



The Bar Council

Consultation on Judicial review reforms: Beyond Nationally Significant Infrastructure Projects

August 2026

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As well as championing the rule of law and access to justice, we lead, represent and support the Bar in the public interest through:

- Providing advice, guidance, services, training and events for our members to support career development and help maintain the highest standards of ethics and conduct
- Inspiring and supporting the next generation of barristers from all backgrounds
- Working to enhance diversity and inclusion at the Bar
- Encouraging a positive culture where wellbeing is prioritised and people can thrive in their careers

- Drawing on our members' expertise to influence policy and legislation that relates to
- Sharing barristers' vital contributions to society with the public, media and policymakers
- Developing career and business opportunities for barristers at home and abroad through promoting the Bar of England and Wales
- Engaging with national Bars and international Bar associations to facilitate the exchange of knowledge and the development of legal links and legal business overseas

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As the General Council of the Bar, we're the approved regulator for all practising barristers in England and Wales.

We delegate our statutory regulatory functions to the operationally independent Bar Standards Board (BSB) as required by the Legal Services Act 2007.

Introduction & Summary

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Ministry of Justice consultation on Judicial Review reforms: Beyond Nationally Significant Infrastructure Projects¹ published on 16 July 2026 ('the Consultation').

2. **In summary** the Bar Council is concerned that the Consultation appears to proceed on a presumption that evidence provided in response to the Consultation

References

¹ [Judicial review reforms: Beyond Nationally Significant Infrastructure Projects](#)

will demonstrate that current issues do already arise or are anticipated to arise in respect of Major Infrastructure Projects as a consequence of the current procedures and rights to challenge such decisions by way of judicial review and in turn give rise to delays to their delivery. However if the Bar Council accepts the logic that such delays will occur as a matter of course- the extent of the issue however is not set out or clear from the Consultation nor is it addressed therein.

Introductory Remarks

3. The Bar Council secondly acknowledges that in removing the paper permission stage for such claims and giving the Court at a hearing the opportunity to make a finding that the case is totally without merit, thereby preventing any further appeal to the Court of Appeal, there are checks and balances. The Bar Council however is not clear of the benefits of removing the paper permission stage overall.

4. The purpose of the Consultation [pg 10 Scope of Consultation] appears to the Bar Council to be on, the one hand, a call for evidence with regard to *“whether there are current or anticipated issues with delays to major infrastructure projects consented under the TCPA 1990² and the TWA 1992³ regimes which are caused by legal challenges and which may be mitigated with changes to the judicial review process;”* and on the other a request for views on *“how reforms”* to the judicial review process (set out within the consultation) *“should be targeted to support delivery of these developments, while ensuring access to justice and avoiding undue burden on the courts”*.

5. As such it appears to the Bar Council that the Government is proceeding on the presumption that the evidence provided in response to the first question *will* demonstrate that current issues do already arise or are anticipated to arise to such projects and give rise to delays to their delivery. The Consultation is not therefore proceeding on the basis that the Government already has such evidence.

6. This absence of evidence is acknowledged within the Consultation itself. At [22] et seq for example it refers to the recent reforms made specifically to judicial review procedures relating to challenges to Development Consent Orders (‘DCOs’) for Nationally Significant Infrastructure Projects (‘NSIPs’) under the Planning Act

References

² Town and Country Planning Act 1990

³ Transport & Works Act 1992

2008. These were introduced following the review conducted by Lord Banner KC (published on 28 October 2024 ('the Banner Review') (the Government's response to which is at Appendix A to the consultation). The Consultation goes on at [22] to state that following the introduction of these reforms "*some stakeholders have called for these to be extended to other planning processes, noting that the issue of delays resulting from legal challenges is not unique to the NSIP regime*". The consultation then notes that a "*number of non-government amendments were also tabled during passage of the PIA 2025⁴ seeking to extend the effect of the judicial review provision to the TCPA 1990, the Planning (Hazardous Substances) Act 1990 and the Planning (Listed Building and Conservation Areas) Act 1990*" but that these amendments "*were resisted on the grounds that there was insufficient evidence at that time to support the extension of the measure to those other planning regimes*".

7. Importantly at [23] the Consultation confirms that the "*Government is aware of a small number of specific projects being delayed as a result of legal challenges*" but that it is "*looking for additional evidence of the impact of legal challenges on the delivery of major infrastructure projects and other strategically important developments consented through the TCPA 1990 and the TWA 1992 processes*".

