

Your guide to...

# FINCH V SURREY COUNTY COUNCIL [2024]

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## Finch v Surrey County Council [2024] UKSC 20

In this ground-breaking case, the claimant (Sarah Finch on behalf of the Weald Action Group) took a case all the way to the Supreme Court, which ultimately ruled that the grant of planning permission for oil production in Surrey was unlawful for failing to assess the 'downstream' greenhouse gas (**GHG**) emissions that will inevitably arise from the combustion of the fuel, following refinement of the crude oil.

The decision turned on the correct interpretation of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (**EIA Regulations**), in particular: the "direct and indirect significant effects of a project" on the climate. The central issue was whether, when considering an application for oil extraction at the Horse Hill Well Site for commercial production, the local planning authority should have required an assessment of the downstream or 'scope 3' GHG emissions resulting from the eventual use of the refined products of that oil.

The Supreme Court found that the concept of "the effects of a project" within the EIA Regulations is a question of causation. In the case of oil production, the Supreme Court noted that the causal connection plainly meets the "but for" legal test: i.e. but for the extraction of the oil, the oil would stay in the ground and so would not be burnt. However, on the agreed facts, the extraction of oil is not just a necessary condition of the burning of the fuel, it is also sufficient to bring about that result because of the guarantee that it will be refined and burnt – thereby displaying the strongest possible form of causal connection and much stronger than that required as a test of causation for most legal purposes.

The ruling emphasised the importance of public participation in environmental decision-making, which is an objective not only of the EIA Directive but also central to the UNECE

Aarhus Convention (obligations under which have been codified by subsequent amendments to the EIA Directive). The Court identified two issues in relation to public participation, namely: increasing the democratic legitimacy of environmental decision, and serving an educational function. As Lord Leggatt summarised: “You can only care about what you know about”.

Similar arguments can be made for projects, particularly agricultural projects, which might lead to impacts to rivers and watercourses. For example, where an agricultural development will generate large amounts of manure or ammonia, then those can be seen as “downstream” effects of the development which should be taken into account in the EIA process. This is an important judgment to refer to if you believe that a development might lead to impacts to a river or watercourse.

The judgment can be found [here](#).