



JUSTICE

Judicial Review Reforms: Beyond Nationally Significant Infrastructure

Ministry of Justice (‘MoJ’) Consultation

August 2026

Introduction

1. JUSTICE is a law reform and human rights organisation working to create a fair justice system within everyone’s reach. This briefing responds to the MoJ’s consultation on further judicial review reforms, following previous reforms to the judicial review process for Nationally Significant Infrastructure Projects (‘NSIPs’).
2. In recent years, JUSTICE has provided written responses to public debates on judicial review reform; including submissions to the Independent Review of Administrative Law (‘IRAL’) (October 2020), the previous Government’s response to the review (April 2021), and extensive briefings on the Judicial Review and Courts Bill (2021–2022).¹ We also responded to the government’s previous consultation on reforms to judicial review for NSIPs. We were concerned that proposals, particularly in the latter, would limit access to justice and impinge on the rule of law.
3. Judicial review plays a critical constitutional role in upholding the rule of law, allowing individuals to ensure that executive action is lawful through accessing our independent courts and judiciary. As JUSTICE is not an organisation with expertise in planning law, our response to this consultation is limited to **questions 1, 7 and 8**.

The importance of judicial review

6. We fully agree and welcome the Government’s statement that *‘judicial review is a constitutionally important mechanism which allows an individual or organisation affected by a decision taken by a public body to challenge the lawfulness of that decision in court’*.² It is a core component of the rule of law that all government decision-making should be open to legal challenge, and it is the role of the independent judiciary to filter out claims which are unmeritorious. We welcome the Government’s commitment to

¹ JUSTICE, ‘[Response to Call for Evidence – IRAL](#)’ (October 2020); JUSTICE, ‘[Judicial Review Reform: Consultation Call for Evidence – Response](#)’ (April 2021); and <https://justice.org.uk/judicial-review-and-courts-bill/>.

² MoJ [Consultation](#), para 4

'maintaining access to justice' and ensuring the public can continue to challenge the lawfulness of planning decisions.³

7. As JUSTICE set out in our response to IRAL,

'Judicial review is a crucial check on the abuse of power, ensuring that the Government and other public authorities act in accordance with the rule of law. Access to judicial review is a key element of our unwritten constitutional arrangements for the protection of the rule of law'.⁴

8. Reforms of judicial review should, therefore, be undertaken cautiously and with a significant evidence base. We are concerned that restricting access to judicial review will affect access to justice and set a concerning precedent, increasing the likelihood of further restrictions in the future.

Reducing the number of permission attempts

4. The MoJ consultation asks whether the paper planning permission stage and the right of appeal for 'totally without merit' cases should be removed for 'other planning decisions', and, if so, whether the change should be limited to 'major infrastructure projects' and other 'strategically important developments.

Lack of Evidence

5. While the Banner Review was a serious piece of analysis from a legal expert, containing statistical evidence, we are concerned that it did not contain sufficient evidence to justify reducing the permission stage for judicial review claims to a single attempt, by removing the paper permission stage and right of appeal. Crucially, for the purposes of this consultation, it did not provide an evidence base for wider judicial review reform, as it was concerned with NSIPs. There has been no further review of planning judicial review and there is no evidence in this consultation which matches the work done by Lord Banner. The evidence of one case, the identified *Stonestreet Green* case (itself an NSIP claim relating to an important solar project), is clearly insufficient to identify whether the NSIP reforms have been a success, let alone justify much wider reform to planning judicial review.
6. We would highlight, for example, the response to the NSIP judicial review consultation from Dr Elizabeth A O'Loughlin (Durham Law School) and Professor Maurice Sunkin KC (Essex Law School) which cautiously accepted the need for some streamlining of NSIP judicial review given their *'unique status'*, but made clear ***'the case is not made out for extending such reforms to other areas of judicial review, including other Significant Planning Court Claims'*** (emphasis added). They also made clear that *'it would be inappropriate to limit*

³ MoJ [Consultation](#), para 13

⁴ JUSTICE, ['Response to Call for Evidence – IRAL'](#) (October 2020), p5

*access to judicial review of the lawfulness of decision-making in this field by providing a single opportunity to seek permission to bring a challenge’.*⁵

