

Sarah Finch

[address redacted]

RESPONSE TO THE CONSULTATION ON DRAFT SUPPLEMENTARY EIA GUIDANCE FOR ASSESSING THE EFFECTS OF SCOPE 3 EMISSIONS FROM OFFSHORE OIL AND GAS PROJECTS

The Supreme Court's June 2024 ruling on a legal case that I brought, on behalf of the Weald Action Group,¹ has sparked a much-needed rethink on how the climate impacts of offshore oil and gas extraction projects are assessed.

My case challenged the grant of planning permission by Surrey County Council to expand an onshore oil extraction site and produce hydrocarbons over a period of 25 years. The permission was granted with no assessment of the effects on the climate of the greenhouse gas emissions that would arise when the oil was eventually burned. That seemed to me a glaring omission. These emissions would be a significant impact of the development. The production of oil for combustion was its entire purpose.

I was shocked to learn that this wasn't a one-off omission but usual practice. The scope 3 emissions that arise as a consequence of fossil fuel extraction have routinely been omitted from environmental impact assessment (EIA).

I was pleased that the Supreme Court found in my favour. The ruling, now widely referred to as the *Finch* ruling, confirms that there is a legal requirement to assess scope 3 emissions as part of the Environmental Impact Assessment (EIA) for new fossil fuel projects. It has had an immediate impact on a number of other planned UK fossil fuel projects, which have had their planning permission quashed or applications withdrawn, or not been defended in court. The most notable example so far is the planned new coal mine in Cumbria, which was permitted by then Secretary of State for Levelling Up, Housing and Communities, Rt Hon Michael Gove MP in 2022, but was found unlawful and had its planning permission quashed in September 2024.

I welcome the government's acknowledgement that clear guidance is required to ensure future decisions comply with the legal requirements of *Finch* and the current consultation. The supplementary guidance must ensure a robust EIA regime that does not give developers loopholes to avoid assessing scope 3 emissions or to downplay their impact.

¹ *R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others* [2024] UKSC 20.

I support all the comments and recommendations in the Weald Action Group's submission to the consultation and would like to reinforce the following points:

- The guidance must not allow developers to avoid assessing emissions based on speculative assumptions that there will be a reduction in oil and gas production elsewhere as a result of the proposed project going ahead. This argument was dismissed in the case against the proposed coal mine in Cumbria.² The *Finch* decision also explains this clearly, stating that “leaving oil in the ground in one place does not result in a corresponding increase in production elsewhere” [*Finch* paragraph 2].
- The guidance must apply a presumption that all hydrocarbons extracted will be combusted. The Supreme Court in *Finch* confirms that legal causation will always be established between a fossil fuel project and its combustion emissions: “the combustion emissions are unavoidable if the project proceeds and no pollution control regime could be relied on to prevent or reduce them” [*Finch* paragraph 110].
- Nor can developers cite ‘mitigation’ measures as reducing the impacts. As the Supreme Court affirmed, “In the case of oil extraction, there are no measures within the control of the developer which, if the project proceeds, would avoid or reduce the combustion emissions and their impact on climate” [*Finch* paragraph 105].
- Scope 3 emission assessments for proposed projects must be considered within the context of global cumulative greenhouse gas emissions and a global carbon budget aligned with the Paris Agreement. . As stated in *Finch*, “climate change is a global problem because there is no correlation between where GHG emissions are released and where climate change is felt” [*Finch* paragraph 97].
- The Supreme Court emphasised that public participation is necessary in EIA, both to increase the democratic legitimacy of decisions which affect the environment and to serve an important educational function, contributing to public awareness of environmental issues. As the ruling says, “You can only care about what you know about” [*Finch* paragraph 105]. To enable informed public participation, and ensure the best decision is reached, Environment Statements should describe the harmful social and environmental effects of proposed fossil fuel developments rather than simply provide anticipated volumes of greenhouse gas emissions.

² *Friends of the Earth Ltd v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 2349

- The draft guidance is intended to apply to applications for offshore oil and gas projects. I was glad to hear that the Government's forthcoming consultation on its manifesto position not to issue new licences to explore new new oil and gas fields will consider both onshore and offshore licensing.³ However guidance is also needed for onshore fields that are already licensed. The need for such guidance was sparked by my case, and reinforced by the Cumbria case, both of which concerned onshore sites, and were therefore subject to the Town and Country Planning Act 1990 regime rather than the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020. I recommend that the supplementary guidance should equally apply to the regulatory regime for onshore fossil fuels.

We are in a climate crisis and the impacts are being felt right now. 2024 was the hottest year on record. Countries around the world are experiencing deadly storms, floods and droughts. In the UK, last winter was the second wettest on record, preventing farmers from successfully planting crops.

Extracting and burning the billions of barrels of oil and gas that remain under the North Sea would add fuel to the crisis. Back in 2021 International Energy Agency executive director Fatih Birol said: "If governments are serious about the climate crisis, there can be no new investments in oil, gas and coal, from now – from this year".⁴ To put that in other words: keeping global average temperature rise below 1.5°C requires that no new oil and gas fields are developed.⁵

Decision-makers must have all the facts in front of them so they can properly weigh up the true climate harm of new oil and gas developments. I believe the only conclusion to draw from a full and fair assessment of scope 3 emissions is that no new oil and gas fields are permissible in the UK.

The UK government has an opportunity to reclaim global leadership. By publishing clear guidance that makes it impossible to allow new oil and gas exploration and extraction, except in truly exceptional circumstances, the UK would send ripples around the world, inspiring other countries to follow. That would be a sea change and a giant step towards a safer future.

Sarah Finch

³ Letter from Helen Huish, DESNZ Correspondence Unit, 23 Dec. 2024.

⁴ Fiona Harvey, 'No new oil, gas or coal development if world is to reach net zero by 2050, says world energy body', *Guardian*, 28 May 2021.

⁵ Olivier Bois von Kursk et al., *Navigating Energy Transitions: Mapping the road to 1.5°C* (Winnipeg: International Institute for Sustainable Development, 2020).