Climate litigation after the Planning and Infrastructure Act: judicial review, infrastructure and the rule of law

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The Planning and Infrastructure Act 2025 is presented as a law for speed, certainty and delivery. For climate and environmental lawyers, the real question is whether speed is being pursued through better decision-making or through thinner accountability. This article argues that judicial review should be understood as part of lawful infrastructure delivery, not as its enemy. It suggests practical ways in which solicitors, NGOs and community groups can litigate effectively under a faster and more politically charged regime.

1. The new politics of delay

The Planning and Infrastructure Act 2025 arrived in a political climate in which delay has become a master concept.[1] Housing delay, grid delay, renewable energy delay and transport delay are treated as symptoms of an over-legalised planning culture.[2] There is some truth in the diagnosis. A net-zero electricity system requires new transmission, storage, ports, heat networks, public transport, water infrastructure and large-scale renewables.[3] A legal system that cannot consent to necessary low-carbon infrastructure at speed will fail the climate rather than protect it.[4]

But the politics of delay is dangerous when it treats the law itself as the obstruction. Judicial review does not build pylons or insulate homes, but it can identify unlawful environmental assessment, inadequate consultation, irrational reasoning and breaches of statutory climate duties.[5] In environmental cases, that constitutional function is reinforced by the Aarhus Convention, which recognises access to justice as part of environmental governance.[6] The rule-of-law problem is therefore not whether climate infrastructure should be delivered quickly. It is a question of whether speed is obtained by improving front-loaded legality or by narrowing the space in which communities can expose illegality.[7] In this context, it is useful to remember the words of Pauffey J,

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[1] Planning and Infrastructure Act 2025.

[2] Ministry of Housing, Communities and Local Government, *Guide to the Planning and Infrastructure Bill* (19 September 2025).

[3] Climate Change Committee, *The Seventh Carbon Budget* (CCC, 26 February 2025).

[4] International Energy Agency, *Net Zero by 2050: A Roadmap for the Global Energy Sector* (IEA 2021).

[5] Senior Courts Act 1981, ss 31 and 31A; Civil Procedure Rules, Pt 54.

[6] Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) art 9.

[7] Tom Hickman, *Public Law after the Human Rights Act* (Hart 2010) ch 1.

albeit they were said in a family dispute as opposed to an environmental claim, "[j]ustice must never be sacrificed upon the altar of speed"[8].

The Act's judicial review reforms focus on challenges to national policy statements and development consent orders under the Planning Act 2008.[9] The new approach removes the paper permission stage for specified infrastructure challenges and channels cases directly to an oral permission hearing.[10] It also removes an onward appeal where a claim is certified as totally without merit at the oral stage.[11] The Government has presented these changes as a way to make infrastructure judicial review faster and more predictable while preserving access to justice for arguable cases.[12] Critics argue that the reforms risk increasing costs, reducing early judicial filtering and creating a precedent for wider restrictions on public law accountability.[13]

The environmental stakes are not one-directional. A poorly designed challenge to a genuinely necessary renewable energy project can harm climate objectives if it produces avoidable delay.[14] A meritorious challenge to an unlawful road, airport, fossil-fuel, waste or grid decision can prevent carbon lock-in, ecological harm and public distrust.[15] The task after the Act is not to romanticise litigation or to condemn it. It is to distinguish obstructive litigation from legality-enhancing litigation, and to defend the latter as part of a functioning climate state.[16]

2. Why judicial review matters in climate infrastructure

Judicial review is sometimes criticised because it is not a merits appeal.[17] That criticism misunderstands its value. The court's function is not to decide whether a wind farm, road scheme or reservoir is desirable, but to ensure that the public body has acted within its powers, considered mandatory matters, consulted lawfully, given adequate reasons where required and avoided irrationality.[18] In climate infrastructure, those legal standards are not formalities. They are the

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[8] Re NL (A child) [2014] 270 (Fam)

[9] Planning and Infrastructure Act 2025, s 13; Planning Act 2008, ss 13 and 118.

[10] Planning and Infrastructure Act 2025, s 13.

[11] Senior Courts Act 1981, s 18, as amended by Planning and Infrastructure Act 2025, s 13.

[12] Ministry of Justice and Ministry of Housing, Communities and Local Government, *Infrastructure Planning and Judicial Review Reform*, HCWS385 (23 January 2025).

[13] JUSTICE, 'Proposed Legal Reforms Risk Undermining Justice in Infrastructure Planning' (30 January 2025).

[14] Planning Act 2008, ss 104-105.

