THE LATEST ON SCOPE 3 EMISSIONS

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Introduction

1. "*You can only care about what you know about*" – that was a statement of significant importance in Lord Leggatt's judgment for the majority in *R (Finch on behalf of the Weald Action Group) v Surrey County Council and others* [2024] UKSC 20 ("***Finch***").[1]

2. The facts of the *Finch* case are now well known. Ms Finch challenged the grant of planning permission by Surrey County Council ("**the council**") to retain a crude oil extraction site of two existing wells, and to expand the site to drill four new wells, for the production of hydrocarbons over a period of 25 years. By a three-to-two majority, the Supreme Court allowed Ms Finch's appeal.[2] The issue for the Supreme Court was whether it was unlawful for the council not to require the Environmental Impact Assessment ("**EIA**") to include an assessment of the impacts of downstream greenhouse gas ("**GHG**") emissions, resulting from the eventual use of the refined products of the extracted oil. The key issue for the court was whether the combustion emissions were effects of the project at all.

3. The majority of the Supreme Court answered that it was "*plain*" that they were.[3] The majority judgment held that the council's conclusion that the GHG emissions were not indirect effects of the project was unlawful. In carrying out an EIA of a project for the extraction of oil, the authority was required to assess, as an indirect effect of the project, the environmental effects of GHG emissions arising from the ultimate combustion of the oil once refined and used as fuel.

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[1] [2024] UKSC 20, at [21].
[2] Lord Leggatt, with whom Lord Kitchin and Lady Rose agreed, gave the majority judgment. Lord Sales, with whom Lord Richards agreed, dissented. Below Holgate J had dismissed Ms Finch's claim, and the Court of Appeal 2:1 had dismissed her appeal (though Lewison LJ with serious doubts).
[3] [2024] UKSC 20, at [7].

4. The impact of the case has been significant. This article explores the way in which the principles from *Finch* have been developed and applied in the energy context and in other sectors, including how the lower courts have approached the *ratio* in *Finch*, as well as the application of the principles in the context of upstream emissions.

Scope 1, 2 and 3 emissions and direct and indirect effects

5. Lord Legatt set out the classification of GHG emissions at the start of his judgment given the way the appellant had framed her argument namely with its focus on scope 3 emissions.[4] GHG emissions are classified into three different categories, derived from the Greenhouse Gas Protocol Corporate Accounting and Reporting Standard (the "**GHG Protocol**"):[5]

> *"[…] Scope 1 is direct emissions from sources that are owned or controlled by the company, for example emissions from combustion in owned or controlled boilers, furnaces, vehicles etc. Scope 2 is "electricity indirect [greenhouse gas] emissions" from the generation of purchased electricity consumed by the company within the organisational boundary, for which the company should account even though the emissions physically occur at the facility where the electricity is generated. Scope 3 is all other indirect greenhouse gas emissions, an optional reporting category under the GHG Protocol that covers emissions which are a consequence of the activities of the company but occur from sources not owned or controlled by the company. This is a very wide category which covers both emissions which are "upstream" from the company's own activities but to which those activities give rise and emissions which are "downstream" from the company's activities."*

6. These categories are relevant to the development of international standards for the disclosure of sustainability information (in particular, the standards developed by the International Sustainability Standards Board). However, these three categories of emissions are not found in the EIA Directive or Regulations themselves.[6] Indeed, Lord

[4] [2024] UKSC 20, at [39]-[43] and [181]-[182].
[5] [2024] UKSC 20, at [181].
[6] The legislation is contained in the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017/571) (the "**2017 Regulations**"). The 2017 Regulations are one of a number of UK statutory instruments designed to implement Directive

Leggatt noted that none of the authorities from the Court of Justice of the European Union ("**CJEU**") *"explains the scope and application of the EIA Directive in terms of the concepts used in the GHG Protocol"*.[7]

7. The EIA Directive and Regulations themselves refer to *"direct and indirect effects"*. The question of an 'effect' is a question of causation.[8] In terms of the difference between *"direct"* and *"indirect"* effects, Lord Leggatt noted as follows:[9]

> *"[…] A natural way to understand the distinction – and how it is commonly used in social sciences – is to define a direct effect of one event on another event as an effect which is not mediated by one or more variables. An indirect effect, by contrast, is one which depends on one or more variable intermediate factors that may alter the total effect observed […]"*
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> *"[I]t 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."*

8. The consequences of *Finch* are far reaching and plainly go beyond the facts the appeal. A central point in *Finch* was that the environmental information gained by assessment – comprising both the developer's Environmental Statements ("**ESs**") and the outputs of consultation with specialist statutory bodies and the public – informs but does not dictate the ultimate decision. In respect of future projects, the identification of adverse effects under EIA does not mean that permission or consent should necessarily be withheld. The process is intended to inform project design and decision-making, including informing measures which may be necessary to avoid, mitigate or

2011/92/EU of the European Parliament and of the Council, as amended by Directive 2014/52/EU (the "**EIA Directive**" as amended).
[7] [2024] UKSC 20, at [182].
[8] [2024] UKSC 20, at [65].
[9] [2024] UKSC 20, at [84] and [102].

compensate for certain effects.[10] Rather the intention is that actions are authorised in the full knowledge of their environmental consequences.[11]

9. This article considers what the principles from *Finch* mean in the context of:
    a. First offshore oil and gas productions projects; and
    b. Second for other industries including energy and infrastructure; agriculture; and upstream emissions more broadly.

Guidance for Offshore Oil and Gas Production Projects

10. Although *Finch* concerned an onshore development, its interpretation of the EIA Directive also applies to offshore projects and indeed other projects requiring an EIA.

11. Offshore oil and gas production projects are subject to the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020 (the "**2020 Regulations**") rather than the 2017 Regulations which were central to the *Finch* judgment. However, the 2020 Regulations were similarly enacted to transpose the EIA Directive and therefore the Supreme Court's interpretation of the legal requirements in relation to EIA are equally applicable to the 2020 Regulations. Following the *Finch* judgment the guidance for offshore oil and gas needed to be updated and this led the Government to pause the EIA process for offshore oil and gas projects from 29 August 2024, pending the publication of new guidance.[12]

12. The government then consulted on the new guidance between October 2024 and January 2025. Following this consultation the guidance on 'Environmental Impact Assessment (EIA) – Assessing effects of downstream scope 3 emissions on climate' (the "**Supplementary Guidance**") was published by the Department for Energy Security

[10] As Lord Hoffmann said in *R v North Yorkshire CC Ex p. Brown* [2000] 1 A.C. 397, at p.404, the purpose is "*to ensure that planning decisions which may affect the environment are made on the basis of full information*".
[11] [2024] UKSC 20, at [62].
[12] See: Press release 'New guidance issued for environmental impact assessments' (dated 19 June 2025). Available at: https://www.gov.uk/government/news/new-guidance-issued-for-environmental-impact-assessments.

and Net Zero on 19 June 2025. The EIA process for oil and gas production projects has now been restored following that pause since August 2024.

