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Legal costs for judicial reviews

Sir, – As the new year dawns, one fact stands out: the Government’s apparent disregard for meaningful public consultation. Nowhere is this more evident than in its handling of proposed restrictions on legal cost awards in planning and environmental judicial reviews; reforms advanced on a narrative about judicial review that, as several commentators have noted, is contradicted by available evidence.

Under the Planning and Development Act 2024, the State will set fixed fee scales for lawyers representing successful judicial review applicants. Yet, crucially, the State itself faces no such constraint when defending its decisions.

Citizens who win their cases may still face substantial legal bills, as the capped award will not cover their actual costs. Meanwhile, public authorities litigate with effectively unlimited, taxpayer-funded budgets.

This creates a profoundly unlevel playing field. It also hands the State control over who can effectively challenge it in court, as those fee scales can be adjusted at ministerial discretion.

Once established for planning cases, these restrictions are intended to extend to all environmental judicial reviews, and potentially beyond; a concerning precedent in areas already struggling with under-resourced legal representation. If authorities believe they cannot be held to account regarding the integrity of their decisions, the quality is likely to diminish and there is a risk that power may be abused.

Judicial review has been recently cast as a convenient culprit for delays in housing and infrastructure delivery, yet this narrative does not withstand scrutiny.

As legal scholars have repeatedly noted, restricting access to justice is unlikely to speed up delivery. What it will do is undermine accountability and potentially generate greater legal uncertainty as weakened representation leads to more poorly argued cases.

Rather than reflecting on why so many flawed planning decisions have been struck down by the courts, including a significant proportion challenged by developers, the State appears intent on insulating itself from scrutiny, particularly amid climate and biodiversity crises.

The Government is currently proposing a notable change to the rules on costs in judicial reviews. The aforementioned imbalance is compounded by the way these proposals are being advanced.

A consultation closing at 5:30pm on January 15th, launched in early December over the Christmas period, cannot credibly facilitate meaningful public participation. Key supporting documents were added to the consultation portal only on December 23rd. Traditionally, members of the public engage in consultations during evenings and weekends.

Asking to submit to a public consultation of such importance over Christmas and New Year, a time usually devoted to family and friends, is frankly insulting.

Curtailing access to justice will not resolve the housing or energy crisis. In a constitutional democracy, blunting public consultation and judicial review, the strongest check on executive power, is a price we should refuse to pay. – Yours, etc,

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