BUSINESS LDN

Judicial Review Reforms: Beyond Nationally Significant Infrastructure Projects

Consultation Response

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Date submitted: **27 August 2026**

Introduction

1. BusinessLDN is a business membership organisation with the mission to make London the best city in the world to do business, working with and for the whole UK. We work with the support of the capital's major businesses in key sectors such as housing, commercial property, finance, transport, infrastructure, professional services, technology and education.

2. We welcome the opportunity to respond to the Ministry of Justice consultation on judicial review reforms: beyond Nationally Significant Infrastructure Projects (NSIPs). Our members include developers, investors and infrastructure providers that bear the financial and commercial consequences when projects that have secured planning consent are delayed or cannot proceed.

3. We support extending the judicial review reforms introduced for NSIPs to other strategically important developments, provided that the reforms are targeted, access to justice is maintained, and the courts have sufficient capacity to meet the relevant timescales. Done well, these reforms could provide greater certainty for businesses and investors and support the timely delivery of the homes and infrastructure London needs to grow. We have responded to the 14 consultation questions below.

Our position

4. We support extending the NSIP judicial review reforms to defined categories of major infrastructure projects and strategically important developments.

5. The strongest case for reform is that similar major projects can currently face different judicial review processes simply because they go through different planning routes. This inconsistency has arisen following changes to the NSIP thresholds and the introduction of the section 35B direction power.

6. The reforms should also apply to projects that would have met the NSIP thresholds before the changes introduced on 31 December 2025 and projects directed out of the NSIP regime under section 35B.

7. Significant housing developments should be included, but through a tiered approach so that the most intensive reforms are focused on the largest schemes.

8. Some measures, such as formal designation as Significant Planning Court Claims and case management conferences, should be introduced more widely.

9. Changes to permission and appeal rights should be limited to defined categories of strategically important development.

10. Extending the reforms must be accompanied by sufficient resources for the Planning Court and Court of Appeal.

Scope of reform

Question 1. Should the NSIP judicial review reforms be extended to other planning regimes?

11. Yes, on a targeted basis and subject to court capacity.

12. There is now an inconsistency between the treatment of similar infrastructure projects.

13. For example, following the increase in the NSIP threshold for solar and onshore wind to 100MW from 31 December 2025, a solar/onshore wind project that would previously have been an NSIP may now be determined under the Town and Country Planning Act 1990. The nature of the project, its environmental impacts and the potential grounds for challenge may be essentially the same, but the judicial review process is different.

14. The use of section 35B of the Planning Act 2008 can create a similar situation, with significant projects being directed into a different consenting regime.

15. Extending the reforms would therefore provide greater consistency for projects of similar scale and significance. A more consistent and predictable system would give businesses and investors greater confidence and strengthen London’s attractiveness as a place to invest and do business.

16. However, this should only happen if the courts have sufficient capacity. Extending the reforms without additional resources within the court system could transfer delays to other cases or undermine the timescales already applying to NSIPs.

17. Additionally, many major transport, housing, energy, regeneration and public infrastructure projects deliver benefits beyond their immediate locality, even where they fall below the formal NSIP threshold. This is increasingly important as responsibility for growth and infrastructure delivery is devolved to metro mayors, combined authorities and local transport authorities. Projects that unlock housing, improve connectivity, support freight, strengthen resilience or enable public service reform can therefore be strategically significant without being nationally classified.

Question 2. Should reform be limited to major infrastructure projects and strategically important developments?

18. Yes. We agree that the reforms should be targeted rather than applied to all planning cases.

19. However, the criteria for inclusion should be as objective as possible. Relying solely on a discretionary policy pipeline, largely decided by Ministers, could create uncertainty and potentially introduce a further decision that can itself be challenged.

20. We therefore favour objective criteria such as:
    - capacity or size thresholds set out in secondary legislation;
    - projects subject to a section 35B direction;
    - called-in applications;
    - Crown development; and
    - development requiring an environmental impact assessment.

21. Clear criteria would give developers, investors and local authorities greater certainty from the outset. That predictability is particularly important for major projects requiring significant long-term investment and would support a more competitive business environment in London and across the UK.

Question 3. Should onshore wind over 50MW, electricity network projects and grid-scale storage over 100MW be treated as strategically important development?

22. Yes.

23. We would also include:
    - development that would have met the NSIP thresholds before the changes introduced on 31 December 2025. This would ensure that similar projects continue to receive similar procedural treatment.
    - development directed out of the NSIP regime under section 35B. The significance of a project does not change simply because its consenting route has changed.

24. For electricity network projects, the definition should expressly cover associated infrastructure such as substations, substation extensions, converter stations and related works. These are often critical to delivering new electricity generation and securing grid connections.

25. Government should retain flexibility to designate new categories of strategic infrastructure as technology, energy systems and national priorities evolve. This will be increasingly important as the UK invests in climate resilience, digital infrastructure, electrification and more integrated energy, transport and public estate planning.

Question 4. Should other developments, such as significant housing developments, be in scope?

