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Measuring Downstream Emissions Post-*Finch*: Implications and Challenges for Infrastructure Projects

by Estelle Dehon KC, Jack Parker, Ruchi Parekh and Lois Lane

Introduction

1. On 20 June 2024, the Supreme Court handed down its long-awaited judgment in *Finch v Surrey County Council* [2024] PTSR 988, [2024] UKSC 20 (*"Finch"*),[1] concerning the proper approach to assessing downstream combustion emissions from an onshore oil drilling project, as part of the Environmental Impact Assessment (*"EIA"*) process. The judgment is clearly groundbreaking for new fossil fuel proposals and has already had ripple effects across a number of subsequent cases. But what does it mean for planners generally? Does *Finch* signal an upheaval of the EIA process or only require some tweaking around the edges?

2. To recap the background to the case, *Finch* concerned a legal challenge to the 2019 grant of planning permission by Surrey County Council for the extraction of 3.3 million tonnes of oil over a 25-year period from a site at Horse Hill. The central issue was whether the inevitable greenhouse gas (*"GHG"*) emissions, which would occur when the oil extracted from the proposed development was eventually burned, were a "likely significant effect" of the development within the meaning of Directive 2011/92/EU of the European Parliament and of the Council (as amended by Directive 2014/52/EU) (*"the EIA Directive"*), as implemented domestically by the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (*"the EIA Regulations"*), such that they should have been included in the EIA process for the project.

3. By a majority of 3–2, the Supreme Court held that the combustion emissions from the proposed development *were* a likely significant indirect effect of the project on the climate, which fell to be assessed as part of the EIA process.[2] The Court also found that the reasons given by the County Council for not treating the combustion emissions as a likely significant effect of the project were legally flawed. The planning permission was therefore quashed.

4. Three fundamental points can be distilled from the Court's reasoning. **First**, the question of an "effect" in EIA terms is one of factual and legal causation (§§65-71). **Second**, considering the difference between "direct" and "indirect" effects (§§83-92), "it is in the very nature of 'indirect' effects that they may occur as a result of a complex pathway involving intermediate activities away from the place where the project is located." (§102) **Third**, it is only "likely significant effects" that must be included in an environmental statement (*"ES"*) and whether a potential effect is "likely" (§§75,77) or "significant" (§58) is a question of evaluative judgment, based on sufficient evidence.

5. Applying this reasoning to the facts of *Finch* itself was a straightforward exercise, given the inevitability of combustion emissions and the existence of an established methodology for measuring them. Since the judgment was handed down, we have begun to see how its conclusions have been applied to the facts of other cases. This paper sets out the key findings from the *Finch* judgment, highlights subsequent cases where its effects have become apparent, and offers some predictions on how the implications of the judgment may continue to play out for planning and environmental decision-making more broadly.

Legal framework – the EIA regime

6. The EIA Directive is implemented domestically by the EIA Regulations in relation to applications for planning permission under the Town and County Planning Act (*"TCPA"*) 1990. For larger infrastructure projects subject to applications for development consent under the Planning Act (*"PA"*) 2008, the provisions of the Directive are implemented via the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (*"the Infrastructure Planning Regulations"*).

7. Regulations 3 and 26 of the EIA Regulations prohibit the

1. Six members of chambers were instructed in the case: Estelle Dehon KC and Ruchi Parekh (Appellant) (who were assisted by Lois Lane during her pupillage); Harriet Townsend and Alex Williams (County Council); Nina Pindham and David Welsh (for interveners Friends of the Earth and Greenpeace respectively).
2. References to the Supreme Court refer to the decision of the majority unless otherwise specified.

grant of planning permission for 'EIA development' (as defined in the Regulations) without an EIA having been carried out for the development. EIA requires the relevant decision-maker (i.e. the planning authority, Secretary of State or planning inspector) to determine whether or not a proposed project falls within the remit of the EIA regime (*"screening"*), the extent of issues to be considered in the EIA (*"scoping"*), and consult on and consider an ES submitted by the applicant for planning permission.[3] Regulation 4(1) of the Infrastructure Planning Regulations likewise provides that the Secretary of State may not grant development consent for a project unless EIA has been carried out.

