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

APPLICATION FOR PERMISSION TO APPEAL TO THE COURT OF APPEAL AGAINST THE HIGH COURT HOLDING THE APPLICATION TO GRANT PERMISSION TO APPLY FOR JUDICIAL REVIEW WAS OUT OF TIME

SKELETON ARGUMENT FOR BLUE GREEN LONDON PLAN (13 March 2015)

Introduction

1. The Claimant seeks to challenge the decision of the Secretaries of State ("SsoS ") dated 12th September 2014 to make the Thames Water Utilities Limited (Thames Tideway Tunnel)

Development Consent Order 2014 (the "Order" or "DCO"). It is claimed the SsoS's accompanying letter, inviting Interested Parties (PB, tab B2 pB17 para 161- Annex C) to challenge their decision, as written in bad faith, therefore unlawfully, thereby void and a nullity, to be substituted by the Court under CPR 54. 19(2)(b) with its own decision to Order the remedy of a 'Blue Green London Plan' '*...as the only substantive decision capable of being made and a waste of time sending back to decision-making body.' per May LJ, R (on the Application of Dhadly) v London Borough of Greenwich [2001] EWCA Civ 1822 para 16 (Ch 8.A, R. Moules, Environmental Judicial Review p148)("RM, EJR")*

2. The DCO grants development consent under the Planning Act 2008 (the "2008 Act" Nationally Significant Infrastructure Projects ("NSIPs")) for the construction and operation by the Interested Party ("Thames Water Utilities Limited" ("TWUL")) of a waste water scheme in London known as the Thames Tideway Tunnel (the "TTT") at a cost in excess of £4.1Billion (2011 prices), to be completed some time after 2023. As the SsoS, however, had persistently 'shut their ears' *British Oxygen Co v Minister of Technology [1971] A.C. 610. (V1, p71 para 6 - p72 para2)* to the 'significance' of the new water industry (PB, tab B2 pB14-15), all the evidence shows that at no time, from 26 January 2007 onwards, (V1, tab 29, p596 para 20) did the SsoS have any intention of considering any challenge from Blue Green independent experts, as to a better solution than the NSIP they had already chosen, unlawfully as without meaningful public consultation, *R (on the application of Moseley (in substitution of Stirling Deceased)) v London Borough of Haringey [2014] UKSC 56*, for London, the UK and Europe, up to and including their invitation at Annex C, causing it to be written in bad faith against the intention of Parliament.

3. On 15 Janauary 2015 in the High Court, Mr Justice Ouseley held, in agreement with the Order of Mr Justice Lewis of 10 December 2014 in his judgement on paper, that an Application to extend time for bringing a claim and for permission to apply for judicial review be refused in the renewed application. '*67. Accordingly, although I have some sympathy with the position that he finds himself in,... there is no power for me to extend time. Their claims were filed out of time. Indeed, in the light of Barker, I have to say the arguments are in fact unsustainable and I, accordingly, refuse the renewed applications for permission in both those cases, agreeing, as I do, with the judgments on paper in both of them of Mr Justice Lewis.'* (Ouseley J Judgment para 67) ("OJ 67")

4. On 2 March 2015 Mr Justice Lewis gave a different judgement on the same issue concluding; '*46. On a proper interpretation of section 113(4) of the 2004 Act, where the six week period for bringing a claim would end on a day when the court office is closed, so that an application to quash a development plan document cannot be made on that day, the six week period ends on the next working day. In the present case, the six week period began to run on the day when the development plan was adopted, that is the 8 September 2014. The last day of a six week period would end on Sunday, 19 October 2014, a day when the court office was closed. On a proper interpretation of section 113(4) of the 2004 Act, Parliament intended the six week time limit to expire on the next working day, that is on Monday, 20 October 2014. As the claim was issued on that day, the claim against the City Council, seeking an order to quash the development plan document, was brought within the time prescribed by section 113(4) of the 2004. The application to strike out the claim is, therefore, dismissed.' Nottingham City Council v Calverton Parish Council [2015] EWHC 503 (Admin).* Lewis J Judgment para 46 ("LJ 46")

