

# EIA After *Finch*

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# Fog and its dissipation?

Churchill's Monet—restored after many years of cigar smoke—goes on show in Courtauld

- Scope 3 emissions
- *R (Finch on behalf of the Weald Action Group) v Surrey County Council* [2024] UKSC 20



# Finch

- Large degree of factual agreement: inevitable GHG emissions would be produced; could be quantified and would have climate effect
- Majority: rejected “sufficient causal connection” test; intermediate process irrelevant; “likely” vs conjecture; “exported” effects not to be ignored; importance of public participation
- Minority: must be effects of the project; “constitutionally inappropriate” for emissions to be addressed at local level



# Finch

- Grounds to distinguish first instance examples of metal for use in vehicles or aircraft
- Downstream use of steel not susceptible to meaningful assessment
- Use of motor vehicles or aircraft conjectural
- The Irish cheese case: *An Taisce – The National Trust for Ireland v An Bord Pleanála (Kilkenny Cheese Ltd, notice Party)* – elusiveness of causation



# Effects of Finch

- Does not mean development consent cannot be given, but must be with full knowledge of effects
- West Cumbria Mining project:  
*Friends of the Earth Ltd v Secretary of State for Levelling Up, Housing and Communities*
- *Wressle and Biscanthorpe* oil projects for new wells
- *Rosebank and Jackdaw* gas fields



# Substitution issues

- *Friends of the Earth Ltd v Secretary of State for Levelling Up, Housing and Communities*
- Potential for offsetting, but does not mean no likely significant effect
- Onus on applicant/developer to bring forward evidence to support offsetting



# Other developments

- ITLOS Advisory Opinion on UNCLOS and EIA
- *Greenpeace Nordic v The State of Norway*
- *Environment Council of Central Queensland Inc v Minister for the Environment and Water (No 2) The Living Waters Case*
- Offshore Petroleum Regulator for Environment and Decommissioning proposed guidance on Scope 3 emissions
  - Substitution
  - Baseline
  - Methodologies



# Future developments?

- Environmental Outcome Reports under Part 6 Levelling Up and Regeneration Act 2023
- Developments at EU level on EIA for renewables under REPowerEU initiative
- Pressure in UK to accelerate wind, solar and nuclear projects

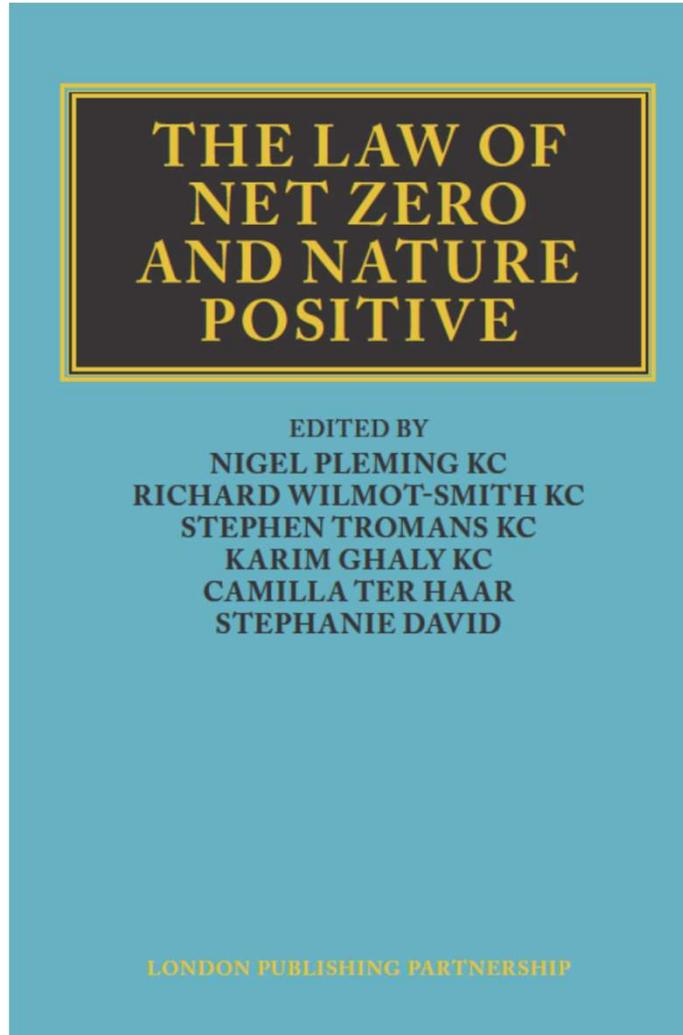


# Lessons

- Oil, gas, coal projects
- Other projects
- Appetite for legal risk
- Onus on developer to address the issues
- Science will change
- Offsetting and substitution will be controversial
- *“All difficulties are but easy when they are known”*



# Forthcoming book: The Law of Net Zero and Nature Positive



- Over 35 contributors from 39 Essex Chambers
- Covering commercial and financial services, construction, planning and environmental matters, environmental protest, public international law and fiscal measures
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