8. The object of an EIA, as set out in Finch at §3 is to:
"ensure that the environmental impact of a project is exposed to public debate and considered in the decision-making process. The legislation does not prevent the competent authority from giving development consent for projects which will cause significant harm to the environment. But it aims to ensure that, if such consent is given, it is given with full knowledge of the environmental cost."

9. Under Article 3(1) of the EIA Directive and regulation 4(2) of the EIA Regulations, where an EIA is required, it must include the assessment of "direct and indirect significant effects" of a project on a range of environmental factors including climate change. Regulation 5(2) of the Infrastructure Planning Regulations contains the same requirement for projects requiring development consent.

Key findings in *Finch*

10. It was agreed between the parties in *Finch* that it was inevitable that the crude oil extracted from the development would be refined and ultimately combusted somewhere in the world, giving rise to GHG combustion emissions (also referred to more broadly as "scope 3" or "downstream" emissions).[4] It was also agreed that those emissions were capable of being quantified. Pausing there, it is important to note that the factors that drove this agreement are likely to be present in almost all developments for the commercial production of fossil fuel: the whole purpose of the extraction is to produce fossil fuel to be combusted and the physics of the climate impact of this combustion producing GHG emissions is unassailable.[5]

11. The EIA carried out by the applicant excluded consideration of combustion emissions and the County Council accepted the developer's argument that they fell outside the requirements for EIA and were not an "indirect effect" of the project. By a majority, the Supreme Court found that this conclusion was unlawful (see §§53 and 174).

12. The Court held that the EIA Directive and the EIA Regulations must be interpreted in their proper context (§11). That context includes the key principles underlying the EIA regime (§§12–17) and related principles of international law, such as the Aarhus Convention.[6]

13. Central among these principles is the importance of public participation in environmental decision-making. The Court held at §21:
"Public participation is necessary to increase the democratic legitimacy of decisions which affect the environment. Second, the public participation requirements serve an important educational function, contributing to public awareness of environmental issues. Guaranteeing rights of public participation in decision-making and promoting education of the public in environmental matters does not guarantee that greater priority will be given to protecting the environment. But the assumption is that it is likely to have that result, or at least that it is a prerequisite. ***You can only care about what you know about."*** (emphasis added).

14. It further held at §153:
"Looking at the matter more broadly, it needs to be recognised that the process of EIA takes place in a political context and that the information generated by an EIA will be considered within a political decision-making arena. It is therefore inevitable that economic, social and other policy factors will6 outweigh environmental factors in many instances. But this does not avoid or reduce the need for comprehensive and high quality information about the likely significant environmental effects of a project. If anything, it enhances the importance of such information. Nowhere is this more so than where issues arise relating to climate change."

15. The question of what constitutes an 'effect' of a project in EIA terms is a matter of law and causation, not a matter of planning judgement as the Court of Appeal had considered it to be (§§65, 131–139). The Supreme Court pointed to several potential legal thresholds for establishing the necessary degree of causation between a project and its effects and did not make any final determination as to which test was the most appropriate (§§67–71). However, it concluded that by any definition of causation – even the strictest *"necessary and sufficient condition"* test – combustion emissions are effects of an oil extraction project where, as in this case, they are inevitable (§§79–80).

16. Whether an impact is capable of reasoned assessment is also a relevant factor to whether it must be assessed as an effect of a project because it goes to the question of whether an effect is 'likely' within the meaning of the EIA Regulations. Only effects which "evidence shows are likely to occur and which are capable of meaningful assessment must be assessed" (§167). This must, however, be understood in light of the precautionary principle, which *"underlies the EIA Directive"* and *"implies that cases of material doubt should generally be resolved in favour of EIA"*: Supreme Court in *R (Champion) v North Norfolk* [2015] 1 WLR 3710 at §51.

