Neutral Citation Number: [2026] EWCA Civ 648

Case No: CA-2025-003267

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT
Mrs Justice Lang
[2025] EWHC 3206 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/05/2026

Before :

LORD JUSTICE BEAN, VICE PRESIDENT OF THE COURT OF APPEAL, CIVIL DIVISION
LORD JUSTICE LEWISON
and
LORD JUSTICE HOLGATE

- -

Between :

THE KING (on the application of Luton and District Association for the Control of Aircraft Noise)	**Appellant**
- and -	
SECRETARY OF STATE FOR TRANSPORT	**Respondent**
- and –	
LONDON LUTON AIRPORT LIMITED	**Interested Party**

- -

Estelle Dehon KC, Ruchi Parekh and Hannah Taylor (instructed by **Leigh Day**) for the **Appellant**
James Strachan KC and Victoria Hutton (instructed by the **Government Legal Department**) for the **Respondent**
Michael Humphries KC and Rebecca Clutten (instructed by **Broadfield Law UK LLP**) for the **Interested Party**

Hearing date : 19 May 2026

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Approved Judgment

This judgment was handed down remotely at 11.00am on 21/05/2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Lord Justice Lewison:

Decision

1. On 19 May 2025 we heard an application for an extension of time for applying for permission to appeal against a judgment of Lang J, handed down on 8 December 2025. Having heard argument, we announced that the extension of time would be refused. These are my reasons for joining in that decision.

Background

2. On 3 April 2025 the Secretary of State for Transport made a Development Consent Order (a "DCO") in exercise of powers under the Planning Act 2008. The overall effect of the DCO was to permit the expansion of Luton Airport to enable an increase in passenger capacity to 32 million passengers per annum. It is a nationally significant infrastructure project ("NSIP").

3. The statutory scheme enacted by the 2008 Act was designed to curtail the ambit of the issues up for debate in interminable planning inquiries into proposals for development of NSIPs; and hence to speed up the delivery of such projects. Following consultation and parliamentary scrutiny, policy is set at national level (with limited scope for challenge) rather than being contested at the inquiry. In addition, the process of making recommendations to the decision maker is dealt with by the speedier method of examination by an Examining Authority rather than by a public inquiry. The primary time scale for an examination is six months. The background and structure of the 2008 Act is described by the Divisional Court in *R (Spurrier) v Secretary of State for Transport* [2019] EWHC 1070 (Admin), [2020] PTSR 240 and by the Supreme Court in *R (Friends of the Earth) v Secretary of State for Transport* [2020] UKSC 52, [2021] 2 All ER 967.

4. Section 118 (1) of the 2008 Act permits a challenge to the grant of a DCO to be made by judicial review if the claim form is filed before the end of the period of 6 weeks beginning with the day after the DCO is published or, if later, the day on which the statement of reasons for making the order is published. The time within which the challenge could be brought therefore expired on 16 May 2025. Because it is a statutory time limit, the courts cannot extend it. The JR claim form in this case, challenging the grant of the DCO, was issued on the very last day of that period (although it had been filed two days earlier).

Appeals in relation to NSIPs

5. By her judgment handed down on 8 December 2025 Lang J dismissed the challenge; and on the same day refused permission to appeal. The time limit for applying to this court for permission to appeal is laid down by CPR 52.12. In many cases that is 21 days from the date of the decision; but, as the rule itself states, particular time limits are laid down by Practice Direction 52D. Paragraph 17.3 of that Practice Direction, which came into force on 1 October 2025, applies to claims brought under section 118.

6. That paragraph takes up the recommendations made by Lord Banner KC in his review of legal challenges to NSIPs. That review was commissioned because, despite the introduction of the DCO procedure, there was still concern over delays to the delivery of NSIPs. As Lord Banner explained:

> "3. The prompt for this review was a concern in government and amongst some stakeholders that unmeritorious legal challenges to DCOs were causing significant undue delay to the delivery of NSIPs, with consequent detriment to the public interest.
>
> 4. The report examines that concern, informed by data as well as extensive engagement with stakeholders in the NSIP regime from a wide range of perspectives. I conclude that it is in significant respects well-founded, in the terms that I set out fully in the main body of the report.
>
> 5. I have therefore sought to examine ways of streamlining the process for judicial review of DCOs so as to minimise delays caused by unsuccessful legal challenges, whilst at the same time respecting constitutional principles and UK's international obligations including under the Aarhus Convention.
>
> 6. I set out my recommendations below and explain the reasoning for them in the body of my report. If they are implemented, then I am confident that they would deliver meaningful acceleration in the handling of legal challenges to DCO decisions. Perhaps just as importantly as making the timescales quicker, my recommendations would also make them more predictable. These enhancements would increase stakeholder confidence in the NSIP regime (including from investors) as well as reducing costs and other risks caused by delays to delivery of NSIPs caused by unsuccessful legal challenges."