The permission stage generally works well

7. As we set out in our response to the NSIP consultation, the permission stage across judicial review generally works well. It allows the courts to filter out weak or vexatious claims,⁶ whilst retaining sufficient flexibility to allow arguable claims to proceed. We did not support the “one bite of the cherry” proposal for NSIP claims and specifically raised concern that this would be extended to wider judicial review claims. That this consultation has followed so quickly validates that concern.
8. We oppose removing the paper permission stage for two reasons: access to justice and efficiency. The paper permission stage is a cost-effective way for the courts to approve permission where a claim is clearly arguable, refuse permission where it is not, or certify a claim as totally without merit to prevent permission being requested at an oral hearing. The permission stage reduces time and costs for the court and all parties by avoiding the need for a much more resource intensive oral hearing in many cases. This, in turn, helps to keep costs proportionate, which is a key factor in ensuring access to justice.
9. Removing the paper permission stage would also undermine the use of rolled-up hearings, in which a permission and substantive decision are determined together at one oral hearing. The Banner Review highlighted seven claims which went to a rolled-up hearing (six of which were ordered to proceed to a rolled-up hearing at the paper stage), with two subsequently granted permission.¹³ If both these claims had gone straight to an oral permission hearing, they would have then required a further full substantive judicial review hearing.
10. We reiterate that reforming the permission stage in relation to one form of judicial review risks opening the door for future restriction of permission stages for other judicial review claims. This would be a retrograde step for access to justice.
11. Dr O’Loughlin and Professor Sunkin KC’s evidence also considered the wider evidence of data on “Town and Country Planning Significant” judicial review claims. They found 50% of cases refused permission did not seek oral renewal (about 24% of overall cases).⁷ It is not

⁵ O’Loughlin, E., & Sunkin, M. (2024, December 30). [Judicial Review and Nationally Significant Infrastructure Projects: Submission to the Ministry of Justice call for evidence on the recommendations of the independent review by Lord Banner KC](#)

⁶ As Lord Diplock said in *R v Inland Revenue Commissioners ex p National Federation of Self-employed and Small Businesses Ltd* [1982] AC 617 at 643, it is also designed: “to prevent the time of the court being wasted by busybodies with misguided or trivial complaints of administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived.”

⁷ O’Loughlin, E., & Sunkin, M. (2024, December 30). [Judicial Review and Nationally Significant Infrastructure Projects: Submission to the Ministry of Justice call for evidence on the recommendations of the independent review by Lord Banner KC](#)

in the claimants, the defendants or the High Court's interest that such claims be required to have an inefficient, time-consuming oral permission hearing, where they could have been and were dealt with on the papers.

12. Their evidence cited how these figures closely aligned with wider judicial review trends and, in their view, *'the permission stage filters a significant number of claims, while the oral renewal stage operates as an important second check on written permission decisions'*.⁸ We agree. Furthermore, there are many more planning judicial review claims than the relatively small number of NSIP claims. Between 2014 and 2015, for example, there were around 2,656 judicial review claims within the TCP and TCP(S) categories (compared with only 34 NSIP claims between 2008 and 2024 identified by the Banner Review).⁹ Reform is likely to have a much wider impact; both in terms of requiring unnecessary permission hearings (when permission could have been granted on the papers) and restricting the judicial review process for a much more significant number of claims.

Court of Appeal stage

13. We remain strongly opposed to removing the ability to renew a permission decision to the Court of Appeal. This is predominantly a paper-based decision, since changes to the Civil Procedure Rules in October 2016.¹⁰ There is no evidence that this stage is being abused. The Banner Review highlighted that a right of appeal to the Court of Appeal is an essential safeguard in a small but significant number of NSIP cases—of the 9 cases identified where permission was sought from the Court of Appeal, five were granted permission.¹¹ In respect of other types of judicial review, there are no publicly available statistics on Court of Appeal permission applications.¹² To improve the publicly available dataset on a matter of such importance, and upon which the MoJ is consulting, we recommend the MoJ publish the data in future Civil Justice Statistics publications.

Conclusion

14. JUSTICE does not support the proposal to reduce the permission stage, by removing either the paper permission stage or the right of appeal, in wider planning judicial review claims. There is no evidence to support such a change. It would be inefficient, set a dangerous

⁸ Ibid.

⁹ S. Guy, *'Are judicial reviews in the Planning Court taking too long?'*, U.K. Const. L. Blog (23rd March 2026) (available at <https://ukconstitutionallaw.org/>)

¹⁰ Civil Procedure Rules, [Part 52.5](#)

¹¹ Lord Banner KC, *'Independent review into legal challenges against Nationally Significant Infrastructure Projects'* (28 October 2024), para 34

¹² *'It should be noted that no data was available to show the numbers and outcomes of appeals made to the Court of Appeal against refusals of permission (where such appeals are available'* [The Independent Review of Administrative Law](#) (March 2021), p84

precedent for the future of judicial review reform, and undermine the Government's stated commitment to access for justice and the rule of law.

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