

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

17 April 2015

your ref: **No. C1/2015/0340**

Dear Sirs

R (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 Ref. No. C1/2015/0225)

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. C1/2015/0364)

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. C1/2015/0340)

Thames Tideway Tunnel Order judicial reviews

We write further to the letters sent to the Court by Berwin Leighton Paisner on behalf of Thames Water Utilities Limited ("TWUL") on 13 April and 17 April 2015 on behalf of the Secretaries of State, the Defendants in the above Claims.

We respectfully urge the Court not to make the Orders requested, for the reasons set out below.

1 Application for resisting expedition

- 1.1 Under Rule 52.2-52CPD.26, the IP TWUL have set out succinctly their summary of the grounds on which the expedition is sought, referring at 2.6 to 'signifiant planning cases' under PD 54E.
- 1.2 At PD 54E 3.1 and 2(a)(b)(c)(d) CPR categorises 'significant' claims as those which have significant economic impact...beyond their immediate locality, raising important points of law, generating significant public interest, or the nature of the technical material requiring judges with significant experience necessary to deal with case justly. (at 3.6)

2 Summary of grounds for resisting expedition

- 2.1 The cases have arisen due to the Secretaries of State 'shutting their ears' to a significant change in the water industry since they requested the IP TWUL to design their Tunnel and public consultation in compliance with the democratic rule of law for

implementing such projects under our obligations as a Member State to comply with the UWWTD. That remains the concern of international independent experts as stated in their open letter to the Secretaries of State on the publication of their Development Consent Order, the decision of which is the substance of the actions.

- 2.2 At present, just a few experts understand the significance of the new water industry, but the public are well aware that the Secretaries of State and TWUL are trying to 'pull a fast one' by misusing legal procedure to dictate their preselected solution; they are consulting the public in bad faith against the intention of parliament. It is unfair for the public to have no idea of the significance of the environmental impact being imposed on them, against the purpose of the Directive.
- 2.3 The significance that the Secretaries of State consequently failed to grasp is described at PD 54E 3.2(a) as 'significant economic impact...beyond their immediate locality', in this case, the Environmental Impact their chosen TTT project would have, involving as it does the economic impact of global warming. Global warming has, as its name suggests, global impact from emissions at any location, and vice versa. The Secretaries of State have failed to understand the link between the legal concept of 'environment' as required by the UWWTD and the global warming effect of increased rainfall it requires to be addressed. Briefly, as the Earth's surface warms up, more water evaporates globally, leading to increased rainfall, causing increased flooding, such as those in the Somerset Levels. In London, it is the increasing practice of paving over porous ground which directs the increased rainfall into the CSOs to overflow sewerage and rainwater into the Thames.
- 2.4 The important point of law under PD 54E 3.2(b) is whether the Secretaries of State are unlawfully dictating their choice of solution, without public consent and against the wishes of Parliament, or whether they have found a genuine legal loophole in which combined UK and EU law fails to prevent such abuse. It is only judicial review of both procedure and substance which will reveal the answer.
- 2.5 The significant public interest referred to PD 54E 3.2(c) is amply demonstrated by media interest, a selection of which may be referred to at Bluegreenuk.com , the evidence site for these cases. The site is now receiving 50-60 visits per day, with larger and larger downloading. The decision is the most significant decision of public choice to implement the Climate Change Act by infrastructure selection. It's not surprising that water is at the heart of solving global warming; in it's gas phase, it is the second most significant of the greenhouse gases.
- 2.6 In consequence of shutting their ears, the Secretaries of State have failed to ensure fulfillment of the EU objective of the Environmental Impact Directive. The existence of false and misleading statements on 'SuDS' in TWUL's Application and absence of a 'blue green' London plan is conclusive evidence the Secretaries of State could not possibly have properly considered the significant effects of the TTT on the environment.
- 2.7 The courts are naturally reluctant to judge scientific opinion or technical expertise, but the case revolves around the credibility of the inadequate technical basis of the Secretaries of State's decision, therefore requiring judges with the significant experience, referred to under PD 54E 3.2(d), necessary to deal with the cases justly.

2.8 The reliance on procedural argument before Mr Justice Ouseley, claiming it is now too late to stop the tunnel as no legal power exists to do so, puts a duty to the court on the Treasury Solicitor to ensure the substantive arguments of an Aarhus Convention claim are properly made in the court under law, hence my invitation to the Secretary of State for Energy and Climate Change.

