



Environmental Law Foundation

The Barn, 36 High Street
Pershore, Worcestershire
WR10 1DP

www.elflaw.org

20th April 2015

Dear Sir/Madam,

R (on the application of Thames Blue Green Economy Limited) v Secretary of State for Communities and Local Government and Secretary of State for the Department of the Environment, Food and Rural Affairs (Appeal Court Reference No. 2015/0225)

R (on the application of London Blue Green Plan (as Graham Stevens)) v Secretary of State for Communities and Local Government and Secretary of State for the Department of the Environment, Food and Rural Affairs (Appeal Court Reference No. 2015/0340)

R (David Percival) v Secretary of State for Communities and Local Government and Secretary of State for the Department of the Environment, Food and Rural Affairs (Appeal Court Reference No. 2015/0364)

1. I am writing on behalf of Thames Blue Green Economy (TBGE), in response to the letter from Thames Water Utilities Limited (TWUL) to your office dated 13th April 2015. In this letter TWUL seek to have the above three appeals expedited under CPR 52.2 and paragraph 26 of Practice Direction 52C.
2. I respectfully ask that this letter explaining our position is placed before the Lord or Lady Justice dealing with our case.

Expedition

3. The question of whether a claim is urgent is a matter for the Court. Therefore, subject to paragraphs 5-7 below, TBGE maintains a neutral stance on the application.
4. Nevertheless, I would draw the following to the Court's attention:
 - (1) The benefits of the Thames Tideway Tunnel (TTT), as set out in paragraphs 2.3-2.5 of TWUL's letter are not matters of common ground.
 - (2) In particular, a number of universities, independent water experts and environmental groups, including TBGE, are concerned that TTT is not the right solution to London's water problems, and that its benefits have been overstated. Indeed, the Environment Agency have

confirmed that water quality for the Thames River is currently designated as moderate under the Waste Framework Directive, and will still be moderate once the TTT is operational.

- (3) There is no evidence or suggestion in TWUL's letter that an infrastructure provider to deliver the project cannot be appointed after the end of July 2015.
- (4) Nor is there any evidence to support the suggestion that entering into these contracts after July 2015 will place TWUL's commitment to ensure compliance with the Urban Waste Water Treatment Directive at risk.

5. That said, TBGE does not object to the application, provided that it suffers no prejudice.
6. TBGE's representatives, the Environmental Law Foundation and its Counsel, Nathalie Lieven QC and Andrew Parkinson, have been assisting TBGE on a pro-bono basis and/or at a reduced rate. It will be difficult for TBGE to ensure similar representation at short notice should the substantive hearing be listed before early-June 2015.
7. As a result, notwithstanding paragraph 26 of Practice Direction 52C, TBGE asks that any substantive hearing listed before June 2015 is listed at Counsel's availability.
8. Should this not be possible, TBGE objects to the application to expedite.

The Order

9. TBGE's appeal is plainly arguable.
10. Mr Justice Ouseley held that TBGE's application for judicial review was arguable if evidence on need and strategic alternatives were relevant considerations under section 104(7) of the Planning Act 2008 (see paragraph 35 of the judgment).
11. This is a matter of statutory interpretation. To succeed, TWUL and the Secretaries of State must show that these considerations were irrelevant as a matter of law and that the scheme of the 2008 Act prevents a decision-maker from taking them into account. This is because this is the basis on which the Panel refused to hear the evidence (see paragraph 33 of the judgment).
12. This is at the very least arguably wrong, see paragraphs 20-33 of TWUL's skeleton argument. As a result, permission should be granted on the papers.
13. TBGE objects to the case being retained in the Court of Appeal. TWUL's interest in obtaining a quick decision would be guaranteed by an order to expedite; there is no need for the case also to be heard in the Court of Appeal. This would also deprive the TBGE of a right of appeal to the Court of Appeal should it not succeed at first instance. It would therefore not be in the interests of justice. It would be open to TWUL to apply for further expedition after the substantive hearing in the High Court, should that be necessary.
14. A copy of this letter has been sent to TWUL and the Secretaries of State.

Yours faithfully,

Environmental Law Foundation