

A46 Coventry Junctions (Walsgrave) Scheme number: TR010066

8.26 Applicant's response to R (on the application of Finch on behalf of the Weald Action Group) (Appellant) v Surrey County Council and others (Respondents)

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**A46 Coventry Junctions (Walsgrave)
Development Consent Order 202[x]**

**APPLICANT’S RESPONSE TO R (ON THE APPLICATION OF
FINCH ON BEHALF OF THE WEALD ACTION GROUP)
(APPELLANT) V SURREY COUNTY COUNCIL AND OTHERS
(RESPONDENTS)**

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1. Finch Judgement EIA review

1.1. Purpose of the report

- 1.1.1. This report has been prepared by National Highways (the 'Applicant') in response to the Supreme Court judgment (R (on the application of Finch on behalf of the Weald Action Group) (Appellant) v Surrey County Council and others (Respondents) [2024] UKSC 20) (hereafter referred to as the Finch judgement). The judgement was handed down 20 June 2024 concerning the assessment of indirect effects of the project. The judgment emphasised the need for inevitable indirect environmental effects of a project to be identified, assessed, and presented in the Environmental Statement (ES).
- 1.1.2. The Applicant has undertaken this assessment on the implications for the Scheme of the Supreme Court Finch judgment on a voluntary basis to ensure transparency, to assist the examining authority in its examination / consideration of the Scheme, to demonstrate that the potential for indirect environmental effects has been comprehensively addressed. The Applicant believes this will reduce the risk of successful legal challenge to the making of the Development Consent Order should the Secretary of State decide to approve it.

Environmental Impact Assessment Background

- 1.1.3. The Environmental Impact Assessment (EIA) for the A46 Walsgrave Junctions (the "Scheme") has been prepared in line with the requirements of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) and guidance provided in the Planning Inspectorate's (2020) Advice Note Seven: Environmental Impact Assessment: Process, Preliminary Environmental Information and Environmental Statements. The EIA has also been undertaken in accordance with the Design Manual for Roads and Bridges (DMRB) Standards including:
- LA 101 Introduction to environmental assessment (Highways England, 2019a) (DMRB LA 101)
 - LA 102 Screening projects for environmental impact assessment (Highways England, 2019b) (DMRB LA 102)
 - LA 103 Scoping projects for environmental assessment (Highways England, 2020a) (DMRB LA 103)
 - LA 104 Environmental assessment and monitoring (Highways England, 2020b) (DMRB LA 104)
- 1.1.4. The Scheme EIA has been prepared by competent experts from each technical discipline. Evidence of the competent experts is presented in each of the

relevant environmental aspect chapters of the ES (Chapters 5 to 15)
(**TR010066/APP/6.1**).

- 1.1.5. As part of the EIA process, all effects, including indirect effects, were identified during the scoping stage of the EIA. All likely significant effects, including indirect effects, were carried forward to the detailed assessment stage, and their results are presented within the ES, however no reference to the *Finch* judgement was made. The criteria for identifying the magnitude of an impact were based on Table 3.4N in DMRB LA 104, which is detailed in Table 4-4 of ES Chapter 4 (Environmental Assessment Methodology) (**APP-026**). This process identifies potential impacts that may arise due to the construction and operation of the Scheme. These impacts can be adverse or beneficial, direct or indirect, secondary or cumulative, and may vary in duration—being temporary or permanent, short-term, medium-term, or long-term. However, following the *Finch* judgment, a review of all possible indirect effects from the Scheme has been undertaken to ensure that all likely significant indirect effects are reported, and none were omitted during the EIA Scoping stage or from the ES.
- 1.1.6. It is important to note that the Supreme Court in *Finch* emphasised the need for an ES to consider all impacts where there can be considered to be an 'inevitable causation' between a project and an effect. Such effects must not be mere 'speculation or conjecture' i.e determining that a potential effect is "likely" requires evidence on which to base such a determination (including an appropriate methodology in order to reach a reasoned conclusion).