5. This is an appeal following the Judgements of Ouseley J and Lewis J. *'2.The application raises one short but important point of statutory construction.... 3.The question is whether, when the last day for making an application falls on a date when the relevant court office is closed so that an application cannot be made on that day, is section 113(4) of the 2004 Act to be interpreted so that the period of six weeks for making an application ends on the next working day when an application can be made? If so, the period for making the application in this case would end on Monday 20 October 2014 and the claim would not be barred by section 113(4) of the 2004 Act.' (LJ 2,3)*

The question in the present Appeal being: is section 118 (*1)(b)* of the 2008 Act to be interpreted so that the period of six weeks for making an application ended on Friday 24 October 2014, the date the application was filed? If so, the claim would not be barred by section 118 (1)(b)

6. It is established the SsoS's letter was unlawful. '*51.Mr Stevens says, and I have no reason to doubt him, that he tried to get all his papers into the best order possible and relied on that annex in order to take advantage of the maximum time he could before filing. However, in my judgment, an error by the Secretaries of State cannot help him. 52.The issue is a jurisdiction issue and the Secretary of State can, and indeed should, as the court itself must, examine a jurisdiction issue where it is as plain on its face as this is. Even if Mr Stevens was entitled to expect that the Secretary of State would get his law right, the error does not entitle him to have a challenge entertained when the court has no jurisdiction to do so, nor can the error give to the court a jurisdiction it does not otherwise have.*(OJ 51,52)

7. The Appeal is to argue that the facts and circumstances show the SsoS's letter was also written in

(a) bad faith, requiring s118 to be interpreted as Parliament intended or, alternatively,

(b) against the Direct Effect of the EIA Directive, requiring Preliminary Reference

(c) against the Aarhus Convention principles in the claim form

(d) unfairly, against the ECHR, article 6 as argued previously

The facts

8. Permission to apply for judicial review was refused as both the SsoS and TWUL claimed the Application must be dismissed (PB, tab3 pB22) as:

' (i) the claim has been brought out of time and

(ii) it is unarguable.'

9. It is only the first, '*short but important point of statutory construction.'* argument (i), the Appeal is against, as it will necessarily lead to considering substantive argument for the first time, as a reconsideration for permission. The judge held he only had jurisdiction of the Planning Court to find on the first question. '*the question of jurisdiction not on an arguability basis but in order to decide whether this court has jurisdiction to consider the substantive merits of those two claims.* (OJ 5)

10. In his Judgement on 15 January, delivered after lunch, Mr Justice Ouseley found the SsoS had made an error of law in the newly created Planning Court (CPR 54.21). The SsoS informed the

Court they had immediately corrected Planning Court procedure rules during the lunch recess, following the morning arguments.

11. The Planning Act 2008 s118 currently reads that the claim form must be:

> *'filed during the period of 6 weeks beginning with ... the day on which the order granting development consent is published'.*

The Criminal Justice and Courts Bill, which is almost at the point of Royal Assent, will amend the deadline in the Planning Act (and several other acts). Section 91(4)(c) will change the above text to the claim form. It must now read:

> *'filed before the end of the period of 6 weeks beginning with the day after ... the day on which the order granting development consent is published'.*

12. It was held that this did not help the claimant as the SsoS's error of law in not following the Aarhus Convention did not allow the judge to accept the arguments on the particular circumstances of the case made by the claimant under UK, EU and ECHR law, as argued by the initiating Judge, Mr Justice Lewis, in his Order of December 10 2014, under *Barker v Hambleton District Council [2012] EWCA Civ 610.* (PB, tab B6 pB79-81)

13. However, after adopting arguments of Mr Harcourt in Barker, those of Mr Turney in *Nottingham City Council v Calverton Parish Council [2015]EWHC 503 (Admin)* are also adopted. '*25. There is, however, a body of case law, on which Mr Turney for the Parish Council relies, which indicates that a different interpretation is to be given to provisions of statutory limitation periods such as that contained in section 113(4) of the 2004 Act. In Hodgson v Armstrong [1967] Q.B. 299, 26. The approach to the interpretation of statutory limitation periods was considered by the Court of Appeal in Pritam Kaur v S. Russell & Sons Ltd. [1973] 1 Q.B. 336. That case concerned a statutory time limit... Lord Denning M.R., with whom Karminski L.J. agreed, noted first that the time-limit was prescribed by statute and, in disagreement with the judgment of Davies L.J. in Hodgson v Armstrong [1967] 2 Q.B. 299, considered that the rules of court could not be used to prescribe or define a time-limit fixed by the statute itself.*