17. In *Finch* all parties were agreed that the downstream emissions

3. For a summary see *R (Friends of the Earth & ors) v Secretary of State for Levelling Up, Housing & Communities* [2024] EWHC 2359 (Admin) ("**Whitehaven**"), §62.
4. See §§39-43 of *Finch* for a further explanation of the classification of GHG emissions into 'scopes'.
5. A small percentage of fossil fuels are produced for non-combustive uses: approximately 4-6% of Europe's oil and gas is used for plastics and globally around 6% of global oil is used (per the British Plastics Federation as at 4 April 2024).
6. The Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (signed at Aarhus, Denmark, on 25 June 1998 and in force from 30 October 2001) is a multilateral international treaty, which grants the public a number of rights around access to environmental information, public participation in environmental decision making, and access to justice in relation to issues affecting the local, national and transboundary environment.

were capable of assessment through an agreed methodology (§81), and this will be true for all developments for the commercial production of fossil fuel. However, in other circumstances with more uncertainty around whether or not an effect will occur there must be sufficient information upon which a reasoned conclusion should be based, which goes beyond mere conjecture or speculation (§77).

18. Ultimately the Supreme Court concluded that the ES in the *Finch* case was flawed because it assessed only direct emissions from the operation of the site and not downstream combustion emissions and the decision to grant planning permission for the project was therefore unlawful (§174).

19. It was irrelevant that combustion might occur anywhere in the world. As the Court held at §97:
"Climate change is a global problem precisely because there is no correlation between where GHGs are released and where climate change is felt. Wherever GHG emissions occur, they contribute to global warming. This is also why the relevance of GHG emissions caused by a project does not depend on where the combustion takes place. If an activity is carried on which will inevitably result in significant GHG emissions, people who carry on the activity cannot be heard to say: "These emissions are not effects of our activity because they are occurring far away among people of whom we know nothing."

20. It was similarly irrelevant that there were to be intermediate stages of refinement of the oil (§§118, 134) or that its end use was outside the project site boundary (§§102–103). Indeed, applying something akin to a 'polluter pays principle', the Court concluded that the combustion emissions were, "entirely" within the control of the developer, even if they were to occur elsewhere, because "if no oil is extracted, no combustion emissions will occur" (§103). Intervening stages were insufficient to break the chain of causation between extraction and combustion emissions.

21. It was also irrelevant to the validity of the EIA that other pollution control regimes might exist or that national planning policy (currently para 194 of the National Planning Policy Framework, *"NPPF"*) sets out a planning presumption that such regimes should be assumed to operate effectively (§§106–111). Lord Leggatt held at §108 that:
"It was a clear legal error to regard this aspect of planning policy as a justification for limiting the scope of an EIA. An assumption made for planning purposes that non planning regimes will operate effectively to avoid or mitigate significant environmental effects does not remove the obligation to identify and assess in the EIA the effects which the planning authority is assuming will be avoided or mitigated."

22. It should be noted that, although the question of whether a downstream impact is an effect of a project is now understood to be a matter of law, the question of whether it is likely to be *significant* is still a matter of planning judgement for the decision-maker (Finch at §58).

23. However, it is not enough for decision-makers to pre-empt the decision on significance as a reason to avoid assessment. An effect must be properly assessed before its significance can be determined. As Lord Leggatt held at §62:
"it is no answer to a challenge based on failure to carry out an EIA that complies with the EIA Directive to say that complying with the EIA Directive would not have affected the decision. It is essential to the validity of the decision that, before it is made, there has been a systematic and comprehensive assessment of the likely significant effects of the project on the environment in accordance with the EIA Directive."

