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

APPELLANT'S STATEMENT
In accordance with paragraph CPR PD52C 16(1)[1]
(For 24 June Hearing)

---

1. The application raises one short but important point of statutory construction, (13 March SkA para 5) which, although already corrected in the High Court, will continue to affect decisions made under the 2008 Planning Act and the Aarhus Convention.

2. The Civil Appeals office management team wrote to the Appellant on 29 May 2015 ruling the application will proceed with the incomplete bundle filed by the respondent. The case shares common ground with that of Thames Blue Green Economy and the arguments of their legal team are adopted. With permission, the TBGE Bundle may be referred to in conjunction with the BGLP incomplete Bundle. The incomplete bundle may easily be completed in 7 days with or without the SoS for Energy and Climate Change.

---

[1] Abbreviations have the same meaning as set out in the Appellant's skeleton argument dated 13th March 2015. All references to alternatives are to strategic alternatives.

3. Under Ground 1(a), (b), (c) and (d) the Appellant only needs to show that in rewriting Parliament's Act the SsoS were acting unlawfully (arguably in bad faith). Parliament's intention is assumed to be in good faith therefore the claim is to be interpreted by the court as filed in time, fulfilling Parliament's intention. Mr Justice Ouseley has already held the SsoS made an error of law in rewriting the Act.

4. The SsoS further acted in bad faith under the Planning Act, the Environmental Impact Assessment Directive, the Aarhus Convention and the ECHR Art 6 in attempting to use the 'dies non' (13 March SkA para 23) of an extra day for the improper purpose of counting it to ask the court to find the claim was filed out of time to deny the Appellant his right of access to justice. In so doing, they have wasted the court's time until today.

5. In the circumstances of the Appellant's credibility, confirmed by the judge (OJ para 51), with no legal team, (*Mucelli*), no prejudice to the defendants, (LJ para 24) and case law, the case must be continued promptly so as to waste no more time. It is now suitable to join with TBGE for consideration of the substantive arguments together.

6. The UK is free to decide what procedure it wants to use for the enforcement of EU law—but only so long as that procedure is (a) certain (*CJEU C406/08 Uniplex [39]*)and (b) does not make it 'in practice impossible or excessively difficult' to enforce EU law (*C -570/13 Gruber [46]*). The statutory time limit under the Planning Act 2008 is extremely short. The precise end point of the statutory time limit is uncertain—hence the Government misunderstood it, as did I and the clients of Miss Lieven QC-and we were all one day out if Ouseley J was right. In view of its uncertainty (which makes Ouseley J's interpretation incompatible with EU law) it must either be interpreted (*C-106/89 Marleasing*) so as to admits claims made on last day plus one, or it must be disapplied (*C-106/77 Simmenthal*) enabling my claim to be made. Further the EU does not distinguish between emanations of state. The Government advice (erroneous if Ouseley J is right) made it excessively difficult for me to comply with the time limit (as interpreted by Ouseley J) as it wrongly suggested that I could submit my material on what was (on the basis of Ouseley J's judgement) the last day plus one –which I did

Directions:

7. The Appellant agrees that this matter is suitable for being heard as the court thinks fit, with damages under *Uniplex* and a wasted costs order against the SsoS and TWUL

Other Matters

8. The case management was right to refuse substantive arguments be added as amendments to sections 9 and 10 of the Appellent's Notice, as there is only one procedural point to be heard. The following update may, however, help in persuading the SoSDECC to join me as an interested party if communicated with the gravity of the Appeal Court.

9.The SoSDECC may feel unable to update the SsoS with advances in technical understanding of Climate Change. It may be mere political expediency in not wishing to join the Appellant as an Interested Party in the public interest.

10. As an IP LIP, called a climate expert by some, making an altruistic appeal to be able to present key expert findings for judicial review on behalf of all Londoners, I feel duty bound, against all futility, to persist in trying to persuade the SoSDECC to join me in court as an interested party. The SsoS, in making their Decision, could not possibly have fully understood the national danger from climate change requiring substantial action well before the Tunnel can be completed in 2023, and to be announced at the Paris Climate Change Conference of Parties in December.

Updates

11. In the July 2013 edition of the Quarterly Journal of the Royal Meteorological Society, twelve leading climate scientists co-authored a review article entitled 'Climate Sensitivity in the Anthropocene', which includes the passage:

' Based on evidence from Earth's history, we suggest here that the relevant form of climate sensitivity in the Anthropocene (e.g. from which to base future greenhouse gas (GHG) stabilization targets) is the Earth System sensitivity, including fast feedbacks from changes in water vapour, natural aerosols, clouds and sea ice, slower surface albedo feedbacks from changes in continental ice sheets and vegetation, and climate-GHG feedbacks from changes in natural (land and ocean) carbon sinks. Traditionally, only fast feedbacks have been considered (with other feedbacks either ignored or treated as forcings), which has lead to estimates of the climate sensitivity for doubled CO2 concentrations of about 3oC. The 2xCO2 Earth System sensitivity is higher than this, being ~ 4-6oC if the ice sheet/vegitation albedo feedback is included in addition to fast feedbacks, and higher still if climate-GHG feedbacks are also included. The inclusion of climate-GHG feedbacks due to changes in the natural carbon sinks has the advantage of directly linking anthropogenic GHG emissions with the ensuing global temperature increase, thus providing a truer indication of the climate sensitivity to human perturbations.' [Q.J.R. Meteorol. Soc. 139:1121-1131, July 2013 A]

11. 8 April 2015. The Huffington Post: 'Landmark Dutch Lawsuit Puts Governments Around the World on Notice' "The Urgenda foundation is suing the Dutch government for knowingly endangering its citizens by failing to prevent dangerous climate change."

12. On 24 May 2015 the Pope issued an encyclical 'On care for our Common Home' which is undoubtably in compliance with EU and UK law on environment and climate change.

13. On 23 June 2015 The Times: 'Curb global warming or face a health catastrophe, experts warn', Guardian: Climate Change 'a threat to global health' reported the Lancet Commission on Health and Climate Change as saying "action to limit the rise to a 2oC trajectory or less required taking action now and over the next ten years. Otherwise the game could be over."

Graham Stevens IP, LIP
Aarhus Convention Appellant

23 June 2015