

Briefing

Horse Hill: drilling for oil in Surrey and setting a dangerous legal precedent

Summary

- Months after declaring a climate emergency, Surrey County Council granted planning permission for an oil development that would extract over 3 million tonnes of oil over 20 years.
- Friends of the Earth intervened in a legal challenge brought by local resident and campaigner Sarah Finch, on behalf of the Weald Action Group. In December 2020, the judge ruled that the council did not have to consider the emissions from the actual end-use of the oil (ie, from burning the oil), just those from the production of the oil itself, as part of the environmental impact assessment (EIA).
- This sets a dangerous legal precedent which could potentially allow countless similar fossil fuel developments to be approved without consideration of their full climate impacts. We are intervening again in support of Sarah Finch's appeal, which goes to the Court of Appeal in November 2021. **The Secretary of State for Levelling Up, Housing and Communities Michael Gove should not continue to participate in the appeal and to defend the decision by Surrey Council Council. The Secretary of State should withdraw from the legal case.**
- This development is incompatible with the 2050 net zero target and the UK's efforts to show global climate leadership in the run up to UN climate talks in Glasgow.
- **We urge the government to immediately withdraw from the appeal and to stop defending the decision to grant planning permission for the Horse Hill development.**

Introduction

In 2012, Surrey County Council granted planning permission for an exploratory oil well at Horse Hill – a site only 3km west of Horley and 3.5km north of Gatwick Airport. In 2017, they granted permission for a sidetrack well and second borehole, and subsequent testing. **In 2019, just a few months after the council passed a motion declaring a climate emergency, it granted planning permission for an oil development.** This development, if it goes ahead, will include **6 oil wells that would collectively extract over 3 million tonnes of oil over 20 years**, the burning of which would produce more than 10 million tonnes of carbon dioxide equivalent.

The legal challenge

The legal challenge is brought by local resident and campaigner Sarah Finch, on behalf of the Weald Action Group; an umbrella for local groups that have been campaigning against the extraction of oil and gas in the southeast of England for years. Friends of the Earth was granted permission to intervene in the High Court.

In the High Court, the case was opposed by the council and two interested parties: Horse Hill Developments Limited (the developer) and the Secretary of State for Housing, Communities and Local Government, Robert Jenrick. It went before the High Court for a hearing in November 2020.

Our original intervention supported Sarah's case that the council's decision was unlawful. We argued that it breached EIA obligations by **failing to assess the indirect greenhouse gas emissions caused by burning the oil produced** (the Council only considered the emissions caused by extracting the oil itself) and because it **failed to take into account the 2050 net zero target**.

In December 2020, the judge ruled that the Council had acted lawfully, rejecting our and the claimant's arguments and finding that the council was right not to consider the end-use emissions as part of the EIA. In fact, the judge concluded that the council **could not legally have considered them in the EIA**.

The appeal

Sarah Finch is appealing the judgement, with the Court of Appeals having given Friends of the Earth permission to intervene. The appeal is being defended, once again, by Surrey County Council, the developer, and the Secretary of State. The case is being heard on 16 November 2021, for 1.5 days.

Our case will argue that **the decision to not consider the end-use emissions is unlawful as it does not conform with the obligations of the EIA regulations to factor in the indirect effects of the development**. Drawing on the experience of our international network of Friends of the Earth sister groups across the world, we will argue that as the case law from other countries demonstrates, end-use emissions arising from fossil fuel developments can and should be considered. We will refer, for example, to the recent case brought by Milieudefensie (Friends of the Earth Netherlands) against Shell, in which the Dutch Court referred to the need for companies to take responsibility for their scope 3 (end-use) emissions.

If the High Court ruling in the Horse Hill case becomes the norm for EIAs, it could be hugely detrimental for environmental protection and preventing climate breakdown, with all fossil fuel developments potentially being able to exclude the emissions that would be created by the resources they are exploiting, this being where the vast majority of emissions arise. This judgement has already been cited by other developers to justify excluding these considerations. For example, the developer in the upcoming Whitehaven coal mine planning inquiry (in which Friends of the Earth is a main party and is opposing the development) is using it to argue that it does not need to consider the end-use emissions of the coal. It has therefore not assessed these, however Friends of the Earth

has calculated that they will amount to approximately 220 million tonnes of carbon dioxide equivalent over the lifetime of the mine.

The politics of Horse Hill

The Horse Hill development is incompatible with both Surrey County Council's declaration of a climate emergency and the UK government's commitment to bring all greenhouse gas emissions to net zero by 2050, as well as severely damaging the UK's ability to proclaim world leadership on tackling climate change in the run up to the UN climate talks in Glasgow.

We are hoping that the appeal in November is successful. However, it is obvious that **the government, and specifically the Secretary of State for Levelling Up, Housing, Communities and Local Government, Michael Gove, and his Department**, should not be involved in defending a council's decision to grant permission for an oil development that would extract over 3 million tonnes of oil, while it is claiming to be serious about tackling the climate emergency. To do so severely undermines our ability, as the host of the UN climate talks, to ask other countries to transition away from fossil fuels, submit their own net zero commitments, and to provide climate financing for poorer countries to transition to renewable energy.

Conversely, withdrawing from the case and committing to an end to fossil fuel extraction in the UK would demonstrate clear leadership on climate and help persuade other countries to follow our example.

Furthermore, alongside withdrawing from this case, the government should **introduce legislation and policy that ensures similar developments are no longer permitted anywhere in the UK**. If we are to have any chance of remaining within 1.5°C degrees of global warming, our planning laws must be strengthened, not weakened, to prevent any new coal, oil and gas extraction in the UK.

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