Implications of the judgment in subsequent cases

24. The ripple effects from the Supreme Court's judgment in *Finch* began to be felt almost immediately after it was handed down. In early June, the High Court heard the case of *R (Mathilda Dennis on behalf of SOS Biscathorpe) v Secretary of State for Levelling Up, Housing and Communities* (AC-2023-LON-003737) (*"Biscathorpe"*), concerning planning permission granted by an inspector on appeal for drilling at Biscathorpe in the Lincolnshire Wolds for exploration, appraisal/testing, and (if viable) production of oil over a fifteen-year period.[7]

25. One of the grounds of that claim was that the Inspector erred in law in granting planning permission without having information on downstream emissions before him. The ES which accompanied the application in 2021 cited the judgment of the High Court in *Finch*, which had held that combustion emissions were legally incapable of being effects of a fossil fuel extraction project, as justification for their exclusion. The developer's Appeal Statement in April 2022 repeated this justification, notwithstanding that the Court of Appeal judgment in *Finch* had been handed down in February 2022, which held that combustion emissions might be an indirect effect of a fossil fuel project where there was a sufficiently close causal connection between the project and the downstream emissions and that this was a matter of planning judgement for the decision-maker.[8]

26. Before the High Court's judgment in *Biscathorpe* was handed down, the Supreme Court delivered its judgment in *Finch*. In light of the *Finch* judgment, both the Secretary of State and the developer in the *Biscathorpe* claim accepted that the grant of planning permission without consideration of downstream emissions was an error of law and consented to judgment. Neither sought to sustain their original arguments around standing (based on the failure by the group explicitly to raise the issue of *Finch* or the adequacy of the EIA at the hearing stage, although it had expressed concerns about the impact of downstream emissions) and whether relief should be refused because the outcome would

7. The Claimants were represented by Estelle Dehon KC and Lois Lane.
8. [2022] PTSR 958, [2022] EWCA Civ 187 at §§40, 141.

necessarily have been the same even without the error of law, per *Simplex GE Holdings Limited v Secretary of State for the Environment* [1989] 57 P & CR 306 (*"Simplex"*).

27. In September 2024, judgment was handed down in *Friends of the Earth & South Lakeland Action on Climate Change v Secretary of State for Levelling Up, Housing & Communities* [2024] EWHC 2349 (Admin) (*"Whitehaven"*).[9] This case was a statutory review challenging the decision of the Secretary of State for Levelling Up, Housing and Communities to grant planning permission for a new underground coal mine in Whitehaven, Cumbria. Applying *Finch*, Mr Justice Holgate (as he then was) found that the Secretary of State had acted in breach of the predecessor regulations to the 2017 Regulations by deciding that the combustion emissions from the coal to be extracted from the proposed development were not a likely significant indirect effect of the project.

28. The decision in *Whitehaven* confirmed that the findings of the Supreme Court would not be confined by the courts to oil extraction projects, but also apply to other fossil fuel developments where combustion emissions would inevitably arise; in this case a development for the extraction of coking coal to be used in steelmaking. The judgment dealt in detail with a key argument around downstream impacts: substitution, or the argument that there would not be an increase in GHG emissions (including downstream emissions) because the extraction in the UK would "substitute" for an equivalent amount of fossil fuel elsewhere in the world. The judgment makes clear that potential substitution is not a relevant factor in determining whether the burning of the fossil fuel would be a likely significant effect of the proposed development, as it is "not the same chain of causation" (§§106-107]. Instead, any substitution had to be assessed in accordance with the EIA Regulations (§103), with the developer bearing an evidential burden to produce information in its ES to demonstrate any claimed substitution effect or that there would be no net increase in GHG emissions, "including legal causation in relation to substitution" (§§112, 115-116).

29. The judgment also confirmed that when considering whether to exercise their discretion to refuse relief in cases where an EIA is found to be unlawfully deficient, the courts should still apply the test in *Simplex*, with the burden on defendants to show the decision would necessarily have been the same (§§85-88).

