

FAO Claire Dorgan and the planning team

Borough Council of King's Lynn & West Norfolk
Kings Court
Chapel Street
King's Lynn
Norfolk
PE30 1EX

23 January 2025

By email only: borough.planning@west-norfolk.gov.uk.

Dear Sir/ Madam,

This letter concerns the following planning applications:

22/00866/FM | Demolition of existing poultry sheds, construction of 20 new poultry sheds, 4 workers dwellings and associated infrastructure. (Airfield Farm and Methwold Farm)

22/00860/FM | Demolition of existing buildings and construction of new buildings in connection with pig finishing provision and other associated works. (Feltwell Farm)

We write to you jointly from Feedback, and Sustain; the alliance for better food and farming, both UK registered charities. We aim to share information relevant to these applications. In summary:

- The environmental statement unlawfully excludes comprehensive information about the direct and indirect greenhouse gas ("GHG") impacts of the developments.
- It is anticipated that the environmental impacts of the facilities on the climate would be significant, amounting to an estimated 6% increase in borough-wide emissions. This is contrary to the local climate plan, which aims to reduce industrial emissions "as and when opportunities arise", and in contravention of local and national planning policy which aims to deliver "**radical reductions in greenhouse gas emissions**".
- The development is unnecessary for UK food security and undermines rural livelihoods.

Our key concerns in relation to this proposal are addressed below in detail.

1. The application is unlawful, therefore should be rejected

The council has acted unlawfully in scoping out climate change - including an assessment of GHGs - from the Environmental Impact Assessment process. This is contrary to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. We have taken legal advice on this matter from counsel Ruchi Parekh. Our legal submissions are set out in Annex C.

By way of summary, the Supreme Court has very recently clarified the circumstances in which direct and indirect GHG emissions of planning proposals must be assessed as a matter of law: *R (Finch) v Surrey County Council* [2024] UKSC 30 ("*Finch*"). In essence, an environmental assessment must be made of a likely significant effect where: (i) a causal test is met between a proposal and the effect (i.e. GHG emissions); and (ii) there is an evidential basis or methodology on which to base an assessment. Both these conditions are satisfied in this case, such that the climate impacts of the projects must be assessed in order to ensure a lawful EIA process.

We also draw to your attention the Supreme Court's emphasis on the role of public participation in the EIA process. The Court highlighted that public participation is necessary to ensure the democratic legitimacy of decisions which affect the environment. The public participation requirements also serve an important educational function by contributing to public awareness of environmental issues. As the Court in *Finch* aptly summarised: "You can only care about what you know about".

Finch and subsequent cases have confirmed that comprehensive environmental impact assessments are integral to decision making processes, and that in the absence of legally compliant EIA processes the courts will quash the grant of planning permissions:

- In July 2024, [the Supreme Court ruled against the expansion of oil drilling at the Horse Hill site near Gatwick Airport](#), finding that the local council's approval was unlawful due to its failure to assess the 'scope 3' GHG emissions which will inevitably arise from the combustion of the fuel, following refinement of the crude oil.
- In August 2024, the UK government said it would not fight a judicial review [against the Rosebank and Jackdaw offshore oil wells](#), brought on the grounds of an inadequate greenhouse gas emissions assessment (although the developers have continued to contest the claim).
- In September 2024, [plans](#) for a fossil fuel development in Cumbria were overturned by the High Court, which ruled that it was "legally flawed" to assume that indirect emissions (namely burning coal) were not a significant, likely effect of the development. In his [judgment](#), Mr Justice Holgate (as he then was) noted that "the object of an EIA...aims to ensure that if such consent is given, it is with **"full knowledge of the environmental cost"** and that **"as much knowledge as can reasonably be obtained**, given the nature of the project, about its likely significant effects on the environment is available to the decision-maker." The developer [has not appealed](#) the decision.
- In November 2024, permission for a judicial review was granted to challenge [the government's decision to award oil and gas licenses in the North Sea](#), on the basis of a failure to account for the environmental impact of oil spills and the climate crisis.

In light of the application's purported reliance on 'substitution', we also draw your attention to the correct legal position on any claimed substitution arguments. The Cumbria coal mine case confirmed that any alleged substitution was not a relevant factor in determining whether the proposals in question gave rise to likely significant GHG impacts. Further, if a developer does wish to rely on substitution arguments as part of the EIA, then the evidential burden is on the developer to demonstrate "legal causation in relation to

substitution”; i.e., any claims that refusing the application would lead to an increase in emissions from imports must be clearly evidenced and meet legal causation tests [112, 115-116]. **This application asserts that failure to build could mean an increase in imports, but provides no such evidence.** These assertions should therefore be rejected because they do not meet the requirements of the Cumbria coal mine case.

Finally, the legal failure to assess the climate impacts in the present case means it is not possible for the council, other stakeholders or the public to accurately ascertain whether the development is compatible with local and national planning and climate policy (see below).

