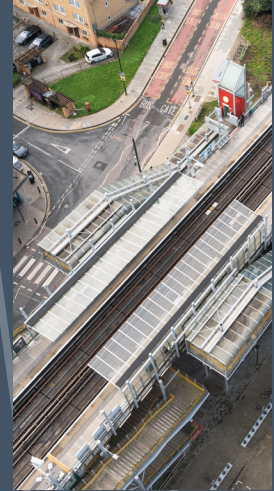


Roundtable - Independent review into legal challenges against Nationally Significant Infrastructure Projects

With Lord Banner KC

Online via zoom



Introduction

The judicial process for Nationally Significant Infrastructure Projects (NSIPs) is a critical factor in determining the speed and certainty of their delivery. Legal challenges can create significant delays, adding substantial costs and uncertainty to major projects. The independent review led by Lord Banner KC examined these issues in detail, exploring how judicial processes could be streamlined while maintaining access to justice.

At this roundtable discussion, Lord Banner KC outlined the key findings and recommendations from his review, which has been accepted by the Government and will inform reforms in the upcoming Planning and Infrastructure Bill. The conversation focused on the factors contributing to legal delays, the balance between public participation and efficiency, and potential solutions, including procedural reforms, cost structures, and judicial specialisation.

Bringing together legal experts, policymakers, and industry stakeholders, the discussion provided valuable insights into how these recommendations could be implemented—not just for NSIPs but also for wider planning processes. This document summarises the key takeaways from the session.

Key Takeaways

- Judicial reviews (JRs) are a significant factor in delaying NSIPs, leading to increased costs, project uncertainty, and potential investor hesitancy. The unpredictability of legal challenges, including late-stage interventions, was highlighted as a major concern for both developers and policymakers.
- Delays caused by legal challenges were identified as a deterrent to private investment in infrastructure projects. Investors seek predictability and a clearer timeline for project approval and delivery. Uncertainty around the length and outcome of legal proceedings makes it harder for developers to secure long-term financial commitments.
- There was broad agreement that reforming the judicial review process could help accelerate project delivery. Suggestions included reducing the number of stages required for judicial review, setting stricter time limits for filing claims, and introducing clearer thresholds for standing to prevent frivolous or purely tactical challenges.
- Delays in court proceedings were identified as a key issue. There was strong support for reforms that would enable cases to move more quickly through the legal system, such as allowing direct access to an oral hearing in the High Court without an initial written stage. Improving case management, including stricter adherence to deadlines and better resourcing of the courts, was also seen as essential.
- Participants welcomed recommendations for better transparency in judicial review timelines, particularly the proposal to publish data on how long legal challenges take in NSIP cases. This would help identify bottlenecks, provide clearer expectations for project timelines, and support evidence-based policymaking for future reforms.
- Concerns were raised about the increasing use of judicial reviews by certain groups to delay or block projects, often without a strong legal basis. While legal challenges are a necessary safeguard, there was support for measures that prevent the misuse of the system, such as stricter criteria for granting permissions to proceed with a claim.
- While there was strong support for legal reform, participants emphasised the need to maintain access to justice and ensure compliance with international legal obligations, such as the Aarhus Convention. Striking the right balance between speeding up decisions and maintaining environmental protections and public engagement in the process remains a key challenge.

Concerns and issues raised

- There was discussion on whether reforms are needed to encourage more planning lawyers to become judges, such as clearer career pathways or incentives for those with planning expertise to enter the judiciary. Without this, legal challenges may continue to be determined by judges with limited direct knowledge of the complexities of planning law and infrastructure policy.
- Currently few planning lawyers transition to the bench, many judges overseeing judicial reviews of nationally significant infrastructure projects (NSIPs) come from other legal backgrounds. This lack of expertise can lead to misinterpretations of planning law and an overreliance on procedural technicalities rather than the broader policy objectives behind major infrastructure decisions.
- Some attendees noted that judicial review is sometimes used strategically to delay or block projects, even when the substantive legal grounds for the challenge are weak. This was seen as a particular issue for large-scale infrastructure projects where delays can lead to significant cost increases and uncertainty for developers.

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