



# The Planning & Environment Bar Association

Judicial Review Policy  
Ministry of Justice  
Constitutional Policy Division  
9<sup>th</sup> Floor, 102 Petty France  
London SW1H 9AJ

By email to: [BannerReviewCfE@justice.gov.uk](mailto:BannerReviewCfE@justice.gov.uk)

23<sup>rd</sup> December 2024

Dear Sirs,

## RESPONSE TO THE CONSULTATION ON JUDICIAL REVIEW AND NSIPs

### ABOUT PEBA

The Planning & Environment Bar Association (PEBA) is a specialist bar association comprising practising barristers who specialise in the areas of planning, the environment, local government, and related matters in England and Wales. PEBA members advise and act for clients in all of these areas of law, including landowners, developers, local authorities, Government departments, statutory agencies, non-governmental organisations, charities, and private individuals. PEBA members appear as advocates in all levels of the courts and tribunals, and at planning inquiries and hearings, local plan examinations, and development consent order examinations. Membership of PEBA is open to all barristers who have a significant part of their practice in the fields of planning, the environment, and local government law.

PEBA is a non-political entity. It is regularly consulted by Government departments, as it has been on this occasion, and by the Planning Inspectorate in relation to proposals for reform of either policy or legislation within its specialist areas. PEBA sees its role as seeking to inform decision makers as to the practical implications of proposed reforms to regulatory regimes or relevant guidance, based on the experience of its membership

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### Administration PEBA

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within its areas of practice, with a view to facilitating reforms that will enable better and more effective regulatory regimes or guidance and (hopefully) discouraging or modifying reforms that would work against such outcomes.

## RESPONSE

PEBA is grateful for the opportunity to respond to the Call for Evidence regarding the Banner Review on this important topic area.

The general premise of the Review and the questions in the consultation is that delay is caused to nationally significant infrastructure projects by reason of judicial review of the lawfulness of consenting decisions. Those decisions are most frequently for DCOs, though that does not encompass all infrastructure schemes: see for example:

- *R (Girling) v East Suffolk Council* [2020] EWHC 2579 (Admin) which was concerned with enabling works for the Sizewell C nuclear project via a conventional planning permission;
- *R (Llandaff Residents Association v Cardiff Council* [2023] EWHC 1731 (Admin) which was concerned with waste water infrastructure and related to a major allocation of housing.

That is the first point which PEBA would make, namely that reference to DCOs as a means of capturing this issue is useful but not a perfect surrogate for reference to all infrastructure projects and procedures for consenting them.

The general premise is self-evidently correct: judicial review does, in practice, delay development which has been permitted because developers only rarely proceed while the litigation is under way. However, PEBA's second point is that remedies from a judicial review or statutory review are available to all parties. It is an obvious point that a promoter of infrastructure which has been refused may wish to show that the refusal was unlawful and examples of such unlawful refusals arose with:

- the Preesall underground gas storage facility (*R (Halite Energy Group) v Secretary of State for Climate Change and Energy* [2014] EWHC 17 (Admin));

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- the Aquind Interconnector (*R (Aquind Ltd) v Secretary of State for Business, Energy, & Industrial Strategy* [2023] EWHC 98 (Admin)).

Thirdly, it is also necessary to keep very much in mind that all planning decisions are captured by a bespoke procedural regime and list within the Administrative Court which affects time limits by which the parties operate and by which the Court operates. The Review is therefore asking whether, in respect of infrastructure schemes, the objective of ensuring sufficient expedition of such cases has been met.

The questions which are asked in the call for evidence include questions of a type which go to: (1) making the existing mechanisms and rights work more efficiently and quickly, and; (2) changing the rights of potential parties, including standing, access to the Court and costs.

As to those questions of type (1), PEBA very much endorses the objective of efficient and timely resolution of legal issues which arise from infrastructure challenges.

However, as to type (2) questions, PEBA draws attention to its wide remit and membership, as we have explained above. PEBA is neutral on the merits of the type (2) questions by reason of its role and membership. However, PEBA considers that it is essential to make change, if any, on the basis of clear evidence and rigorous analysis of the options and the effects of the change because these are important issues. The need for any change to be evidenced based is particularly acute where there is the potential for a future case to be made that for any decisions made to amend the usual procedural rules / adopt a different approach for challenges to DCOs should be applied to other types/categories of decisions (eg challenges to permissions for large housing developments or renewables currently dealt with through the TCPA 1990 process).

In this regard, i.e. the importance of rigorous evidence, you may find it helpful to see the review of timescales for planning and environmental cases to be found at JPL [2020] 5, 470, attached.

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Further on type (2) questions, PEBA highlights the need for careful consideration to be given to the potential impacts of any such changes for DCO challenges to the timely and efficient consideration of the Planning Court's other business.

Yours faithfully,

**Richard Kimblin KC, Tom Cosgrove KC, Michael Bedford KC, Jacqueline Lean on behalf of the Committee of PEBA**

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