

IN THE MATTER OF THE TOWN AND COUNTRY PLANNING
(ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2017

Re: The implications of *R (Finch) v Surrey County Council and others* [2024] UKSC 20
for the determination of an application for an anaerobic digestion plant at Ashton
Down, Ashton Keynes, Wiltshire, SN6 6QT

OPINION

INTRODUCTION

1. I am instructed by South Cerney Parish Council (“**the Parish Council**”) to advise on the implications of the Supreme Court’s decision in *R (Finch) v Surrey County Council and others* [2024] UKSC 20 (“**Finch**”) for the environmental impact assessment (“**EIA**”) process in relation a planning application for the construction and operation of an anaerobic digestion plant (“**the AD Plant**”) on a site bordering the parish of South Cerney, Gloucestershire, (Application Reference: PL/2023/03359) (“**the Application**”). The determination of the Application was deferred by the Strategic Planning Committee (“**the Committee**”) of Wiltshire Council in its capacity as local planning authority (“**LPA**”) on 21 April 2026. It is now set to be determined on 16 June 2026 and further representations from interested parties have been invited by 13 May 2026.
2. This Opinion is for the benefit of the Parish Council but I understand that it may be shared with the LPA or other third parties, at the discretion of the Parish Council.
3. The *Finch* case itself concerned a challenge to the grant of planning permission by Surrey County Council for the extraction of 3.3 million tons 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 combusted, were a “likely significant indirect effect” of the development within the meaning of the 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 2017 Regulations**”), such that they should have been included in the EIA process for the project.

4. By a majority of 3–2, the Supreme Court held that the combustion emissions from the proposed development were “plainly” a likely significant indirect effect of the project on the climate, which fell to be assessed as part of the EIA process.¹ The Court also found that the reasons given by the County Council for not treating the combustion emissions as likely significant indirect effects of the project were legally flawed. The planning permission was therefore quashed.
5. The central question upon which I am now asked to advise is whether the judgment in *Finch* requires the LPA, before determining the application, to request that the applicant provide an assessment of the GHG that will result from the combustion of biomethane produced by the AD Plant and whether a grant of planning permission without such an assessment would be unlawful.
6. Specifically, I am asked to address the following questions:
 - (a) Whether the *Finch* principle applies to this Application and requires assessment of combustion emissions from the biomethane produced by the AD Plant.
 - (b) Whether the Environmental Statement (“**ES**”) as submitted is legally deficient for failure to include such an assessment.
 - (c) Whether any grant of planning permission by Wiltshire Council without requiring such an assessment would be unlawful.
 - (d) Whether the AD Plant falls within the scope of developments for which an EIA is required under the 2017 Regulations, and whether the ES as submitted satisfies the requirements of those Regulations in respect of greenhouse gas emissions.

¹ References to the Supreme Court refer to the decision of the majority unless otherwise specified.

SUMMARY OF ADVICE

7. For the reasons set out in detail below, I consider that:

- (a) **The Finch principle applies to the AD Plant.** The central principle in Finch was that determining whether a downstream environmental impact is an effect of a project for EIA purposes is a question of causation. The reasoning of the Supreme Court is of general application and is not confined to fossil fuel extraction projects. Insofar as the Officer's Report suggests that at pp. 22-23 that Finch is only relevant to fossil fuel development, this suggestion is mistaken. It has already been applied by the courts and in planning proceedings to other types of project generating other types of downstream effect, including the impact of a dolerite quarry and a number of intensive farming operations on climate and the impact of intensive poultry units on watercourses via the spreading of digestate.
- (b) **The emissions from the combustion of biomethane are an effect of the project.** A central purpose of the proposed AD Plant is the production of biomethane, which is explicitly designed for combustion in homes and/or vehicles. The combustion emissions are an inevitable consequence of the operation of the AD Plant as intended, with no breaks in the chain of causation. They satisfy the highest potential test of causation, as set out in Finch at §69, in that the AD Plant project is "both a necessary and sufficient condition" for the occurrence of the effects (§69). Here, the anaerobic digester *is* the project and the connection between it and the downstream combustion emissions is even closer than the connection was in Finch itself, because no further intermediate stages of refinement are required once the biomethane leaves the application site.
- (c) **The combustion emissions from the AD Plant are capable of assessment.** End-use emissions of projects — or scope 3 emissions in language of the GHG Protocol² — may sometimes be able to be excluded from consideration on the basis that they are incapable of meaningful assessment (Finch §167), but that is not the position here. The applicant's Carbon Report and accompanying calculations, submitted in September 2025, provide a breakdown of claimed emissions savings from biomethane produced by the AD Plant relative to the

² The GHG Protocol provides the world's most widely used GHG accounting standards and guidance.

equivalent consumption of natural gas. It follows that it must be possible for the applicant to quantify and assess in absolute terms the scope 3 emissions generated by the project and not only its emissions relative to a counterfactual scenario.