[15] R (Finch on behalf of the Weald Action Group) v Surrey County Council [2024] UKSC 20.

[16] Elizabeth Fisher, Eloise Scotford and Emily Barritt, 'The Legally Disruptive Nature of Climate Change' (2017) 80 MLR 173.

[17] Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374.

[18] R (Mott) v Environment Agency [2018] UKSC 10; [2018] 1 WLR 1022.

means by which public claims about necessity, security, affordability and decarbonisation are tested.[19]

The Climate Change Act 2008 creates a statutory architecture for emissions reduction, but it depends on decisions made across planning, transport, energy, housing, agriculture and industry.[20] If those decisions are poorly reasoned, the carbon budget may become an accounting exercise rather than a governing constraint.[21] The successful challenges to the Net Zero Strategy and the Carbon Budget Delivery Plan show that courts can require ministers to understand the evidential basis of climate policy without substituting judicial preferences for ministerial judgment.[22] That model is highly relevant to infrastructure consenting. If a decision maker relies on a national policy pathway, it must understand and explain the relationship between the project and that pathway.[23]

Judicial review also protects participation. Nationally significant infrastructure projects often affect communities with limited resources and face technical documentation that runs to thousands of pages.[24] Consultation is not meaningful if environmental information is missing, if alternatives are framed artificially, or if the public cannot understand the case being made.[25] Climate law adds a further dimension because the affected public may include not only immediate neighbours but also future residents, young people and communities vulnerable to climate impacts.[26] Domestic standing rules cannot directly represent all those interests, but they can enable NGOs and local groups to ensure that public authorities comply with the law.[27]

3. The risk of building faster badly

The most serious weakness in the anti-delay narrative is that it assumes legal challenge is external to delivery. In reality, legal error is itself a cause of delay.[28] If a development consent order is granted on the basis of inadequate environmental assessment, the subsequent challenge may be the

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[19] R (Friends of the Earth Ltd) v Secretary of State for Transport [2020] EWCA Civ 214; [2020] PTSR 1446.

[20] Climate Change Act 2008, ss 1, 4, 13 and 14.

[21] R (Friends of the Earth Ltd) v Secretary of State for Business, Energy and Industrial Strategy [2022] EWHC 1841 (Admin).

[22] R (Friends of the Earth Ltd) v Secretary of State for Energy Security and Net Zero [2024] EWHC 995 (Admin).

[23] Climate Change Act 2008, ss 13-14.

[24] Planning Act 2008, ss 47-56.

[25] R (Moseley) v Haringey London Borough Council [2014] UKSC 56; [2014] 1 WLR 3947.

[26] Joana Setzer and Catherine Higham, *Global Trends in Climate Change Litigation: 2024 Snapshot* (Grantham Research Institute, LSE 2024).

[27] R v Inspectorate of Pollution, ex p Greenpeace Ltd (No 2) [1994] 4 All ER 329; and John Mussington v Development Control Authority [2024] UKPC 3.

[28] National Audit Office, *Delivering Major Infrastructure Projects* (NAO 2020).

moment when the defect becomes visible, not the cause of the defect.[29] The same is true where consultation fails to disclose essential information or a decision letter gives inadequate reasons.[30] Faster litigation cannot compensate for unlawful decision-making. It only compresses the time in which unlawfulness must be identified.[31]

There is a climate-specific version of this point. A rush to build is not always a rush to decarbonise.[32] Some infrastructure is transition-enabling, such as grid reinforcement, public transport, heat networks and renewable generation.[33] Some infrastructure is transition-ambiguous, such as roads, airport expansion, waste incineration, and hydrogen networks that serve mixed industrial futures.[34] Some infrastructure risks extend fossil fuel dependence.[35] A planning system that treats all major infrastructure as presumptively virtuous because it is major infrastructure will not deliver climate legality. It will deliver carbon-intensive path dependence with better press releases.[36]

The Northern Ireland High Court's decision in *Hassard* illustrates the point in a particularly sharp form.[37] The court did not dismiss the A5 Western Transport Corridor as an unimportant or frivolous project. On the contrary, McAlinden J expressly recognised the acute road safety context and the "overwhelmingly compelling arguments" in favour of the scheme. The decision was nevertheless quashed because legality could not be displaced by urgency, political priority or asserted public benefit. The judgment's most important practical lesson is that climate duties do not necessarily prohibit high-emitting infrastructure. Still, they do require an evidently coherent account of how such infrastructure fits within statutory carbon budgets, net-zero targets and cross-departmental climate planning. As McAlinden J put it, "the decision to proceed with the scheme must be taken in accordance with the law and the principle of the rule of law cannot be subverted, even if the motivation for doing so is to achieve what is deemed to constitute a clear societal benefit."[38]

The Planning and Infrastructure Act also introduces broader reforms to nature recovery and infrastructure planning, including mechanisms for environmental delivery plans and a nature

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[29] R (Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport [2021] EWHC 2161 (Admin).