7. Parliament took up Lord Banner's recommendations, some of which were implemented by section 13 of the Planning and Infrastructure Act 2025. Among other things section 13 (1) amended the Senior Courts Act 1981 by removing a right to appeal to this court where an application to challenge a DCO by judicial review had been certified by the Planning Court as totally without merit.

8. Lord Banner's recommendation immediately relevant to this application was:

> "1) The CPRC should be invited to amend the CPR to introduce a new Practice Direction accompanying CPR Part 52, dealing with appeals to the Court of Appeal from the Planning Court, which sets timescales for the determination of applications for permission to appeal, and (where permission is granted) thereafter substantive appeals. These target time scales should at minimum apply to DCO judicial reviews.

> 2) The target timescales in the Court of Appeal should be;
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> a. For permission to appeal and appeals against the refusal of permission to apply for judicial review: determination 4 weeks from the application for permission to appeal.
>
> b. For the hearing of substantive appeals: 4 months from the application for permission to appeal."

9. As footnote 88 to that recommendation stated:

> "There are likely to be other knock-on adjustments (for DCO cases) to the various deadlines for the submission of documents by the parties in Court of Appeal proceedings."

10. Following a government call for evidence, Lord Banner's recommendations were referred to the Civil Procedure Rules Committee. The amendments to the Practice Direction were published on the Ministry of Justice website at the end of July 2025, to take effect on 1 October 2025.

11. Paragraph 17.3 of the Practice Direction provides:

> "(1) The target timescale for determining an application for permission to appeal in a nationally significant infrastructure project appeal is four weeks from the filing of an appellant's notice.
>
> (2) Where permission to appeal is sought in a nationally significant infrastructure project appeal—
>
> (a) the appellant's notice is to be filed within seven days of the decision being appealed;
>
> (b) the appellant's notice and appellant's skeleton argument are to be served on the respondent within seven days of the appellant's notice being sealed;
>
> (c) the appellant is to file a core bundle and serve a core bundle index on the respondent within seven days of the appellant's notice being sealed; and
>
> (d) the respondent may file and serve reasons why permission to appeal should not be granted, if so advised, within seven days of service of the appellant's notice and appellant's skeleton argument.
>
> (3) The target timescale for the hearing of nationally significant infrastructure project appeals, which the parties should be prepared to meet, is four months from the filing of an appellant's notice."

12. The reduction of the time limit for an appeal was an almost inevitable "knock-on" effect of the setting of the target dates.

13. It is common ground that, in accordance with paragraph 17.3 (2) (a), time for appeal expired on 15 December 2025. But no Appellant's Notice was filed until 24 December 2025. That Appellant's Notice asserted that it had been lodged in time; and contained no application for an extension of time for the application for permission to appeal, as it should have done: PD 52C para 4 (1) (b). An application for an extension of time was eventually made on 22 January 2026, nearly six weeks after the expiry of the time limit for filing the Appellant's Notice.

14. Thus, the would-be Appellant seeks an extension of time for applying for permission to appeal as well as permission to appeal itself. By his order of 4 February 2026 Holgate LJ directed that the application for an extension of time and the application for permission to appeal be considered together at a "rolled-up" hearing. That hearing took place on 19 May 2026. The target date for determining the application for permission to appeal (if the Appellant's Notice had been filed in time) was 12 January 2026; and the target date for hearing any appeal was 15 April 2026. The delay in filing the Appellant's Notice (24 December 2025) and in applying for an extension of time (22 January 2026) meant that the target for determination of the application for permission (12 January 2026) could not be met. These delays also meant that even if, assuming in the Appellant's favour, permission to appeal might have been granted at some point after 22 January 2026, the target for a hearing (15 April 2026) could not realistically have been achieved in practice. Given the preparation involved the hearing could not have been accommodated in the Easter Term; and so the listing window would have run from the beginning of the Trinity Term on 2 June 2026.

Approach to extensions of time for appeal

15. The approach which the court applies in considering whether to extend time for appealing is that laid down in *R (Hysaj) v SSHD* [2014] EWCA Civ 1633, [2015] 1 WLR 2472. Moore-Bick LJ said that the question whether an extension of time should be granted was to be decided according to the same principles as govern the grant of relief against sanctions, as formulated in *Denton v TH White Ltd* [2014] EWCA Civ 906, [2014] 1 WLR 3926, which he summarised as follows:

> "A judge should address an application for relief from sanctions in three stages. The first stage is to identify and assess the seriousness and significance of the 'failure to comply with any rule, practice direction or court order' which engages rule 3.9(1). If the breach is neither serious nor significant, the court is unlikely to need to spend much time on the second and third stages. The second stage is to consider why the default occurred. The third stage is to evaluate 'all the circumstances of the case, so as to enable [the court] to deal justly with the application including [factors (a) and (b)]'."