- (d) **Substitution of climate impacts is no basis for a failure to assess scope 3 emissions.** The argument that the downstream climate impacts of a project do not need to be assessed under the EIA Regulations where a degree of substitution exists and negative impacts are offset by positive ones was rejected by the Court in (1) *Friends of the Earth*; (2) *South Lakes Action on Climate Change v (1) Secretary of State for Levelling Up, Housing, and Communities*; (2) *West Cumbria Mining* [2024] EWHC 2349 (Admin) (“*Whitehaven*”) at §§103-108. Instead, the correct approach was that the inevitable downstream emissions caused by the project should be assessed and any emissions savings said to be generated by the project elsewhere should also be separately assessed where they could be robustly demonstrated.
- (e) **National policy support for a project does not justify limiting the scope of the EIA.** *Finch* at §151 is clear that, while national policy support for a proposal may be relevant to “substantive decision whether to grant development consent”, it is no justification for limiting the scope of the EIA. There is no reason to think this principle would not apply to national policy support for biomethane production.

8. Overall, I consider it strongly arguable that a permission granted on the strength of the current ES and additional information available to the Committee would be legally flawed for failure to provide a transparent assessment of the total emissions associated with the project, so that its full climate impact can be properly understood by the Committee and the public.
9. For completeness, I note that my instructions asked whether the proposal was indeed EIA development falling within the scope of the 2017 Regulations at all. I agree with the conclusion of the screening opinion in the Officer’s Report at pp. 21–22 that it is EIA development, having regard to its scale, nature, and location in a sensitive area, despite not fitting neatly within any single category in schedule 2 to the Regulations.

ESSENTIAL FACTS

10. The application for the AD Plant was originally submitted in April 2023. The Planning, Design and Access Statement states at §4.1 that the proposed development would occupy a site of 6.99 hectares, would accept approximately 91,000 tonnes of feedstock from local farms per annum, and would have the capacity to produce approximately 17,456,073 Nm³ of biogas per annum, resulting in approximately 9,815,904 Nm³ of upgraded biomethane. It would also produce digestate for use as fertiliser. A shed for the storage of chicken manure, digester tanks, digestate lagoons, separator building, biogas upgrade plant, CO₂ tank, and a range of other ancillary buildings and facilities would all be present on site (Planning Statement, §4.1).
11. The Application was accompanied by an ES. Climate change was addressed in cursory fashion in Chapter 11 on ‘Other Environmental Effects’. The applicant stated that the biomethane produced by the project would be used directly to heat homes and fuel vehicles, rather than as part of any subsequent electricity generating project. It was estimated that the project would generate a quantity of biomethane capable of providing heating to the equivalent of 8,700 UK households, based on an estimated energy usage of 12.3 MWh/y per household (§11.83).
12. In the same paragraph the applicant claimed that the biomethane produced by the AD Plant would generate emissions savings of 34,000 tonnes of CO₂ each year relative to standard UK Grid emissions, but no modelling was provided to substantiate this claim within the ES.
13. In September 2025, the applicant submitted a Carbon Calculation Report, supported by Carbon Calculator spreadsheet, which provided a breakdown of the claimed emissions savings from the project relative to an equivalent consumption of natural gas but did not quantify or assess the scope 3 emissions from the combustion of biomethane produced by the AD Plant in absolute terms.
14. I understand that the Parish Council has made a number of objections to the proposed development, including comments by Mr Colin Godfrey BSc (Hons), C Eng, MEI responding to the applicant’s ES and its more recent carbon calculations. This Opinion does not include any technical evaluation of the competing evidence on the precise nature and extent of the project’s climate impacts, but I note that the

methodology used by the applicant to calculate the claimed climate benefits of the project are contested.