8. It should be noted that Lord Banner KC set out in clear terms the data and basis for his recommendations and the "*Case for Intervention*" in Part 2 of his review⁵. These are provided at [32] –[58] of the Banner Review. These passages show, as acknowledged, that he necessarily (as the DCO system is relatively new) proceeded on the basis of a "*very small sample size*" [36] noting that "[w]ider trends in the Courts may be found from their published data" [idem]. That small sample size amounted to 27 claims (at that date) which had had "*some form of permission decision...*, 19 (c. 70%) *were ultimately granted permission to proceed on at least some grounds, and 8 (c. 30 %) did not obtain permission to proceed at all*".

9. Lord Banner KC did nevertheless conclude that there was "*a case for streamlining the process for judicial review of DCOs, and onwards appeals arising from such*

References

⁴ Planning & Infrastructure Act 2025

⁵ <https://www.gov.uk/government/publications/independent-review-into-legal-challenges-against-nationally-significant-infrastructure-projects/independent-review-into-legal-challenges-against-nationally-significant-infrastructure-projects>

cases, to reduce the time it takes for the high proportion of unsuccessful claims to be concluded” [56]. He further addressed the point made by stakeholders that because of the small number of DCO decisions that have been challenged the case could not be made for intervention as follows:

“58. I disagree. The absolute number is a product of the number of DCOs overall, which unsurprisingly (given the scale of NSIPs) is considerably lower than the number of conventional planning cases that progress through the TCPA 1990. What matters more is that each one is of national significance, that delays occasioned by unsuccessful challenges cause clear detriment to the public interest, the proportion of DCOs that are challenged (c.22%) is significant, and the proportion of those challenges that are unsuccessful is high. Moreover, DCO challenges have become more prevalent in recent years, from between 0-4 between 2010-2018, to a peak of 10 in 2022. In 2024 there have, so far, been 5.”

10. The Consultation also refers (see pg8-9) to the recommendations of the recent Nuclear Regulatory Review 2025 carried out by the Nuclear Regulatory Taskforce led by Mr John Fingleton (‘the Fingleton Review’) and published on 34 November 2025 and the Government’s Response published on 13 March 2026⁶. In the latter the Government notably asserts under “Objective 2: Streamline planning and environmental assessments” that the Fingleton Review “has shown that the way our regulatory system has evolved over time has led to a complex web of duplicative assessments without benefits to nature. A focus on process over outcomes. A judicial system that does not do enough to disincentivise unmeritorious claims. This is not just slowing down nuclear projects, but also the other clean power, housing, hospitals, airports, and railways we need to thrive. Delay has a cost.” [emphasis added]

11. The Government in the same passage goes on to state that it has already acted to block “‘meritless’ Judicial Review appeals” through the PIA 2025. This is understood to be a reference to the core recommendation of the Banner Review which was taken forward in s13 of the PIA 2025, namely the removal of the initial consideration of whether permission to proceed with a judicial review by a judge ‘on the papers’ and for judicial review claims under s118 of the PA 2008 to proceed directly to an oral permission hearing. Further in such circumstances the judge, following a conclusion the claim is unarguable and should be refused permission can make a finding that the claim is ‘totally without merit’ which thence prevents then any further appeal to

References

⁶ Policy Paper: “Building our nuclear nation: government response to the Nuclear Regulatory Review 2025”

the Court of Appeal to grant permission. This as noted in the Consultation at pg 8 has already been recently applied by Lieven J (as she then was) in *R(oao) Aldington and Bonnington Parish Council) v (1) The Secretary of State for Energy Security and Net Zero and (2) EPL 001 Limited*[2026] EWHC 1252 (Admin).

12. A further procedural change (see Practice Direction 52 para 17.3) has also been introduced as a consequence of the Banner Review namely a shortening of the time limit by which an unsuccessful party to a s118 PA 2008 judicial review claim, following a substantive hearing, must apply to for permission to appeal the Court of Appeal. This now 7 days as opposed to 21 days. This again has been the subject of recent consideration by the Court of Appeal in *R (oao Luton and District Association for the Control of Aircraft Noise) v Secretary of State for Transport, London Luton Airport Limited* [2026] EWCA Civ 648.