14. *'27. Lord Denning M.R. then held that the claim was brought in time, holding that:*
"Those arguments are so evenly balanced that we can come down either way. The important thing is to lay down a rule for the future so that people can know how they stand. In laying down a rule, we can look to parallel fields of law to see the rule there. The nearest parallel is the case where a time is prescribed by the Rules of Court for doing any act. The rule prescribed in both the county court and the High Court is this: If the time expires on a Sunday or any other day on which the court office is closed, the act is done in time if it is done on the next day on which the court office is open. I think we should apply a similar rule when the time is prescribed by statute. By so doing, we make the law consistent in itself: and we avoid confusion to practitioners. So I am prepared to hold that when a time is prescribed by statute for doing any act, and that act can only be done if the court office is open on the day when the time expires, then, **if it turns out in any particular case that the day is a Sunday or other dies non, the time is extended until the next day** on which the court office is open." (bold added)
28. Megarry J. gave a concurring judgment'

Ground 1 of Appeal

(a) bad faith

15. It is argued the present particular case falls within the 'other dies non' of the SsoS acting in bad faith by instrumentalising court procedure to avoid legal arguments for a Blue Green London Plan. With their extensive legal team of advisors, from at least December 2010, they designed all public participation under the Aarhus Convention, EIA Directive and response to the CJEU UWWTD Judgement to be frustrated in considering any alternative to their own pet project; a tunnel, knowing it to be unlawful. '*The duty of a public body invested with statutory powers to act reasonably was 'involved in' its duty to act in good faith... in order to establish lack of good faith it had to be shown that the Corporation were intent upon achieving an improper purpose 'under colour and pretence' of a proper purpose. Lord Macnaghten Westminster Corpn v London and North Western Railway [1905] AC426,430 (13.2.1 JR, S5th)*

16. The SsoS acted in bad faith by leaving the only possibility of the SsoS being required by law to consider a Blue Green London Plan to the very end of the public consultation period, and in a court by judicial review, after persistent rejection by unlawfully shutting their ears. The SsoS had made a pretence of public consultation and participation. Making the procedure very difficult, practically impossible or using cost and complexity as a barrier, knowing the improbability of a Litigant in Person being abreast of recent changes in the law taking away his rights, changing rules of access to those rights, not properly informing him clearly without vagueness, without certainty of the exact time and date for filing his claim form, is acting in bad faith with the improper purpose of granting a DCO without meaningful public consent or knowledge of its' environmental impact.

17. *'A decision in bad faith will be a nullity' Lord Reid in Anisminic Ltd v Foreign Compensation Commission[1969] 2 AC 147,171 (13.2.1 n2 JR, S5th)* as it acts outwith and has not given effect to the Parliamentary intention, presumed in 'good faith'.*(13.2.2 JR, S5th)*

18. The SsoS intended *'a breach of the most elementary principle of natural justice, the right to be heard'* and Munby LJ confirmed *'the jurisdiction which is here invoked is exercisable even if the tribunal has behaved with complete propriety' R (Harrison) v Birmingham Magistrates' Court [2011] EWCA Civ 332 . (13.3.3 n3 Judicial Review, Supperstone 5th Ed)("S5th JR")*

19. In *Khan (Bagga) v SoS for the Home Department [1987] Imm AR 543, 555,* Bingham LJ held' *If a procedural mishap occurs as a result of misunderstanding, confusion, failure of communication, or even perhaps inefficiency, and the result is to deny justice to an applicant, I should be very sorry to hold that the remedy of judicial review was not available' (13.2.1 JR, S5th)* relied on in *Amao v Nursing and Midwifery Council [2014]EWHC 147 (Admin)*

20. 'Bad faith' comes in a wide spectrum of seriousness. Megaw LJ distinguished *'not fair... public..should read that a court has held them to be guilty of "bad faith" when they have made an honest mistake' Western Fish Products Ltd v Penwith District Council[1981] 2 All ER 204 at 215h (S5th JR, 7.28.3 n2)*
'In that sense bad faith is no more than a pejoritive description of grounds of illegality *(S5th JR, 7.28.3)*

21. However, fraud also may be committed with honest intention by innocent use of false information; Fraud Act 2006, as argued before the Examining Authority, without answer. (Request for Preliminary Reference to the Court of Justice of the European Union. PB tab pB) The SsoS's written error of law may be seen as procedural fraud or mishap *(S5th JR 13.3.1)*

22. Whatever level of seriousness, *'fraud unravels everything'* *Lazarus Estates Ltd v Beasely[1956] 1 Q.B. 702 at 712,* discussed in *Prest v Petrodel [2013] 2 ac 415 at 18 (links to Al-Mehdawi) (S5th JR 13.2.4 n1,2,3),* and is actionable in damages by the High Court in judicial review. Circumstances of unreasonable failure to exercise a statutory duty is also actionable in damages.
n3 Kruse v Johnson [1898] 2Qb91, where bad faith is treated as an example of unreasonableness.