13. The Supplementary Guidance is, as the name suggests, supplementary to the existing 'Offshore EIA Regulations Guidance' (published by OPRED in 2021) – therefore the two must be read together.

Impact of *Finch* on the Supplementary Guidance

14. It is notable that in the Supplementary Guidance three points from the *Finch* judgment are specifically emphasised:[13]
    a. Paragraph 3 of the judgment is highlighted: "*The object of an EIA is to ensure that the environmental impact of a project is exposed to public debate and considered in the decision-making process [and]…if such consent is given, it is given with full knowledge of the environmental cost.*"[14] It therefore is not the case that certain projects cannot be consented to even if the scope 3 emissions are high, rather they must be consented to in the knowledge of what the impact will be.
    b. Paragraph 97 of *Finch* is also cited where it was said that: "*…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…*"[15]
    c. Finally, as per paragraph 7 of *Finch*: "*… It is not disputed that these emissions, which can easily be quantified, will have a significant impact on climate…*"[16]

15. These can be viewed as three guiding principles underpinning the Supplementary Guidance.

Overview of Supplementary Guidance

16. The Supplementary Guidance runs to 18 pages. Despite its relative brevity, it addresses some of the key arguments that feature in ESs:

[13] Supplementary Guidance, page 4.
[14] [2024] UKSC 20, at [3].
[15] [2024] UKSC 20, at [97].
[16] [2024] UKSC 20, at [7].

a. Market substitution arguments;
b. "Drop in the ocean" arguments; and
c. How carbon offsets and removals should be treated.

17. The Supplementary Guidance is intended to apply in three scenarios:
    a. It is focussed primarily on projects falling under Schedule 1 of the Offshore EIA Regulations (i.e. those requiring a mandatory ES) and which require development and production consent from the North Sea Transition Authority (the "**NSTA**").[17]
    b. Second, it applies to projects which require a screening direction to determine whether an ES is required (i.e. Schedule 2 projects). The Supplementary Guidance should be considered when providing information on scope 3 emissions in the screening application and subsequently applied if an ES is required.[18]
    c. Finally, where a consented project seeks to amend its daily production rate and that a change would alter the total amount of hydrocarbons produced over the project's lifetime, the ES or screening application should include an assessment of the resulting scope 3 emissions.[19]

18. The central point from the Supplementary Guidance is that developers must assess the impact of scope 3 emissions from downstream combustion. This applies even if the developer argues that the hydrocarbons will substitute other sources or will not be fully combusted.

19. In the Supplementary Guidance, it is said that the Institute of Environmental Management and Assessment's ("**IEMA**") 2022 guide to 'Assessing Greenhouse Gas Emissions and Evaluating their Significance' provides a useful list of assessment principles that a developer may wish to follow when assessing the GHG emissions associated with their project:[20]
    a. Setting the scope and extent of the assessment;

[17] Supplementary Guidance, page 5.
[18] Supplementary Guidance, page 14.
[19] Supplementary Guidance, page 14.
[20] Supplementary Guidance, page 7.

b. Determination of the baseline;
c. Decide on the emissions calculation methodologies;
d. Data collection;
e. Calculate / determine the GHG emissions inventory; and
f. Consider mitigation opportunities and repeat steps 4 and 5.

20. In terms of the practical guidance given to how an assessment should be carried out, six elements of the Supplementary Guidance are emphasised below:
    a. Substitution arguments;
    b. The approach to global emissions;
    c. Methodology;
    d. Estimating emissions – the rebuttable presumption;
    e. Assessing the significance;
    f. Mitigation measures.

Points of note from the Supplementary Guidance

<u>The substitution argument</u>

21. Market "*substitution*" is the idea that granting consent for a hydrocarbon project will not cause an aggregate increase in GHG emissions, since production to meet market demand for oil and gas would come from another project elsewhere if the relevant field is not opened. In other words, it is the idea that proposed production would replace, rather than supplement, production elsewhere.

22. An issue with this type of argument – and it was seen in the *Whitehaven* coal mine decision[21] – is that they often lack credible supporting evidence.

23. This point is significant because it is clear in the new Supplementary Guidance that substitution does not affect whether scope 3 emissions need to be assessed in the EIA. In that way substitution arguments are limited to contextualising the emissions – even then that must also be supported by credible evidence.

[21] *Friends of the Earth Ltd v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 2349 (Admin).

Global emissions

24. Unsurprisingly, the guidance states that an assessment of the *"likely significant effects"* of a project should take into account the impact that the release of *"global"* GHGs on climate and be carried out in the context of the UK's net zero target and associated carbon budgets. The Supplementary Guidance expressly says: *"OPRED would expect that these considerations will feature in any assessment of GHG emissions effects..."*[22]

25. That approach reflects two key points from the guidance: (i) scope 3 emissions must be assessed so that the decision maker and indeed the public have the relevant information needed; and (ii) these numbers need to be contextualised and explained.

26. This approach very much mirrors the majority judgment in *Finch* when Lord Leggatt said: "*…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.'*"[23] The Supplementary Guidance therefore directly addresses this type of argument.

Methodology

27. Methodology is a particularly important issue on which developers have been asking for clear guidance. The emphasis in the Supplementary Guidance is on conducting the assessment in accordance with *"current, credible and widely accepted"* principles, rather than on any specific methodology.[24]

28. This does leave some potential scope for inconsistency in the approach taken between different decision-makers to assessing scope 3 emissions, however provided that developers (i) can justify the methodology they select to assess the volumes and impacts of scope 3 emissions by reference to industry standards; and (ii) conduct a robust analysis, the extent to which planning consents can be challenged before the courts on the basis of methodology chosen should be limited.

[22] Supplementary Guidance, page 8.
[23] [2024] UKSC 20, at [97].
[24] Supplementary Guidance, page 11.

