IN THE COURT Of APPEAL (CIVIL DIVISION) **CASE No.20150340**
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

PERMISSION TO APPLY TO REOPEN FINAL APPEAL

GROUNDS OF APPEAL

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1. On Wednesday 24 June 2015 Lord Justice Sales held that I submitted my application to apply for Judicial Review in time on Friday 24 October 2014, confirming in court that I had won my 'one short but important point of statutory construction' as argued in my Skeleton Arguments.

2. However, he then proceeded to find I had lost my case on further substantive issues set out in a letter sent by Lord Justice Sullivan to TWUL, the interested party, forwarded to me at 18.58pm on 23 June, after the Civil Appeals Office had closed. The letter read as follows:

Begin forwarded message:
From: Samuel Cramer <Samuel.Cramer@blplaw.com>
Date: 23 June 2015 18:56:35 GMT+01:00
To: "grahamstevens@hotmail.co.uk" <grahamstevens@hotmail.co.uk>
Cc: James Good <James.Good@blplaw.com>, Carina Wentzel <Carina.Wentzel@blplaw.com>

Subject: FW: C1/2015/0340 Blue Green

Dear Graham

I understand you requested the directions of Sullivan LJ from Carina. Carina has been on annual leave and therefore I apologise if this has been delayed. The directions were as follows:

Lord Justice Sullivan has considered your email of 5 June 2015 together with previous correspondence and the respondent's bundle and has directed as follows:

"The application should be listed for an oral hearing, during which the application for an extension of time for further submissions and the amendment of the appellant's notice will be considered. The court will also consider not only the issue of timeliness, but also whether the claim, if it in time, is arguable and whether the permission to appeal or to apply for judicial review should be granted."

A hearing date will be imposed before the end of the Trinity term, that is 31 July 2015. The Listing Office will shortly be in touch with further information as to the hearing. ***Should you wish to provide further submissions to the Court, these should be filed by 22 June 2015.***

Kind regards
Sam

Samuel Cramer | Berwin Leighton Paisner LLP
Trainee Solicitor

3. I wrote in reply to the Civil Appeals Case Management Section at 8.17am on 24 June 2015, the morning of the Hearing:

' My fully documented Appellant's notice, with it's skeleton argument of 13 March 2015 has reasoned enough for permission to be granted without a full bundle on this 'short procedural point', It would be clearly unfair to argue 'the relevant reasons and circumstances', as argued in my previous submissions.

My second point still stands, that requiring the SoS for Energy and Climate Change to join me as an interested party in the present urgent circumstances of climate change, is one which I believe my reasons will convince any reasoning judge that UK and EU law require permission to be granted.

Yours Faithfully,

Graham Stevens IP, LIP
Aarhus Convention appellant'

4. I confirmed with Lord Justice Sales in the 20 minute Hearing that I had won my first and only 'short but important point of statutory construction', which Mr Justice Ouseley had held was the only point he had jurisdiction to hear and had therefore purposefully not considered whether my substantive arguments were 'arguable'.

5. As an Aarhus Convention claimant I argued my Claim Form N461for judicial review was in time when submitted on 24 October 2014, and to be ordered back to the High Court to apply for permission to seek judicial review and /or given directions to use my original bundle with or without the Secretary of State for Department of Energy and Climate Change (**"SoSDECC"**). as an interested party.

Grounds for Reopening of Final Appeal under CPR 52.17

Ground 1.

6. In this case, under 52.17, reopening of final appeals, it is

(a) necessary to do so in order to avoid a real injustice of having had to argue a change in procedural law twice, to be refused a fair opportunity to argue my substantive points in the public interest on the ground that they were 'unarguable'.
(b) the circumstances, of finding whether the new water industries are a solution to Climate Change, are exceptional and make it appropriate to reopening the appeal; and
(c) there is no alternative effective remedy in time to replace the Thames Tideway Tunnel with an EU compliant Blue Green London Plan before the Paris Conference of Intergovernmental Climate Change Parties in November 2015, to be attended by the Secretary of State for Department of Energy and Climate Change.

Ground 2. The case raises a point of general public importance under 54.16.8

7. CPR 54.16.8, Appeals, applies; 'There may be an appeal to the Supreme Court where the High Court certifies that the case raises a point of general public importance and either the High Court or the Supreme Court grants permission to appeal. (Administration of Justice Act 1960 s. 1).

8. Under CPR section 9B, Other Statutes and Regulations. Administration of Justice Act 1969 Part ll, Appeal from High Court to Supreme Court, Grant of certificate by trial judge:
s12 (1) Where (a) relevant conditions are fulfilled
(b) sufficient case for an appeal to the Supreme Court has been made out, the judge may grant a certificate where, under
s12(3A) a point of law of general public importance is involved in the decision and that-

(a) proceedings entail a decision relating to a matter of national importance. Here, a project designated a 'Nationally Significant Infrastructure Project'

(b) the result of the proceedings is so significant, that a hearing by the Supreme Court is justified. Here, the significance is that the proceedings will result in changing the way clause 1. of the Climate Change Act is made achievable,
'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.'
to enable it to reach reach it's target.

