

**IN THE COURT Of APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN”S BENCH DIVISION
PLANNING COURT**

CASE No.20150340

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

PERMISSION TO APPLY TO REOPEN FINAL APPEAL

GROUNDS OF APPEAL

Further Developments since the start of the Claim

1. On 16 December 2014 ‘REQUEST TO BE RECONSIDERED’ included ‘Ground 4. Developments since the start of the Claim’ to update evidence for original grounds. The following developments have occurred since ‘PERMISSION TO APPLY TO REOPEN FINAL APPEAL’ or previous updates; foreseeing opening of the floodgates on evidence for the unlawfulness of the Tunnel as a solution to environmental pollution and its damage under reasons of ‘exceptional public interest’ 1. being added to the website bluegreenuk.com:
 2. 6 July 2015. Parliamentary Questions on unlawful Tunnel bidding.
 3. 3 July 2015. Unenforced regulations multiplying air pollution.
 4. 2 July 2015. Prince Charles: “2015 is a vital year for the future of humanity”.
 5. 30 June 2015. Climate Change Committee recommends a Blue Green ‘Action’ Plan.
 6. 12 June Ofwat confirms no intention to consider alternatives from 2007.
2. 6 July 2015. Parliamentary Questions reveal continuing breach of EU and UK law in the Tunnel bidding process. The Department for Environment, Food and Rural Affairs has provided the following answer to written parliamentary questions :

Questions Tabled on 26 June 2015:

1. 'To ask SoSDEFRA, what her policy is on government financial support to enable the Thames Tideway Tunnel infrastructure project to attract private sector financing.
2. To ask SoSDEFRA, what recent assessment she has made of the likelihood and scale of the risks associated with the Thames Tideway Tunnel infrastructure project that may create exposure for the public purse.
3. To ask SoSDEFRA, what commitment she has made to provide loans should the Thames Tideway Tunnel infrastructure project be unable to access debt capital markets.
4. To ask SoSDEFRA, whether state aid approval from the EU Commission has been granted for the financial support package for the Thames Tideway Tunnel infrastructure project.
5. To ask SoSDEFRA, under what circumstances the Government would invest equity in the Thames Tideway Tunnel infrastructure project.
6. To ask SoSDEFRA, what contingent financial support is being provided for project risks associated with the Thames Tideway Tunnel infrastructure project; and what limit has been set on such support.

Answer:

Rory Stewart:

A Written Ministerial Statement of 5 June 2014 (Official Record, Col. 11WS) sets out the reasons for the Government's decision to provide contingent financial support for the Thames Tideway Tunnel (TTT) project, and the scope of that provision. The TTT project will be financed and delivered by a competitively tendered Infrastructure Provider (IP), which will be an entirely separate entity to Thames Water. This will keep project costs down and provide value for money for customers.

The support package is designed to make sure taxpayers' interests are protected throughout the construction phase to which it applies, and the likelihood of it being called upon is remote. If the support package is not called upon, there will be no cost to the taxpayer. The IP will pay the Government for certain limbs of the support package at an appropriate commercial rate. The precise financial details of the package and particular circumstances under which Government equity or short-term loans would be provided to the project remain commercially sensitive while procurement of the IP is ongoing.

The Government formally notified the European Commission of the State Aid implications of the support package earlier this year. The EC has yet to announce its decision on State Aid approval. We will inform Parliament of the outcome of Thames Water's procurement of the IP when it is complete.'

answer submitted on 06 Jul 2015 at 15:13. and published on: <http://www.parliament.uk/writtenanswers>

2.1 The answer breaches EU and UK regulations, and fails to answer the question of risk to tax payers, for example:

(a) Under the Water Industry (Financial Assistance) Act 2012, all UK tax payers risk liability for both major works and financial assistance to reduce charges for water/sewerage customers in England only.

<http://www.legislation.gov.uk/ukpga/2012/8/section/1>

- (b) Government offers in terms of financial support of taxpayers are “not commercially sensitive”.
- (c) Under EU and UK Procurement Regulations, such support must be defined in the bid specification at the outset and cannot be changed thereafter without re-bid. Such a process as has been adopted is against all normal international bidding procedures for public service contracts.
- (d) Final Bids have now been received, but Government now wants to negotiate with the bidders breaching EU and UK Procurement Regulations.
- (e) The value of risks have not been identified or placed in the public domain.
- (f) Bidding for the IP has been "behind closed doors". Terms and conditionals applying to tenders have not been made public, as required under EU and UK Regulations.
- (g) With reportedly only 2 bidders for the IP licence, bidding is not competitive under EU and UK Regulations.
- (h) IP is termed an “independent” utility. But TW are conducting the process publicly announced an “alliancing contract” between IP and TW after the award.

