

Finch -v- Surrey County Council (2024) – The Implications



In this final post on the Supreme Court decision in Finch we look at the potential implications of the decision and consider whether and to what extent the case has broader implications for the planning sector or whether it is a case that might ultimately be limited to its facts.

The scope of downstream considerations

The use of fossil fuels and the creation of GHGs is hugely important and incredibly emotive. However, one question left undetermined following the decision in Finch is where you draw the line. With something such as oil extraction it was an agreed fact before the Supreme Court that the end use of the extracted oil **will** result in both the burning of the oil and the creation of an **identifiable level** of GHGs.

Finch was concerned with GHGs generated from oil extraction and the impact this would cause to the environment, but the 2017 Regs are concerned with all forms of environmental impact, which have direct and/or indirect adverse effects on the air, land, water, climate, soil and natural vegetation etc. Does that mean an EIA will now need to consider all downstream environmental impacts. What about the case of a factory producing cattle feed? Should the impact of the release of methane gas be considered a relevant factor?

While it is not controversial to say that the largest single use of crude oil is the production of fuel, it is not the only use. Extracted oil could be used in the production of lubricants, solvents and other products and each use may



result in a differing release of GHGs. Indeed, even different types of fuel may generate different volumes of GHGs. How is a local planning authority or planning inspector expected to assess competing technical evidence in this field, particularly in circumstances where there may be a number of divergent technical viewpoints in existence. It is telling that in *Finch* it was recorded that the parties had agreed that combustion emissions could be estimated and the estimated emissions appeared to be common ground. Two points flow from this. First, downstream impacts may not always be capable of uncontroversial quantification. Second, might there be incentives for parties not to be seen to agreeing downstream impacts?

If the assessment of downstream emissions will be required as a matter of course it seems inevitable that we will see increased levels of dispute, creating delays in decision making and important development from coming forward in a timely manner, if at all.

Positive factors

The *Finch* decision confirms that, in the case of oil extraction, the end use of the oil and the GHG's emitted was a relevant factor for EIA purposes. But is that the end of the story? If the extracted oil was used in some way to support green energy might it be said that the clean energy produced is a positive factor to be considered relevant for the purposes of an EIA? Should you be able to net off positive and negative factors and, if netting off negative and positive impacts is now a thing under the EIA regime, how do you give weight to different individual impacts?

The road to net zero 2050

The UK (albeit under the previous Government) is committed to reaching net zero by 2050. This does not mean that all energy consumption will be from renewable sources. Rather the total GHGs would equate to emissions removed whether through the use of carbon capture schemes, peat restoration, woodland creation and similar projects. While we may see dramatic technical advances over coming years it seems, given where we are today, to be somewhat unrealistic to assume that on and from 2050 the UK will have no need for fossil fuel consumption. More likely we will see fossil fuels forming part (possibly a significantly smaller part than it does today) of a balanced portfolio of energy sources. That being the case, should the production of GHGs from oil extraction (for example) be considered in a vacuum. If it were then it risks promoting fuel insecurity. In this respect it is interesting to note that following the decision in *Finch* and the change in Government the Secretary of State has decided to support a claim by Friends of the Earth and South Lakes Action on Climate Change that the decision to approve the controversial coal mine in Whitehaven, Cumbria should be quashed, citing *Finch* and downstream impacts as the basis for its change in position.

The decision in *Finch* has also provided a reminder to local planning authorities of the importance of public participation and as part of their reasoning for agreeing for the Whitehaven decision to be quashed the Secretary of State has accepted their error '*as serious*' and deprived the public of their rights of access to information on the climate impact of the development and had they been able to participate based on such details it may have resulted in a different decision. West Cumbria Mining did not agree with the Secretary of State so the High Court hearings went ahead in July 2024 and at the time of writing we await the outcome, which will make for an interesting read!

Conclusions

It is difficult to see whether there might be circumstances analogous to *Finch* that mean the decision will set a far-ranging precedent which will affect the entirety of the planning system, but its impacts have already been seen in the last few weeks, albeit in the same industry. As well as Whitehaven the Labour Government has also



conceded a challenge to the grant of planning permission for exploratory oil drilling in Lincolnshire. As with Whitehaven the Lincolnshire decision appears to be made in direct response to the *Finch* case.

Whether the pendulum will swing the other way (in the face of future challenges to the refusal of planning consent) remains to be seen but for now we can say we are certainly starting to see a downstream impact of the *Finch* decision in relation to proposed fossil fuel based schemes.



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