to them the following:-

- a) The technical specification of IP's project and its TW interfaces;
- b) IP's estimated costs of the project, with its major contract values;
- c) TW's costs spent to date in developing TTT and the preparatory works;
- d) IP's proposed construction contractual structure: after all, customers will be carrying completion risk;
- e) IP's "Alliancing Agreement" with TW;
- f) IP's "Revenue Agreement" (between TW and IP);
- g) IP's "Direct Agreement" with Government;
- h) IP's "Project Management Contract" with CH2MHill; and
- i) IP's "Tax Change" exemption agreement with HMRC.'

15. The documents will further enable a more complete answer to the 6 parliamentary questions referred to in the previous 'Further Developments' at paras 1.2 and 2., lodged on 7 July 2015.
16. This claim for interim relief is made with a maximum assistance request under the Aarhus Convention and the Environmental Impact Assessment Directive to enable claims based on leading expert's vital information to be put before the court. The sentiment of 'Only the law can save us now' of the Urgenda judgement 24 June 2015 (Further Developments 7 July 2015 ) against the Dutch State will be argued.

Graham Stevens, IP, LIP

Aarhus Convention appellant,

4 August 2015