[30] R (CPRE Kent) v Dover District Council [2017] UKSC 79; [2018] 1 WLR 108.

[31] Administrative Court, *Judicial Review Guide 2025* (Judiciary 2025).

[32] Climate Change Committee, *The Seventh Carbon Budget* (CCC, 26 February 2025).

[33] Department for Energy Security and Net Zero, *Clean Power 2030 Action Plan* (2024).

[34] R (Transport Action Network Ltd) v Secretary of State for Transport [2021] EWHC 2095 (Admin).

[35] R (Finch on behalf of the Weald Action Group) v Surrey County Council [2024] UKSC 20.

[36] Gregory Unruh, 'Understanding Carbon Lock-In' (2000) 28 Energy Policy 817.

[37] In the matter of an application by John Hamilton Hassard, Robin Bruce, Carol Porter, Robert McKean, David Peoples, Wildridge Coote, Derick Donnell, David Brush and Victor Brush as members of the Alternative A5 Alliance [2025] NIKB 42, [193], [202], [300];

[38] ibid 300.

restoration levy.[39] The stated ambition is to enable development while delivering strategic environmental improvement.[40] The critical question is whether strategic delivery will strengthen ecological outcomes or replace site-specific protections with uncertain future measures.[41] For NGOs and community groups, this means the litigation focus may shift from whether a protected site is affected to whether the substitute mechanism is lawful, evidence-based, funded, enforceable and monitored.[42]

4. What the new permission regime means in practice

Removing the paper permission stage changes litigation tactics. The paper stage previously offered an early, relatively low-cost judicial filter and, in some cases, allowed permission to be granted or refused without an oral hearing.[43] Under the reformed route for specified NSIP and national policy statement claims, claimants should assume that the first judicial encounter will be an oral permission hearing.[44] That makes the pre-action stage more, not less, important. Letters before claim need to be sharper, evidence needs to be ready earlier, and grounds need to be drafted with the oral permission hearing in mind.[45]

For claimant solicitors, the first practical lesson is triage. Not every environmental objection is a ground of judicial review.[46] A strong post-Act claim will usually identify a clear public law error: a failure to assess a mandatory environmental effect, a misdirection as to policy, inadequate reasons, procedural unfairness, an unlawful approach to habitats, or a failure to have regard to a statutory climate duty.[47] A weak claim that merely asks the court to favour a different balance of benefits and harms is likely to fail quickly and may undermine the credibility of future environmental litigation.[48]

The second lesson is record-building. Community groups should keep a structured record of consultation responses, missing information, expert concerns, requests for environmental

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[39] Planning and Infrastructure Act 2025.

[40] Natural England, 'Royal Assent: Natural England and the Planning and Infrastructure Act' (18 December 2025).

[41] Wildlife and Countryside Link, *Planning and Infrastructure Bill: Briefing on Nature Recovery* (2025).

[42] Conservation of Habitats and Species Regulations 2017, SI 2017/1012, regs 63-64.

[43] Civil Procedure Rules, r 54.12.

[44] Planning and Infrastructure Act 2025, s 13.

[45] Pre-Action Protocol for Judicial Review, para 14; Administrative Court, *Judicial Review Guide 2025* (Judiciary 2025) ch 6.

[46] R v Somerset County Council, ex p Dixon [1998] Env LR 111.

[47] Town and Country Planning (Environmental Impact Assessment) Regulations 2017, SI 2017/571; Conservation of Habitats and Species Regulations 2017, SI 2017/1012; Climate Change Act 2008.