29. The Government's consultation response published alongside the guidance is interesting in this respect because it emphasised that: *"… it is for developers and their competent experts to assess the effects of a project on the environment in the first instance, and to set out that assessment in an ES. While the guidance sets out a number of expectations as to how that assessment could or should be done, OPRED accepts that alternative approaches may be possible or even preferable, either now or as approaches and scientific understanding develop over time."*[25] (emphasis added)

30. However, in terms of the methodology to be adopted, the Supplementary Guidance does reference the wide range of published methodologies available and several of those are referred to expressly including IPIECA, 2016; GHG Protocol, 2013)and emissions conversion factors (such as DESNZ, 2025; GHG Protocol, 2013; IEA, 2013), which are publicly available to estimate scope 3 emissions related to the non-combustion fate of the hydrocarbons.[26]

31. There is therefore flexibility as to methodology. Nonetheless, it will be interesting to see how OPRED interrogates or questions the methods used, in any future decisions.

32. Bringing questions of the methodology together, a big issue is determining the 'baseline'. Three key observations on the Supplementary Guidance in this respect are as follows:
    a. The Supplementary Guidance reflects the consultation response from the government which said: *"The key messaging…was that the baseline scenario should be zero, i.e. the scope 3 emissions would not occur if the project does not happen in the first place".*
    b. The Supplementary Guidance states: *"…when determining the baseline scenario for scope 3 emissions, the location of the emissions is not relevant and a global baseline scenario of GHGs must be considered in the ES."*[27]

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[25] See OPRED, 'Consultation outcome: Consultation on draft supplementary EIA guidance' (dated 19 June 2025) (the "**Government's consultation response**"), on page 9. Available at: https://www.gov.uk/government/consultations/consultation-on-draft-supplementary-eia-guidance.
[26] Supplementary Guidance, page 10.
[27] Supplementary Guidance, page 9.

c. As per the Supplementary Guidance a reasonable future estimate of global GHGs affecting climate is to be provided *"over the lifetime of a project needs to be considered as part of the baseline scenario"*.[28]

33. Finally, that baseline scenario must be based on available up to date environmental information and scientific knowledge on global GHG and climate. Again, this is an evolving obligation on the part of the developer. It cannot be assumed that the methodology adopted in 2025 will still be the most appropriate methodology in 2027.

The rebuttable presumption of full combustion

34. In *Finch*, all parties agreed that it was *"inevitable"* that the oil extracted would be sent to refineries and the refined oil would eventually be combusted.[29] However, this is not the same for every given situation. As such, oil and gas companies often argue that some of the extracted oil could be used to produce plastics or petrochemicals, for example and therefore it will not be combusted.

35. The Supplementary Guidance addresses this point and states that *"the starting point"* is a rebuttable presumption that *all* produced oil and gas over the lifetime of a project will eventually be combusted.[30]

36. For *"transparency and comparability"*, this scenario should be presented *even where* the developer provides sufficient evidence to rebut the presumption of full combustion and/or presents a scenario for non-combustion use.[31]

37. Therefore, the estimate of scope 3 emissions must reflect the highest anticipated hydrocarbon production (what is called the 'P10' data).[32]

Assessing significance

[28] Supplementary Guidance, page 9.
[29] [2024] UKSC 20, at [7].
[30] Supplementary Guidance, page 10.
[31] Supplementary Guidance, pages 9 and 10.
[32] Supplementary Guidance, page 10.

38. In the context of hydrocarbon extraction projects, applicants have been known to make so-called 'drop-in-the-ocean' arguments – that a given project's emissions are so small compared with total global emissions as to be a drop in the ocean, and therefore the project consent should be granted.

39. The Supplementary Guidance emphasises that an EIA must use a matrix to assess the *"magnitude"* and *"significance"* of scope 3 emissions including the cumulative effects of the emissions and their alignment with global climate goals.[33]

40. In addition, OPRED expects developers to *contextualise* emissions using global emissions-reduction pathways and not just raw numbers: *"OPRED therefore expects that ESs will both include a clear assessment of the magnitude of scope 3 emissions…and provide appropriate context to support a determination of significance."*[34] This point is of note because it has always been a challenge in the context of emissions to adequately contextualise them.

41. The other difficulty is the practical tension at the heart of the EIA process. Cynically one could think that the developer does not have an interest in, for instance, contextualising the figures in such a way that makes them sound significant. As an example, on 30 January 2025 Uplift estimated that the emissions from Rosebank would amount to more than 200 million tonnes of CO_2 – which, to put that in context, would be more than the combined annual emissions of 700 million people living in all 28 low-income countries.[35] This is unsurprisingly not the type of contextual perspective any developer would use. However, what the guidance is really aimed at – and this is reflected by the *Finch* judgment – is that information and context need to be available so the decision maker and any members of the public can interrogate it.

42. It is on this point that the Supplementary Guidance is helpful in providing detail:[36]
    a. The guidance states that OPRED's current view is that *"characterising scope 3 emissions from a project solely in numeric terms against global GHG emissions would*

[33] Supplementary Guidance, page 12.
[34] Supplementary Guidance, page 12.
[35] See for example: https://www.stopcambo.org.uk/updates/everything-you-need-to-know-about-the-rosebank-oil-field.
[36] Supplementary Guidance, page 12.

not on its own provide a meaningful expression of the global effect of those scope 3 emissions", because of the obvious difference in scale between individual projects and global emissions levels.[37]

b. Therefore, OPRED considers that an assessment of scope 3 emissions in relation to the current state of climate and global emissions-reduction pathways (IPCC, 2023) is more likely to support a reasoned conclusion on significance.

c. Finally, if a developer wishes to use substitution to help contextualise the scope 3 emissions, the developer should provide evidence to demonstrate that (i) hydrocarbons from the project will result in substitution of international hydrocarbon supplies into the UK; and (ii) there is no other demand for the international hydrocarbon supplies substituted by the project. So that is a high bar.

Mitigation measures

43. Finally, in respect of mitigation measures the headline point is as follows:

> *"A developer may not have direct control over mitigation measures for avoiding, preventing or reducing scope 3 emissions, unlike the situation for scope 1 and scope 2 emissions. [The guidance continues that] OPRED is not recommending or discounting any specific mitigation measures, but any such proposals must not be speculative…OPRED's current view is that emissions removal measures currently appear to be most appropriate for addressing any likely significant effects on the environment from scope 3 emissions."*[38] (emphasis added)

44. There is therefore clearly a distinction drawn with scope 1 and 2 emissions where mitigation measures can be more effective. The key point however in respect of scope 3 is that OPRED currently considers emissions removal measures to be the most appropriate means of mitigating likely significant effects from scope 3 emissions. The Supplementary Guidance states that such measures must be transparent, easily verifiable at a project level, and permanent.

[37] Supplementary Guidance, page 12.
[38] Supplementary Guidance, page 13.

