

**IN THE HIGH COURT OF JUSTICE  
KING'S BENCH DIVISION  
ADMINISTRATIVE COURT  
(Planning Court)**

**AC-2023-LON-003737**



**AC-2023-LON-003737**

**BETWEEN**

**SOS BISCATHORPE  
(ACTING THROUGH MATHILDA DENNIS)**

**Claimant**

**-and-**

**(1) THE SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND  
COMMUNITIES  
(2) EGDON RESOURCES UK LIMITED  
(3) LINCOLNSHIRE COUNTY COUNCIL**

**Defendants**

---

**CONSENT ORDER**

---

UPON the Claimant's application for statutory review under s.288 of the Town and Country Planning Act 1990 of the First Defendant's planning inspector's decision dated 14 December 2023 to grant planning permission for a side-track drilling operation, associated testing and long term oil production at Land off High Street, Biscathorpe, Lincolnshire LN11 9RA ("the **Decision**").

AND UPON the parties agreeing terms

AND UPON the Court being satisfied that it is appropriate to quash the Decision for the reasons set out in the Statement of Reasons

**IT IS ORDERED BY CONSENT:**

1. The Decision is quashed.
2. The application for planning permission shall be remitted to the First Defendant for re-determination.

3. The First Defendant shall pay the Claimant's costs of the application subject to the costs cap of £35,000 ordered by Jay J on 23 February 2024, to be assessed if not agreed on the standard basis.

THE HON MRS JUSTICE FARBEY

Dated: 04/07/2024

**BY THE COURT**

IN THE HIGH COURT OF JUSTICE  
KING'S BENCH DIVISION  
ADMINISTRATIVE COURT  
(Planning Court)

AC-2023-LON-003737

BETWEEN

SOS BISCATHORPE  
(ACTING THROUGH MATHILDA DENNIS)

Claimant

-and-

(1) THE SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND  
COMMUNITIES  
(2) EGDON RESOURCES UK LIMITED  
(3) LINCOLNSHIRE COUNTY COUNCIL

Defendants

---

STATEMENT OF REASONS

---

1. By application reference PL/0037/21 the Second Defendant applied to Lincolnshire County Council ("**the Council**") for planning permission for a side-track drilling operation, associated testing and long term oil production at Land off High Street, Biscathorpe, Lincolnshire LN11 9RA (the "**Site**").
2. The Council refused planning permission and the Second Defendant appealed to the First Defendant who appointed a planning inspector to hold a hearing on 11 October 2022 and determine the appeal. In a decision letter dated 14 December 2023, the Inspector allowed the appeal and granted planning permission ("**the Decision**").
3. The Second Defendant's planning application was accompanied by an Environmental Statement ("**ES**") which did not consider the effect on climate of greenhouse gas ("**GHG**") emissions resulting from the eventual combustion of the oil extracted from the development.
4. In this claim the Claimant contends under Ground 3 that the Decision is unlawful because the Inspector failed to consider whether those combustion emissions were an effect of the development in light of the Court of Appeal's judgment in *R (Finch) v Surrey County Council* [2022] PTSR 958.

5. The claim was heard by Farbey J on 5 and 6 June 2024 with judgment reserved. In an order dated 14 June 2024, Farbey J ordered that:

2. If, before judgment is handed down in the present claim, the Supreme Court hands down its judgment in R (on the application of Finch on behalf of the Weald Action Group) (Appellant) v Surrey County Council and others (Respondents) (Case ID: 2022/0064), the parties have permission to file and serve written submissions on the implications of the Finch judgment for Ground 3 of the present claim within fourteen days.

6. On 20 June 2024 the Supreme Court gave judgment in *Finch* ([2024] UKSC 20). The majority of the Supreme Court (Lord Leggatt with whom Lady Rose and Lord Kitchin agreed) allowed the appeal. They held that the effect on climate of the combustion of the oil to be produced was, as a matter of law, an “effect” of the project. It was a question of judgment whether an effect was “likely” and “significant”, but on the agreed facts the GHG emissions were both inevitable and significant. In breach of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (“**EIA Regs**”) the council had failed to assess that effect and the grant of planning permission was unlawful.

7. Regulation 26 of the EIA Regs provides:

26.— Consideration of whether planning permission or subsequent consent should be granted

(1) When determining an application or appeal in relation to which an environmental statement has been submitted, the relevant planning authority, the Secretary of State or an inspector, as the case may be, must—

- (a) examine the environmental information;
- (b) reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account the examination referred to in sub-paragraph (a) and, where appropriate, their own supplementary examination;
- (c) integrate that conclusion into the decision as to whether planning permission or subsequent consent is to be granted; and
- (d) if planning permission or subsequent consent is to be granted, consider whether it is appropriate to impose monitoring measures.

(2) The relevant planning authority, the Secretary of State or the inspector, as the case may be, must not grant planning permission or subsequent consent for EIA development unless satisfied that the reasoned conclusion referred to in paragraph (1)(b) is up to date, and a reasoned conclusion is to be taken to be up to date if, in the opinion of the relevant planning authority, the Secretary of State or the inspector, as the case may be, it addresses the significant effects of the proposed development on the environment that are likely to arise as a result of the proposed development.

(3) When considering whether to impose a monitoring measure under paragraph (1)(d), the relevant planning authority, the Secretary of State or inspector, as appropriate, must—

- (a) if monitoring is considered to be appropriate, consider whether to make provision for potential remedial action;

(b) take steps to ensure that the type of parameters to be monitored and the duration of the monitoring are proportionate to the nature, location and size of the proposed development and the significance of its effects on the environment; and

(c) consider, in order to avoid duplication of monitoring, whether any existing monitoring arrangements carried out in accordance with an obligation under the law of any part of the United Kingdom, other than under [any law that implemented ]I the Directive, are more appropriate than imposing a monitoring measure.

(4) In cases where no statutory timescale is in place the decision of the relevant authority or the Secretary of State, as the case may be, must be taken within a reasonable period of time, taking into account the nature and complexity of the proposed development, from the date on which the relevant authority or the Secretary of State has been provided with the environmental information. (emphasis added)

8. Following the Supreme Court's decision in *Finch*, it is apparent now that the Inspector erred in law. The Inspector could not lawfully grant planning permission for the oil extraction project unless an EIA had been carried out which complied with the obligation to identify, describe and assess the direct and indirect significant effects of the project on (among other factors) climate: Reg 4(2) of the EIA Regs. Furthermore, Reg 26 required the Inspector to reach a reasoned conclusion on the significant effects of the project which was up to date i.e. which addressed "the significant effects of the proposed development on the environment that are likely to arise as a result of the proposed development".
9. Following *Finch* and on the facts of this case the effects of the project on climate included as a matter of law the downstream combustion emissions. The Inspector did not consider as part of the EIA whether that effect was "likely" and "significant" and it cannot be said that he inevitably would have concluded that it was not. Accordingly, in breach of Reg 26 of the EIA Regs, the Inspector failed to consider the likelihood and significance of an effect of the project on climate.
10. In these circumstances, and without prejudice to the claimant's position on the other grounds of challenge brought, the parties have agreed that the Decision should be quashed and the planning application should be remitted to the First Defendant for re-determination.