[48] R (Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council [2020] UKSC 3; [2020] PTSR 221.

information and the authority's responses.[49] This record is not bureaucracy. It is evidence that the decision-maker was alerted to the issue and either failed to address it or gave a legally inadequate answer.[50] The shorter and more front-loaded the permission process becomes, the more important it is to have the chronology, documents and key passages ready before proceedings are issued.[51]

The third lesson is cost strategy. Aarhus cost protection remains central to environmental claims, but it does not eliminate all financial risk.[52] Claimants need early advice on whether the claim is an Aarhus Convention claim, whether the default cap is adequate, whether a variation application is possible, and how adverse costs might interact with crowdfunding.[53] NGOs should also think carefully about claimant identity. A resident, a community association and a national NGO may each bring different strengths in terms of standing, evidence, costs and public legitimacy.[54]

5. The climate claimant's toolkit after the Act

The first tool is the environmental assessment ground. After *Finch*, downstream emissions, cumulative effects, alternatives and mitigation claims must be approached with particular care where a project enables fossil fuel combustion or high-carbon demand.[55] The same logic can extend beyond extraction. A road scheme may raise induced traffic issues, an airport scheme may raise aviation demand issues, and an incinerator may raise waste hierarchy and lock-in issues.[56] The legal question is not whether every downstream consequence is always assessable, but whether the effect is sufficiently causally connected, likely and significant.[57]

The second tool is the reasons ground. Reasons are the bridge between technical assessment and democratic accountability.[58] If a decision-maker accepts that a project has major climate effects but approves it because of need, security, or policy support, the reasoning must be sufficiently

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[49] Environmental Information Regulations 2004, SI 2004/3391.

[50] R (Plantagenet Alliance Ltd) v Secretary of State for Justice [2014] EWHC 1662 (Admin).

[51] Administrative Court, *Judicial Review Guide 2025* (Judiciary 2025) ch 7.

[52] CPR 45.41-45.44.

[53] R (Edwards) v Environment Agency (No 2) [2013] UKSC 78; [2014] 1 WLR 55.

[54] R v Inspectorate of Pollution, ex p Greenpeace Ltd (No 2) [1994] 4 All ER 329.

[55] R (Finch on behalf of the Weald Action Group) v Surrey County Council [2024] UKSC 20; Town and Country Planning (Environmental Impact Assessment) Regulations 2017, sch 4.

[56] R (Transport Action Network Ltd) v Secretary of State for Transport [2021] EWHC 2095 (Admin); In the matter of an application by John Hamilton Hassard, Robin Bruce, Carol Porter, Robert McKean, David Peoples, Wildridge Coote, Derick Donnell, David Brush and Victor Brush as members of the Alternative A5 Alliance [2025] NIKB 42; and Waste (England and Wales) Regulations 2011, SI 2011/988, reg 12.

[57] R (Finch on behalf of the Weald Action Group) v Surrey County Council [2024] UKSC 20 [79]-[81].

[58] R (CPRE Kent) v Dover District Council [2017] UKSC 79; [2018] 1 WLR 108.

intelligible to show how the issue was resolved.[59] Reasons will be especially important where the project is controversial, the statutory context is complex, or the decision departs from expert advice.[60] Climate reasoning that says everything and nothing at once should be challenged as such.[61]

The third tool is the policy consistency ground. National policy statements, local plans and carbon plans often contain commitments that are treated as political background rather than legal material.[62] Yet once a policy is adopted, the decision maker must interpret and apply it lawfully.[63] Where a policy supports both infrastructure delivery and environmental protection, a decision maker cannot simply cite the delivery limb and ignore the environmental limb.[64] This is likely to become more important as the Act accelerates the review of national policy statements and infrastructure delivery.[65]

The fourth tool is the rights and equality ground. Climate infrastructure decisions can affect homes, health, disability, age, race, livelihoods and cultural life.[66] A decision that exposes vulnerable residents to flooding, heat, air pollution or displacement may engage equality duties and Convention rights even where the primary statutory regime is planning.[67] Lawyers should not over-plead rights as decorative grounds, but should identify concrete impacts on identifiable groups where the evidence supports doing so.[68]

6. A positive rule of law agenda for infrastructure

Environmental lawyers should resist being trapped in a purely defensive posture. The answer to anti-JR politics is not simply to preserve every existing procedure. It is to insist on a better legal bargain. If the government wants faster infrastructure, it should invest in better environmental data, earlier community engagement, clearer policy, more competent decision letters and properly

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[59] South Bucks District Council v Porter (No 2) [2004] UKHL 33; [2004] 1 WLR 1953.

[60] R (Oakley) v South Cambridgeshire District Council [2017] EWCA Civ 71; [2017] 1 WLR 3765.

[61] Elizabeth Fisher, Eloise Scotford and Emily Barritt, 'The Legally Disruptive Nature of Climate Change' (2017) 80 MLR 173.

[62] Planning Act 2008, ss 5 and 104.

[63] Tesco Stores Ltd v Dundee City Council [2012] UKSC 13; [2012] PTSR 983.

