

## Environmental Impact Assessment: The case of Finch - v- Surrey County Council [2024]



In this second article we look in detail at the facts and Supreme Court decision in the case of Finch v Surrey County Council (2024) UKSC 20.

Read the first article in this series: [Environmental Impact Assessment: what's it all about?](#)

### The facts

A developer applied to Surrey county council for planning permission to expand oil production from a well site at Horse Hill, in East Surrey. The development would involve extracting oil from six wells over a twenty year period. An Environmental Impact Assessment (“EIA”) is compulsory for a project for the extraction of more than 500 tonnes of petroleum a day, and the Horse Hill development fell within this category.

The developer argued that, on considering climate change within the EIA, Surrey county council should only consider the release of greenhouse gases caused by the extraction of the oil. They argued that the EIA did not need to include an assessment of the greenhouse gas emissions that would occur when the extracted oil was subsequently burnt elsewhere as fuel. Surrey County Council agreed with this approach and therefore granted planning permission without any assessment or consideration of the emissions that would occur upon the later combustion of the extracted oil (downstream emissions).



## The case

The claimant, a local resident Ms Finch on behalf of the Weald Action Group, had applied for a judicial review of the decision to grant planning permission. She argued that the EIA was required to include an assessment of the downstream emissions and had not – i.e. that the consequences of the subsequent use of the extracted oil had not been considered.

The high court rejected the claim and held that an assessment of the combustion emissions was not required as part of the EIA, or if that was wrong it was for Surrey County Council to decide whether to assess them and Surrey County Council had given valid reasons for declining to do so.

The court of appeal did not agree, that as a matter of law, the combustion of emissions were incapable of being regarded as effects on the climate requiring assessment under the EIA but rather it depends on whether there is a “sufficient causal connection” and that this is a matter of evaluative judgment for Surrey County Council.

Ms Finch appealed to the Supreme Court.

## The supreme court judgement in brief

The appeal was successful by a 3 to 2 majority and it was held that Surrey County Council’s decision to grant planning permission was unlawful because “(i) the EIA for the project failed to assess the effect on climate of the combustion of the oil to be produced, and (ii) the reasons for disregarding this effect were flawed” .

## The reasoning for the judgement

The key question for the supreme court was whether downstream emissions should be included in the EIA as a matter of interpretation of the legislation. The judges unanimously agreed that the Court of Appeal’s finding that the question was one of evaluative judgment for the Surrey County Council was wrong.

The EIA must consider the “effects of a project”, which is a question of causation. The EIA test is whether an effect is “likely”.

Here, the parties were in agreement that it was inevitable that the extracted oil from the site would be refined and undergo combustion which will produce greenhouse gas emissions. It was also not disputed that the volume of emissions are quantifiable and could be estimated using established methodologies nor that such downstream emissions have an impact on climate.

The issue in dispute was whether these downstream emissions are “direct or indirect ... effects of the project” under the EIA Directive and 2017 regulations. If they are then they must be assessed as part of the EIA.

It was held that the emissions that will occur on combustion of the produced oil are indeed “effects of the project”, albeit indirect. It is inevitable that, if the project goes ahead, the extracted oil would release greenhouse gases upon combustion, thus the causal connection is not broken.

It was argued that Surrey County Council were wrong to limit the EIA to the environmental impacts at the site itself as the EIA Directive does not set out any geographical limit of the scope of the environmental impacts which must be assessed. “Indirect” effects may occur away from the extraction site. Further, the impact of the greenhouse gas emissions does not depend on where the gases are released nor can reliance be placed upon other regimes that may operate to avoid or mitigate significant environmental effects (although no relevant regimes were identified in these proceedings) to remove the obligation to identify and assess in the EIA the effects, whether they are “direct or indirect, immediate or remote”.



Refining crude oil does not alter the intended use or its basic nature and does not break the causation between the extraction of the oil and its combustion. This was noted to be different to, for example, the production of steel which can be used for numerous purposes and therefore no meaningful assessment can be made as to the emissions which may result from the use of the end product.

The judgement also said that whilst national planning policy is relevant to the substantive decision as to whether to grant planning permission, it is irrelevant to the scope of EIA and should not negate the requirement for local planning authorities to fully assess the environmental impact.

For these reasons it was held that Surrey County Council's failure to consider the environmental impact of the combustion of the oil meant that the decision to grant planning permission was unlawful.

## The dissenting arguments

The judges position was that decisions on planning permission will generally be taken by district or county councils. The emissions caused by use of the extracted oil are dealt with by central government, rather than at a local level. It was therefore argued that it was "constitutionally inappropriate" for a local planning authority to make decisions based on its own views regarding downstream emissions. It was also argued that it was contrary to the EU principle of proportionality for local planning authorities to have to take downstream emissions into consideration.

It was further argued that looking at the EIA Directive as a whole made it clear that downstream emissions do not qualify as indirect effects of a project and if it had intended such an approach, it would have made it specifically clear. The EIA Directive confirms that indirect effects need to be considered and it was argued that on a reasonable interpretation this did not include downstream emissions. It was also noted that the EU Commission had not commenced infraction proceedings against any member states for failing to include downstream emissions in their requirements for an EIA.

The dissenting judges therefore said that Surrey County Council were correct not to have required consideration of downstream emissions in the EIA and would have erred in law if they had insisted on this.

## Implications of Finch

The planning permission for the oil extraction at Horse Hill has been held to be unlawful and set aside. It does not however mean the applicant will not obtain planning permission, Surrey County Council will need to reconsider the application in light of Finch.

The case of Finch has potential to have far reaching implications and we will consider these in our next article.





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