23. 'Dies non' (juridicus) is a legal term meaning a day on which no legal business is done, a day that does not count or cannot be used for a particular purpose. The cases considered by the *Pritum Kaur* line of cases are those of the first type. This particular case is of the last type. The SsoS's errors of law in their letter cannot be used to achieve fraud by statute, as *"Equity will not allow a statute to be used as an instrument of fraud"*per Lord Eldon, *Mastaer v Gillespie (1805) 11 Ves 621.* [Form Section 10 application to extend time 25 November 2014. PB tab pB)

24. The reasoning continued in *Calverton* then applies; 'Parliament intended in good faith that IP LIP's have the right to have substantive expert evidence and arguments for a Blue Green London Plan judicially reviewed' *The Kaur principle , confirmed by the House of Lords in Mucelli,* Mr Justice Lewis continued; *'37...will only have the effect, in practical terms, of lengthening the period by one or two days (if the six week period ends on a weekend) or possibly three or four days (if it ends on the first day of a period where there are two Bank Holidays and a weekend). The time-limit will still be short. It will still have to be adhered to strictly as there is no provision for any discretionary extension of time.'*
Applicants and SsoS alike will know any extra day taken unintentionally, due to SsoS's bad faith in misstating the law to mislead or trick applicants, failing to give clear, precise, accurate time and date to litigants in person without legal teams of advisors, will be dies non, and cannot be used for the particular purpose of misleading applicants into taking an extra day, for the purpose of being held 'out of time'. Such exceptional circumstances are properly interpreted as bringing the filing date within time, as intended by Parliament. The extra day cannot be used lawfully for the improper purpose of holding the claim has been brought 'out of time'. It is not, finally, a question of jurisdiction to extend time, but simply interpreting Parliament's intention correctly, as Denning MR through to Lewis J, in *Calverton,* held, and Ouseley J was unable to argue due to time, (OJ 163, 169) but accepted as a decision for the Court of Appeal and perhaps a Preliminary Reference to the Court of Justice of the European Union.

Alternatively, (b) Setting aside under the Direct Effect of the EIA Directive, (c) Aarhus Convention and/ or (d) Article 6 arguments are repeated, and court directions are requested as to which arguments are not needed and which accepted for arguing before the court

(b) Setting aside under the Direct Effect of the EIA Directive,

25. The obligation is on the UK as a MS to ensure fulfillment of the obligations of EU Membership.... and to abstain from measures that could jeopardise attainment of the objectives of the Treaty (Article 5, now Art 13 of the Consolidated Treaty. To fulfill the environmental objectives of the Treaty, a Blue Green London Plan is now required for the public to understand the environmental impact of integrated water management and participate in realizing Climate Change Act targets.

26. The question for the Court of Appeal is whether Blue Green London Plan, as an Aarhus claim under Direct Effect of the EIA Directive, fulfilling the objectives of the Treaty, has a right to be heard in the new Planning Court after faithfully following instructions of the SsoS on the claim form. And as promised by the Examining Authority of the Planning Inspectorate, on behalf of the SsoS, in their documents *'Advice Notes 8.1-5 and meetings, from April 2012 onwards, for public participation by Interested Parties in their decision-making procedure for the Thames Tideway Tunnel planning Application. Alternatively, whether the SsoS consistently acted in bad faith in consulting the public.

27. The ECJ held in *Kraaijeveld v Gedeputeerde Staten van Zuid-Holland [1996] ECR I - 5403 Case C-72/95, para 56 (RM Ch 16 EJR p298)*

'As regards the right of an individual to invoke a directive and of the national court to take it into consideration... it would be incompatible with the binding effect attributed to a directive by Article 189 [now 288 TFEU] to exclude, in principle, the possibility that the obligation which it imposes may be invoked by those concerned. In particular, where the Community authorities have, by directive, imposed on Member States the obligation to pursue a particular course of conduct, the useful effect of such an act would be weakened if individuals were prevented from the relying on it before the national courts.'

