



Public Law Project's response to the Ministry of Justice's consultation on planning judicial review reform

August 2026

1. Public Law Project (PLP) is a legal and social justice charity working in England and Wales. We advance fairness in society through public law – the rules that shape how the state makes everyday decisions that affect our lives, from immigration to welfare benefits and more.
2. We work with those marginalised by the state or abandoned through systemic neglect, uniting experts by experience with legal experts, challenging social injustice at both an individual and a systemic level. Our vision is a fair and inclusive society secured by a just and confident state.
3. PLP's response will be limited to public law elements of the consultation, rather than planning or environmental law elements.

Question 1: Do you think that the NSIP judicial review reforms should be extended to other planning regimes? Please explain your response with reference to the potential benefits and risks of doing so.

4. PLP disagrees that the NSIP judicial review regime should be extended to other planning judicial reviews.
5. Judicial review is one of the UK's most important constitutional mechanisms for promoting the rule of law and ensuring that public bodies remain within their legal powers. Therefore, judicial review should only be restricted where there is clear evidence and a compelling reason in the public interest. By the Government's own admission, "it is not yet clear" that these exist.¹ Consequently, the Government should not proceed with these proposals on constitutional and evidential grounds.
6. This accords with independent academic opinion at the time of the then Government's original call for evidence into Lord Banner's recommendations. As Elizabeth O'Loughlin and Maurice Sunkin said in their submission: "We invite

¹ Ministry of Justice, [Judicial Review Reforms Beyond Nationally Significant Infrastructure](#) (July 2026) p.9.



the Government to proceed with caution when it comes to instituting reforms to the judicial review process for NSIPs. In our view, the case for streamlining rests on the unique status of NSIPs and the competing public interests involved. The case is not made out for extending such reforms to other areas of judicial review, including other Significant Planning Court Claims. Any changes made should be expressly confined to DCO decisions."²

7. In addition to this, it is already more challenging to bring judicial reviews in the planning context than elsewhere. For example, there is a statutory time limit of 6 weeks (compared to the usual three months) to issue a planning claim in the Administrative Court. It would be inappropriate for the Government to ask Parliament to legislate for yet more restrictions on planning judicial reviews when by its own admission the evidence is not there.
8. This is reinforced when the Government is also unclear about the detrimental implications of these proposals for people with protected characteristics. As the consultation concedes: "The Government notes that some of the proposals being considered...may present difficulties for inexperienced claimants and litigants in person. It is currently unclear how this might impact on individuals with different protected characteristics."³
9. Finally, PLP is concerned that extending the NSIP regime to other planning judicial reviews will be used by this or future administrations to justify expanding the restrictions to further judicial reviews still. The more widely the net is cast, the greater the risk to access to justice and the rule of law – simply because there are more claims at issue. NSIP judicial reviews make up a very small number of claims but there will be a greater volume of claims outside that area. The more widely the net of restrictions is cast, the more likely that otherwise arguable claims are invalidated at the earliest stage on the view of a single judge, with no recourse to any accountability.

² Elizabeth O'Loughlin and Maurice Sunkin, [Judicial review and Nationally Significant Infrastructure Projects: Submission to the Ministry of Justice's call for evidence on the recommendations of the independent review by Lord Banner KC](#) (December 2024) para. 7.

³ Ministry of Justice, [Judicial Review Reforms Beyond Nationally Significant Infrastructure](#) (July 2026) p.29.



10. Overall, PLP's considers that this is no basis on which to make significant changes to major constitutional mechanisms.

Question 2: 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)?

11. While PLP disagrees with the proposals, if they are taken forward, they should be implemented as narrowly as possible to prevent undue restrictions on the rule of law and access to justice.

Question 7: 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?

12. PLP disagrees that the CPRC should be invited to remove the paper permission stage for judicial review claims concerning other planning decisions.
13. Primarily, PLP reiterates that on the Government's own admission there is no evidential basis for the extension.
14. However, we also make broader comments on the importance of the paper permission stage. The paper permission stage was introduced following the recommendations of the Bowman Committee in 2000. It was expressly designed to make judicial review proceedings more efficient and cost-effective. Parties would not need to pay counsel to attend oral hearings for permission – this could be done in writing instead. The safeguard was the right to a so-called “oral renewal” hearing where permission was refused on the papers. This was to provide a “second pair of eyes” on the initial judge’s reading of the case.⁴
15. Research by Varda Bondy and Maurice Sunkin in 2009 on practitioner perceptions of the permission stage concluded that most practitioners from claimant and defendant backgrounds expressed satisfaction with paper permission applications. The reasons included: the procedure saves time and cost; it acts as a filter of weak claims; it provides an indication whether a claim is likely to be successful; and it helps to achieve early resolution and settlement.

⁴ Review of the Crown Office List (Lord Chancellor's Department, 2000).