45. However, what is not clear – in the context of scope 3 emissions – is what emissions removal measures are envisaged. This is an area where there could be future development if developers do try to propose mitigation measures for scope 3 emissions that developers claim would be realistic and verifiable.

46. The Supplementary Guidance does not give examples of emissions removal measures, but more broadly for scope 3 emissions these include strategies like implementing low-GHG procurement policies, encouraging supplier decarbonisation, developing zero-emitting products etc – which are all measures that are harder to envisage in the context of hydrocarbons.

47. Finally on mitigation measures, significantly, carbon offsetting is *not* considered a sufficient mitigation method, pending the outcome of the government consultation on the implementation of the Principles for High Integrity Voluntary Carbon and Nature Markets (the "**Principles**").

48. As such, the current position on mitigation measures could, in practice, make it difficult where scope 3 emissions are assessed as having a likely significant adverse effect. Given OPRED's position on the use of carbon credits, it is likely to evolve in light of the Principles - this is also an area to watch.

49. That leads to the question of what this means for future projects and developments.

Testing the Supplementary Guidance

50. In February 2025 the Scottish Court of Session confirmed that the Jackdaw and Rosebank North Sea oil and gas projects were unlawfully consented by the Secretary of State and the NSTA.[39] Therefore both Jackdaw and Rosebank have to go back to the drawing board on their EIAs.

51. In September of this year, Shell submitted a fresh environmental impact assessment for Jackdaw gas field in the North Sea and Equinor submitted its EIA for Rosebank.[40]

[39] *Greenpeace Ltd v Advocate General for Scotland* [2025] CSOH 10.
[40] See: https://www.gov.uk/government/publications/rosebank-field-development and https://www.gov.uk/government/publications/jackdaw-field-development.

The Supplementary Guidance will be put to the test when the development consent is considered for those projects in light of what will be very significant effects in terms of scope 3 numbers.

52. The final note is that for the first time ever, the UK is facing a claim under the International Centre for Settlement of Investment Disputes ("**ICSID**") Convention. The arbitration of *Woodhouse Investment Ltd and West Cumbria Mining (Holdings) Ltd v United Kingdom* was filed on 8 August 2025, under the 1975 UK-Singapore Bilateral Investment Treaty ("**BIT**"). The reason the case has been filed under the BIT is because Woodhouse Investment holds 80% of West Cumbria Mining and is itself a Singaporean company. The details of the claim have not been made public, but under ISDS rules foreign investors are allowed to sue states when their activities are affected by government policies and it is understood that the claimants claim that the revocation of planning permission and related regulatory measures unlawfully interfered with their investment.

53. These developments – the Jackdaw and Rosebank EIAs along with the ICSID arbitration – demonstrate the increasing tensions there are in the area of hydrocarbon projects in the context of scope 3 emissions. These tensions extend, however, beyond hydrocarbon projects – which is the next area of consideration in this article.

Authorities Applying *Finch*

54. Other industries are clearly impacted by the decision in *Finch.* This article considers the application of these principles in the context of energy and infrastructure; agriculture; and upstream emissions more broadly.

Energy and infrastructure

55. The Court of Appeal in *R (Boswell) v Secretary of State for Energy Security and Net Zero* [2025] EWCA Civ 669 assists in understanding the scope of the *ratio* in *Finch* as well as the intersection between the requirements of the EIA regulations and any National Policy Statement ("**NPS**") in the decision-making process. The judicial review challenge was brought pursuant to section 114 of the Planning Act 2008 ("**PA 2008**")

in relation to a Development Consent Order ("**DCO")** for a new gas-fired electricity generating station at Teesside with Carbon Capture Utilisation and Storage. At first instance, Lieven J rejected all four grounds of challenge.[41]

56. The decision of the Court of Appeal reaffirms that (i) the sufficiency of the environmental information as part of the EIA; and (ii) the assessment of the significance of GHG emissions, are ultimately matters for planning judgement.

57. In terms of the legal framework, the PA 2008 provides for the designation of NPSs which set the overarching policy framework for certain prescribed nationally significant infrastructure projects in the fields of energy, transport, water, waste water and waste.[42] An NPS can set out policy in relation the need for certain infrastructure, the criteria for determining the suitability of certain locations and, given its relevance here, the relative weight to be given to specified criteria. An NPS is subject to an appraisal of sustainability[43] and strategic environmental assessment.[44] Where a relevant NPS has been designated in relation to a particular type of infrastructure, an application for a DCO must be decided in accordance with it, unless certain exceptions apply. The relevant EIA regulations, in the context of determining a DCO application, are a different set of regulations from 2017: Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the **2017 Infrastructure Regulations**"). The appeal was concerned with the requirements in regulation 21 in determining a DCO application, the Secretary of State must *inter alia:*

> "*(i) examine the environmental information; (ii) 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, any supplementary examination considered necessary […]"* (emphasis added)

58. In this case, the relevant NPSs were EN-1 'Overarching National Policy Statement for Energy' and EN-2 'National Policy Statement for Fossil Fuel Electricity Generating

[41] [2024] EWHC 2128 (Admin), at [3].
[42] PA 2008 s 14.
[43] PA 2008, s 5(3).
[44] Environmental Assessment of Plans and Programmes Regulations 2004 SI 2004 No.1633.

Infrastructure'. They had been originally designated in 2011, subject to review pursuant to PA 2008, s 6 and then updated versions were designated on 17 January 2024. For those applications accepted for development before that date, the 2011 versions applied (in any event the parties did not suggest that the appeal turned on any difference between the versions and the Secretary of State had taken into the 2023 drafts and 2024 designated versions as material considerations).[45]

59. The Secretary of State, in granting the DCO, determined that EN-1 applied to the whole of the proposal and section 104 of the PA 2008 therefore applied. She determined that the proposed development accorded with the relevant NPS and that none of the exceptions applied.[46] The Secretary of State had ultimately accepted the estimate of +20,450,719 tCO2e for the development and offshore elements of the development, that the cumulative whole-life GHG emissions would be a significant adverse effect, and that carries significant negative weight in the planning balance.[47]

60. The critical paragraph in EN-1 (2011) was paragraph 5.2.2:

> *"5.2.2 CO2 emissions are a significant adverse impact from some types of energy infrastructure which cannot be totally avoided (even with full deployment of CCS technology). However, given the characteristics of these and other technologies, as noted in Part 3 of this NPS, and the range of non-planning policies aimed at decarbonising electricity generation such as EU ETS (see Section 2.2 above), Government has determined that CO2 emissions are not reasons to prohibit the consenting of projects which use these technologies or to impose more restrictions on them in the planning policy framework than are set out in the energy NPSs (e.g. the CCR and, for coal, CCS requirements). Any ES on air emissions will include an assessment of CO2 emissions, but the policies set out in Section 2, including the EU ETS, apply to these emissions. The IPC[48] does not, therefore need to assess individual applications in terms of carbon emissions against carbon budgets and this section does*