28. The subsequent case of *Case C - 435/97, WWF v Autonome Provinz Bozen [1999] ECR I - 5613 para71 (RM Ch 16 EJR p298)* held:

'*Articles 4(2) and 2(1) of the Directive are to be interpreted as meaning that, where the discretion conferred by those provisions has been exceeded by the legislation or administrative authorities of a Member State, individuals may rely on those provisions before a court of that Member State against the national authorities and thus obtain from the latter the setting aside of the national rules or measures incompatible with those provisions. In such a case, it is for the authorities of the Member State to take, according to their relevant powers , all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment, and if so, to ensure that they are subject to an impact assessment.'*
Refusing to apply EIA direct effect is another ground for judicial review.

29. The 'significant' effects on the environment the claimant is calling upon the SsoS, and now the Planning Court to mandate the examination of, are those differences in effect between the Tunnel project and a Blue Green London Plan, under the UWWTD definition of 'environment' and applying Best Technical Knowledge Not Entailing Excessive Costs, as held by the CJEU in their Judgement C- 310, to include climate change effects in line with Parliament's Climate Change Act 2004.

30. A DCO being made for an application is the last chance to object. The SsoS claiming the claim form had been filed out of time is further evidence that they had no intention of listening to any expert evidence given on their invitation under the Aarhus Convention. The SsoS knew they had "shut their ears" to the law requiring comparison with Blue Green technologies, therefore had not satisfied the legal requirements of balancing the benefits of the dictated Tunnel against chosen Blue Green solutions. Not properly considering public rights of consultation, or less public rights or even practically impossible rights to enforce, while under the Direct Effect of the EIA Directive is

"...Different if the failure relates to what I described in arguments as a 'show stopper' that is a policy or factual consideration which makes the proposal so obviously unacceptable that the only rational course would be to abort it altogether without further ado.. failure to reopen consultation on new aspects of Climate Change was not a show stopper...bad faith or manifest absurdity is.' R (Greenpeace) v SoS for Trade and Industry [2007} EWHC 311 (Admin), [2007] Env LR 29 note108 para 54

31. The advantage to the Court in allocating time and resources in relation to the importance of the case under the CPR , the relevant parts of which now have to be law in the Planning Court, is that the UK would not have to be declared to be refusing to apply EU law under the Treaty, as under Subsidiarity, the UK court has the jurisdiction to judge the particular circumstances in this case, set aside the Judgements and grant permission to apply for Judicial Review.

32. Refusal to follow EU Treaty law *In Re McFarland [2004] UKHL 17 [2004] 1 WLR 1289 at [7]* Lord Bingham *"Just as the courts must apply acts of parliament whether they approve of them or not, and give effect to lawful official decisions whether they agree with them or not, so Parliament and the executive must respect judicial decisions whether they approve of them or not, unless and until they are set aside" (13.1.3 M Fordham, Judicial Review Handbook 6th Ed)(MF, JRH6th)*

(c) Aarhus

33. Arguments are made on claim form N461 that the DCO contravenes the Aarhus Convention (PB, tab 1, pB3 s.6, 10) and section 10 'Application to extend the time limit for filing the claim form' was left blank, but implied the court had jurisdiction to extend time. The Claimant's subsequent s.10 Application (PB, tab B5, pB62, paras 1-17, 20-26) arguments and the supporting evidence in the Claimant's 'Request for a Preliminary Reference to the Court of Justice of the European Union' submitted to the Examination Authority's public consultation on which the SsoS's DCO was based ("ExA") (PB, p B68-B75 paras) are repeated here.

34. The Claimant's arguments in his 'Request... for Reconsideration (PB, tab 7, pB84 - B91) are repeated here, particularly at para 13.'48'; EU (principle of effectiveness) and 26. Only a Blue Green London Plan remains necessary to integrate air, water and energy infrastructure...