(c) the judge is satisfied that the benefits of earlier considerations by the Supreme Court in *R (on the application of ClientEarth) (Appellant) v The Secretary of State for the Environment, Food and Rural Affairs (Respondent)[2013] UKSC 25 On appeal from: [2012] EWCA Civ 897* per Lord Carnwath at para 38-40. (GAI21 on the bluegreenuk.com website), outweigh the benefits of consideration by the Court of Appeal. The Supreme Court, after a Preliminary Reference to the Court of Justice of the European Union in that case, ordered London to prepare a plan for compliance with the air pollution Directive. The appellant, Blue Green London Plan, is requesting the same in remedy.

Ground 3. For reasons of exceptional public interest.

9. CPR 54.11 Service or order giving or refusing permission. Under 54.11 (ai) Any certificate (if not included in the order) that permission has been granted for reasons of exceptional public interest in accordance with section 31 (3F) of the Senior Courts Act 1981; and 54.11A-(1) This rule applies where the court wishes to hear submissions on- (b) where there are reasons of **exceptional public interest** which make it nevertheless appropriate to give permission.

10. It is submitted that the exceptional public interest is in Londoners having the legality of a 'Nationally Significant Infrastructure Project' being judicially reviewed before unnecessary water bills are imposed by dictate for at least 120 years and a significant opportunity to solve global warming lost to the UK.

11. Under CPR section 9, Jurisdictional and procedural legislation, 9A Main Statutes, Senior Courts Act 1981, Application for Judicial Review, 9A-101

31.(3E), (May 2015) the court may disregard the requirement in subsection (3D, highly likely that the outcome for the applicant would not have been substantially different) if it considers it is appropriate to do so **for reasons of exceptional public interest.** (3F) If the court grants leave in reliance on subsection (3E), the court must certify that the condition in subsection (3E) is satisfied.

31.(5) If the High Court quashes the Decision... it may in addition (5)(b) substitute its own decision for the decision in question.

Ground 4.

12. Under the Senior Courts Act 1981, general provisions, Law and Equity, Concurrent administration of law and equity 9A-168 s. 49 -... (2) Every court shall give the same effect as hitherto-(a) to all equitable estates, rights... duties and liabilities (b) all legal claims ...rights ..obligations and liabilities existing by the common law or by any custom or created by any statute, to ensure all matters are completely and finally determined.

Indication of Skeleton Argument

13.The skeleton argument will follow arguments in the CPR to establish truly exceptional circumstances and public interest, as has been argued from the beginning with arguments to the Examining Authority.

14. Under CPR54, Judicial Review and Statutory Review, 54.12.3, Appeals to the Supreme Court, 54.16.8 ‘where the CA grants permission to appeal but then refuses to grant permission to apply for JR (because of alleged delay in filing claim), the HL held it does have jurisdiction to hear an appeal against refusal to grant permission to apply, *R v Hammersmith and Fulham LBC ex parte Burkett [2002] 1 W.L.R. 1593*

15. *Taylor v Lawrence.* CA objectives (a), correct wrong decisions, (b) clarify and develop the law and set precedents therefore implicit powers to do that which is necessary to achieve those dual objectives. The Court of Appeal has implicit, residual jurisdiction to reopen an appeal , in order to avoid real injustice in exceptional circumstances.

16. The case clearly establishes that a significant injustice has probably occurred where not given leave. *Greg v Turner [2003]* distinguished.The SsoS shut their ears to the significance of the new water industry, leading to a significant injustice.

17. The integrity of the earlier proceedings has been critically undermined (not only lawyers mistakes).*Mc Williams v Northern Finance* no final determination of the case, no final adjudication on the merits. The SsoS failed to give reasons for not considering my Request for a Preliminary Reference to the Court of Justice of the European Union

18. *Couwenbergh v Valkova 2004 EWCA Civ 676* decision acheived by deceit and perverting the course of justice. Here the decision was achieved in bad faith, as successfully argued to the Court of Appeal.

19. *Re Uddin 2005 EWCAciv 52; 2005 1 WLR 2398* only when ..integrity ..critically undermined, and demonstrates a real possibility that an erroneous result was arrived at in the earlier proceedings. As at para 22 ‘by no means a sufficient condition, this is taken together with *Feakins v DEFRA [2006]5*, where ‘years earlier court had been misled by untrue evidence. Highly likely that if the court had known the true position at the earlier hearing, it would have reached a different decision’ para 38. If the court had known the application EIA was almost entirely based on false information, due to the emergence of a new, radically different water industry, the SsoS or the Court would not have been misled.

20. In agreement with *Johnson v Lord Mayor an Citizens of Westminster 2013 EWCA Civ 773* per Aitkins LJ this case is truly ‘reserved for cases of last resort’.

Graham Stevens IP, LIP
Aarhus Convention claimant

Tuesday, 30 June 2015