Case No. CO/ 4943/2014

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
BETWEEN:

BLUE GREEN LONDON PLAN

Claimant

-and-

THE SECRETARY OF STATE FOR THE DEPARTMENT OF COMMUNITIES AND LOCAL GOVERNMENT

-and-

THE SECRETARY OF STATE FOR THE DEPARTMENT OF ENVIRONMENT FOOD AND RURAL AFFAIRS

Defendants

-and-

THAMES WATER UTILITIES LIMITED

Interested party

SECTION 10 APPLICATION TO EXTEND TIME LIMIT RETROSPECTIVELY FOR FILING THE CLAIM FORM FOR JUDICIAL REVIEW

Introduction

1. The Applicant received acknowledgement of service and summary grounds of resistance on behalf of the Secretaries of State (**SsofS**) and for contesting the claim on behalf of Thames Water (**TWUL**), the interested party, which had been filed at the Administrative Court on the 21 November.

2. Both grounds rely on the court dismissing the Application for Permission as the Applicant calculated the 6 week period allowed as is normally calculated by the public and not according to a special legal formula devised for the Planning Court.

3. The Applicant apologises unreservedly to the Court for this mistake, of which he was unaware until pointed out by the SsofS and TWUL, to which he has also apologised and therefore makes this application to correct section 10 retrospectively on the Claim Form, requesting ticking the box 'Application to extend time for filing the claim form' as now 'attached'.

4. The Applicant is unaware of any mention of the Thursday date derived from the time counting formula for judicial review by the SsofS, TWUL, or indeed during any of the public meetings or conference with Counsel during the 6 week period in question; an indication of the enabling intent of government and TWUL towards public involvement in the planning process under the Aarhus Convention.

5. The Application is for permission to judicially review the legality of the UK's Nationally Significant Infrastructure Project for compliance with the Urban Waste Water Treatment Directive that it has been judged guilty of breaching since 1991, specifically required to comply with by 2000, and again found guilty in TWUL's pollution of the Thames by the CJEU in it's Judgement of 18 Oct 2013.

6. The solution proposed by TWUL will not be operative until 2023 at the earliest, if no engineering delays occur; a common risk in most engineering projects of this ambition.

7. The purpose of the Aarhus Convention in the context of the Planning Court is to ensure public participation in the decision-making process of planning Moseley v Haringey LBC October 29 2014 Times Law Report 5 November 2014 per Lord Reed.

8. In proportion, the mistake has no effect on the timing of the planning process as claimed by the SsofS at para 33.

'The public interest in finality is greater in planning cases as there will inevitably be other directly interested persons (such as the developer, local authority or neighbours) as well as a general public interest in the carrying out of development decisions.'

Both The SsofS and TWUL go on to argue their case, in so doing accepting the Claimant must have done all that he could do to bring the proceedings in time; having taken part in the public consultation of Thames Water.

9. The Applicant attended public and private meetings and correspondence over four years of public participation in the planning process, doing all that he could to ensure technical evidence from leading international experts necessary for the SsofS to make

a balanced, reasoned Decision. All at no charge. The website bluegreenuk.com is put in as evidence of this.

10. The particular decision in the planning process that the Court is being asked to review in this case is that of the SsofS on 12 September 2014, the Development Consent "Order" referred to in their resistance, at para 2.

11. The Applicant is not a lawyer and is claiming under the Aarhus Convention for public participation in the decision making process for planning, including the legal system enacted by Parliament in the Planning Act 2008.

12. The arguments of the SsoS and TWUL on this point go to the public consultation procedure and substance of the claim.

13. The SsofS are claiming diminished powers of the new "Court" :

'The 2008 Act creates a new system of development consent for nationally significant infrastructure projects ("NSIPs"). The new system includes the grant of development consent for the construction of infrastructure for the transfer or storage of waste water of a certain capacity. (para 14);
'the Court has no jurisdiction to hear them. An exceptional circumstance proviso is not to be read into the planning legislation.' (para 35);

The Government is telling the judge that the decision is no longer one for the "Court" to take, as it is also to find the SsofS's DCO lawful. Argued from document 23 of the claim form's Essential Reading "*(for in my opinion this must be the scarcely veiled meaning of this letter)"* per Lord Reid in Padfield

14. TWUL, a private monopoly company licensed by government, is also telling the court it has no jurisdiction to 'entertain the proceedings' (para 3(1)).

15. These arguments reflect Lord Woolf LCJ's warning to the House of Lords in it's debate on the curtailment of judicial review powers of the courts, as argued in the Claimant's Application conclusion to Essential Reading at para 26: "Lord Woolf LCJ warned of *'elective dictatorship'* saying *"It's dangerous to go down the line of telling the judges what they have to do"*.

