

Date: 13 April 2015  
Our ref: GOOD/TW901/00003  
Your ref: 2015/0225, 2015/340, 2015/0364  
DDI: +44 (0)20 3400 4461  
e-mail: James.good@blplaw.com

Berwin Leighton Paisner (Services)  
Adelaide House  
London Bridge  
London EC4R 9HA  
Tel: +44 (0)20 3400 1000  
Fax: +44 (0)20 3400 1111  
DX92 London  
[www.blplaw.com](http://www.blplaw.com)

Civil Appeals Office  
Room E307  
Royal Courts of Justice  
Strand  
LONDON  
WC2A 2LL

**By e-mail and post**

**For urgent attention – application for expedition**

Dear Sir/Madam

**R (on the application of Thames Blue Green Economy Limited) v Secretary of State for Communities and Local Government and Secretary of State for Environment, Food and Rural Affairs (Appeal Court Reference No. 2015/0225)**

**R (on the application of Blue Green London Plan (as Graham Stevens)) v Secretary of State for Communities and Local Government and Secretary of State for Environment, Food and Rural Affairs (Appeal Court Ref. No. 2015/0340)**

**R (David Percival) v Secretary of State for Communities and Local Government and Secretary of State for Environment, Food and Rural Affairs (Appeal Court Ref. No. 2015/0364)**

We act for Thames Water Utilities Limited ("TWUL"), the Interested Party in relation to the three applications for permission to appeal listed above.

**1 Application for expedition**

- 1.1 This letter is a formal application by TWUL for expedition of these three appeals further to Rule 52.2 of the Civil Procedure Rules ("CPR") and paragraph 26 of Practice Direction 52C.
- 1.2 Treasury Solicitors acting for the Secretaries of State have previously been provided with the final draft of this letter and we understand they support the application and will be writing to the Civil Appeals Office to confirm that position.

**2 Summary of the grounds for expedition**

- 2.1 TWUL is the statutory sewerage undertaker for London. As such it has the statutory duty under section 94 of the Water Industry Act 1991 to effectively drain London and in particular the Beckton and Crossness drainage catchments in London. This duty includes securing compliance with the requirements of the Urban Waste Water Treatment Directive ("UWWTD") in these catchments.
- 2.2 TWUL was the applicant for the order granting development consent for the Thames Tideway Tunnel project (the "TTT") which is the subject of these appeal proceedings. At

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- the present time TWUL is the sole beneficiary of the provisions of the development consent order, in due course these powers will also be made available to the infrastructure provider appointed to construct, finance, own and then maintain the TTT – please see further paragraphs 2.5 to 2.7 below.
- 2.3 The TTT is a nationally significant infrastructure project which has been included in the National Environment Programme published by the Environment Agency. In March 2012, the Department for Environment, Food and Rural Affairs designated, following a vote in Parliament, the National Policy Statement for Waste Water (“NPS”) which confirmed the urgent national need for a tunnel to address the problem of unacceptable levels of untreated sewage discharging into the River Thames. As set out in the NPS, the principal legal driver for the TTT is the requirement to secure compliance with the UK’s obligations under UWWTD concerning the collection, treatment and discharge of waste water. On 18 October 2012 the European Court of Justice (Case 301/10) confirmed that the UK is in breach of that Directive as a result of combined sewer overflow discharges into the River Thames in London. That finding means that fines can be imposed on the UK. The TTT will secure compliance with the UWWTD and meet the urgent national need for the project identified in the NPS.
- 2.4 In addition to securing compliance with the UKs international obligations the TTT will have a number of other benefits including improving the water quality of the river, with beneficial effects for aquatic ecology and users of the River, and the aesthetic appearance of the River by preventing large quantities of offensive solid material being discharged into the River Thames and deposited on the foreshore. The TTT will also contribute to meeting the requirements of the Water Framework Directive on the River Thames.
- 2.5 The cost of the TTT project is approximately £4.2Bn. It will generate 9,000 jobs and take 7 years to construct with construction due to be completed in early 2023, at which point compliance with the UWWTD will be achieved. TWUL is currently engaged in complex and urgent procurement processes, firstly to procure a separately regulated infrastructure provider to construct, finance, own and then maintain the TTT pursuant to the Water Industry (Special Infrastructure Projects) (English Undertakers) Regulations 2013 and, secondly, to award the three tunnelling contracts and a number of smaller contracts for the construction of the TTT.
- 2.6 The Planning Act 2008 procedures under which the development consent order for the TTT was granted were introduced to speed up and give greater certainty to delivery of nationally significant infrastructure projects (it is also relevant to note that these cases were considered in the High Court further to the fast track procedure for “significant planning cases” under Practice Direction 54E). That objective is now being frustrated by these appeals which the submissions by the Secretaries’ of State and TWUL demonstrate have no realistic prospect of success and are, in our view, totally without merit. Pursuant to that objective, and having regard to the urgent national need for the TTT, there is considerable advantage in these judicial review proceedings being disposed of as expeditiously as possible. In the absence of such expedition, ongoing uncertainty as to the outcome of the litigation will have potentially significant implications for the procurement processes and may increase the cost of the TTT significantly. Given the regulated funding arrangements applicable to the water industry any increased cost over that currently forecast would ultimately lead to an increase in customer’s bills; accordingly TWUL’s customers stand to be prejudiced if the procurement is not completed as programmed.