Methodology

- 1.1.7. The review of indirect effects has been undertaken by the competent experts that completed the ES for the Scheme and identifies any additional effects that have not already been included and scoped out or included within the ES. The review has followed a four-step approach:
1. Have all potential indirect effects of the project been identified?
 2. Have all those indirect effects which are "likely" to occur as a result of the grant of consent for the project being assessed been identified?
 3. Have any likely indirect effects which have been identified been assessed to determine whether they are significant?
 4. Have any likely indirect effects which are considered to be significant been reported in the ES.
- 1.1.8. Table 1--1 below reports the findings of this review, including the rationale for the consideration or otherwise of additional potential indirect effects.

Conclusion

- 1.1.9. The review concludes that there are no likely indirect effects which are considered to be significant that have not already been captured by the existing EIA for the Scheme.
- 1.1.10. In light of this conclusion, no updates to the ES for the Scheme have been considered necessary.

Table 1--1: Additional Indirect Effects identified per topic

Potential Indirect Effect	Construction/ Operation	Is the effect likely to occur?	Does the effect have the potential to be significant?	Does assessment of this effect need to be added to the Scheme Environmental Statement?	Commentary
Air Quality					
Any likely indirect effects were captured within ES Chapter 5 (Air Quality) (REP3-011) and no additional indirect effects were identified in this review.					
Cultural Heritage					
Any likely indirect effects were captured within ES Chapter 6 (REP4-006) and no additional indirect effects were identified in this review.					
Landscape and Visual Amenities					
Any likely indirect effects were captured within ES Chapter 7 (Landscape and Visual Effects) (APP-029) and no additional indirect effects were identified in this review.					
Biodiversity					
Any likely indirect effects were captured within ES Chapter 8 (Biodiversity) (REP3-012) and no additional indirect effects were identified in this review.					
Geology and Soils					
Any likely indirect effects were captured within ES Chapter 9 (Geology and Soils) (REP4-008) and no additional indirect effects were identified in this review.					
Material Assets and Waste					
Off-site extraction of raw materials used for the Scheme	Construction	Y	N	N	Due to the complexity and intricacy of the supply chains for material extraction and production, and waste management and disposal, there was considered insufficient evidence of an identifiable “causal link” between any indirect environmental effects and the Scheme. The Scheme includes mitigation measures designed to inherently reduce any residual indirect environmental effects in relation to procurement of materials and management of waste. These measures are detailed in MA1 – MA7 of the Register of Environmental Actions and Commitments (REP4-012) (Appendix A to the First Iteration Environmental Management Plan (EMP) (REP4-010)). These are the only measures the Scheme can control, as it cannot impose additional controls on existing regulated facilities.
Off-site management and disposal of surplus materials and waste	Construction	Y	N	N	
Manufacture of construction machinery	Construction	N	N	N	The Scheme will not result in the manufacturing of construction machinery which would not otherwise be produced for other construction schemes (highways or otherwise) in the United Kingdom. The Scheme is not anticipated to require any bespoke items of construction machinery to be utilised. It has been considered that the size of the Scheme is negligible compared to the market forces which drive the production of construction plant and equipment on a national level.
End of lifecycle for construction machinery used in the Scheme	Construction	N	N	N	The construction period of the Scheme is such that construction plant used on the Scheme would still be in a serviceable condition for future use and would not be disposed of in a landfill as a direct result of the Scheme alone.
Increase in the production of vehicles	Operation	N	N	N	The Scheme is likely to result in the production of a negligible amount of additional vehicles when considered on a national scale as set out above.
Production and use of fuel (fossil, electric and hydrogen)	Operation	N	N	N	The Climate assessment, contained within ES Chapter 14 (Climate) (APP-036), included an assessment of the emissions associated with road users during the operation of the Scheme. This assessment captures the emissions of the Scheme by comparing “with” and “without Scheme” scenarios, including the emissions associated with the use of fossil fuels and electricity by the vehicles. This is based on the Transport Assessment (APP-134) which indicates an increase in vehicle kilometres is anticipated, and as such increased fuel usage. However, the increase in fuel use as a result of Scheme itself is considered to be negligible in the context of overall fuel demand in the United Kingdom and would not result in the need for additional fossil fuel extraction sites.
Greater wear and tear on vehicles due to vehicles travelling greater distances	Operation	N	N	N	The Scheme will not result in greater wear and tear on vehicles as it will have a negligible impact on total journey distances in the local area compared to the existing configuration of the A46.
Noise and Vibration					
Any likely indirect effects were captured within Chapter 11 of the Environmental Statement (REP3-014) and no additional indirect effects were identified in this review.					