[64] R (Friends of the Earth Ltd) v Heathrow Airport Ltd [2020] UKSC 52; [2021] PTSR 190.

[65] Planning and Infrastructure Act 2025, Pt 1.

[66] Equality Act 2010, s 149; Human Rights Act 1998, ss 3 and 6.

[67] Verein KlimaSeniorinnen Schweiz v Switzerland App no 53600/20 (ECtHR, 9 April 2024).

[68] R (Bridges) v Chief Constable of South Wales Police [2020] EWCA Civ 1058; [2020] 1 WLR 5037.

resourced courts.[69] Speed achieved in that way is compatible with the rule of law. Speed achieved by making claims harder to bring or more expensive to argue is not.[70]

A climate-compatible infrastructure system should also distinguish between projects that are necessary for decarbonisation and projects that merely claim the language of national need.[71] Grid connections for renewable power should not be equated with road capacity that induces traffic, or with fossil fuel infrastructure that prolongs extraction.[72] The law could create a simple green list and a brown list. Alternatively, decision-makers could be required to explain the transition function for major projects.[73] That would turn climate policy from a background aspiration into a discipline of public reasoning.[74]

There is a novel opportunity here. Judicial review could be reframed not as a brake on infrastructure, but as a quality-control mechanism for the transition state.[75] In that model, a successful challenge is not a failure of delivery but a correction of unlawful delivery. A refused permission application is not proof that courts are hostile to climate action, but rather evidence that weak claims can be filtered out. A strong permission grant in an environmental claim is not an obstruction but a signal that the decision deserves full scrutiny.[76]

7. Practical checklist for solicitors, NGOs and community groups

First, identify the consent route and the clock. Infrastructure claims may involve short time limits under the Planning Act 2008, the Civil Procedure Rules and specialist statutory review provisions.[77] Missing the time limit may be fatal, and protective issuing may be necessary where disclosure is delayed.[78] Second, obtain the core decision documents immediately: decision letter, recommendation report, environmental statement, habitats assessment, consultation report, policy documents and any carbon assessment.[79] Third, isolate the legal error before mobilising the public

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[69] Institute for Government, *Government Should Approach Reducing Risk of Judicial Review with Care* (20 May 2026).

[70] TRS Allan, *The Sovereignty of Law: Freedom, Constitution and Common Law* (OUP 2013) ch 2.

[71] Climate Change Committee, *The Seventh Carbon Budget* (CCC, 26 February 2025).

[72] Gregory Unruh, 'Understanding Carbon Lock-In' (2000) 28 Energy Policy 817.

[73] Paris Agreement, art 2(1)(c).

[74] Eloise Scotford, *Environmental Principles and the Evolution of Environmental Law* (Hart 2017).

[75] Carol Harlow and Richard Rawlings, *Law and Administration* (4th edn, CUP 2022) ch 15.

[76] R (Cart) v Upper Tribunal [2011] UKSC 28; [2012] 1 AC 663.

[77] Planning Act 2008, s 118; CPR 54.5.

[78] R (Berky) v Newport City Council [2012] EWCA Civ 378.

[79] Environmental Information Regulations 2004, regs 5 and 7.

campaign. The campaign may explain why the claim matters, but the court will ask what was unlawful.[80]

Fourth, use experts strategically. The best expert evidence often identifies a discrete flaw in an assumption or model rather than attempting to relitigate the whole project.[81] Fifth, plead remedies carefully. A claimant may need quashing, a declaration, a mandatory order, or, in some circumstances, interim relief.[82] Sixth, explain the public interest in the claim. In a post-Act climate, courts may be especially attentive to delay arguments, so claimants should show why the claim promotes lawful delivery rather than tactical obstruction.[83]

8. The Banner logic and its limits

The reform programme draws intellectual support from Lord Banner KC's review of judicial review in nationally significant infrastructure cases.[84] The core concern was not that environmental law is too demanding in substance, but that weak challenges can take too long to fail.[85] That is an important distinction. If the problem is the delay caused by unmeritorious claims, the solution should target weak claims without making arguable environmental claims more expensive or procedurally fragile.[86]

There is a risk that the language of 'meritless' litigation expands in political use beyond its legal meaning. A claim is not meritless because it is inconvenient, unpopular with a promoter, or unsuccessful at final hearing.[87] Environmental law often develops through claims that are difficult, novel or only partly successful.[88] The *Finch* challenge was originally refused permission on the papers, was unsuccessful in the High Court, and unsuccessful in the Court of Appeal before the Supreme Court allowed it by majority, which is a useful reminder that legal merit is not always

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[80] Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374.