2. The application will cause significant climate impacts

The proposed development will produce more than six million chickens and fifty-six thousand pigs per year. In the absence of a comprehensive and transparent GHG assessment, Sustain have estimated the likely GHG emissions from the development could be [more than 120,000 tonnes CO₂-equivalent per year](#) (See Annex B).

Kings Lynn and West Norfolk Borough Council’s latest [Local Carbon Audit report and district emissions report](#) shows that total annual gross emissions from council activities are 3,574 tonnes.

King’s Lynn and West Norfolk also report on [borough-wide emissions](#), which includes all emissions produced by residents, transport and industry. In 2019, [these were reported as 1,907,000 tonnes](#).

The increase in GHG emissions from these developments is estimated to constitute more than 30 times the total emissions from council activities, and would more than cancel out the emissions reductions achieved by the council since they began recording in 2009¹ The developments represent **more than a 6% increase in the total borough-wide emissions**. This is significant bearing in mind the scale of the global climate crisis, local emissions reduction targets and the fact that these emissions will contribute cumulatively to global climate change.

3. The application will cause wider environmental impacts:

Intensive agriculture is the main cause of river pollution incidents in England, with [intensive livestock production](#) a significant contributor. Agriculture accounts for [61-70% of total nitrogen in river water](#) in England and Wales. River pollution has had a serious and detrimental impact on [wildlife](#) and [tourism](#) in the UK.

The environmental statement contains an estimate that over 13,000 tonnes of manure and slurry will be produced annually, which will be spread in mid- or West Norfolk, North-West Suffolk or East Cambridgeshire, within Nitrate Vulnerable Zones (NVZ) ([see ES paragraphs 4.15 - 4.17](#)).

¹ In 2009, the borough reported total net emissions from council activities of CO₂e of 7,366 tonnes (see: https://www.west-norfolk.gov.uk/download/downloads/id/6951/carbon_audit_report_-_20092010.pdf)

This waste poses a significant pollution risk to rivers and other habitats. East Anglia already has the [highest intensity of manure spread in the UK](#). The Norfolk Broad Rivers group and Great Ouse river catchments are considered to be some of [the most polluted catchments in the UK](#), and this development represents a significant increase in the amount of manure produced every day and spread in these catchments. The developer, Cranswick, has been found [not to have a detailed company-wide plan for managing waste](#), or for ensuring that waste exported off-site doesn't pollute rivers. The application does not contain an assessment of the likely impacts of waste once it has left the site, i.e., the downstream impacts of this aspect of the development.

Large parts of King's Lynn and West Norfolk are in a 'nutrient neutrality' zone. This means that pollution levels are so high that sites that are protected for nature are in unfavourable condition.

4. The application risks the delivery of legally-binding climate and nature emergency targets, plans and policies

National Climate Policy:

The UK's target to become carbon neutral by 2050 is written into law. In November 2024, the Prime Minister [confirmed the UK Government's commitment](#) to reducing greenhouse gas emissions by 81% by 2050.

Pig and chicken meat are high-carbon food sources, [while plant-based proteins emit significantly](#) fewer GHGs per kg and per calorie. The UK's [latest Carbon Budget](#) calls for a 20-50% reduction in all meat consumption to meet climate goals, with [the National Food Strategy recommending a 30% cut in meat production and consumption](#).

Replacing animal-based foods with plant-based alternatives is identified as a [particularly impactful route](#) to reducing emissions in high-income countries, and can reduce emissions by up to 84%. It also has significant public health benefits by improving nutrient intake and cutting premature mortality [by up to 12%](#). Red meat is [known to increase the risk of cancer](#), even in relatively small quantities.

The UK's [latest food security report](#) identifies climate change as a pressing threat to food availability, and expanding livestock production as a risk to feeding a growing population and global food security. A switch from meat to more fruit, veg and pulses would [bring UK diets more in line with the UK Eatwell Guide](#), the diet recommended for health.

King's Lynn & West Norfolk Local Climate Plan:

The borough declared a climate emergency in September 2021 and has [a commitment and strategy to achieve net zero by 2035](#). Kings Lynn and West Norfolk has the [highest emissions](#) of any district in Norfolk.

Approving this development would contravene the stated aims of the council's two-phase climate plan. As part of phase two, the council aims to tackle emissions from industry, wider transport, and domestic homes "as and when opportunities arise."

The development also contradicts the council's own advice about [the necessity to reduce meat and dairy consumption](#) and support organic and low-intensity systems.

5. The application threatens the delivery of local and national planning policy

The development undermines the environmental objective of the [National Planning Policy Framework](#) for England. In particular, the NPPF requires that:

161. The planning system should ***support the transition to net zero by 2050 and take full account of all climate impacts*** including overheating, water scarcity, storm and flood risks and coastal change. It should help to: shape places in ways that ***contribute to radical reductions in greenhouse gas emissions***, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.'