26. Yes, but through a tiered approach.

27. London faces a significant housing shortage and needs to increase housing delivery. The Government has identified a need for around 88,000 new homes a year, while Molior's January 2026 data show that private starts on London schemes with 20+ private homes were 84% lower in 2025 than in 2015.[1,2] Judicial review is not the main cause of the housing shortfall, but challenges can create considerable uncertainty and, in some cases, put funding, procurement and delivery programmes at risk. Increasing housing delivery is also central to London's competitiveness: businesses need the capital to remain a place where people can afford to live and work.

28. We would therefore support two levels of reform:
    - Full reforms for genuinely strategic housing schemes, such as major sites identified in development plans or schemes requiring environmental impact assessment, subject to an appropriate scale or strategic-significance test.
    - A lighter-touch approach for larger housing schemes, for example schemes of more than 150 homes. This could include formal designation as a Significant Planning Court Claim without applying all of the more intensive procedural reforms.

29. This would extend the benefits of greater certainty to a wider range of housing schemes while ensuring that court resources remain focused on the largest and most strategically important projects.

Evidence of delay

Question 5. Is there an issue with delays under the TCPA 1990 regime?

30. Yes, although better data is needed.

31. The main cost of judicial review is not necessarily the cost of the legal process itself. Lengthy uncertainty can hold up investment, increase project costs and put funding and delivery timetables at risk. In practice, project teams, financing packages and supply-chain commitments may all need to remain in place while a challenge is resolved, placing delivery on hold and driving up costs.

32. For projects with fixed funding, grid connection or procurement deadlines, delays can have a disproportionate impact.

33. The Ministry's own published statistics show that timescales in the Planning Court have lengthened materially over the last two years, and the available data is incomplete in ways that understate the position.

34. The judicial review statistics record 2,656 claims in the town and country planning and town and country planning (significant) categories between 2014 and 2025. The independent review by Lord Banner KC identified 34 NSIP claims across 16 years from 2008 to 2024. The regime this consultation proposes to reform is therefore substantially larger than the one already reformed, and any inefficiency identified in the NSIP process

[1] https://www.london.gov.uk/programmes-strategies/planning/planning-consultations/towards-new-london-plan

[2] https://www.moliorlondon.com/bulletins/molior-residential-development-in-london-january-2026/

arises here at far greater volume. We note that some NSIP challenges are likely to sit within the significant category, because the published statistics do not distinguish them, so this comparison indicates relative scale rather than an exact ratio.

35. Analysis of the civil justice statistics published on 5 March 2026, covering claims to December 2025, shows the following mean times in days from a claim being lodged, with medians in brackets:

Milestone	2014 to 2023 (2,249 claims)	2024 to 2025 (407 claims)	2025 (209 claims)
Permission	72 (53)	99 (77)	107 (95)
Oral renewal	134 (113)	168 (145)	163 (145)

36. Time to first consideration of permission is therefore 37.5 per cent longer in 2024 and 2025 than the 2014 to 2023 average, and 48.6 per cent longer for claims lodged in 2025. Time to oral renewal is 25.4 per cent and 21.6 per cent longer, respectively.

37. Recent cohorts may appear to show some improvement in the speed of progression, but the figures need to be treated with caution. Only 11 claims lodged in 2025 had reached a hearing, and early closures are disproportionately refusals, withdrawals and settlements. The more reliable comparator is therefore 2022 to 2023: over that period, claims took 20.5 per cent longer to reach a hearing and 16.4 per cent longer to conclude. (A1, B1).

38. The Government's assessment that there is no Planning Court backlog is difficult to reconcile with published statistics. Asked in February 2026 about the Planning Court backlog in TCPA 1990 challenges, the Government replied in March that there is none, citing confirmation from the Planning Court. The statistics nevertheless indicate delay at both the permission and oral-renewal stages. We therefore ask that the basis for the Government's assessment to be published. (A2, A3)

39. The published figures also do not capture the whole relevant caseload. Statutory reviews, including section 288 challenges to Inspectorate decisions, sit outside the published series. Since this consultation covers both routes, the overall position is likely worse than the available figures suggest, although the extent of that additional delay cannot be quantified. (A1, B3)

40. Delay also imposes substantial costs that are not captured by success rates. While litigation remains unresolved, a developer may have to keep a project team, supply-chain arrangements and financing in place. Missing a fixed milestone – such as a grid connection, funding condition or procurement deadline – may mean not merely that a scheme is delayed but that its lost altogether because the relevant slot or opportunity cannot be recovered. Those costs arise whether the challenge ultimately succeeds or fails, so success rates are not a meaningful measure of the impact of delay.

41. We also recommend regularly publishing data on challenge volumes, success rates, determination times, project delays and associated costs. Greater transparency would

help assess whether reforms are delivering their intended outcomes and support further evidence-based improvements.

Question 6. Could challenges to TWA 1992 decisions increase?

42. Yes, this is a risk, and we support including the Transport and Works Act 1992 regime.

43. The current number of challenges under the TWA 1992 is low, but if the regime is used for a greater number of significant transport schemes, the absolute number of challenges and the impact of any resulting delay may increase. The low volume of current challenges also means that inclusion would carry little resource implication for the courts, making it inexpensive to act now rather than wait until volumes rise.