LEGAL FRAMEWORK

The EIA Regime

15. Regulation 3 of the 2017 Regulations prohibits the 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
16. 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.*”
17. The precautionary principle “*underlies the EIA Directive*” and is engaged when decisions are taken under the provisions of the 2017 Regulations. The precautionary principle “*implies that cases of material doubt should generally be resolved in favour of EIA*”: *R (Champion) v North Norfolk* [2015] UKSC 52 (“**Champion**”), at §51. It requires the policymaker “*to make a reasonable assessment, using the best scientific evidence*”: *Afton Chemical Ltd v Secretary of State for Transport* [2011] 1 CMLR 16 at §61. As explained by Pill LJ in *R (Loader) v Secretary of State for Communities and Local Government* [2013] PTSR 406, albeit in the context of the screening exercise:

“The decision maker must have regard to the precautionary principle and to the degree of uncertainty, as to environmental impact, at the date of the decision. Depending on the information available, the decision maker may or may not be able to make a judgment as to the likelihood of significant effects on the environment. There may be cases where the uncertainties are

³ For a summary see *R (Friends of the Earth & ors) v Secretary of State for Levelling Up, Housing & Communities* [2024] EWHC 2359 (Admin) at §62.

such that a negative decision cannot be taken.”

18. Types of development listed in schedule 1 to the 2017 Regulations require an EIA to be carried out as a matter of course. Types of development listed in schedule 2 require an EIA only where they meet relevant quantitative thresholds and the decision-maker (in this case the planning authority) considers that the development is likely to have significant environmental effects, having regard to the criteria in schedule 3.
19. Where EIA is required, an ES must be produced. A ‘paper chase’ is not an acceptable substitute: per *Berkeley v Secretary of State for the Environment* [2001] 2 AC 603 (“**Berkeley**”).
20. Regulations 4(2) and (3) of the 2017 Regulations require that the ES “*identify, describe and assess in an appropriate manner the direct and indirect significant effects of the proposed development*” on a range of factors listed, including climate.
21. Regulation 14(3) of the 2017 Regulations explains that an ES submitted by the applicant must “*include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment*”.
22. In *Berkeley* at p.167 D–E, Lord Hoffmann explained that an ES “*constitutes a single and accessible compilation, produced by the applicant at the very start of the application process, of the relevant environmental information and the summary in non-technical language.*”

Key Findings in *Finch*

23. The key finding in *Finch* was that whether something is an “effect” of a project is a question of causation (§§65-67). Different legal tests apply in different contexts when considering causation, from the low threshold ‘but for’ test to the high threshold ‘necessary and sufficient condition’ test. The Court did not determine which test ought to be applied in other cases on downstream effects for other types of project, instead noting that in the case of oil extracted for commercial purposes, which would inevitably be refined and burnt, even the most stringent legal test

would be satisfied (§80).

24. The assessment of whether a downstream effect is caused by a project should be carried out in line with the following principles:

- (a) So long as there is “*sufficient evidence on which to base an assessment*” in relation to an identified likely significant effect, that effect should be included in the ES (§75).
- (b) There is no geographical limit on the scope of the effects which must be included (§§93, 97, 102, 103).
- (c) Intervening stages between the project and its eventual effects are irrelevant if they do not break the legal chain of causation (§§118, 134).
- (d) An assumption made for planning purposes, via planning policy, does not justify limiting the scope of an EIA (§108). Nor does national policy support for a given type of project (§151).
- (e) Public participation is one of the key objects of the EIA process, to promote democratic legitimacy and to contribute to public awareness of environmental issues (§§18-21; 63; 154).

25. Giving judgment for the majority, Lord Leggatt set out at §53 that:

“The council could not lawfully grant planning permission for the project unless an EIA had been carried out which complied with the obligation to “identify, describe and assess in an appropriate manner....the direct and indirect significant effects” of the project on (among other factors) “climate”: see regulation 4(2), reflecting article 3(1) of the EIA Directive. If the significant effects of the project on climate include the combustion emissions, the council was therefore obliged to assess them as part of the EIA and the failure of the Council in Finch to do so renders the decision to grant planning permission unlawful.”

26. On the significance of transparency and public participation in the EIA process, he 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.”