Potential Indirect Effect	Construction/ Operation	Is the effect likely to occur?	Does the effect have the potential to be significant?	Does assessment of this effect need to be added to the Scheme Environmental Statement?	Commentary
Population and Human Health					
Effects of relocation / extinguishing existing occupiers	Construction / Operation	N	N	N	The Scheme will not indirectly result in the permanent relocation or extinguishment of any existing occupiers' rights beyond that which has been assessed in the ES.
Changes in modes of travel	Construction / Operation	N	N	N	The Scheme is not likely to result in a significant alteration in the modes of travel used in the area.
Agricultural Enterprises					
Agricultural supply chain effects	Construction / Operation	N	N	N	While the Scheme affects two substantial farm holdings, both would be able to continue operating with alternative arrangements in place as set out in ES Chapter 12 (Population and Human Health) (APP-034). Tables 12-13 and 12-19 of ES Chapter 12 (Population and Human Health) (APP-034) set out the significance of effects on agricultural land holdings during construction and operation respectively. Due to the complexity of agricultural supply chains, there is insufficient evidence of an identifiable inevitable causation between the Scheme and specific agricultural service providers/processors, and so there is insufficient evidence of any new indirect effects likely to occur as a result of the Scheme.
Agricultural environmental schemes	Construction / Operation	N	N	N	Both affected farm holdings participate in agri-environmental schemes. Environmental mitigation areas included in the Scheme may, in the longer term, provide alternative / additional opportunities for agri-environmental schemes. No inevitable disruption to regional environmental targets demonstrated.
Road Drainage and Water Environment					
Increased use of water resources as a result of construction workforce.	Construction	N	N	N	The assumed worst-case maximum size of the construction workforce is set out in section 2.6.32 of ES Chapter 2 (The Scheme) (APP-024). During peak construction activities, it is estimated that there would be approximately 120 personnel working on the Scheme. It is anticipated that the construction workforce will result in negligible increases in the use of water resources and generation of waste water. Additionally, local workforces will be utilised where possible, further minimising the potential of this effect.
Increased production of domestic wastewater as a result of construction workforce	Construction	N	N	N	
Climate					
Decommissioning of assets associated with the Scheme	Operation	N	N	N	The carbon assessment within ES Chapter 14 (Climate) (APP-036) already considers the whole life carbon emissions from construction and operation of the Scheme. The construction assessment includes emissions from materials, construction plant and transport to and from the site. The operational assessment includes emissions from road users, energy requirements, renewal and maintenance and land use changes (for example changes to habitat in line with Biodiversity Net Gain and landscape design). All indirect effects of which there is evidence are therefore considered to have been assessed already. As per DMRB LA 114 an assessment of decommissioning effects has been excluded from the assessment due to the length of the asset operational phase. The Scheme would become an integral part of the strategic and local road networks and as such it is highly unlikely that the Scheme would be decommissioned.
Unplanned repair and maintenance activities	Operation	N	N	N	Due to the unplanned nature of these activities by definition, prediction of the likelihood of this effect is deemed impossible to predict and therefore not considered to be likely.