30. Challenges against the decisions of the UK Government and the North Sea Transition Authority to grant consent for the development of the Rosebank and Jackdaw oil and gas fields, brought by environmental campaign groups Greenpeace and Uplift, are due to be heard by the Court of Session in Edinburgh on 12 November 2024, having previously been stayed pending the Supreme Court's decision in *Finch*. The UK Government confirmed in late August 2024 that it did not intend to defend the challenges but, as with *Whitehaven*, the developers are seeking to argue that the consents should not be quashed.

31. Beyond fossil fuel developments, the impacts of *Finch* have already been seen in the context of ongoing infrastructure projects. We mention three interesting examples in different areas. **First, aviation:** in the Examination of Gatwick Airport Limited's application for development consent for its Northern Runway Project, the airport accepted that the *Finch* judgment required it to provide data on the anticipated extent of the scope 3 emissions from inbound flights.[10] These had previously been excluded from the ES on the basis that the United Nations Framework Convention on Climate Change recommended approach to counting carbon from aviation is to attribute emissions to the county of origin,[11] but the airport recognised that the judgment in *Finch* required it to provide information on *all* likely significant indirect effects of the project, even where these might fall within the purview of another pollution control or carbon counting regime (see Finch, §§106-111). There was, however, significant disagreement about the correct approach to contextualising the extent of those emissions in order to assess their significance, with the Applicant suggesting the key contextualisation was against the global carbon budget and other parties taking the approach in the Institute of Environmental Management and Assessment guidance and contextualising against the UK carbon budget and sectoral carbon budgets.

32. **Second, surface transport:** in the examination of the A46 Newark Bypass, the Examining Authority's First Written Questions indicate that it appears scope 3 emissions have not been taken into account in the ES. They ask whether there is a requirement to do so; whether the *Finch* decision has "raised any new issues which have not been included in the application documentation (bearing in mind that the Application was Accepted before the *Finch* judgement was handed down)" and what the correct approach should be to addressing the *Finch* judgment.[12]

33. **Third, hydrogen:** in the examination of the H2 Teeside Limited hydrogen production plant, the Examining Authority's Second Written Questions asked about *Finch* and its relevance to the ES. The Applicant accepted its application, to both upstream and downstream scope 3 emissions, and pointed out that it has considered the relevant impacts: upstream emissions associated with the construction supply chain and with its "feed" supply of "well to tank" methane emissions; downstream emissions from transport; residual methane and the beneficial use of hydrogen as a replacement gas supply for offtakers (i.e. those contracted to buy the hydrogen).

Lessons for planning decision-makers

34. What lessons, then, should planning decision-makers take from the *Finch* judgment and subsequent decisions applying it?

35. **First**, the interpretation of "effects" in *Finch* will apply to all

9. Two challenges under s.288 of the Town and Country Planning Act 1990 were listed together; Estelle Dehon KC and Rowan Clapp appeared for SLACC.
10. Deadline 7 Submission - 10.56.2 The Applicant's Response to ExQ2 - Climate Change and Greenhouse Gases, [REP7-079] at https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020005/TR020005-001118-Gatwick%20Airport%20Northern%20Runway%20Examination%20Library.pdf.
11. See section 16.4 of ES Chapter 16: Greenhouse Gases [APP-041].
12. ExQ1, issued on 15 October 2024; responses due by Deadline 2 (12 November 2024) https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/TR010065/representations/66391.

future EIA projects, in relation to both upstream and downstream effects. An issue which therefore arises is the appropriate test for deciding if Y is an effect of X. As set out above at §15, although the majority discussed three options, they did not clarify which test applies, since all would be satisfied on the facts of *Finch* itself (§§67–71). If developers and decision-makers wish to challenge-proof their decisions, they may wish to consider the 'but for' test: would event Y have occurred but for the occurrence of event X? Although this sets a low threshold, potentially capturing many effects of a project, it does not follow that all must be included in an ES. The effect must also be "likely" and "significant", and able to be assessed via a recognised methodology.