[45] [2025] EWCA Civ 669, at [12].
[46] [2025] EWCA Civ 669, at [13].
[47] [2025] EWCA Civ 669, at [32].
[48] Infrastructure Planning Commission.

not address CO2 emissions or any Emissions Performance Standard that may apply to plant." (emphasis added)[49]

61. The Court interpreted the NPS as recognising that *"GHG emissions having a significant adverse impact cannot be avoided for certain necessary energy infrastructure, even if they provide CCS"*.[50] The operational emissions will be addressed through *"managed, economy-wide manner to ensure consistency with carbon budgets, net zero and international commitments"*.[51] Thus, the NPS states that there is *"no need to assess emissions against benchmarks such as carbon budgets or net zero in decisions on planning consent"*.[52]

62. The Court also referred to the Government's policy context: in particular, reliance on electrification to reduce GHG emissions across sectors with the consequent need for new large-scale energy infrastructure, including additional gas-fired electricity generation and new carbon capture and storage infrastructure. In the 2024 NPS, it refers to the critical national priority for nationally significant infrastructure, which includes natural gas fired generation that is carbon capture ready.

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[49] See also [2.5.2] EN-2 (2011) which states that: "*CO2 emissions are a significant adverse impact of fossil fuel generating stations. Although an ES on air emissions will include an assessment of CO2 emissions, the policies set out in Section 2.2 of EN-1 will apply, including the EU ETS. The IPC does not, therefore need to assess individual applications in terms of carbon emissions against carbon budgets and this section does not address CO2 emissions or any Emissions Performance Standard that may apply to plant.*"
In the context of EN-1 (2024), the relevant section is 5.3, which stipulates as follows in paragraphs 5.3.11-5.3.12:
"*5.3.11 Operational GHG emissions are a significant adverse impact from some types of energy infrastructure which cannot be totally avoided (even with full deployment of CCS technology). Given the characteristics of these and other technologies, as noted in Part 3 of this NPS, and the range of non-planning policies that can be used to decarbonise electricity generation, such as the UK ETS (see Section 2.4), government has determined that operational GHG emissions are not reasons to prohibit the consenting of energy projects or to impose more restrictions on them in the planning policy framework than are set out in the energy NPSs (e.g. the CCR requirements). Any carbon assessment will include an assessment of operational GHG emissions, but the policies set out in Part 2, including the UK ETS, can be applied to these emissions.*

5.3.12 Operational emissions will be addressed in a managed, economy-wide manner, to ensure consistency with carbon budgets, net zero and our international climate commitments. The Secretary of State does not, therefore need to assess individual applications for planning consent against operational carbon emissions and their contribution to carbon budgets, net zero and our international climate commitments."

[50] [2025] EWCA Civ 669, at [28].
[51] [2025] EWCA Civ 669, at [28].
[52] [2025] EWCA Civ 669, at [28].

63. In summary, the focus of the appeal was whether the judge had erred (i) in deciding that the Secretary of State did not rely on the guidance issued by theIEMA, entitled "Assessing Greenhouse Gas Emissions and Evaluating their Significance" (the "**IEMA guidance**") and (ii) in deciding that paragraph 5.2.2 of EN-1 encapsulates both the assessment of significance for the purpose of the 2017 Regulations and the weight to be attributed to that assessment of significance as part of the planning balance.[53]

64. The IEMA Guidance is a guide for practitioners for assessing, mitigating and reporting on GHG emissions. It has not been adopted by the Secretary of State as policy guidance.[54] Chapter 6 deals with significance, referring to the "*crux of significance*" as "*whether it contributes to reducing GHG emissions relative to a trajectory towards net zero by 2050, not simply whether a project will cause GHG emissions, or even the magnitude of those emissions*".[55] In section 6.3, the IEMA Guidance defines a "*significant adverse effect*" by reference to "*a 'business-as-usual' or 'do minimum' approach and is not compatible with the UK's net zero trajectory, or accepted aligned practice or area-based transition targets*" (emphasis added). The guidance then goes on to provide analysis on how levels of significant adverse effects can be differentiated and how a project's GHG emissions may be contextualised to see whether it supports or undermines a trajectory to net zero.

65. Dr Boswell took issue with the Secretary of State having found that the GHG emissions from the proposed development would have a significant adverse effect on the environment yet also finding that it would help deliver the net zero transition (and that the emissions would not measurably harm the Government's ability to meet its national targets). He argued that that represented a failure to apply the IEMA Guidance, which, as set out above, defined "*a significant adverse effect*" as one that is not compatible with a net zero trajectory.

66. It was also argued on behalf of Dr Boswell that reg 21 of the 2017 Infrastructure Regulations required "*a reasoned conclusion on the effect of those emissions on the*

[53] [2025] EWCA Civ 669, at [4].
[54] [2025] EWCA Civ 669, at [34] and [73].
[55] [2025] EWCA Civ 669, at [37].

environment, in this instance the climate".[56] It was therefore legally insufficient for the Secretary of State to describe the emissions as having a "*significant adverse effect*", she needed to evaluate the significance of that effect by reference to a benchmark or contextualisation, such as "*projected contributions of either the fuel supply sector or the energy supply sector for the 6th Carbon Budget or the UK's Nationally Determined Contribution under the Paris Agreement*".[57]

67. The court did not accept that the decision, properly interpreted, had involved the Secretary of State relying on section 6.3 of the IEMA Guidance.[58] The court determined that the Secretary of State had evaluated the significance of the GHG emissions in both absolute terms, by 'contextualisation' and by reference to the EN-1 policies.[59] The court dismissed the argument that regulation 21 required some kind of contextualisation or benchmarking of the "*significance*" of the effects:[60]

> *"80. In our view the evaluation of the significance of an estimated amount of GHG emissions and its acceptability is a matter of fact and judgment for the decision-maker. He or she may decide to choose benchmarks to help in arriving at that judgment. But that choice too is a matter of judgment for them. Any conclusion drawn on the acceptability of the GHG emissions in comparison with a benchmark is also a matter of judgment for the decision-maker. The 2017 Regulations do not determine how these matters should or may be approached (R (on the application of Goesa Limited) v Eastleigh Borough Council [2022] EWHC 1221 (Admin); [2022] PTSR 1473 at [122]-[123]; R (Boswell) v Secretary of State for Transport [2024] EWCA Civ 145; [2024] Env. L.R. 28 at [44], [53]).*
>
> *"81. Nor is there any legal principle which requires a public authority deciding whether to grant a development consent to "contextualise" the GHG emissions or to compare them with a benchmark. It is not unlawful for the decision-maker, for example, to conclude, as in this case, that the GHG emissions will be managed across the economy to ensure consistency with carbon budgets and the 2050 net zero target. In any event, in the present case the Secretary of State did "contextualise" the GHG emissions from the development by making a sectoral comparison, whilst also relying*