35. The Claimant's arguments for the hearing of 15-16 January 2015 Paras 1-7, 17-20 are repeated here. (to be inserted in the Bundle as B'180-185)

36. For the SsoS to invite Claim form N61 section 6 Aarhus Convention claims for permission to apply for judicial review by a date not *'sufficiently clear to be understood by persons subject to them' R (B) v Chief Constable of Avon & Somerset [2001] All ER 5,* raises the question of vagueness, uncertainty and procedural impropriety in unfairly taking advantage of Interested Parties, who are Aarhus litigants in person without legal advisors, *'the test for the court is to resolve whether the words used are too vague or uncertain' (S5th JR, 13.4.2)*

37. Judicial review against a development consent order

' can only be brought under s.118(1)(b)

if the claim form is filed during the period of 6 weeks beginning with (i) the day on which the order is published'

Whereas the SsoS's decision letter reads: 'the period of 6 weeks from the date when the order...' 'from' implying 'following', or 'after' in the ordinary meaning of words which the claimant complied with.

38. As the SsoS had consistently 'shut their ears' to publicly available expert advice on the new water industry over a period of 3 years, showing no intent of considering any EU or UK expertise other than that of government departments or the Applicant TWUL, *'the SsoS were not giving effect to Parliamentary intention.' (S5th JR, 13.2.2)* in issuing their DCO letter in bad faith by using vague and unclear terms. *' Parliament is to be presumed not to have intended to authorise the subordinate legislation authority to make changes in the existing law which are uncertain.' per Diplock LJ Mixnam's Properties Ltd v Chertsey Urban District Council [1964] 1 QB 214 at 237 - 238 '* the SsoS's claim and the judges finding that the Claim Form had been 'filed out of time' is thereby bound to be *'held void for uncertainty' per Wilmer LJ (13.4.4 n1,2, Judicial Review, Supperstone 5th Ed)*

39. *' vagueness is a ground for judicial review'* in itself, *R (Wheeler) v Metropolitan Police Association [2008] EWHC 439, (13.4.5 JR, S5th)* and under the principle of certainty, in the common law for legality, in European law and The European Convention on Human Rights. Lack of certainty is also a ground for judicial review *R (Gul) v SsoS for Justice [2014] EWHC 373 (Admin) at [53] - [58] (13.4.1 n.6, JR, S5th)*

40. Had the judge referred back to the LIP's earlier lodged arguments and reconsidered them, he would have been able to find he had the jurisdiction to make a judgement on the particular circumstances of the case, as the unlawfulness of the procedural rule of the Court had been identified. The SsoS and the IP would have been bound to accept and withdraw their first ground, allowing the SsoS's second ground, that the claim seeking permission to apply for judicial review was unarguable, to be heard.

Technical summary for the Court.

41. Global warming was first calculated by Nobel Laureat Svante Arrhenius in 1898; that if CO2 in the atmosphere doubled, global mean temperature at the Earth surface would increase by 4oC. The 'Keeling curve' has been recording atmospheric CO2 rise since 1958, it now stands at 400ppm, from 280ppm in the 1750's. Global surface temperature has risen 1oC. The water cycle transforms through solid, liquid and gas phases as it transports water and nutrients through the air, land, sea and biosphere, interacting with photon energy from the sun to become an energy source (eg steam engines or biomass). Photon energy arriving at the Earth surface every 3 days is equivalent to total coal, oil, and gas stored underground.

42. The Victorian engineer Sir joseph Bazelgette acknowledged that combining rainwater runoff with sewage was the second best technical knowledge for his system of Combined Sewage Overflow ("CSO"). The EU Commission's Judgement against the UK is due solely to the aggregate rain absorption of London surfaces decreasing due to installation of non-porous surfaces.(eg. stone, concrete, tarmac)

43. **The 'significant' change not understood by the SsoS, (as they 'shut their ears').** Blue Green water industry technologies are designed using systems theory to realize best performance in integrated. infrastructure. They are predominately above ground not under, and comprise of a wide

mix of smaller scale technologies distributed locally over the whole surface area of London, much of it already in place, including natural vegetation, 'ecosystem services' and porous surfaces, rather than a single, large scale capital project, and may be implemented incrementally and continuously, as infrastructure updating and maintenance,. Best technical knowledge may be integrated as it advances, including, for example, economic models for financial performance and customer benefit. Most significantly, it integrates large numbers of low and high skilled local jobs with advanced technical knowledge to make all infrastructure productive in growing the national economy by reversing global warming.