2.9 The scale of impact from the sum of these issues would far outweigh those expressed by the IP TWUL, and it is acknowledged that, to a certain degree, go well beyond the responsibility defined in their brief from the Secretaries of State. Nevertheless, they are caught up in the legal meaning of the word 'environment' required by the UWWTD, and the consequence of the Secretaries of State 'shutting their ears' to the 'best technical knowledge not entailing excessive cost' of the independent experts required to comply with the UWWTD. The Secretaries of State refused the appellant's invitation to meet with EU Environment Commissioner to understand the significance of the new water industry. The UK's consequent failure to understand the UWWTD is confirmed by the European Commission's recent press release:

'The European Commission is referring the United Kingdom to Court over its failure to ensure that urban waste water is adequately treated in 17 agglomerations. In the EU, Member States need adequate collection and treatment systems for urban waste water, as untreated water poses risks to human health, inland waters and the marine environment.

Brussels, 26 March 2015'

2.10 The Secretaries of State must understand the UK's fine is to be assessed for non compliance with the UWWTD and that the UK lost on all its legal arguments in the Court of Justice of the European Union case 301/10, as the 18 October 2012 Judgement clearly states. Tactical use of the NPS to impose a solution by legal procedure does not bring the UK into compliance. It is not helpful for the Secretaries of State to continue to assert all our arguments are unarguable or totally without merit. As Sir David Attenborough says, 'everybody understands'
Bluegreenuk.com [news](#) *January 2015*

2.11 Any fine or increase in TWUL customer's water bills is due to the Secretaries of State's refusal to take advice on the best available expert technical arguments on how to bring the UK into compliance. These are clearly now coming from experts free to give independent advice, not those in fear of losing their jobs, profit, contracts or bidders for the appointment of an Infrastructure Provider.

2.12 It is unfortunate that the Secretaries of State have led the applicant TWUL into their contractual problems, but these are surmountable, whereas the consequent and significant damage to London and the economic interests of the UK if the tunnel goes ahead, are not.

3 Orders sought further to the application for Expedition

3.1 In their letter of 17 March 2015 the Court of Appeal decided not to join the cases at this point, precisely to avoid administrative delays arising, presumably from divergence of the cases into procedure and substance.

- 3.2 Both Mr Justices Lewis and Ouseley refused to find the Blue Green London Plan case completely without merit, expressly stating that the substantive arguments have not been considered. Further, Ouseley J held the SsoS, in changing wording of the statute, made an error of law in issuing their invitation to challenge the legality of their decision by judicial review.
- 3.3 It is the Secretaries of State's change in a procedural aspect of due process that is the cause of any current delay. In order to certify a case as totally without merit the substance of the case would also have to be considered. It would be unjust to hold that the appellants may not request that permission to appeal be reconsidered at an oral hearing, particularly as the case involves an understanding of the credibility of the scientific method applied in choosing the Tunnel over the blue green London plan remedy.
- 3.4 From the Treasury Solicitor's letter to the court of 19 March 2015 they agree it is best not to join the cases at present.
- 3.5 From that letter, the same litigation group also appears to represent the Secretary of State for Energy and Climate Change. From my public discussions with its Chairman, Head of Mitigation and Head of Adaption of the Climate Change Committee (CCC) and the Secretary of State himself, I can understand his reluctance to join me in court for political, not legal, reasons.
- 3.6 The correspondence between the CCC and the former Secretary of State for DEFRA published on the CCC website indicates a need for participation to state Parliament's intention for fulfilling the Climate Change Act Target and significantly conflicting projects such as the TTT. It is submitted this can only be done with a blue green London plan.
- 3.7 Both defendants and IP have been most helpful in assisting with administrative aspects in preparation for the High Court. Under 52CPD.25 parties must agree a single appeal bundle or set of bundles for all the appeals or seek directions. This cooperation provides the best way at present to avoid delay and cost.
- 3.8 The claimant therefore requests that, as the problems of the IP TWUL are largely of their own making in agreeing to wait, and actively persuading the public to wait until the last stage in the examination of their project for its whole legal credibility to be examined, and further that the appellant did all he could to advise them of such consequences, they accept the outcome of their decision.
- 3.9 As the remedy necessarily requires the cancellation of the Tunnel as less than the second best solution, for unforeseeable Climate Change reasons, now is the most opportune moment politically to prepare for an orderly switch to a blue green London plan. Not least in preparation for the [UNFCCC COP 21 - Climate Change Policy & Practice](#) Paris Summit in December 2015.
- 3.10 As relations with the IP have never been less than excellent, settlement arrangements could be initiated without delay, as the most experienced and knowledgeable blue green independent expert team are already assembled and primed for the task.

3.11 Justice would be best served by the appellant by continuing to do all he could to comply with the requirements of the court.

I 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 applicant, the two other individual appellants and the Secretaries of State.

Yours faithfully,

Graham Stevens, IP, LIP
Aarhus Convention claimant

cc: Thames Water Utilities Ltd
Treasury Solicitors on behalf of the Secretaries of State for the Environment, Food and Rural Affairs and
Communities and local Government
Environmental Law Foundation on behalf of Thames Blue Green Economy
David Percival