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- 2.7 The appointment of the infrastructure provider and the entering of the construction contracts are programmed to occur by the end of July 2015. It is imperative to achieving those important objectives that the extant judicial review proceedings are disposed of before that date. The UK government has indicated to the European Commission that compliance with the UWWTD will be achieved by 2023. Failure to finalise the procurement of the infrastructure provider and to enter the construction contracts by the end of July 2015 will place that commitment at considerable risk. It would also increase the cost of the TTT with the consequence for customers identified above and would be likely to increase the fines that may be imposed on the UK by the EU for failure to comply with the UWWTD, which will prejudice UK tax payers.
- 2.8 Expedition of the three appeals is therefore sought having regard to the time that has now passed since the applications for permission to apply for judicial review in respect of the TTT were heard by the High Court on 15 and 16 January 2015 and in view of:
- 2.8.1 the urgent national need for the TTT to secure compliance with the UWWTD;
- 2.8.2 the uncertainty these appeals present to TWUL and bidders for the appointment as infrastructure provider and for the award of the construction contracts for the TTT, particularly having regard to the purpose of the Planning Act 2008 procedures that were developed to speed up and give greater certainty to delivery of nationally significant infrastructure projects such as the TTT;
- 2.8.3 the need to appoint the infrastructure provider and to enter the construction contracts by the end of July 2015; and
- 2.8.4 the consequences of delivery of the TTT being delayed as described above, in particular TWUL, its customers and UK tax payers.
- 3 Orders sought further to the application for expedition**
- 3.1 Further to this application for expedition and having regard to the skeleton arguments provided by the appellants and the responses provided by the Secretaries of State and TWUL the Court is respectively asked:
- 3.1.1 to refuse permission to appeal on the papers and to certify all three appeals as totally without merit and order, under rule 52.3(4A) of the CPR, that the appellants may not request that permission to appeal be reconsidered at an oral hearing; or
- 3.1.2 if any of the appellants are able to renew contrary to paragraph 1 above, to order that the case be conjoined if there are applications for renewal by two or more of the appellants and that the oral hearing for reconsideration of permission to appeal be listed within two weeks of any application or applications for renewal by the appellants; and
- 3.1.3 that if the application for permission to appeal is granted (either on the papers or at an oral hearing), that the Court enables the case to be resolved as quickly as possible by:
- 3.1.3.1 granting permission to apply for judicial review retaining the case in the Court of Appeal further to rule 52.15(4) of the CPR; and

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3.1.3.2 directing that the substantive hearing take as soon as possible and in any event by early-June 2015.

We would be grateful if a copy of this letter could be put before the Lord or Lady Justice considering the application for permission to appeal.

A copy of this letter has been sent to the three individual appellants and the Secretaries of State.

Yours faithfully



**Berwin Leighton Paisner LLP**

cc: Treasury Solicitors on behalf the Secretaries of State for Communities and Local Government  
and the Environment, Food and Rural Affairs  
Environmental Law Foundation on behalf of Thames Blue Green Economy Limited  
Graham Stevens  
David Percival

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