There were some criticisms of the paper procedure but these were not in the majority. For example, the perception among some claimant solicitors was that the loss of an oral hearing prevented a claimant from fully elaborating their claim to a judge effectively. Moreover, some solicitors wondered whether judges fully digested and understood claims purely on the papers.⁵

16. Consequently, PLP considers that the streamlining benefits of the paper permission stage should not be foregone without compelling evidence that it is necessary in the public interest. None has been provided.

17. In addition, it is important to flag that abolishing the paper permission stage would significantly increase the costs of judicial review proceedings for all parties – including public bodies and central government. Claimants would have to seek permission and defendants would, if appropriate, contest permission at an oral hearing and ordinarily both would instruct counsel to attend. Currently, this only happen at oral renewal, which most claimants do not seek. According to the Ministry of Justice’s own judicial review data on claims categorised as “Town and Country Planning Significant”, around 50% of claimants did not seek oral renewal after initial refusal. Moreover, in judicial reviews categorised as “Town and Country Planning”, around 60% of claimants did not seek oral renewal after being refused permission on the papers.⁶

18. As such, the upshot of this proposal is that judicial review should be more expensive for everyone, for no obvious benefit, when there is no evidence of a problem, and when the Government is unclear as to what additional problems it would create – including for people with protected characteristics.

Question 8: 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’?

19. PLP disagrees that the right of appeal against judicial decisions to certify a claim as “totally without merit” should be extended to other planning decisions. Primarily, we reiterate that there is no evidential basis for the extension.

⁵ Public Law Project, [The Dynamics of Judicial Review Litigation: The resolution of public law challenges before final hearing](#) (2009) Section 4.

⁶ [Judicial Review Interactive Data Tool](#).



20. However, we add comments about the importance of the right of appeal. The right of appeal is an important safeguard for the rule of law. Otherwise, an entire claim which may raise significant implications for the individual, groups with protected characteristics, society at large, and the law itself, may end because of the initial decision of one court. The right of appeal provides an opportunity for an additional pair of eyes in cases where the law may be disputed, ambiguous, or yet to be decided.

21. PLP is also concerned about what implications this proposal has for people with protected characteristics and litigants in person, which we outline in Q.13.

Question 13: 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.

22. PLP has concerns about the consequences of these proposals for two broad groups, which may sometimes overlap: litigants in person and people with protected characteristics.

23. In the broader body of planning claims under consideration, the caseload is likely to be more diverse than NSIP claims, with a greater proportion of litigants in person or small organisations with very limited resources and experience in litigation.

24. Proceeding directly to an oral hearing, for example, could disadvantage litigants in person who are not experienced at advocacy or public speaking and who may find judicial proceedings intimidating. This is on top of the prior disadvantage of not being expert in the relevant law and procedure and having to prepare for an oral hearing in the very short time limit of 6 weeks for planning judicial reviews.

25. Similar concerns exist where individuals have protected characteristics such as learning or other disabilities or English as a second language and may need significant additional support to fully elaborate their claim.

26. Equally, an oral hearing for permission may have advantages for litigants in person or people with protected characteristics. Individuals who are not



experienced in the law or need additional help to communicate may miss important points in their papers and aspects of their case could be explored – and validated – by a judge asking questions during an oral hearing. However, the Government presents no evidence to suggest that either eventuality is more likely and, as such, PLP is unable to support the proposal.

27. Abolishing the right of appeal carries even greater, and more clearly negative, risks. Litigants in person may require significant support and additional time to fully elaborate the nuance and parameters of their legal claim. If they cannot present and argue their claim effectively, a judge may certify it as being “totally without merit” and end the claim conclusively, despite it being arguable. As such, it is crucial to preserve the right of appeal so that arguable claims are not prematurely extinguished.
28. The risk is that litigants in person and people with protected characteristics with entirely arguable claims are unable to explain that claim effectively and are given only a single make-or-break opportunity to do this, with no recourse to accountability if that one and only option goes wrong.
29. More generally outside litigants in person, given legal aid deserts, individuals and organisations may also be unable to locate lawyers who can take on their claim, prepare oral submissions, and appear at a hearing in the short time scales required by planning judicial review. These proposals bear no relation to the real legal advice and representation crisis facing England and Wales in particular.
30. Overall, PLP considers that too much that could go wrong in the Government's proposals and that they should not proceed.

Question 14: Are there forms of mitigation in relation to impacts that we should consider?

31. If these proposals are taken forward, the Government should commit to monitoring the consequences and publishing that information openly and in an understandable fashion. This should include monitoring and publishing: how many claims within the scope of these reforms are certified as “totally without



merit" and, therefore, have been denied a right of appeal; the legal costs incurred by central government and, so far as possible, other public bodies attending oral permission hearings; and an impact assessment within one year, reviewing the implications of the reforms for people with protected characteristics and for litigants in person.