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[56] [2025] EWCA Civ 669, at [79].
[57] [2025] EWCA Civ 669, at [66] and [79].
[58] [2025] EWCA Civ 669, at [78].
[59] [2025] EWCA Civ 669, at [76]. The relevant passage states as follows: "*[…] The Secretary of State accepted that the emissions would not measurably harm the UK's ability to meet national targets or the UK's Carbon Budgets. The emissions will be managed in an economy-wide manner so as to ensure consistency with those measures. Furthermore, in paragraphs 4.11 and 4.30 of the decision letter the Secretary of State accepted that, in view of the policy approach in EN-1, the proposed development is necessary in order to support the UK's transition to the "net zero" target.*"
[60] [2025] EWCA Civ 669, at [80] and [81].

upon the policy in EN-1 that made this exercise unnecessary (see e.g. [46], [54], and [58]-[59] above)." (emphasis added)

68. It was also argued on Dr Boswell's behalf that the judge had erred in concluding that paragraph 5.2.2 of EN-1 "*encapsulates the assessment of significance of GHG emissions for the purposes of the EIA Regulations as well as the weight to be given to the assessment of significance as part of a planning balance exercise*".[61] In short, paragraph 5.2.2 EN-1 could not address the significance of GHG emissions for the purpose of the EIA assessment.[62] The argument was summarised as follows:[63]

> "*A policy document could not deem or prescribe the level of significance of an effect on the environment. It can provide guidance. It can set out relevant factors. But it cannot predetermine, or stand in place of, the outcome of the assessment for an individual development. This would run counter to the purpose of the EIA process.*"

69. The argument was dismissed by the Court of Appeal.[64] The court determined that:[65]

> "*It was, we think, entirely legitimate in principle and in the circumstances of this case, for the Secretary of State to draw upon national planning policy in the NPSs in forming her conclusions on the "significance" of GHG emissions, and to do so both for the purposes of EIA and for the purposes of what the judge referred to as the "ultimate planning balance".*"

70. In interpreting paragraph 5.2.2 of EN-1 (2011) (and the equivalent paragraph in EN-2 (2011)), the court reasoned that:[66]

> "*Both policies state unequivocally that "CO2 emissions are a significant adverse impact". But whilst they acknowledge that the effects of such emissions from some types of energy infrastructure are "significant", it is also clear from the language of the policies, read in their context, that this is not regarded by the Government as an automatic basis for the refusal of development consent. There is nothing in the policies to qualify their acknowledgment of the "significance" of CO2 or GHG emissions by confining its relevance either to the EIA process alone or to the decision-maker's*

[61] [2025] EWCA Civ 669, at [83].
[62] [2025] EWCA Civ 669, at [85].
[63] [2025] EWCA Civ 669, at [85].
[64] [2025] EWCA Civ 669, at [86].
[65] [2025] EWCA Civ 669, at [86].
[66] [2025] EWCA Civ 669, at [88].

consideration of the proposed development on its planning merits when striking the planning balance and deciding whether or not development consent should be granted. And there is no need or justification for reading such a qualification into the policies. As the judge held, the policies are in sufficiently broad terms to encompass both the question of significance for the purposes of EIA and the part that any finding of significance will play in the question of whether to grant development consent."

71. The court further observed that there was *"no legal or practical reason why national planning policy should not provide guidance on the question of the "significance" of environmental effects of one kind or another"*.[67]

72. The Court of Appeal also dismissed Dr Boswell's reliance on *Finch,*[68] in particular where Lord Legatt observed, in summary, that (i) the aim of EIA is to establish general principles for assessing environmental effects and that UK national policy, whilst relevant to the substantive decision on development, is *"irrelevant to the scope of EIA"* and (ii) that even if information about environmental effects would make no difference to the decision as to whether to grant consent or not, it remains necessary to obtain and assess that information *("to ensure that a project which is likely to have significant adverse effects on the environment is authorised with full knowledge of these consequences"*).[69]

73. The Court endorsed Lieven J's judgment that the cases were 'analytically quite different' – *Finch* was about the scope of an EIA, rather than a judgement as to the significance of the particular environmental effects.[70] There was therefore no issue with the Secretary of State having conflated the *impact* of the GHG emission from the proposed development with the *weight* to be attributed to that impact;[71] nor was there any requirement to distinguish artificially and rigidly between matters relevant to EIA and those pertaining to the determination of the application for development consent.[72]

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[67] [2025] EWCA Civ 669, at [90].
[68] In particular [2024] UKSC 20, at [151] to [152].
[69] [2025] EWCA Civ 669, at [152].
[70] [2025] EWCA Civ 669, at [94] to [95].
[71] [2025] EWCA Civ 669, at [99].
[72] [2025] EWCA Civ 669, at [99] to [102].

74. Thus, there was no need for a mechanistic approach, separating out the EIA from the broader decision-making. Rather, regulation 21(c) expressly refers to integrating the conclusion in the DCO decision.

75. On the question of the adequacy of the environmental information to meet the requirements of the legislation, the court, in *obiter,* noted that this is a matter for the authority to decide subject to review on rationality grounds.[73]

76. In our view, the key wording here is "*to meet the requirements of the legislation"* bearing in mind the public participation required as part of a lawful EIA. As was made clear by the Supreme Court in *Finch,* and set out above, the purpose of the EIA is for decision-makers to face the full environmental consequences of their decisions.[74] Consent can be given for a project provided that it is done so with "*full knowledge of the environmental cost"*.[75] Public participation plays an essential role in that process and to be effective requires sufficient information, as referred to at the start of this article: "*[y]ou can only care about what you know about"*.[76] In *R (Friends of the Earth & ors) v Secretary of State for Levelling Up, Housing & Communities* [2024] EWHC 2359 (Admin) (or "***Whitehaven***" as referenced above), Holgate J was clear that the burden to produce the information falls upon the applicant, not the public, to produce *"full information"* to which the public could then respond.[77]