36. **Second**, downstream GHG emissions will need to be assessed for all EIA projects where the causal test is met and where such emissions are capable of assessment. It is questionable whether this is a wholly new development. Scope 3 GHG emissions are already routinely quantified in other cases – for example, many major road schemes, airport expansion projects (though previously only incompletely, as set out above) and even some large housing developments.

37. **Third**, the Supreme Court discounted as flawed the reasons given by the council, and similar reasoning will leave future decisions susceptible to successful legal challenges. In short, downstream GHG emissions beyond the application site cannot be regarded as "outwith the control" of developers, and the existence of other control regimes cannot justify limiting the scope of an EIA.

38. **Fourth**, when making screening decisions regarding fossil fuel extraction schemes which fall within schedule 2 of the EIA Regulations and must therefore be screened in if they are likely to have effects on the environment, decision-makers can again challenge-proof their decisions by screening in fossil fuel developments as a matter of course. It is difficult to see how schedule 2 proposals for hydrocarbon extraction (i.e. "Extractive industries and surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale, which cover an area of development that exceed 0.5 hectares") could not be found to entail likely effects on the climate in light of the judgment in *Finch*.

39. **Fifth**, it will still be for planning decision-makers to determine whether an environmental effect is "significant" as a matter of planning judgement.

40. **Sixth**, given the comments in *Finch* on the importance of public participation in environmental decision-making, and the importance of assessing effects even where they might not prove to be significant or may be controlled by a separate pollution control regime, arguments around standing for local objectors or that relief should be refused as a matter of discretion in cases of a flawed EIA seem unlikely to succeed.

41. **Seventh**, there may be times where indirect effects on the environment will be *positive* rather than negative. These should be assessed too and scheme promoters may find that they are able to highlight wider benefits of a proposal on the environment to decision-makers through the EIA process.

42. **Finally**, it is worth highlighting what has not changed: the EIA Regulations remain focused on process and public participation, not outcome; an assessment of the terms "likely" and "significant" are still matters of evaluative judgment; and the final decision on consent involves an overall balancing exercise which remains a matter of judgment for decision-makers.

Looking to the future – some predictions

43. In the immediate aftermath of *Finch*, it was an open question whether the judgment would be applied narrowly or broadly. Since June, it has become apparent that the courts, planning decision-makers, and some (though not all) developers are in agreement that the requirement to assess scope 3 emissions from a project applies to all types of fossil fuel extraction project and to other kinds of project where there is a recognised methodology for assessing scope 3 GHG emissions. We have already seen this approach taken at Gatwick in the context of aviation emissions, and it seems likely that we will see the same approach applied to other infrastructure schemes and major developments before long.

44. Some areas where the impacts of the *Finch* judgment have not yet been tested but where they are likely to play out in the future include the following:
(a) Whether the principles in *Finch* also apply to the Strategic Environmental Assessment ("*SEA*") regime for assessing the environmental effects of plans, proposals and policies at a strategic level (as opposed to the EIA process which deals with applications for consent for specific projects/developments).

(b) The extent to which the analysis in *Finch* applies to upstream (as opposed to downstream) emissions. It appears to be uncontroversial that applying the core reasoning in *Finch*, the term "indirect effects" would also encapsulate scope 3 upstream emissions.

(c) Whether all large housing schemes are required to assess both upstream emissions (e.g. embodied carbon) and downstream emissions (e.g. emissions from occupant travel) as part of the EIA process.

(d) How positive downstream effects of certain projects (e.g. renewable energy), ought to be assessed as part of the EIA process.