16. Lord Woolf is in the best position to judge, as he has practiced in both law and politics, and has reformed the legal system.

17. If directed, the applicant will argue that the judge retains a power of decision in his court to accept the unintended mistake of a non lawyer Applicant seeking permission under the Aarhus Convention properly transposed into English law.

18.The 'exceptional circumstances' ordered by the SsofS not to be read into the planning legislation is the immediate threat of death to 3,700 Londoners and the

permanent maiming of untold thousands of children up to the age of 18, when their lungs stop developing. Further, the long term, ever present and rapidly growing threat from Global Warming, the speed of which even scientists have continually underestimated. IPCC 5th Report.

19. It is perverse to the point of criminality that the government, through its lawyers, is arguing to maintain the death rates of their own parents and grandparents, together with permanently maiming their own children, grandchildren and the rest of London. The SsofS and their lawyers are clearly unaware of their own immediate environment or coming effects of Global Warming. Government lawyers and Court judges, for example, would be well advised to use the back entrance of the Royal Courts of Justice whenever possible, as the risk to their health is considerably reduced compared to walking along any main road like the Strand or Fleet Street with its urban gas chamber effect from PM10 and 2.5, mixed with black carbon and other noxious gases. GRO08: Clean Air In London.

20. For the SsofS or a private monopoly corporation to order the Court not to grant permission or read 'exceptional circumstances' into planning legislation to consider the legality of the SsofS's DCO decision is an attempt to corrupt justice by diminishing the Court's powers and distort the purpose and design of the planning Act. In so doing it is unbalancing the balance of powers which stabilise the Constitution.

21. *'And it is the corruption of justice that as a matter of policy is most likely to validate an exceptional recourse; a recourse which relegates the high importance of finality in litigation to second place'*

Re Layla Uddin [2005] EWCA Civ 52 para 18. As a matter of policy the corruption of justice has to be resolved at the earliest opportunity, not separated to be heard at a later date, or the requirement of Lord Diplock in Bremer Vulkan Schiffbau und Maschinenfabrik v South India Shipping Corp Ltd [1981] AC 909 as quoted by Lord Woolf LCJ in Taylor and Laurence [2002]EWCA Civ 90; [2002] 3WLR at 656 para 53 that:

" the doing by the courts of acts which it needs must have power to do in order to maintain its character as a court of justice"

will not be satisfied.

22. If directed by the court in granting permission, the applicant will amplify these arguments as a fundamental principle of English courts that:

"Equity will not allow a statute to be used as an instrument of fraud"

per Lord Eldon, Mastaer v Gillespie (1805) 11 Ves 621. The court is referred to the Applicants fiscal fraud arguments in his 'Request for a Preliminary Reference to the Court of Justice of the European Union', submitted to the Examination Authority, but unanswered except by para 17 of the SsofS's statement of reasons; They were 'unaware of any law' preventing them making the decision as they did. As noted in STATEMENT OF GROUNDS AND FACTS FOR JUDICIAL REVIEW para 12 ground 1.2, the documents may be found on the website but are sent to the court with this Application for its convenience.

23. Further support for the Applicant's approach under European law comes in the CJEU Press Release No 153/14, 19 November 2014:

'The Court clarifies Member States' obligations as regards respecting the limit values for nitrogen dioxide

When a Member State finds that the limit values cannot be respected before the deadline fixed by the Air Quality Directive and wishes to postpone that deadline for a maximum of five years, that Member State is required to make an application for the postponement of the deadline by drawing up an air quality plan demonstrating how those limits will be met before the new deadline'

The full text of the judgment Case C-404/13 is published on the CURIA website

24. The similarity of the two cases may be seen by comparing the main findings:
- UK lost on all points (as in water pollution)
- UK plans should have aimed at compliance by 1 January 2015 at the latest
- UK in ongoing breach of EU law
- UK courts must order the government to produce a plan which achieves nitrogen dioxide limits "as soon as possible"

25. Had the ExA made a Reference to the CJEU as requested, they would have found the UK, in asking for an extension of the deadline to 2003 for water pollution, would be ordered to make a 'Blue Green London Plan' integrating water with air pollution to demonstrate how compliance is to be met before the new deadline. The remedy the applicant has asked for.

26. It is in these circumstances that the Court is asked to exercise it's power to extend time retrospectively to allow the Applicant's claim form and the court to consider granting permission to the Applicant for judicial review of the SsofS's decision.

Graham Stevens IP
25 November 2014