Application of *Finch* in subsequent proceedings

27. A number of decisions since *Finch* have helped to clarify the limits of its application to other types of project and factual scenarios.
28. **First**, in September 2024 the first major judgment in the UK to address the implications of *Finch* was handed down in the Whitehaven coal mine case.⁴ 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, for the production of coking coal to be used in steelmaking. 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.
29. Crucially, this judgment addressed the assessment of scope 3 GHG emissions in circumstances where developers claimed a degree of substitution would occur in relation to the climate impacts of a project (i.e. that extracted hydrocarbons could be

⁴ In addition to *Whitehaven*, the case of *R (Mathilda Dennis on behalf of SOS Biscathorpe) v Secretary of State for Levelling Up, Housing and Communities* settled after both the Secretary of State and developer accepted that the failure to consider emissions from combustion of oil to be produced at the proposed development constituted an error of law in light of the Supreme Court’s findings in *Finch*, and the permissions for Rosebank and Jackdaw offshore oil and gas fields were quashed by the Scottish Court of Session in *R (Greenpeace) v SSBEIS* [2025] CSOH 10.

used domestically and substitute for fossil fuels imported from abroad). In a significant decision, the Court found that, even where the evidence before a decision-maker suggests that some degree of substitution is likely, the downstream effects of a project on the climate still need to be assessed (§§103–108). Substitution of impacts might be relevant to the question of the significance of a project’s effects on the climate, but it did not absolve developers of the responsibility for assessing those effects in the first place, and robust evidence of the causal link between the project and the substitution effect was required (§§112, 115-116).

30. **Second**, in *R (Caffyn) v Shropshire County Council* [2025] EWHC 1497 (Admin), Mr Justice Fordham applied the principles from *Finch* to the downstream effects on watercourses of the spreading of raw and digestate chicken manure from a number of intensive poultry units. Applying *Finch* and the earlier case of *R (Squire) v Shropshire Council* [2019] EWCA Civ 888 [2019] Env LR 36, he concluded at §32(iii) that anaerobic digestion of raw manure to produce digestate fertiliser did not break the chain of causation between the project and its effects. This indicates that the principles set out in *Finch* are applicable outside the context of fossil fuel development (and indeed even outside the context of effects of projects on climate change).
31. **Third**, the fact that *Finch* applies to effects of projects other than fossil fuel infrastructure is confirmed in a number of other planning refusals and quashed permissions for projects including intensive farming and quarrying.
32. In April 2025, King’s Lynn and West Norfolk Borough Council rejected an application for permission for a facility designed to house 714,000 chickens and 14,000 pigs near the villages of Methwold and Feltwell, in part because insufficient information on upstream and downstream climate effects had been provided by the applicant as part of the EIA process. The Officer’s Report, cited *Finch* extensively, stating that “[w]hile emissions and other environmental effects from a farm are not the same as an oil well, the *Finch* decision has clear implications for this application.”⁵ Having sought legal advice, the Council concluded that the legal position after *Finch* required the assessment of “inevitable, quantifiable emissions” both upstream and downstream.

⁵ Officer’s Report on Application 22/00866/FM: Demolition of existing poultry sheds, construction of 20 new poultry sheds, 4 workers dwellings and associated infrastructure. at Airfield / Methwold Farm Brandon Road Methwold Norfolk IP26 4RJ, 25 March 2025, p. 92.

33. The Officer's Report also rejected the applicant's arguments that pork and poultry from its facility would substitute for pork and poultry imported from abroad and that this would have a beneficial effect on emissions, citing the Whitehaven case where "[r]eliance on this kind of assertion was found to be a legal error".
34. In August 2025, North Norfolk District Council also consented to the quashing of its decision to grant permission for an intensive poultry unit at Shrubbs Farm, planned to hold more than 310,000 chickens, after the Coalition Against Factory Farming sent a pre-action letter alleging, among other legal errors, non-compliance with the EIA Regulations through a failure to assess downstream GHG emissions as an indirect effect of the project on the climate.
35. In April 2025, after another pre-action letter from a local resident, Northumberland County Council consented to the quashing of its permission for a quarry at Kirkwhelpington, proposed to excavate dolerite, because no assessment was made of the emissions associated with extensive soil disturbance.

REASONS

36. **First**, the central principle in *Finch* – that determining whether a downstream environmental impact is an effect of a project for EIA purposes is a question of legal caution – plainly applies to a wide range of project categories and effects. The reasoning of the Supreme Court on this point is of general application and is not confined to fossil fuel extraction projects, as evidenced by its application by planning officers and the courts to cases involving climate impacts of intensive agriculture and quarrying and to other types of environmental impact in the case of *Caffyn*.
37. The core of the reasoning for scoping out the combustion emissions from the biomethane to be produced by the AD Plant found at pp. 22-23 of the Officer's Report appears to rest upon an assumption that *Finch* is only relevant to fossil fuel development. This assumption is plainly incorrect.
38. **Second**, applying the principles from *Finch*, set out at §24 above, I consider that the GHG emissions from the combustion of biomethane should be considered an effect of

the project for EIA purposes. The primary purpose of the proposed AD Plant is the production of biomethane, which is explicitly designed for direct combustion in homes and/or vehicles (ES, Ch.11 §11.83). The operation of the AD Plant is thus a necessary and sufficient condition for the occurrence of the scope 3 combustion emissions, satisfying the same high threshold test of causation that the combustion emissions in *Finch* itself did (§69).