45. When it comes to new infrastructure projects subject to the SEA process, the Environmental Assessment of Plans and Programmes Regulations 2004 (*"the 2004 Regulations"*), implementing Directive 2001/42/EC (*"the SEA Directive"*), require that all *"likely significant effects on the environment, including short, medium and long-term effects, permanent and temporary effects, positive and negative effects, and secondary, cumulative and synergistic effects, on issues such as – […] (i) climatic factors"* are included in an Environmental Report (*"ER"*).

46. Case law has confirmed that similar terms within the SEA Directive and the EIA Directive should be interpreted in a consistent manner: see for e.g. *Walton v Scottish Ministers* [2013] PTSR 51, [2012] UKSC 44 at §§10-30. This principle is best summarised in the *R (Friends of the Earth Ltd) v SST* [2021] PTSR 190, [2020] UKSC 52 at §135 (and see also §142):
"The SEA Directive operates along with the EIA Directive to ensure that environmental impacts from proposals for major development are properly taken into account before a development takes place. The relationship between the Directives was explained by Lord Reed in Walton v Scottish Ministers [2012] UKSC 44; [2013] PTSR 51, paras 10-30. The SEA Directive applies "upstream", at the stage of preparation of strategic development plans or proposals. The EIA Directive requires assessment of environmental impacts "downstream", at the stage when consent for a particular development project is sought. ***Although the two Directives are engaged at different points in the planning process*** *for large infrastructure projects …,* ***they have similar objects and have to deal with similar issues of principle, including in particular the way in which regard should be had to expert assessment of various factors bearing on that process. These points indicate that a similar approach should apply under the two Directives."*** (emphasis added)

47. In *R (Greenpeace Ltd & Uplift) v Secretary of State for Energy and Net Zero* [2024] PTSR 245, [2023] EWHC 2608 (Admin), in the context of a challenge to the SEA relevant to the plan to grant new oil and gas licences and the failure to consider downstream GHG emissions arising as a likely significant effect of that plan, the High Court applied *Finch* – at that stage, the Court of Appeal decision. Holgate J acknowledged the differences between EIA and SEA, but held that "the factual context and the two regimes are sufficiently analogous that important parts of the analysis in *Finch* [2022] PTSR 958 are applicable to the SEA in the present case" (§103). It is likely that the wider principles of the Supreme Court's approach to EIA in *Finch* will equally apply in relation to SEA, and especially the interpretation of "secondary" effects in the SEA Directive.

48. That will give rise to interesting infrastructure-related issues. Most obviously, future SEAs related to the non-statutory offshore energy plan, which encompasses offshore renewables as well as offshore oil and gas development, will need to address downstream emissions. The new National Energy System Operator ("NESO") will also shortly be producing a Strategic Spatial Energy Plan, which will set out a coordinated approach for Great Britain's onshore and offshore energy infrastructure, addressing "how to spread new energy projects across the country", which will inevitably touch on the new power line infrastructure desperately needed to facilitate the net zero transition. It will be interesting to see if potential downstream positive benefits for GHG emissions reductions achievable by upgrading the grid will be able to be evidenced and considered at the strategic stage. Highly likely, however, that when specific grid-related projects come forward, Finch will be relied on to take into account downstream benefits.

Conclusion

49. It is clear that *Finch* has significant implications for infrastructure projects, as it is highly relevant to the range of downstream and upstream indirect effects which will need to be addressed in the ES. For some projects, that will be business as usual. For others, it will increase the ambit of the ES and of the relevant environmental impacts (whether harmful or beneficial) which should feed into the decision to grant permission or consent. As for challenges, the main legal question will be which test for legal causation should be used for non-fossil fuel-based developments. The main practical challenges will likely be whether methodologies exist to assess the relevant scope 3 emissions; whether the developer or promoter has provided sufficiently detailed and robust information to allow for proper public participation in the EIA process (taking into account the precautionary principle) and how GHG emissions should be contextualised in order to assess their significance.


Estelle Dehon KC


Jack Parker


Ruchi Parekh


Lois Lane