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November 29th, 2024

The UK's role in phasing out fossil fuels from COP to the courts

COP 29 has demonstrated that there is still a long way to go in the fight to restrict the use of fossil fuels. But the UK Supreme Court ruling on Finch vs Surrey County Council shows a promising pathway for the Government to show international leadership in implementing its policies of phasing out fossil fuels, argue Catherine Higham and Ruchi Parekh.

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One of the key outcomes of the first global stocktake at COP28 in Dubai last year, was an acknowledgement from all countries that addressing climate change requires addressing fossil fuels. The [final negotiated text](#) called on parties to contribute to global climate change mitigation by “transitioning away from fossil fuels in energy systems”.

That this outcome should be considered significant might be surprising to many. Burning fossil fuels is the most significant cause of planet warming greenhouse gases (GHGs), accounting for over 75 per cent of [all emissions](#). Nonetheless, until COP26 in Glasgow in 2021, fossil fuels had [rarely been mentioned](#) in the outcome texts of COP negotiations, which centred instead on reducing GHG emissions, rather than focusing on their primary causes. As a result, the text from Dubai was hailed as “[historic](#)” by many, even as others were critical that it was heavily subject to caveats.

At COP29 this year, it has become clear that the fight over restricting fossil fuel supply is far from over. Talks over this issue [nearly broke down](#) in the middle of the conference, with proposals on how to operationalise the commitments from COP28 meeting with strong opposition from oil-producing countries. At one stage, a proposal to postpone discussions until 2026 looked set to be adopted. While talks did continue into the second week, tensions continued to flare. The final decision on implementing the global stock take outcomes does contain a veiled reference to the previous commitment on fossil fuels, but this is somewhat weakened by the reference to “transitional fuels” – a term which usually refers to fossil gas – in the very next [paragraph](#).



The Finch vs Surrey County Council ruling, which has already opened the door to further litigation, could also be leveraged by the government as a further reason to strengthen its policy position on phasing out fossil fuels.



Throughout the COP, the UK has been one of the most **vocal advocates** for maintaining the emphasis on fossil fuels in the text. This is perhaps no surprise given that we now have a Labour Government whose **election manifesto** included a commitment not to issue any new licenses to explore new oil fields, as well as a commitment not to grant any new coal licenses and a ban on fracking. However, it is not yet clear how broadly or narrowly the Government will interpret its mandate to act on this issue, even despite the powerful opportunity for a policy rethink offered by the Supreme Court's recent decision in *Finch vs Surrey County Council*. This ruling, which has already opened the door to further litigation, could also be leveraged by the Government as a further reason to strengthen its policy position on phasing out fossil fuels.

Understanding the decision in *Finch*

In a historic ruling, the Supreme Court held that the grant of planning permission for commercial oil production at an oil well in Surrey was unlawful. The decisionmakers had failed to assess the inevitable "downstream" GHG emissions – in breach of the relevant environmental impact assessment (EIA) regulations, which require an assessment of the "direct and indirect significant effects of a project" on the climate. This was the first time a UK court acknowledged that scope 3 GHG emissions, which are released when fossil fuels are ultimately burned by customers, constitute an "indirect effect" of fossil fuel production projects. Scope 3 emissions can account for 80-95 per cent of total GHG emissions of oil and gas projects, and the ruling ensures that decisionmakers will now have a full picture of the climate impacts of such schemes prior to granting consent.



As a direct result, we have seen the quashing of planning permission for oil drilling in the Lincolnshire Wolds as well as the new underground coal mine in Whitehaven, Cumbria.



The decision has had immediate ramifications for other fossil fuel consents, given that many controversial projects had been similarly challenged and had been ‘stayed’ pending the outcome in *Finch*. As a direct result, we have seen the quashing of planning permission for **oil drilling in the Lincolnshire Wolds** as well as the **new underground coal mine in Whitehaven, Cumbria**. In the latter decision, the High Court applied the *Finch* principles to reject arguments made by the project developers about the alleged ‘substitution’ of American coal by Cumbrian coal. The developers had sought to rely on this point to claim that the coal mine would have neutral or beneficial effects on global GHG emissions. Earlier this month, the Scottish Court of Session also heard *Finch*-based arguments in the challenge to the Rosebank and Jackdaw fields in the North Sea, although a final decision is pending.

Notably, in all these cases, the Labour government had acknowledged the legal errors in light of *Finch*, and the consents (in the case of Cumbria, Rosebank and Jackdaw) were being defended by the developers alone.

The quashing of these consents over the summer has been hailed by some as marking a new chapter in the fight against fossil fuels, but it should be noted that *Finch* is confined to procedural errors in the EIA regime as opposed to the substantive issue at the heart of the COP negotiations. Notwithstanding the narrow basis for the ruling, however, the clear message from the courts is that developers need to report on their scope 3 emissions to ensure full public participation, a key objective of the EIA regime. As was simply put in *Finch*: “*You can only care about what you know about.*” It may well be the case that enhanced reporting of scope 3 emissions will lead to different substantive outcomes for future fossil fuel projects, but it is too early to tell.



The momentum created by the cancellation of project consents following the Finch judgment could offer the UK the opportunity to demonstrate that leadership.



The impact of the *Finch* decision on UK policy

Meanwhile, and outside of the courtroom, the Government has recently launched a [consultation](#) on new EIA guidance for offshore oil and gas projects in light of *Finch*. The draft guidance on assessing downstream emissions may seem at odds with Labour's [manifesto commitment](#) – but that commitment was confined to the issuing of new licences to *explore* new oil and gas fields. Labour had always stated that they would not revoke existing licences, and would need to manage existing fields – to which this EIA guidance will apply.

An opportunity for UK leadership?

The new EIA guidance is a logical response to the questions arising after *Finch*. However, it does not go far enough to address the major issues identified in the COP debates, issues which are grounded in assessments by organisations like the [International Energy Agency](#) and [others](#) that globally the numbers of new fossil fuel projects need to be strictly limited in order to realise global mitigation ambitions. As the UK and its allies in the negotiations recognise, international leadership on the issue of fossil fuel supply is urgently needed as part of the collective effort to limit global warming. The momentum created by the cancellation of project consents following the *Finch* judgment could offer the UK the opportunity to demonstrate that leadership.

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Posted In: Climate change | Environment and Energy Policy | Environmental Policy and Energy | LSE Comment



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