2.2 The unlawful procedure for constructing the project is described in Martin Blaklock’s July 8 2014 paper: ‘The Thames Tideway Tunnel [“TTT”] An Exercise in “Enron-Economics”’, pdf attached, and is to be argued under original grounds 1, 2, 3 and 4: Non compliance with the UWWT, lack of timely or meaningful public consultation, ‘whether the SsoS failed to acquaint themselves with the information necessary for the decision to be rational’, per Ouseley J in *R (Badger Trust)*, and ECHR right to life, family life and property.

3. On 3 July 2015 the Evening Standard published an article demonstrating the consequences of unenforced regulations and failure to follow EU Directives; companies assume a right to increase deaths from air pollution: ‘Secret pollution...’ of particulates and NOX from transport refrigeration units produce equivalent to extra 5.5 million cars and 0.5 million trucks delivering food.

4. 2 July 2015 Prince Charles in Guardian: ’rewire the global economy to stop climate change’ adding to arguments for ‘Exceptional public interest’. The Guardian article may be accessed on bluegreenuk.com ‘News’.

5. On 30 June 2015, the Climate Change ‘Committee’s new progress report which is published half way through a crucial year for global climate action. 196 nations will meet in Paris in December to agree a new international deal to limit global warming.

The Committee is advising Government to:

- 1 extend funding for low-carbon electricity generation to 2025, to support investment and innovation and to continue cutting costs
- 2 agree an action plan that delivers low-carbon heat and energy efficiency to allow homes to be heated for less while addressing the risks from rising temperatures and flooding
- 3 continue support for efficient, low-emission vehicles to save drivers money

- 4 develop new infrastructure that helps to combat climate change and is resilient to its impacts‘ including an ‘action plan’ addressing the risks from rising temperatures and flooding.’

5.1 The CCC progress report was reported in The Times as ‘ More turf, less paving to help keep cities cool’ complying with planning regulations to not pave over front drives; (a key part of any Blue Green London Plan), saving 5000 heat-related deaths per year by 2050.

5.2 The report is further evidence of the SsoS acting in bad faith in hindering Parliament’s good faith in implementing the Climate Change Act, against the EIA Directive ‘obligation to abstain from measures that could jeopardise attainment of the objectives of the Treaty (Article 5, now Art 13 of the Consolidated Treaty), as argued in skeleton argument of 13 March 2015.

6. On 12 June 2015, in response to a letter from an independent expert to the Ofwat Chief Executive, Ofwat Senior Director of Finance and Networks wrote in reply: ‘.... This misunderstands the role of Ofwat as a statutory body. The decision to build the tunnel was taken by Government in 2007 as the most appropriate solution for addressing discharges into the river Thames to meet the Urban Waste Water Treatment Directive.... Government’s decision was reaffirmed a number of times after 2007 but was formalised in the issue of a Specification Notice in 2014, ...’

6.1 The written Ofwat reply further confirms original ground 2 of application to apply for Judicial review, para 11.; that the SsoS never had any intention of considering any solution other than the Tunnel, and wrote the March 12 NPS on Water to specifically exclude other solutions:

11. No ‘Blue Green London Plan’ has been carried out using the best technical knowledge not entailing excessive cost (BTKNEEC), as required by the UWWTD and held in Case C-301/10 *Commission v United Kingdom* [2012], para 20. *At a meeting on 26 January 2007, representatives of the Commission and the United Kingdom discussed the two possible options for London, which had been suggested by the TTS report, and the United Kingdom decided to opt for the single 30 km tunnel along the length of the River Thames and the separate tunnel for its tributary, the River Lee. The whole project was to be completed by 2020.* (para 20 argued in’List of essential documents’ para 2.7)

Conclusion

7. The evidence above confirms the real injustice as stated and for taxpayers to be denied the benefit of leading expert knowledge to be put before the court for judicial review in the public interest in such exceptional circumstances of doubt around the degrees of Climate Change, from 2 - 6oC, or more under earth system feedback dynamics. And for the arguments to be accepted as of general public importance in equity for interpretation of the Aarhus Convention as the EU requires for public participation in the daunting task of reversing global warming in time for survival of species.

8. If not, Government will be clearly failing to implement the intention of Parliament for exceptional public interest under the rule of law.

Graham Stevens, IP, LIP

Aarhus Convention appellant,

7 July 2015