13. It is clear in overall terms that the Consultation; the Banner review and the Fingleton Review are focused on challenges to decisions by the relevant authorities (for the most part the Government) to allow certain infrastructure projects. It is of course correct that the changes proposed to Judicial Review procedures and the existing amended procedures in respect of DCO challenges relate to decisions to refuse such projects and therefore disappointed developers, order promoters and supporters with an interest will clearly be affected by the same proposed constraints as well.

14. Whilst the Consultation is clearly aimed specifically at judicial review of planning decisions in respect of what it terms ‘major infrastructure projects’ and not wider judicial review procedure, the Bar Council notes that there is no reference to the Independent Review of Administrative Law (‘IRAL’) chaired by Lord Faulks KC conducted between 2020 and 2021. This confirmed inter alia the following with regard to the effectiveness of judicial review based upon its analysis of responses and data [4.74]:

“• While there has been an exponential increase in judicial review claims being made to the courts since the 1970s, the most recent evidence shows that it is at a similar level to that recorded in the mid-1990s (i.e. between 3,000 and 4,000).

• There is also evidence that claims are decreasing.

• In terms of the effectiveness of the permission stage as a filter of claims for judicial review, there was good evidence to show that significant numbers of claims fell away and that for the

most part, judges' refusals of permission on the papers did not lead to a high number of re-applications for permission with a hearing.

- The grant of permission also led to significant numbers of claims that had been found to be arguable being settled without the need for a substantive hearing.
- The number of cases that went to a substantive hearing were a very small proportion of the claims made (and a small proportion of those permitted to proceed).
- A higher proportion of claims were successfully defended than were made out.
- The evidence did not suggest that large numbers of claims lacking merit claims were being allowed to proceed.
- The judicial review pre-action protocol procedure is operating as a significant means of avoiding the need to make claims and for valid cases to be considered and settled by defendants, as well as identifying claims which were not arguable."

15. Finally the Bar Council notes the Consultation is directed at widening the procedures for DCO judicial review challenges to "Major Infrastructure Projects" ('MIPs') decisions. These are defined in [1] of the Consultation as follows:

"major economic infrastructure projects ('major infrastructure projects')... are developments of strategic importance for national economic growth, including:

- *Nationally Significant Infrastructure Projects (NSIPs) decided under the Planning Act 2008;*
- *projects determined under other processes where they met the thresholds of an NSIP on 5 December 2024 (when the Government published the Plan for Change), such as solar projects over 50MW;*
- *projects decided under other processes where they have been directed out of the NSIP regime, through section 35B of the Planning Act 2008 (a power added by section 13 of the Planning and Infrastructure Act 2025); and*
- *certain projects consented by Special Development Order (SDO) where the Government specifically deems that the development in question is a major infrastructure project.*

Response to Questions

16. The Bar Council has set out a summary of its position above. In answering specific questions it will be noted that where it considers that it is unable to assist or considers the Government would be better assisted by specialist practitioners it has made that clear.

Q1. Do you think that to the NSIP judicial review reforms should be extended other planning regimes? Please explain your response with reference to the potential benefits and risks of doing so.

17. As noted above, the Bar Council is concerned that the Government is not basing its proposals on any data. The position that is taken it would appear is that any delay to a positive decision in favour of a MIP because of a Judicial Review challenge as a matter of policy is to be discouraged and can only be justified if it has arguable merit.

18. The Bar Council considers that if the NSIP judicial review reforms should be extended to challenges to MIP decisions (both negative and positive) may engender the following risks/negative effects may arise:

(i) It would lead to the loss of the paper stage when it is an effective sift and allows for matters to be dealt with without court time taken up in hearings and the expense accompanying that as well as without creating pressure on Administrative or Planning Court Judges;

(ii) By creating a 'direct to hearing' permission stage it places an immediate and potentially considerable cost upon Claimants (as well as Defendants) when a cheaper paper stage permission would have avoided that;

(iii) It may lead to judges being more cautious about refusing permission and then making a finding of totally without merit given there is no option for the Court of Appeal to consider the claim if it has been so ascribed. To that end the changes may not achieve the speedier (or much speedier) process that is the aim of the proposals.

