

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

CASE No.20152028A

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

SKELETON ARGUMENT for consideration on paper only

1. The Order of Mr Justice Ouseley on 15 January 2015 [2015] EWHC 495 (Admin) held he had no jurisdiction to hear an application for permission to apply for judicial review on the grounds that, although the claimant had argued correctly to say the Secretaries of State were procedurally wrong in law to have changed the wording of the Statute in issuing their invitation for the public to challenge their DCO Decision of 12 September 2014 for a Thames Tideway Tunnel, nevertheless, the claim had been filed as the SsoS had claimed; a day out of time. Ouseley J also held that the court had no jurisdiction to extend time for the application to be heard. In reaching these conclusions he held it was therefore not necessary for him to have considered any of the claimant’s substantive arguments and he had purposely not done so. ‘*The defendant Secretaries of State and TWUL contend that they have filed their claim out of time, that there is no jurisdiction to extend time and therefore the proceedings must fail without consideration of their merits.*’ Ouseley J Judgement para 3.

2. In their ‘SECRETARIES OF STATE’S NOTE ON THE HEARING AND DOCUMENTS’, 14 January 2015, the Secretaries of State considered ‘it would not be appropriate to deal with any cases on a rolled-up basis on 15th/16th January.’

3. In BGLP’s reply, para 3.3, of 17 April to TWUL’s ‘application for expedition’ dated 13 April 2015, BGLP resists expedition as ‘It is the Secretaries of State’s change in a procedural aspect of due process that is the cause of any current delay.’

4. BGLP’s second reply of 22 April, after ELF’s reply, again confirmed common ground, an arguable case, ‘one short but important point of statutory construction’ and that if the claim form is held to have been submitted ‘within time’, the case be sent back to the High Court and listed at BGLP’s availability, now after the summer recess.

5. As BGLP has now argued successfully that the SsoS and TWUL have wasted 9 months arguing and losing ‘one short but important point of statutory construction’ on procedure, on the facts and grounds stated it would be a real injustice if Blue Green London Plan were refused an opportunity to argue substantive points to apply for permission to judicially review the SsoS’s decision in the High Court.

6. It would be a further injustice not to be awarded costs for the SsoS and TWUL’s 9 months of delay.

7. In the alternative, the Appeal Court may choose to hear Lord Justice Sullivan’s point’s, issue Lord May’s Order as argued in BGLP’s skeleton of 13 March, or issue a certificate on the ground of exceptional public interest for the case to be heard in the Supreme Court at the appropriate time.

Graham Stevens IP, LIP
Aarhus Convention appellant

20 July 2015