77. The question of sufficient information formed part of the challenge to the Minister of Infrastructure's decision in Northern Ireland to proceed with the first phase of the A5 dual carriageway: *Re Hasssard's Application* [2025] NIKB 42.[78] In short, as part of the decision-making process, the Department for Infrastructure had undertaken a further exercise to produce estimates of GHG emissions resulting from induced trips originating from or terminating in the Republic of Ireland, which resulted in the production of new environmental information that was not subject to public

[73] [2025] EWCA Civ 669, at [96].
[74] [2024] UKSC 20, at [3].
[75] [2024] UKSC 20, at [3].
[76] [2024] UKSC 20, at [21].
[77] [2024] EWHC 2359 (Admin), at [116].
[78] [2025] NIKB 42, at [237] to [242].

consultation or scrutiny.[79] The court concluded that the new information, including the methodology adopted, was "*sufficiently important or significant to warrant it being made the subject of further consultation and scrutiny prior to any decision being made*".[80] McAlinden J stated that:[81]

> "*The absence of the fruits of further consultation and scrutiny means that there was an inadequacy of information for the purpose of lawful decision making and, therefore this is yet another reason based in public law for concluding that the decision made in this case cannot stand.*"

78. There must be "*a systematic and comprehensive assessment of the likely significant effects of the project on the environment in accordance with the EIA directive*" for the decision to be valid.[82] The question then for decision-makers to consider is how much information is required from applicants so that there can be proper public participation and the decision-makers can then provide a reasoned assessment as to the likely significant effects on the environment. Whilst this is a matter of planning judgement, seen in the context of the requirements of the legislation, in our view, it would be sensible for applicants to be transparent in presenting their carbon assessments (including the factors taken into account in their emissions intensity figures) so that there can be proper public participation and scrutiny in the first instance rather than unnecessarily drawing the process out by not providing full information to allow proper engagement.

Agriculture

79. It is unsurprising that the principles in *Finch* have already been applied to agriculture, given the significant contribution that agriculture makes to GHG emissions (and the environment more generally as had been recognised in the *R (Squire) v Shropshire Council* [2019] EWCA Civ 888 considered in *Finch* itself).[83] Agriculture emits three types of GHG: nitrous oxide, methane and carbon dioxide. In 2022, agriculture emitted 70% of total UK emissions for nitrous oxide; 49% of total UK emissions from methane;

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[79] [2025] NIKB 42, at [237].
[80] [2025] NIKB 42, at [241].
[81] [2025] NIKB 42, at [242].
[82] [2024] UKSC 20, at [62].
[83] As per Lord Leggatt, [160]-[162] where he dismissed the distinction that the Court of Appeal had made in *Finch* between *Squire* and the facts in *Finch.*

and 2% of total UK emissions from carbon dioxide, meaning that, overall, agriculture was responsible for around 11% of the UK's GHG emissions (almost as much as all other industry combined).[84]

Downstream effects from agricultural waste

80. The first post-*Finch* case in the agricultural context is *R (Caffyn) v Shropshire* [2025] EWHC 1497 (Admin) in which Fordham J considered a challenge to a decision to grant planning permission for the construction and operation of *inter alia* four poultry units with 200,000 chickens on site, producing an annual 3,600 tonnes of poultry manure containing 66,000 kg of nitrogen. The challenge to the lawfulness of the EIA was concerned with the impacts of the development wider environment, such as unsurprisingly watercourses,[85] rather than climate.

81. In his consideration of the *Finch* case, Fordham J identified three features:[86] (i) it was inevitable that it would be processed and burned as fuel meaning no indeterminacy as to future use; (ii) the GHG that would inevitably be released from the combustion of the processed oil could be quantified; and (iii) the environmental harm was not "*locationally contingent*" and "*would be the same wherever in the world the inevitable combustion took place*". He then referred to two criteria from *Finch*:[87]
    a. That the "*effects of a project*" raised a question of causation (in fact and law), before referring to two of the tests for causation mentioned by the Supreme Court (the necessary and sufficient condition test and the proximate cause test).
    b. That the effects must be capable of meaningful assessment (and must not be a matter of conjecture or speculation).

82. Before acknowledging that it remains for the decision-maker to evaluate causation (in particular, whether an effect is likely), and whether the effect is capable of assessment.[88]

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[84] Climate Change Committee, "Progress in Reducing Emissions 2024 Report to Parliament", July 2024, Table 1.1 (pg 28) and see Defra, "Agriculture in the UK Dashboard", available online at: https://defra-farming-stats.github.io/auk-dashboard/#emissions-from-agriculture
[85] [2025] EWHC 1497 (Admin), at [11] to [13].
[86] [2025] EWHC 1497 (Admin), at [17].
[87] [2025] EWHC 1497 (Admin), at [18] to [19].
[88] [2025] EWHC 1497 (Admin), at [20].

83. Fordham J then applied those principles to his analysis of whether the decision-maker had lawfully considered digestate, which is distinguished from raw manure – it is one of the products of anaerobic digestion,[89] namely the "*stable sanitised material that can be applied to land for the benefit of agriculture or to improve the soil structure or nutrients in land*".[90]

84. In short, he found that the local planning authority had failed to consider digestate at all as part of the EIA.[91] On the issue of causation, he gave short shrift to the argument that anaerobic digestion constituted some kind of 'mitigation' in contrast to oil refinery in *Finch* – he considered that it was akin to saying that the processing of raw material broke the chain of causation, which is legally flawed in light of *Finch.* On capability of meaningful assessment, Fordham J accepted the submission that in *Finch* it was obvious that GHG emissions from the combustion of the refined oil would (not only meet the test for causation) but was also capable of meaningful assessment in contrast:[92]

> "*Spreading digestate is not said to have inevitable intrinsic environmental impacts, for example because all farmland is already saturated with nitrogen and phosphate. There is contingency. But the same is true of raw manure, including as to the effects of odour and dust. There was contingency in Squire, where the location of the third party land was unknown.*"

85. However, the crux was that the local planning authority simply had not considered digestate in their EIA at all. In many ways, Fordham J's application of the *Finch* principles is uncontroversial, but it is important to point out that the decision-maker's evaluative judgment applies only in the context of whether an effect is 'likely' rather than the antecedent question of whether it is an effect at all. Whether an impact is an

[89] One of the planning conditions required that all manure from the poultry buildings would be taken off site to an anaerobic digester or other suitable disposal or management facility, [2025] EWHC 1497 (Admin), at [22].
[90] [2025] EWHC 1497 (Admin), at [23] and [24].
[91] [2025] EWHC 1497 (Admin), at [32].
[92] [2025] EWHC 1497 (Admin), at [32(v)].