19. In terms of positive effects, the Bar Council accepts the logic behind the proposals which is that the Government wishes to minimise the delay to challenges to consents for important economic projects. The Bar Council accepts that the proposals by removing the paper stage and preventing an appeal to the Court of Appeal where the claim is totally without merit would indeed potentially make the process faster but it is not clear the extent of that benefit. The Bar Council understands the Government policies are clearly in favour of encouraging economic growth however the reasons for delays to MIP schemes are potentially far wider. In addition, it is accepted that it leaves the issue for the Court as to whether a claim is totally without merit. In other words, the prejudice that may arise to claimants needs to be considered wholly in that context.

Q2. Do you agree that consideration for further judicial review reforms should be limited to ‘major infrastructure projects’ consented under the TCPA 1990 and the TWA 1992 and other ‘strategically important developments’ (as defined by this consultation)?

Q3. Do you agree that onshore wind projects over 50MW and under 100MW, electricity network projects and large grid-scale battery storage projects with a capacity over 100MW, all of which are currently determined under the TCPA 1990, should be considered ‘strategically important developments’?

Q4. Should other developments, such as significant housing developments, also be in scope of this review? If so, how should these developments be defined. Please explain your response with reference to the importance of these developments and the potential impact of delays resulting from legal challenge.

20. These are matters which are best addressed by specialist practitioners and to whom the Bar Council defers.

Q5 In your view, is there an issue with delays to ‘major infrastructure projects’ and ‘strategically important developments’ consented under the TCPA 1990 regime resulting from legal challenges? If so, please provide details (for example, how long does it take on average for a legal challenge against a decision to reach a conclusion; are there any specific cases of concern; what is the impact of the resulting delay).

21. Whilst the Bar Council accepts the logic that any development consent/permission/grant of an TWA Order that is the subject of a judicial review challenge will be delayed (whether it is, the question of whether this is an ‘issue’ is a matter which is best addressed by specialist practitioners and to whom the Bar Council defers).

Q6. Although to date there have been few challenges against TWA decisions, in your view, is there a risk that the number of challenges could increase in light of changes in the PIA? If so, what would be the potential impact on ‘major infrastructure projects’ consented under the TWA 1992 regime? Please provide details (for example, what is the likelihood of challenge and the expected complexity of proceedings, including the amount of evidence required; and what would be the potential impact of the resulting delay).

22. These are matters which are best addressed by specialist practitioners and to whom the Bar Council defers.

Q7. Should the CPRC be invited to remove the paper permission stage for other planning decisions? If so, do you agree that this change should be limited to 'major infrastructure projects' and other 'strategically important developments' only?

Q8. Should the removal of the right of appeal for 'totally without merit' cases be extended to other planning decisions? If so, should this change be limited to 'major infrastructure projects' and other 'strategically important developments'?

23. Whilst again these are matters which are best addressed by specialist practitioners and to whom the Bar Council defers, the Bar Council, in line with its concerns about the absence of data and more detailed evidence to support the Government's proposal, considers any such proposals would clearly need fuller consideration and justification as well as further detailed consultation.

Q9. Should the CPRC be invited to amend PD 54D to formally designate 'major infrastructure projects' and other 'strategically important developments' as Significant Planning Court Claims?

Q10. Should the CPRC be invited to amend the PD 54D to encourage the use of case management conferences following the grant of permission to apply for judicial review in other types of planning cases? If so, should this change be limited to 'major infrastructure projects' and other 'strategically important developments' consented or should it be extended more widely to all planning cases?

Q11. Should the CPRC be invited to extend the target timescales for NSIP judicial reviews in the High Court to 'major infrastructure projects' and other 'strategically important developments'? Please explain your response with reference to any potential risks and resources implications.

Q12. Should the CPRC be invited to extend the target timescales for NSIP appeals in the Court of Appeal to 'major infrastructure projects' and other 'strategically important developments'? Please explain your response with reference to any potential risks and resources implications.

24. The Bar Council position is neutral with respect to these suggestions. The matter is clearly best addressed by the Planning Court and Court of Appeal and indeed specialist practitioners again to whose views the Bar Council defers.

Q13. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform? Please give reasons.

Q14. Are there forms of mitigation in relation to impacts that we should consider?

25. The Bar Council has no suggestions. This is a matter that the Bar Council considers is best addressed by indeed specialist practitioners again to whose views the Bar Council defers. The Bar Council would however refer the Government to its earlier response to Q1.

Contact

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