[81] Administrative Court, *Judicial Review Guide 2025* (Judiciary 2025) para 15.3.

[82] Senior Courts Act 1981, ss 31 and 31(2A); Judicial Review and Courts Act 2022, s 1.

[83] R (Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport [2021] EWHC 2161 (Admin).

[84] Lord Banner KC, *Independent Review of Legal Challenges against Nationally Significant Infrastructure Projects* (2024).

[85] Ministry of Justice and Ministry of Housing, Communities and Local Government, *Infrastructure Planning and Judicial Review Reform*, HCWS385 (23 January 2025).

[86] JUSTICE, 'Proposed Legal Reforms Risk Undermining Justice in Infrastructure Planning' (30 January 2025).

[87] R (Cart) v Upper Tribunal [2011] UKSC 28; [2012] 1 AC 663.

[88] R (Finch on behalf of the Weald Action Group) v Surrey County Council [2024] UKSC 20.

obvious at the first stage.[89] A permission system that is too hostile to novelty risks suppressing exactly the claims that clarify the law before it is too late.[90]

The category 'totally without merit', which already exists in judicial review, should therefore remain narrow. It should identify claims that are bound to fail and should not be used to punish environmental claimants for raising difficult points in a fast-moving field.[91] Where climate science, statutory duties and policy commitments are evolving, courts should be careful before certifying claims in a way that removes appellate oversight.[92] The legitimacy of infrastructure reform depends on that discipline.[93]

9. Environmental outcomes reports and the next procedural frontier

The Planning and Infrastructure Act sits alongside a longer movement away from retained EU-derived environmental assessment towards a domestic environmental outcomes model.[94] The Government has argued that environmental outcomes reports can streamline assessment and focus decision-making on outcomes rather than process.[95] That ambition is not inherently objectionable. Environmental assessment can be bloated, repetitive and hard for communities to use.[96] But the danger is that a language of outcomes becomes a way to reduce baseline assessment, public participation or project-specific scrutiny.[97]

For climate litigation, the question will be whether new assessment regimes preserve the functions that made cases such as *Finch* possible. Does the regime require disclosure of indirect and cumulative climate effects? Does it require reasonable alternatives? Does it allow the public to understand the significance of residual harm? Does it secure mitigation and monitoring? Does it create reasons that can be reviewed?[98] If the answer is no, the system may be faster but less lawful in environmental substance. If the answer is yes, the system may be both faster and better.[99]

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[89] R (Finch) v Surrey County Council [2022] EWCA Civ 187; Finch [2024] UKSC 20.

[90] Kim Bouwer, 'The Unsexy Future of Climate Change Litigation' (2018) 30 JEL 483.

[91] R (Grace) v Secretary of State for the Home Department [2014] EWCA Civ 1091.

[92] Climate Change Act 2008; Paris Agreement.

[93] TRS Allan, *The Sovereignty of Law* (OUP 2013) ch 2.

[94] Environment Act 2021, Pt 6.

[95] Department for Levelling Up, Housing and Communities, *Environmental Outcomes Reports: A New Approach to Environmental Assessment* (Consultation, 2023).

[96] Maria Lee, *EU Environmental Law, Governance and Decision-Making* (2nd edn, Hart 2014) ch 5.

[97] Office for Environmental Protection, *Advice on the Environmental Outcomes Reports Provisions in the Levelling-up and Regeneration Bill* (2023).

[98] Town and Country Planning (Environmental Impact Assessment) Regulations 2017, sch 4; Environment Act 2021, Pt 6.

[99] Eloise Scotford, *Environmental Principles and the Evolution of Environmental Law* (Hart 2017) ch 8.

The practical advice is to track secondary legislation and guidance as closely as primary legislation. Much of the real environmental law for infrastructure is set out in regulations, policy statements, guidance, and templates.[100] NGOs should intervene early in consultations on these materials because they shape the field before any individual project is challenged.[101] Solicitors should also be ready to challenge guidance where it misstates the law or encourages unlawful reasoning.[102]

10. Climate-positive challenges

Not all environmental litigation against infrastructure is anti-infrastructure. Some claims are climate-positive because they challenge decisions that would obstruct or dilute the transition. A challenge to an unlawful fossil-fuel consent may help protect the carbon budget.[103] A challenge to inadequate grid planning could, in principle, accelerate the connection of renewables if the legal duty is sufficiently precise.[104] A challenge to weak building standards may support warmer, healthier and lower-carbon homes.[105] A challenge to a road scheme may prevent induced traffic and protect investment in public transport.[106]