16. Those two factors are the need for litigation to be conducted efficiently and at proportionate cost, and the need to enforce compliance with rules, practice directions and orders.

17. Whether delay in filing an appellant's notice is serious or significant must, in my view, be assessed against the background of the particular time limit laid down by the rules. In this case it took more than double the time permitted by the rules before the Appellant's Notice was filed. The application for an extension of time was not made until nearly six weeks after the expiry of the time limit. It is also pertinent to take into account that the very purpose of the 2008 Act (and the procedural changes made by both section 13 of the Planning and Infrastructure Act 2025 and the changes to the CPR and the Practice Direction) was the speeding up of delivery of NSIPs free from legal challenge. Second, it is well-established that overlooking a deadline is not a good reason for a failure to comply with the rule. Nor is ignorance of the time limit, let alone ignorance of the time limit by a specialist legal team: *Hysaj* at [52].

18. Although there is no special rule for cases concerning public law, the importance of the issues to the public at large is a factor that the court can properly take into account when it comes to stage three of the decision-making process to evaluate all the circumstances of the case. In most cases, however, the merits of the appeal will have little to do with whether it is appropriate to grant an extension of time. Only in those cases where the court can see without much investigation that the grounds of appeal are either very strong or very weak will the merits have a significant part to play when it comes to balancing the various factors that have to be considered at stage three of the process. In most cases the court should decline to embark on an investigation of the merits and firmly discourage argument directed to them: *Hysaj* at [41] and [46].

The three stages

19. In the present case it is accepted that the failure to comply with the time limit is serious and significant. It is also (at least tacitly) accepted that there is no good reason for the failure. Consideration of the first two stages of the three-stage test cannot be resolved in the Appellant's favour. Holgate LJ dealt with these two stages comprehensively in his order; and I agree with him. Ms Dehon KC tried to explain the failure by pointing to the fact that the target dates that Lord Banner recommended ran from the filing of an appellant's notice. He did not explicitly recommend a reduction in that time limit. But as Mr Strachan KC pointed out, anyone interested in this field would have been keen to learn what the Rules Committee actually did in response to Lord Banner's recommendations, especially since Lord Banner had adverted to the possibility of "knock-on" effects. This is not a case in which the changes were introduced precipitously. There was a two month lead in period before the changes came into force; and a further two months elapsed before the judge gave her judgment.

20. That brings me to the third stage (all the circumstances of the case but bearing in mind the weight to be given to the two particular factors identified in *Hysaj*.)

21. So far as the third stage is concerned, Ms Dehon accepts that finality is an important consideration, particularly in the context of an appeal, where the arguments that a would-be appellant seeks to advance will usually have been judicially considered and rejected. But she argues that there is no evidence in this particular case that either the Secretary of State or the interested party had taken any action on the assumption that once the time limit for appeal had passed the judge's judgment was final. That, however, overlooks one of the reasons for Lord Banner's recommendations, namely that they would increase stakeholder confidence in the NSIP regime (including from

investors) as well as reducing costs and other risks caused by delays to delivery of NSIPs. In other words, they were structural changes.

22. Ms Dehon relies in particular on the following factors:

    i) The breach has caused no delay to the development.

    ii) The Appellant's Notice was filed nine days out of time and five days earlier than the normal 21 day time limit. The delay has not caused serious delay to the overall progression of the appeal.

    iii) The appeal raises questions of considerable importance to the wider public interest, likely to affect other NSIPs.

    iv) The grounds of appeal are strong.

23. Mr Platts, the managing director of the interested party, has made two witness statements dealing with the timescale. In his first witness statement, dated 5 June 2025, he explained that article 44 of the DCO required notice to be given to Luton BC after monitoring had been carried out for one year; and that it was the intention to serve such a notice at the earliest possible opportunity, likely to be in early 2027. He went on to explain that the interested party was proceeding with the purchase, installation and commissioning of monitoring equipment so that monitoring could begin on 1 January 2026.

24. In his second witness statement, dated 26 February 2026, he said that monitoring had indeed begun on 1 January 2026, but went on to say that it was now the intention to serve the article 44 notice in July 2027. He went on to describe a number of matters that had to be resolved, which would involve a significant financial and administrative burden both on the interested party and other public bodies. He concluded:

> "In the circumstances, i.e. with the judicial review hanging over the project, the [interested party] has been reluctant to commit more time and resources than is absolutely necessary to establishment of the [Environmental Scrutiny Group] and Technical Panels, and the development of the airport management plans, until the uncertainty surrounding the challenge has been removed; hence the decision to defer service of the article 44 notice as long as possible without jeopardising the slot allocation for the summer season in 2028."

