BCLP. Client Intelligent

**Insights**

# NEW GUIDANCE TO SUPPORT DCO REFORMS: WHAT IT MEANS FOR PRE-APPLICATION CONSULTATION

Jul 08, 2026


Summary

A suite of new and updated NSIP planning guidance was published on 3 July 2026 to support the raft of DCO reforms introduced by the Planning and Infrastructure Act 2025 (PIA) which come into force on 24 July 2026.

As we discussed in our previous Insight, among of the headline reforms is a fundamental shift in the approach to pre-application consultation. The current statutory requirements will be replaced by a non-statutory approach, guided by new guidance issued under section 50 of the Planning Act 2008 (2008 Act). That guidance, previously a notable gap in the reform framework, has now been published within this suite of updates. Its publication completes the information picture ahead of the 24 July commencement date. In this Insight we examine this new guidance and what applicants will need to consider in navigating these significant procedural adjustments.


## New guidance on pre-application consultation

When the prescriptive statutory pre-application consultation requirements end on 24 July 2026, the recently published new section 50 guidance (which can be found here) will become of central significance in guiding applicants through what has historically been one of the more resource-intensive parts of the DCO process.

The new guidance is explicit that there is no statutory requirement for applicants to engage or consult during the pre-application stage, and nothing in the guidance should be read as creating one. Instead, it makes recommendations and encourages applicants to consider certain issues and their approach to pre-application consultation but is not intended to be prescriptive. The emphasis is very much on flexibility, with applicants given discretion to determine how to structure their time and resources during this stage.

Applicants do retain a legal duty to have regard to the guidance, but that duty is narrow in scope, it applies only to assist compliance with the publicity requirements in section 48 of the 2008 Act and does not impose any broader pre-application obligation.

That said, pre-application engagement and consultation (which the guidance distinguishes between) remain strongly recommended as best practice, with the guidance identifying their value in identifying key issues, improving project design, and reducing delays and uncertainty ahead of examination. Detailed examples of methods for carrying out consultation and engagement are provided, though it is stressed that the use of these is at the applicant's discretion and is not a consideration for whether an application will be accepted for examination.

It does merit noting that none of the above changes the case law position in respect of consultation, in which arena the 'Gunning Principles' remain good law.  How this statutory guidance is rationalised against those legal principles, will be an area to watch, and no doubt litigated.

## A framework for pre-application

Four overarching principles provide a framework for what good pre-application processes look like while allowing approaches to be tailored to the nature, scale and complexity of each proposed development. Applicants are encouraged to consider these when preparing a DCO application and engaging with public authorities and others during the pre-application stage. The principles are:

1. prioritising front-loading to identify key issues early;
2. proportionality, with effort focused on the most important issues;
3. openness and transparency, so applicants are clear about what is fixed and what can be influenced; and
4. timeliness, encouraging engagement and/or consultation in a timely manner that fits within the overall programme for preparation of the proposed DCO application.

## Freedom in pre-application consultation design

The drafting of the new guidance is helpful in that it will, hopefully, reduce the risk of successful judicial review challenge on consultation grounds pursuant to the 2008 Act.

Of particular significance is the following statement in the acceptance stage guidance, which should make it more difficult for a challenge to succeed on the basis of a legal error in pre-application consultation:

> "*The degree to which the applicant has chosen to carry out pre-application engagement and consultation, and the applicant's approach to this, is not a statutory consideration in determining whether an application should be accepted in accordance with section 55 of the*

*Planning Act. The adequacy of any engagement or consultation is also not a consideration in the assessment of a DCO application*."

This will allow applicants genuine freedom to design their pre-application consultation programmes in a way that is appropriate and proportionate to a particular scheme.

Provided the remaining statutory requirements, principally notification under section 46 and publicity under section 48, are met, applicants can depart from conventional and sometimes overly cautious pre-application practice without fear of jeopardising acceptance or exposing the resulting decision to judicial challenge on consultation grounds.

But applicants will still need to approach these changes with thought and care. The removal of statutory consultation requirements does not remove the practical imperative to engage effectively: a poorly prepared application, lacking the technical input and issue-resolution that thorough pre-application engagement would otherwise have produced, is likely to face greater scrutiny at examination, increase the risk of substantive objections, and potentially delay or undermine the prospect of consent. The guidance makes clear that front-loading and proportionate engagement remain strongly recommended practice, even if they are no longer legally compelled. That point is important – in that the entire 2008 Act  DCO regime was predicated on 'front loading' in order to enable relatively short examinations and a greater level of certainty of a positive outcome.  If the front loading is lost, and the examination limit remains, what does this mean for investor and promoter certainty in the regime delivering positive decisions?

## Other guidance changes

There are a whole host of other equally important changes covered by the updated guidance which applicants will need to understand and address. The full suite of updated guidance can be found here.

These include changes to the required application documents, whereby certain documents, such as the Statement of Community Consultation (SoCC) and the Preliminary Environmental Information Report (PEIR), are no longer required, while new mandatory documents have been introduced, most notably in relation to the new BNG requirements, and a further category of voluntary documents which are encouraged where they add value to the application. The guidance on the content of a draft DCO has also been updated, with model provisions expected to be reintroduced as additional guidance in 2027. That is to be welcomed.

The acceptance stage guidance has been revised, including changes to the criteria for determining whether an application meets the required "satisfactory standard".  One principle to have evolved over the years was to consider whether an application was just 'acceptance ready' or 'examination ready', and what those hurdles (and their timing) meant in terms of cost, programme and risk.  The change at acceptance means that applicants can calibrate their appetite to risk more keenly.

The examination stage guidance places significantly greater emphasis on efficiency and on the role of the Initial Assessment of Principal Issues (IAPI) in structuring and focusing the examination. The decision-making guidance has similarly been updated to reflect the broader reforms.

Hence there are many potentially useful changes, but in order for them to work in the way intended, there will need to be a shift in approach from PINS and its inspectors, as well as other participants such as local authorities.

The remaining suite of NSIP guidance is expected to be updated later in 2026 or during 2027. In the meantime, the new and updated guidance documents already published contain a considerable amount of detail that DCO applicants will need to work through carefully and reflect in their project strategies at the earliest opportunity.

## Opportunity and risk

In conclusion, this is the biggest shake up of the 2008 Act in its 18 year history.  There has been plenty of sanding down of rough edges over that time, but this marks a wholesale shift in the regime, and with all change comes both opportunity and risk, as all participants and stakeholders start to navigate their way around the new framework.  Respective appetites for risk will dictate where on the spectrum of opportunity and risk, each project finds itself, and experienced DCO advisors will be essential to help navigate those decisions.

### Related Capabilities

- Planning & Zoning
- Infrastructure

## Meet The Team


### James Parker

Partner, London

james.parker@bclplaw.com
+44 (0) 20 3400 4132



### Clare Eccles

Senior Knowledge & Innovation Lawyer, London

clare.eccles@bclplaw.com
+44 (0) 20 3400 4267


---