44. Transport and Works Act orders can involve compulsory purchase, temporary possession and other powers affecting a wide range of parties. Applying consistent judicial review procedures to major schemes would provide greater certainty.

The proposals

Question 7. Should the paper permission stage be removed for other planning decisions?

45. Yes, but only for major infrastructure and strategically important development.

46. The evidence from the NSIP regime is that the paper stage frequently resolved nothing: nine of 11 cases refused permission on the papers proceeded to an oral hearing in any event, so the stage added time without disposing of the claim. We agree that the paper permission stage should remain for ordinary planning cases.

Question 8. Should the removal of the right of appeal in totally without merit cases be extended?

47. Yes, for the same defined categories of strategically important development.

48. We recognise the specific concern. The independent review recorded that around half of the cases refused permission at an oral hearing were subsequently granted permission by the Court of Appeal. That finding was generated under a process in which certification could follow a paper sift.

49. However, where a claim has been considered at an oral hearing and certified as totally without merit by a judge with relevant planning expertise, there is a stronger case for bringing the matter to an end.

50. This measure should be limited to the same clearly defined categories of major infrastructure and strategically important development.

51. Appeal rights should also remain available for arguable claims. The aim should be to prevent abuse and unnecessary delay, while preserving legitimate access to justice and public confidence in decision-making.

Question 9. Should these cases be formally designated Significant Planning Court Claims?

52. Yes.

53. This would provide greater certainty for all parties about how the case will be managed and ensure that strategically important cases are appropriately prioritised.

54. It should be introduced for all categories brought within the scope of the reforms.

Question 10. Should case management conferences be encouraged after permission?

55. Yes.

56. Case management conferences can help the court and parties identify the issues in dispute and manage cases efficiently before full legal proceedings.

57. We support making them available after permission has been granted. Because the mechanism is discretionary, it could also be made available more widely without creating an automatic additional stage in every case.

Question 11. Should the High Court target timescales be extended?

58. Yes, subject to court capacity.

59. The reforms will only work if the Planning Court has sufficient capacity to meet the proposed timescales.

60. We therefore support extending the NSIP target timescales to in-scope cases alongside increasing resources for the court and regular publication of performance data.

61. The reduction in the time available to serve pre-permission documents from seven days to three days should also be kept under review, particularly given the impact it may have on local planning authorities and unrepresented claimants.

Question 12. Should the Court of Appeal target timescales be extended?

62. Yes, subject to the same conditions.

63. The Court of Appeal will face similar capacity pressures as the reforms are extended. Appellate listing is the tighter constraint, and prioritising one category necessarily

deprioritises another. Any extension should therefore be accompanied by sufficient capacity and regular publication of performance against the target timescales.

Equalities

Question 13. What are the equalities impacts of the proposals?

64. We recognise that planning judicial review can involve a wider range of claimants than NSIP litigation, including residents' groups, parish and town councils, community organisations, local authorities and litigants in person.

65. Shorter timescales and the removal of one stage of the permission process could create additional challenges for parties without specialist legal representation.

66. These considerations should not prevent the reforms being introduced for major infrastructure and strategically important development, but appropriate safeguards should be put in place.

Question 14. What mitigation should be considered?

67. We recommend six measures:
    - **Retain existing Aarhus costs protection,** which limits the financial risk of bringing environmental judicial reviews and statutory challenges by capping the maximum adverse costs a losing party can be ordered to pay. The existing costs protections are an important safeguard for community and other potentially less-resourced claimants.
    - **Provide clear and accessible guidance on the new timescales**. Simple guidance should be available when a planning decision is published, particularly for unrepresented parties**.**
    - **Consider support at the permission stage.** The Government should consider whether legal support or a pro bono referral arrangement could help unrepresented parties navigate the process.
    - **Publish the basis for the assessment that there is no backlog.** The Government has stated to Parliament that there is no backlog in the Planning Court in TCPA 1990 challenges, and that the Court has confirmed the position. The published statistics show times to permission and oral renewal lengthening materially over the same period. We ask that the evidence on which the assessment rests be made publicly available, so that this consultation and any subsequent review proceed from a shared factual basis.
    - **Extend the published data to cover statutory reviews.** This consultation treats judicial review and statutory review together throughout. The published statistics do not. Until they do, neither respondents nor officials can quantify the position in the regimes this consultation addresses.
    - **Review the reforms after two years.** The Government should publish data on the time taken to resolve cases, permission rates and the proportion of claims certified as totally without merit and use this evidence to review the categories covered by the reforms**.**

Conclusion

68. BusinessLDN supports extending the NSIP judicial review reforms to major infrastructure and strategically important development. The case for reform is strongest where projects of similar scale and significance face different judicial review procedures because of their consenting route.

69. The reforms should be targeted, use clear criteria and be backed by sufficient court capacity. With these safeguards, they can support timely delivery while maintaining appropriate access to justice.

This consultation response was prepared by BusinessLDN with support from BusinessLDN members Turner & Townsend, Amey, Town Legal.

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