25. It is, in my view clear, that although the delay may not affect the date at which spades are put into the ground, as Mr Humphries KC accepted, the delay and uncertainty has had an impact on the orderly progress of the development. Indeed it was the interested party's anxiety about the possibility of further delay that caused it to adopt a neutral stance on the application for an extension of time. I do not consider therefore that the first point is well-founded. Quite apart from that, as Holgate LJ said in his order, delay of this kind is detrimental to good administration and the public interest, particularly for proposals concerning NSIPs: *R (Good Law Project Ltd) v Secretary of State for Health and Social Care* [2022] EWCA Civ 355, [2022] 1 WLR 2339 at [39]. The tight time limits imposed are the result of balancing two competing interests: the

need to allow challenges to be made to allegedly unlawful decisions and the need to ensure that any such challenges are made expeditiously.

26. The second point is also ill-founded. If the Appellant's Notice had been filed in time, this court would have first considered whether to grant permission to appeal at all. If permission had been granted, the appeal itself would then have progressed to a hearing. Although the court has ordered a "rolled up" hearing by way of damage limitation, that has had the disbenefit to the Secretary of State and the interested party of having had to incur the costs of preparing for a full appeal at a stage when the only question that required to be decided was whether to grant the requested extension of time. Moreover, as Holgate LJ said in his order, the delay and the need to deal with the application for an extension of time has in itself caused this court to fail to meet the target dates set by paragraph 17.3. So the overall progress of the appeal has been irretrievably compromised. In the context of an appeal that is analogous to the loss of a trial date. That is of particular significance in an appeal involving a challenge to an NSIP where the underlying policy was to speed up the delivery of NSIPs free from legal challenge. The imposition of target dates on the court itself is a clear manifestation of the underlying policy. The grant of an extension of time for appeal at this stage would cut across that clear policy. In a case which involves a challenge to a judgment upholding the grant of a DCO for an NSIP, factor (b) (the need to enforce rules and practice directions) carries particular weight. I consider that this court must send out a clear message that delays in an appeal involving NSIPs are unacceptable.

27. The fact that the Appellant's Notice was filed within an inapplicable time limit is neither here nor there. The time limit is seven days, and that is the time limit that should have been adhered to. Nor was the application for an extension of time made promptly.

28. As far as the third point is concerned, a public law challenge to the grant of a DCO for an NSIP will almost always raise a point of public interest. The very nature of an NSIP means that its effects will be of national significance. If the same or similar points are raised in challenges to other DCOs, they should be decided in the context of those challenges or in any appeal that is brought within the time limits laid down by paragraph 17.3.

29. So far as the fourth point is concerned, as I have said, the merits of the grounds of appeal will have little to do with whether it is appropriate to grant an extension of time except in those cases where the court can see without much investigation that the grounds of appeal are either very strong or very weak. The same approach applies even in a case of potential public interest as *Hysaj* demonstrates at [53]:

> "The final stage of the process is to consider all the circumstances of the case. As I have already mentioned, this appeal raises a point of considerable importance both to the parties and those in similar positions and to the wider public and it is one which in the public interest needs to be decided as soon as reasonably possible. That is a factor that argues in favour of granting relief, but I do not think that the merits themselves are sufficiently clear in this case for the court to take them into account one way or the other."

30. The "public interest factor" is therefore not an independent compelling reason for extending time: *Good Law* at [70]. Accordingly, the mere fact that an appeal raises questions of public interest (in the abstract) is not a sufficient reason for the grant of an extension of time, particularly where the other relevant factors all point against it.

31. Since Ms Dehon argued vehemently that the grounds of appeal were strong, we heard short submissions on those grounds, to which Mr Strachan replied. Far from agreeing that the grounds of appeal were very strong, he submitted that they were very weak. Consistently with *Hysaj*, it is not appropriate to discuss the competing submissions, save to state my conclusion. Lang J's judgment is cogently and comprehensively reasoned; and there is no obvious flaw in her judgment. The grounds of appeal on which the Appellant wishes to rely have been comprehensively answered in writing both by the Secretary of State and the interested party. In my judgment the merits of the grounds of appeal in this case are far from being sufficiently clear for them to be taken into account.

Result

32. It was for these reasons that I joined in the decision to refuse the extension of time and thus refuse permission to appeal.

Lord Justice Holgate:

33. I agree.

Lord Justice Bean, Vice-President of the Court of Appeal, Civil Division:

34. I also agree.