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Suing For Survival

Our legal action against the government aims to shut down fossil fuels

Our survival is not an afterthought. The defence of the living planet cannot be tacked retrospectively onto business as usual. Yet this is how almost all governments operate. They slap the word “sustainable” on damaging projects they have already approved, then insist this means they’ve gone green. If we are to survive and prosper, everything must change. Every decision should begin with the question of what the planet can withstand.

This means that any discussion about new infrastructure should begin with ecological constraints. The figures are stark. A paper published in *Nature*¹ last year showed that existing energy infrastructure, if it is allowed to run to the end of its natural life, will produce around 660 gigatonnes of CO₂. Yet, to stand a reasonable chance of preventing more than 1.5°C of global heating, we can afford to release, in total, no more than 580 gigatonnes. In other words, far from building new fossil power plants, the survival of a habitable planet means retiring the damaging projects that have already been built. Electricity plants burning coal and gas and oil will not secure our prosperity. They will destroy it.

But everywhere special interests dominate. Construction projects are driven, above all, by the lobbying of the construction industry, consultancies and financiers. Gigantic and destructive schemes, such as the *Oxford-Cambridge Expressway*², are invented by lobbyists for the purpose of generating contracts. Political support is drummed up, the project achieves its own momentum, then, belatedly, a feeble attempt is made to demonstrate that it can somehow become compatible with environmental promises. This is what destroys civilisations³: a mismatch between the greed of economic elites and the needs of society.

But last week, something momentous happened. The decision to build a scheme with vast financial backing and terrible environmental impacts was struck down by the Court of Appeal. The judges decided that government policy, on which planning permission for a third runway at Heathrow was based, had failed to take account of the UK’s climate commitments, and was therefore unlawful⁴. This is – or should be – the end of business as usual.

The Heathrow decision stands as a massive and crucial precedent.

Now we must use it to insist that governments everywhere put our survival first, and the demands of corporate lobbyists last. To this end, with the *Good Law Project* and Dale Vince, the founder of *Ecotrici-*

¹ <https://www.nature.com/articles/s41586-019-1364-3>

² <https://www.theguardian.com/commentisfree/2018/aug/22/project-britain-debate-oxford-cambridge-expressway>

³ <https://www.resilience.org/stories/2018-09-25/the-ecological-crisis-is-a-political-crisis/>

⁴ <https://www.theguardian.com/environment/2020/feb/27/heathrow-third-runway-ruled-illegal-over-climate-change>

ty, I'm pursuing a similar claim⁵. In this case, we are challenging the UK government's policy for approving new energy projects.

On Tuesday, we delivered a "letter before action" to the Treasury solicitor. We've given the government 21 days to accept our case and change its policy to reflect the climate commitments agreed by Parliament. If it fails to do so, we shall issue proceedings in the High Court to have the policy declared unlawful. We'll need money, so we've launched a crowdfunding appeal⁶ to finance the action.

It's hard to see how the government could resist our case. The Heathrow judgement hung on the government's national policy statement on airports⁷. This, the judges found, had not been updated to take account of the Paris climate agreement. New fossil fuel plants, such as the gas burners at Drax in Yorkshire the government approved last October, are enabled by something very similar: the national policy statements on energy infrastructure⁸. These have not been updated since they were published in 2011. As a result, they take no account of the Paris agreement, of the government's new climate target (net zero by 2050, as opposed to an 80% cut) or of Parliament's declaration of a climate emergency. The main policy statement⁹ says that the *European Emissions Trading System* "forms the cornerstone of UK action to reduce greenhouse gas emissions from the power sector". As we have left the EU, this, obviously, no longer holds. The planning act obliges the government¹⁰ to review its national policy statements when circumstances change. It has failed to do so. It is disregarding its own laws.

These outdated policy statements create a presumption in favour of new fossil fuel plants. Once a national policy statement has been published, there is little objectors can do to prevent damaging projects from going ahead. In approving the Drax plant, the secretary of state for business and energy at the time (Andrea Leadsom) insisted that the policy statement came first, regardless of the climate impacts¹¹.

Catastrophic decisions like this will continue to be made until the statements change. They are incompatible with either the government's new climate commitments or a habitable planet.

While we are challenging the government's energy policies, another group – the *Transport Action Network* – is about to challenge its road building schemes on the same basis¹². It points out that the national policy statement on road networks¹³ is also outdated and incompatible with the UK's climate commitments.

⁵ <https://www.ecotricity.co.uk/news/news-archive/2020/environmentalists-follow-heathrow-ruling-by-calling-on-government-to-end-fossil-fuel-developments>

⁶ <https://www.crowdjustice.com/case/no-new-fossilfuel-projects/>

⁷ <https://www.gov.uk/government/publications/airports-national-policy-statement>

⁸ <https://www.gov.uk/government/publications/national-policy-statements-for-energy-infrastructure>

⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/47854/1938-overarching-nps-for-energy-en1.pdf

¹⁰ <http://www.legislation.gov.uk/ukpga/2008/29/section/6>

¹¹ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010091/EN010091-001251-Drax Re-Powering Decision Letter of 4 October 2019 Signature Copy.pdf>

¹² <https://transportactionnetwork.org.uk/2020/03/02/the-road-to-tackling-climate-change/>

¹³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/387223/npsnn-web.pdf

The policy statement, astonishingly, insists that “any increase in carbon emissions is not a reason to refuse development consent”, unless the increase is so great that the road would prevent the government from meeting its national targets. No single road project can be disqualified on these grounds. But the cumulative effect of new road building ensures that the UK will inevitably bust its carbon targets. While carbon emissions are officially disregarded, minuscule time savings are used to justify massive and damaging projects.

Transport emissions have been rising¹⁴ for the past five years, partly because of road building. The government tries to justify its schemes by claiming that cars will use less fossil fuel. But because they are becoming bigger and heavier, new cars sold in the UK now produce more carbon dioxide¹⁵ per kilometre than older models.

The perverse and outdated national policy statement locks into place such damaging projects as the A303 works around Stonehenge, the A27 Arundel scheme, the Lower Thames crossing, the Port of Liverpool access road, the Silvertown tunnel in London and the Wensum Link road in Norfolk. A government seeking to protect the lives of current and future generations would immediately strike down the policy that supports these projects, and replace it with one that emphasised walking, cycling and public transport.

A third action has been launched by Chris Packham and the law firm Leigh Day, *challenging HS2*¹⁶ on similar grounds. Its carbon emissions were not properly taken into account, and its environmental impacts were assessed before the government signed the Paris agreement.

Already, the Heathrow decision is resonating around the world. Now we need to drive its implications home, by suing for survival. If we can oblige governments to resist the demands of corporate lobbyists and put life before profit, humanity might just stand a chance.

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¹⁴ <https://www.theguardian.com/uk-news/2019/sep/16/uk-road-transport-emissions-up-since-1990-despite-efficiency-drive>

¹⁵ <https://www.theguardian.com/business/2020/feb/28/new-cars-producing-more-carbon-dioxide-than-older-models>

¹⁶ <https://www.theguardian.com/uk-news/2020/mar/03/hs2-legal-challenge-launched-by-chris-packham>