This matters because environmental claimants are often caricatured as opponents of development. The more accurate distinction is between development that enables a lawful transition and development that deepens risk while borrowing the rhetoric of need.[107] Claimants should therefore state the positive transition case where it exists. If opposing a road, identify the public transport, demand management or active travel alternative. If opposing fossil fuel infrastructure, identify the clean energy and efficiency pathway. If challenging housing policy, explain how climate-safe, affordable homes can be delivered.[108] Courts do not need campaign manifestos, but they do need to understand that legality can improve delivery rather than merely delay it.[109]

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[100] Planning Act 2008, ss 5, 37 and 104.

[101] Aarhus Convention, art 7.

[102] R (A) v Secretary of State for the Home Department [2021] UKSC 37; [2021] 1 WLR 3931.

[103] Finch [2024] UKSC 20; and In the matter of an application by John Hamilton Hassard, Robin Bruce, Carol Porter, Robert McKean, David Peoples, Wildridge Coote, Derick Donnell, David Brush and Victor Brush as members of the Alternative A5 Alliance [2025] NIKB 42.

[104] Electricity Act 1989, ss 9 and 10; and Coolglass Wind Farm Limited -v- An Bord Pleanála [2026] IESC 5.

[105] Building Act 1984; Building Regulations 2010.

[106] R (Transport Action Network Ltd) v Secretary of State for Transport [2021] EWHC 2095 (Admin).

[107] Gregory Unruh, ‘Understanding Carbon Lock-In’ (2000) 28 Energy Policy 817.

[108] Climate Change Committee, *The Seventh Carbon Budget* (CCC 2025).

[109] Carol Harlow and Richard Rawlings, *Law and Administration* (4th edn, CUP 2022) ch 15.

11. The constitutional value of one day in court

Infrastructure projects can involve compulsory acquisition, landscape transformation, ecological loss, carbon effects and long-term community disruption.[110] In that context, one day in court is not a luxury. It is part of the constitutional settlement that allows powerful public and private actors to reshape places while remaining legally accountable.[111] The court may ultimately reject the claim, but the availability of independent scrutiny disciplines the decision-making process before litigation occurs.[112]

This is especially true for climate-affected communities. A community opposing an incinerator, road, airport expansion or flood-risk development may already have lost politically before the legal process begins.[113] Judicial review is not a guarantee of success, but it is a guarantee that legality is not wholly absorbed by executive confidence.[114] Reform that preserves that guarantee while removing avoidable delay is defensible. Reform that weakens it in the name of speed should be resisted.[115]

12. National need and the danger of false inevitability

Infrastructure promoters often rely on national need. In some cases, the need is compelling. A decarbonised electricity system will require grid expansion, storage, flexibility, renewable generation and planning decisions that are faster than many communities have experienced before.[116] But need can become a form of false inevitability. Once a project is deemed nationally necessary, local environmental concerns may be treated as obstacles rather than as information.[117] The danger is not that national need is irrelevant. The danger is that the need is stated at such a high level of abstraction that it avoids the real questions: this project, in this place, with these alternatives, at this time, with these carbon and ecological consequences.[118] A prime example is where a project is proposed on valuable protected land,[119] as opposed to a brownfield site, which would benefit from redevelopment because, from the developer's perspective, it is easier and

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[110] Planning Act 2008, Pt 7.

[111] Entick v Carrington (1765) 19 St Tr 1029.

[112] Mark Elliott and Jason Varuhas, *Administrative Law: Text and Materials* (5th edn, OUP 2017) ch 1.

[113] Aarhus Convention, arts 6 and 9.

[114] R (UNISON) v Lord Chancellor [2017] UKSC 51; [2020] AC 869.

[115] Senior Courts Act 1981, s 31.

[116] Climate Change Committee, *The Seventh Carbon Budget* (CCC 2025).

[117] Planning Act 2008, s 104.

[118] R (Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council [2020] UKSC 3.

[119] See the Cory Decarbonisation Project development consent decision which authorised construction of a carbon capture system on a London nature reserve with various land designations.

cheaper to develop on pristine land than to remediate past development and use before starting the construction of a new project.