Ground 2 of Appeal. Slide to 'elective Dictatorship'

44. LCJ Wolf's 'elective dictatorship' may be made up of smaller, initiating forms of dictatorship; 'corporate dictatorship', 'Dictatorship of monopoly distortion with maximum consumer loss' 'infrastructure dictatorship' initiated by unfair courts, DCO's for an improper purpose of extending corporate monopoly under guise of UWWTD compliance. As the mere danger of 'elective dictatorship' is of key importance to national security, it is in the public interest to be argued in open court as to European compliance.

45. *R v HM Treasury, ExParte Smedley [1985] QB 657, 666C-D* Sir John Donaldson MR *" it is a constitutional convention of the highest importance that the legislature and the judicature are separate and independent of one another, subject to ultimate rights of Parliament.....I would hope and expect that Parliament would be similarly sensitive to the need to refrain from trespassing upon the province of the courts" (13.1.3 MF, JRH6th)*

Evidence

46. The extensive evidence for the SsoS using the Planning Court as an instrument to frustrate the intentions of Parliament can be found in the conduct of the SsoS's with the IP TWUL from the inception of the Project in 2000, as argued in the Claimant's substantive arguments, to be heard later. This is now also put in evidence for the SsoS acting in bad faith, specifically:

47. The unlawful decision to announce a solution to the CJEU before consulting the public.

48. Throughout the design and timing of the consultation to omit meaningful consultation with the public to enable them to properly consider the alternative of a Blue Green London Plan, persuading them to wait until the opportunity for Judicial Review to make the arguments in a court.

49. Designing the EIA to omit informing the public of the Climate Change Act context of high air pollution with PM10 and 2.5 and greenhouse gases, omitting quantifying information on blue green technologies demonstrating superior benefits in reducing such pollution.

50. Refusing to hear independent expert advice of BGIET sufficiently to understand its significance

51. With the oxymoron of only one choice of a Tunnel for the public to choose in the 2 public consultations,

52. omitting integration of the public consultation for the NPS on Water with Justine Greening MP's Thames Tunnel Working Group, from 2011 onwards.

53. Designing the NPS specifically to exclude the significant change in the water industry; Blue Green technologies.

54. The refusal of the SsoS to call in the NPS by 'shutting his ears' to leading expert advice worldwide that a new water industry had arrived,

55. with economic benefits for local authorities, London and the national economy far outweighing any from the Tunnel.

56. In persistently refusing to take legal advice from the CJEU on how to comply with the UWWTD using BATNEEC, accepting SecondBATKNEEC.

57. In "Shutting their ears" to comparative Blue Green BATKNEEC from Philadelphia, New York, Portland, Singapore, Copenhagen and worldwide implementation of Blue Green technologies generally.

58. In refusing to release information held by the Environment Agency that the Thames was already compliant with the UWWTD, subsequently released by Prof Chris Binnie and Lord Berkeley.

59. Refusing to follow design advice contained in the EU Commission 'Blueprint for Water'.

60. In summary, setting up courts to 'Shut their ears' to the Blue Green Independent Expert Team and other's advice to compare and balance the benefits of BATKNEEC applied to a Blue Green London Plan under the Planning Act, for example, s104(7).

61. The SsoS had embedded bias into the decision making procedure of court procedure and their balancing exercise of the dictatorship of infrastructure verses public participation in the design of legal and water systems, and so was able to refuse acceptance of an application for permission to judicially review the SsoS's DCO.

Conclusion

62. On dismissal of the SsoS and IP's first argument the High Court would then be able to hear the substantial arguments to grant permission to apply for judicial review under the original 4 Grounds for an arguable case.

63. In the alternative the Claimant renews his Request for a Preliminary Reference to the Court of Justice of the European Union (CJEU) (PB, p B68-B75), made to the Examining Authority but without answer before the DCO.

64. For the high importance of the arguments expressed above, however inadequately formulated in legal terms, under the purpose of the Aarhus Convention, and with apologies for the odious task of wading through a LIP's arguments, Blue Green London Plan humbly asks for the consideration of the Court in the wider public interest.

65. As the approved transcripts have not yet been released, this skeleton argument is submitted in draft to be updated and improved on receipt of the transcript for the Court's convenience.

66. The intention of the Blue Green parties is to seek a case management conference to best decide how to combine arguments of all parties making application for permission in the wider public interest and to keep court time and cost to the minimum.

Graham Stevens IP LIP

Friday, 13 March 2015