



Press Summary

20 June 2024

R (on the application of Finch on behalf of the Weald Action Group) (Appellant) v Surrey County Council and others (Respondents)

[2024] UKSC 20

On appeal from [2022] EWCA Civ 187

Justices: Lord Kitchin, Lord Sales, Lord Leggatt, Lady Rose and Lord Richards

Background to the Appeal

Before planning permission can be granted for a development project which is likely to have significant effects on the environment, legislation in the United Kingdom (and many other countries) requires an environmental impact assessment (“EIA”) to be carried out. The legislation applicable in this case is contained in the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the ‘**2017 Regulations**’), which implemented European Union Directive 92/11/EU (the ‘**EIA Directive**’) in the UK. This requires an EIA to identify, describe and assess the likely “direct and indirect significant effects” of the project on the environment, including (among other factors) the impact on climate (for example, the nature and magnitude of greenhouse gas emissions). The process of assessment must include public consultation. The legislation does not prevent the planning authority from giving consent for a project that is likely to cause significant harm to the environment; but it requires the authority to reach a reasoned conclusion on the environmental impact and to take this conclusion into account in making its decision.

In this case a developer applied to Surrey County Council for planning permission to expand oil production from a well site at Horse Hill near Horley in Surrey. The proposed project would involve the extraction of oil from six wells over a period of 20 years. The project comes within a category for which an EIA is compulsory (“Extraction of petroleum ... for commercial purposes where the amount extracted exceeds 500 tonnes/day”).

The developer argued that, as regards the impact of the project on climate, the scope of the EIA should be confined to the direct releases of greenhouse gases from within the well site boundary during the lifetime of the project; and that the EIA need not include an assessment of the greenhouse gas emissions that would occur when the oil extracted from the wells was ultimately burnt elsewhere as fuel. The council accepted this approach. Its decision to grant

planning permission for the project was therefore made without assessing or taking into account the emissions that will occur upon combustion of the oil produced.

The claimant, a local resident, applied for judicial review of the council's decision. She argued that the decision was unlawful because the EIA was required to, but did not, include an assessment of the combustion emissions. The High Court rejected the claim, holding that the combustion emissions were not within the legal scope of the EIA Directive and 2017 Regulations; alternatively, whether to assess them was a matter of evaluative judgment for the council, which had given legally valid reasons for deciding not to do so. By a majority, the Court of Appeal upheld the judge's decision on the second of those grounds.

The claimant appealed to the Supreme Court.

Judgment

By a three-to-two majority, the Supreme Court allows the appeal and holds that the council's decision was unlawful because the emissions that will occur when the oil produced is burnt as fuel are within the scope of the EIA required by law.

Lord Leggatt, with whom Lord Kitchin and Lady Rose agree, gives the majority judgment. Lord Sales, with whom Lord Richards agrees, dissents.

Reasons for the Judgment

It is an agreed fact that, if the project goes ahead, it is not merely likely but inevitable that the oil produced from the well site will be refined and, as an end product, will eventually undergo combustion, and that that combustion will produce greenhouse gas emissions [45]. It is not disputed that these emissions will have a significant impact on climate. It is agreed that the amount of these emissions can be estimated using an established methodology; indeed, the council has provided such an estimate as part of its evidence in this case [81]. The issue is whether the combustion emissions constitute "direct or indirect ... effects of the project" within the meaning of the EIA Directive and 2017 Regulations. If they are, they must be assessed as part of the EIA.

The Supreme Court is unanimous in rejecting the view of the Court of Appeal that this question requires an evaluative judgment about whether there is a sufficient causal connection between the extraction of the oil and its eventual combustion, on which different planning authorities could reasonably take opposite views. It is unreasonable to interpret the EIA Directive in a way that treats inconsistent answers to the question whether the combustion emissions are "effects of the project" as equally valid [59]–[60], [321]–[325].

The majority of the Court considers this question to be one of causation to which, on the agreed facts, only one answer can reasonably be given. The emissions that will occur on combustion of the oil produced are "effects of the project" because it is known with certainty that, if the project goes ahead, all the oil extracted from the ground will inevitably be burnt thereby releasing greenhouse gases into the earth's atmosphere in a quantity which can readily be estimated [79]–[81].

The EIA Directive does not impose any geographical limit on the scope of the environmental effects of a project that must be assessed. The council was therefore wrong to confine the EIA in this case to emissions expected to occur at the project site. It is in the very nature of "indirect" effects that they may occur away from their source [101]–[103]. Moreover, the impact of greenhouse gas emissions on climate does not depend on where the release occurs [97].

The judge considered that the emissions occurring on combustion cannot in law be regarded as effects of the project because what is burnt as fuel will not be the crude oil produced from the well site but an end product made at a separate facility where the oil will be refined. The Supreme Court rejects this argument. The process of refining crude oil does not alter its basic nature or intended use and cannot reasonably be regarded as breaking the causal connection between the extraction of the oil and its subsequent combustion. The judge was concerned about the implications of this conclusion for other projects: for example, a project to produce steel which is then used to manufacture parts for use in making motor vehicles or aircraft. If the greenhouse gas emissions that will result from the use of the motor vehicles or aircraft were regarded as indirect effects of the production of the steel, the EIA process would be unduly onerous and unworkable. The Court considers these concerns to be misplaced. Raw materials such as steel can be put to many possible uses, and the view might reasonably be taken that no meaningful assessment or estimate can be made of what emissions will ultimately result from its use. Oil is a very different commodity. There is no element of conjecture about what will ultimately happen to the oil; refining the oil does not change it into a different type of object (unlike the incorporation of a part in a motor vehicle or aircraft); and a reasonable estimate can readily be made of the emissions that will occur upon its inevitable combustion [112]–[139].

An argument that national planning policy is relevant to the scope of the EIA required by the EIA Directive is also rejected. The UK’s national policy of encouraging domestic production of oil and gas is relevant to the decision of the planning authority whether to grant permission for the project. But it does not dispense with the requirement to assess the environmental impact of the project or justify limiting the scope of that assessment before the planning decision is taken. The purpose of the EIA is to ensure that, whatever the decision taken, it is taken with full knowledge and public awareness of the likely significant environmental consequences [140]–[154].

Consequently, the council’s failure to assess the effect on climate of the combustion of the oil that would be produced from the proposed well site means that its decision to grant planning permission for the project was unlawful [174].

Lord Sales, dissenting, observes that the EIA Directive contemplates that decisions on the grant of planning consent will often be taken by local or regional authorities [252]. Downstream emissions are addressed by central governments at the level of national policy [253]. In his view, it would be constitutionally inappropriate for a local planning authority to assume practical decision-making authority based on its own views regarding downstream emissions [256] and it would also be contrary to the EU principle of proportionality [260].

The general scheme of the EIA Directive further indicates that the entirety of downstream emissions do not qualify as indirect effects of a project [261]. This is also clear from its text [273]. The formula used in the EIA Directive indicates that even indirect effects still have to be effects ‘of the project’ which on a natural reading does not include downstream emissions [276]. Lord Sales therefore agrees with the approach of the High Court in which the question is to be determined by a proper interpretation of the EIA Directive as a matter of law [327].

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)