effect at all requires consideration of causation in fact and causation in law.[93] That is distinct from whether such an effect is *"likely"* which, recognises that the inquiry in determining the scope of the EIA is forward-looking. The question of a *"likely"* effect goes to whether it is capable of meaningful assessment and therefore the evaluative judgment of the decision-maker in relation to the scope of the EIA.[94] Whilst [20] of his judgment is clearer, Fordham J appears to suggest that the criterion of causation is also a matter of evaluative judgment which appears to be a misapplication of *Finch* (see *Caffyn,* at [32(ii)]).[95]

Upstream emissions

86. The focus of *Finch* was the downstream environmental effects of the proposed development: what would inevitably happen to the oil extracted from the wells? Even in the context of considering Holgate J's concerns around floodgates and other commodities at first instance in *Finch*, the majority judgment is focussed upon the downstream effects: the uses or end products for iron or steel or the manufacturing of components for motor vehicles or aircraft.[96]

87. An important development is not only how the principles apply to another sector but how the principles apply in the context of upstream emissions, which can also be scope 3 emissions as recognised in *Finch.* The same criteria of causation and meaningful assessment apply to those emissions, as is apparent from Lord Leggatt's analysis of the *An Taisce – The National Trust for Ireland v An Bord Pleanála (Kilkenny Cheese Ltd, notice Party)* [2022] IESC 8; [2022] 2 IR 173 ("***the Kilkenny Cheese case***").[97] The issue was *"whether or to what extent there was an obligation to include in the EIA for a proposed cheese factory the environmental effects of producing the milk needed to supply the factory"* – it was expected that the factory would require 450m litres of milk but that would come from existing sources and was going to be produced in any event. Importantly, in that case the court had recognised that the upstream GHG emissions from the supply of

[93] See [2024] UKSC 20, at [65] to [71].
[94] [2024] UKSC 20, at [78].
[95] In *Whitehaven* [2024] EWHC 2359 (Admin), Holgate J made it clear that the question of an effect must not be elided with the separate question of the significance of the effect at [106].
[96] See [2024] UKSC 20, at [121] to [122].
[97] [2024] UKSC 20, at [163] to [168].

the milk were indirect effects and were capable of assessment: 450m litres of milk would cause 513,000 tCO2e, *Kilkenny Cheese*.[98]

88. There was a separate argument that the factory would increase the overall demand for milk which might in turn stimulate milk production with implications for the size of the herd. Lord Leggatt considered that the Irish Supreme Court had implicitly adopted his criteria when it recognised that *"any future increase in milk production"* was *"entirely elusive, contingent and speculative"*.[99]

89. The question of upstream emissions has arisen in the context of intensive poultry and pig farming in the UK. It is accepted by industry groups (such as the UK Roundtable on Sourcing Sustainable Soya) that soya production, necessary for the protein content of animal feed, drives deforestation and its land use change impacts on scope 3 GHG emissions.

90. Further, these emissions are capable of meaningful assessment as they are included in industry standard emission intensity figures, such as those produced by the Agrecalc carbon calculator.[100] Those figures are then multiplied by the total volume of pork and poultry produced by the facility to give the estimate of total annual GHG emissions.

91. This issue came up in a recent planning application in North Norfolk for Airfield, Methwold and Feltwell farms in relation to a development for 14,000 pigs and 714,000 chickens. The local planning authority had scoped climate impacts and impacts from operational waste out of the EIA prior to the *Finch* decision. The officer had advised the committee to refuse permission on the ground *inter alia* that:[101]

> *"The Council is required to consider the significant effects of the project on the environment, including the impact of the development on climate change. Insufficient environmental information has been submitted to enable the Council to reach a view*

[98] [2022] IESC 8; [2022] 2 IR 173, at [67].
[99] [2024] UKSC 20, at [167].
[100] Net Zero & Livestock, How Farmers Can Reduce Emissions, 2022, Centre for Innovation Excellence in Livestock (CIEL) ("CIEL Report"), available at: https://cielivestock.co.uk/expertise/net-zero-carbon-uk-livestock/report-april-2022/
[101] Officer's report, pgs 110, 214.

and as such the application is contrary to Local Plan policy CS08 and new Local Plan policies LP06 and LP18, and the NPPF."

92. In the report, the officer noted as follows on the implications of *Finch*:[102]

"There is no set way in law to assess emissions. There is room for reasonable disagreement about whether all of the upstream and downstream emissions put forward by objectors can actually be quantified. The Applicant is correct to say that Finch is clear that if emissions are unquantifiable they do not need to be assessed. However, Finch is also clear that inevitable, quantifiable emissions do need to be assessed. There can be no doubt that at least some of the upstream and downstream emissions from this project are quantifiable and have not been assessed in terms of this individual proposal. WWF have sought to provide information within their representation that seeks to demonstrate that this is the case."

93. The applicant had also raised a substitution argument, namely that the pork and poultry will substitute imported pork and poultry with the beneficial effect on emissions, the officer referred to the *Whitehaven* case and noted as follows:[103]

"The Applicant suggests that the pork and poultry from this project will substitute imported pork and poultry and this will have a beneficial effect on emissions. The objectors argue that the business-wide approach to calculating emissions fails to satisfy the legal obligations and it is not sufficient to rely on the fact that the pig and poultry products will reduce the amount imported. That may or may not be correct, but it would be a legal error to give the Applicant's assertions regarding substitution any weight in these circumstances as no information is provided about the degree of substitution, how it has been calculated and whether the imported products can find a market elsewhere. Reliance on this kind of assertion was found to be a legal error in the context of imported coal in R (Friends of the Earth and ors) v SSLUHC [2024] EWHC 2359."

94. The planning committee accepted the advice and refused planning permission. It remains to be seen what the applicant does next.

Conclusion

[102] Officer's report, page 92.
[103] Officer's report, page 93.

95. Given the intention is that actions are authorised in the full knowledge of their environmental consequences,[104] an interesting future area of development will be assessing the legal adequacy of the environmental information for the EIA, which will, in turn, have implications for developers. This is not straightforwardly a matter that is solely for a decision-maker's planning judgement given that it needs to facilitate the objectives in the EIA regime, namely full knowledge and information of environmental effects so that there can be proper public participation and a decision-maker faces the environmental costs of any decision to grant consent. There is then the perennial question about assessing the significance of any environmental effects and the issue of contextualisation, which unless the approach is obviously irrational (and any mandatory guidance is followed such as the Supplementary Guidance in the offshore oil and gas context), it appears that this will remain a matter for policy and the individual decision-maker in most contexts.

[104] [2024] UKSC 20, at [62].