

Case Name: *R (on the application of Finch on behalf of the Weald Action Group) (Appellant) v Surrey County Council and others (Respondents)* [2024] UKSC 20 (20 June 2024)

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Commentary: The Supreme Court has overturned the judgment of the Court of Appeal in this case concerning the treatment of 'downstream' effects in the environmental impact assessment ("EIA") for a commercial crude oil extraction project. The main question was whether it was unlawful for Surrey County Council (the "Council") not to require the EIA for this development to include an assessment of the greenhouse gas emissions resulting from the eventual use as fuel of the oil extracted at the site. It was common ground that, if the project were to go ahead, inevitably the oil produced from the well site would be refined and, as an end product, would undergo combustion which would produce significant greenhouse gas emissions.

Decision of the High Court

The High Court found that, while an EIA should assess indirect likely significant effects of the development for which planning permission was sought, "indirect effects" must still be effects which the development itself has on the environment. It noted that the EIA process was concerned with the use of land for development and the effects of that use; it was not directed at the environmental effects which resulted from the use of an end product.

Decision of the Court of Appeal

The Court of Appeal agreed that the Council had not acted unlawfully. However, rather than finding that these downstream effects were incapable of falling within the scope of the EIA for this scheme as a matter of law, the Court of Appeal held that the existence and nature of indirect effects depend on the circumstances of each development and that establishing what should be included in an EIA was a judgment to be made by the planning authority.

The Court of Appeal considered that the need for a wider assessment of greenhouse gas emissions may sometimes be appropriate; what needs to be considered is the degree of connection between the development and its likely effects. In this case, though the project itself was solely a well site for the commercial extraction of crude oil, the eventual combustion of the oil (following refinement elsewhere) was deemed "inevitable", not merely "likely" or "possible". This being so, the Court of Appeal held that it was for the Council to establish whether the greenhouse gas emissions which would be generated in that way were to be regarded as indirect effects of the proposed development for EIA purposes.

Decision of the Supreme Court

The Supreme Court (the “Court”) held that, in this case, the downstream emissions that will occur on combustion of the oil produced at the development are indirect effects of the project which must be considered in its EIA as a matter of law. This is because it is known with certainty that, if the project goes ahead, 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.

The Court noted that the process of refining crude oil (which would occur away from the development site in this case) does not alter its basic nature or intended use, and so it would not break the chain of causation between the extraction of oil at the site and its subsequent combustion. The Court drew a distinction between this project and, by way of example, a project to produce steel which is then used to manufacture parts for motor vehicles or aircraft. The Court accepted that the EIA process would be unduly onerous 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. However, raw materials such as steel can be put to many possible uses, rendering it difficult to assess or estimate what emissions would ultimately result from its use. Crude oil is a very different commodity: there is no element of speculation about what will ultimately happen to it, and a reasonable estimate can readily be made of the emissions that will occur upon its inevitable combustion.

The Court rejected an argument that national planning policy was relevant to the required scope of the EIA. The UK’s national policy of encouraging domestic production of oil and gas is relevant to the overall decision of whether to grant permission for the project, but it does not justify limiting the scope of the EIA before the planning decision is taken. The purpose of an EIA is to ensure that, whatever decision is taken, it is taken with full knowledge (and public awareness) of the likely significant environmental consequences. On that basis, the Council’s failure to assess the effects of the combustion of the oil produced at this well site means that its decision to grant planning permission for the project was unlawful.

Case summary prepared by Safiyah Islam