39. Indeed, the degree of connection between the project and the end-use emissions in the present case is arguably closer than the connection in *Finch* itself, because no further intermediate stages of refinement are required once the biomethane leaves the application site.
40. Even if the processing of feedstock in the AD Plant itself is considered to be an intervening stage for the purposes of the assessment, the reasoning of Fordham J in *Caffyn* at §32(iii) strongly suggests this would be insufficient to break the chain of causation.
41. **Third**, there has been no suggestion from the applicant that the combustion emissions from the project are not capable of meaningful assessment and thus able to be omitted from the EIA in line with *Finch* at §167. The applicant's Carbon Report and accompanying calculations provide a breakdown of claimed emissions savings from biomethane produced by the AD Plant relative to the equivalent consumption of natural gas. It follows that it must be possible for the applicant to quantify and assess in absolute terms the scope 3 emissions generated by the project and not only its emissions relative to a counterfactual scenario.
42. **Fourth**, implicit in the reasoning in the Officer's Report appears to be an acceptance of the notion that the end-use emissions from burning biomethane do not need to be assessed because they are lower than emissions from the combustion of a comparable volume of natural gas. However, this approach is similar to the which was explicitly rejected by the Court in the *Whitehaven* case at §§103-108. The existence of a degree of substitution or displacement of negative climate impacts is not a proper basis to exclude them from assessment. Instead, the correct approach would be to assess the full extent of the scope 3 emissions of the AD Plant, including consideration of any adverse and beneficial effects separately if required.

43. **Fifth**, the fact that national policy supports a project does not justify limiting the scope of the EIA. *Finch* at §151 is clear that, while national policy support for a proposal may be relevant to “substantive decision whether to grant development consent”, it is no justification for limiting the scope of the EIA. There is no reason to think this principle would not apply to national policy support for biomethane production.
44. Similarly, the existence of a planning policy presumption that other regulatory regimes will operate effectively to avoid or mitigate adverse effects is no basis for a failure to assess such effects in the EIA (*Finch* at §108), though again it may well be relevant to the question of whether to grant permission.
45. **Sixth**, as set out above, *Finch* underscores the crucial importance of public participation in environmental decision-making. A readily accessible assessment of the full effects of the AD Plant has not yet been provided, despite significant concerns being raised by the Parish Council (through Mr Godfrey) regarding the accuracy of the applicant’s climate calculations and the assumptions underpinning them. This assessment ought to be provided so the claimed climate benefits of the proposal can be properly evaluated.
46. In light of all of the above, I consider it (at least) strongly arguable that a permission granted on the strength of the current ES and additional information available to the Committee would be legally flawed for failure to provide a transparent assessment of the total emissions associated with the project, so that its full climate impact can be properly understood by the Committee and the public.
47. For completeness, I note that my instructions asked whether the proposal was indeed EIA development falling within the scope of the 2017 Regulations at all. I agree with the conclusion of the screening opinion in the Officer’s Report at pp. 21–22 that it is EIA development, having regard to its scale, nature, and location in a sensitive area, despite not fitting neatly within any single category in schedule 2 to the Regulations.
48. The AD Plant is closely related to the electricity production installations in para 3(a)

and the waste disposal installations at para 11(b) of schedule 2 to the 2017 Regulations. Together with its location, within 500m of a Site of Special Scientific Interest, and its scale and processing capacity, this close relationship to established schedule 2 categories of development supports the conclusion that it should be considered EIA development. As set out in *Champion* at §51, “*cases of material doubt should generally be resolved in favour of EIA.*”

CONCLUSION

49. A summary of my advice may be found at §7 above. Taken together, the clear implication of the Supreme Court’s judgment in *Finch* and the judgment of the High Court in *Whitehaven* is that the full extent of the GHG emissions caused by the combustion of the biomethane proposed to be produced by the AD Plant should be quantified and assessed. This will allow Committee members to determine the application on the basis of the best possible information regarding the climate effects of the proposed development.

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11 May 2026