A practical way to resist false inevitability is to separate need, choice and design. Need asks whether a public objective is legitimate and weighty. Choice asks whether this project is a suitable and lawful means of meeting that objective. Design asks whether avoidable harm has been minimised.[120] Environmental claimants should rarely deny legitimate need where it plainly exists. Instead, they should ask whether the decision maker has treated need as overriding before examining choice and design.[121]

This is especially important for low-carbon infrastructure. Communities may support climate action while objecting to unfair siting, poor consultation, biodiversity loss or failure to share benefits.[122] If the legal system responds by saying that climate infrastructure is too urgent for meaningful participation, it risks creating backlash against the transition itself.[123] The rule of law can help by forcing promoters to show that urgency has not become arrogance.[124]

13. Access to justice as infrastructure policy

Access to justice is usually discussed as a constitutional value, but it is also an infrastructure policy. A community that believes it has been ignored may continue to resist long after consent is granted.[125] A developer that wins consent after a rushed or opaque process may face reputational damage, protest, delay and litigation risk.[126] A public authority that invests time in lawful consultation and reasoned decision-making may avoid later challenge.[127] The choice is therefore not between legal process and delivery. Legal process is one of the conditions of durable delivery.[128]

This insight should shape how NGOs argue publicly about judicial review. The strongest public defence is not that every challenge should be welcomed. It is that legally accountable infrastructure is more stable, legitimate and climate-compatible than infrastructure delivered by suppressing objections.[129] Courts are part of the machinery that keeps the transition honest. Weak claims will

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[120] Planning Act 2008, ss 104-106.

[121] R (Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport [2021] EWHC 2161 (Admin).

[122] Aarhus Convention, arts 6-7.

[123] Kirsten Jenkins and others, ‘Energy Justice: A Conceptual Review’ (2016) 11 Energy Research & Social Science 174.

[124] R (Moseley) v Haringey London Borough Council [2014] UKSC 56; [2014] 1 WLR 3947.

[125] Aarhus Convention, art 9.

[126] National Audit Office, *Delivering Major Infrastructure Projects* (NAO 2020).

[127] R (Moseley) v Haringey London Borough Council [2014] UKSC 56; [2014] 1 WLR 3947.

[128] Carol Harlow and Richard Rawlings, *Law and Administration* (4th edn, CUP 2022).

[129] R (UNISON) v Lord Chancellor [2017] UKSC 51; [2020] AC 869.

fail. Strong claims should be heard quickly and fairly. That is not anti-growth. It is the rule of law applied to a climate-constrained economy.[130]

14. A final practical point on speed

Speed should be measured from the beginning of the public decision process, not merely from the date proceedings are issued. If an authority consults poorly, withholds environmental information or gives unclear reasons, any later litigation delay is partly a product of that earlier failure.[131] Conversely, a transparent authority that publishes the relevant modelling, addresses objections and explains the balance will often reduce litigation risk even where opponents remain dissatisfied.[132] Claimants should use this point in correspondence. The request is not for delay. It is for the lawful information and reasoning that makes delay less likely.[133] As Lord Leggatt put it, "[y]ou can only care about what you know about."[134]

The practical culture of the reformed system will matter as much as the statutory text. Judges, promoters and claimants will need to avoid treating oral permission hearings as mini-trials. A permission hearing should identify arguability, not determine every contested factual or expert issue.[135] If the process becomes too elaborate at the first hearing, a reform intended to save time may merely move cost and complexity forward.[136] That would be especially damaging for community claimants with limited funds.[137]

The better measure of success is not fewer claims at any cost, but fewer successful claims because decisions are lawful from the start.[138]

Conclusion

The Planning and Infrastructure Act 2025 does not end environmental judicial review, but it changes the atmosphere in which it is practised.[139] The best response is sharper litigation, better evidence and a more confident account of why legality matters to climate delivery. The climate

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[130] Climate Change Act 2008, ss 1 and 4.

[131] R (Moseley) v Haringey London Borough Council [2014] UKSC 56.

[132] R (CPRE Kent) v Dover District Council [2017] UKSC 79.

[133] Aarhus Convention, arts 4 and 6.

[134] Finch [2024] UKSC 20 [21].

[135] Civil Procedure Rules, Pt 54.

[136] Administrative Court, *Judicial Review Guide 2025* (Judiciary 2025).

[137] CPR 45.41-45.44.

[138] R (CPRE Kent) v Dover District Council [2017] UKSC 79.

[139] Planning and Infrastructure Act 2025.

transition will require building at scale, but it will also require trust, fairness and ecological discipline. Judicial review is not the enemy of that transition. Unlawful, poorly reasoned and inadequately assessed infrastructure is the enemy.