It is clear from the latest revisions to the NPPF that there is a renewed emphasis on the planning system playing a key role in meeting the net zero targets. In particular, the NPPF now explicitly requires that "full account of all climate impacts" must be taken for all decisions. The proposals in this case singularly fail to meet this national policy requirement.

Local Planning Policy:

[Intensive farming and the climate emergency](#) are the greatest threats to nature in the UK, and Norfolk has been described as [the UK county that is most vulnerable](#) to climate change, owing to risks of drought, coastal erosion and flooding threatening homes, businesses and nature. This development is therefore at odds with Kings Lynn and West Norfolk's [core planning strategy](#), which states:

"The borough is renowned for its wildlife and natural resources, which should be protected from any negative impacts of development."

The development also contradicts core strategy Objective 13: *West Norfolk is meeting the challenges of climate change and reducing or mitigating carbon emissions.*

The Core Strategy recognises that GHG emissions from the borough which are contributing to climate change are higher than the national average. This assessment is repeated in the emerging local plan, which finds that West Norfolk is one of the highest emitting boroughs in the country – attributable to (among other uses)

agriculture. The clear evidence therefore is that consenting this application will not only worsen the existing high emission rates, but will also threaten the delivery of local and national climate ambitions.

The Local Plan's [Spatial Strategy](#) (Chapter 4) says: When considering development proposals, the Council will take a positive approach that reflects the needs set by national policy and international concern of supporting the transition into a low carbon future and avoiding increased vulnerability to the range of impacts arising from climate change.

The application does not contain a sustainability and climate change statement, as is set out as a requirement on page 57/58 of the strategy.

6. There are no options for mitigating the significant negative climate impacts of the projects

It is not possible to “avoid, prevent or reduce” the significant adverse effects arising from GHG emissions in this case. No such measures have been identified, and this was a point which was also clarified in *Finch* [110].

Further, it is not possible to **offset** the significant adverse climate impacts. Carbon offsetting schemes are fraught with challenges; for example, they shift responsibility for emissions reduction rather than addressing the root cause, and risk reliance on insufficient or unverifiable solutions. Regardless, there are no reasonable GHG offset measures that could mitigate the climate impacts of this development:

- Reforestation/afforestation appears infeasible at this scale. Offsetting emissions through afforestation would require [between approximately 24,490 and 92,308 hectares](#) of new forest, depending on the type of woodland planted.
- Utilising green energy - for example, solar panels - would likely require [an even larger area of land](#).
- Carbon Capture and Storage is prohibitively [expensive and not widely implemented at this scale](#).

Conditions that could be placed on the development to mitigate impacts:

There are no conditions that would reduce greenhouse gas emissions such that they are no longer significant. There are a number of voluntary industry pledges that aim to reduce the likelihood that feed is sourced from recently deforested land. However, it is not clear how, or to what extent, these pledges would reduce GHG emissions. There has been no such assessment of their potential impact, and therefore cannot be relied upon as part of this planning assessment.

7. Negative economic impacts of intensive livestock farming

The applicant's justification for this development centres on the need for 'more locally produced food to be more food secure and reduce food miles'. In practice, we note that:

1. Intensive livestock production does not support local food systems or food security. Production relies on imported animal feed such as soya, which must be transported for long distances (with associated food miles, reliance on refrigeration, traffic pollution and GHG emissions).
2. The final product is often exported. Cranswick [aims to be a significant exporter](#) of meat products, including to China. As a general pattern, the bulk of the profits from intensive, industrialised farming do not stay in the local area.
3. This kind of facility does not benefit local family farms. Very large (not locally based) agriculture companies are [making vast profits](#), while farmers operating the units [struggle to make a living](#). Family farmers say the drive towards intensification is putting them out of business because they cannot survive the prices, trading terms, and insecurity imposed on them by industrialised supply chains. In the UK, [3 companies](#) are responsible for a total of 100 million chickens at any one time, and [just 2 companies](#) (including Cranswick) dominate pig production with 3 million pigs per year. 110,000 livestock and poultry farms [went out of business](#) between 1990 and 2016, a 34% decline, whilst [over 800](#) Concentrated Animal Feeding Operations were established.
4. Areas surrounding large intensive livestock facilities have suffered negative economic impacts from these facilities ([including the Wye valley](#))
5. The development promises very few jobs. The application states: “there are no plans to increase staff numbers significantly”. Employment in intensive livestock units is generally low-paid, insecure and dangerous. [In a submission](#) to the UK’s Business, Energy and Industrial Strategy Committee in 2022, Focus on Labour Exploitation (FLEX) reported widespread use of insecure, seasonal migrant labour in the poultry sector, as well as trafficking, and risks of infringement of employment rights. These jobs also come with significant health risk. Workers can often suffer respiratory disease and irritation and two workers have recently contracted bird flu.

Sustainable farming models offering a legitimate and preferable alternative to the proposed development:

Low-carbon farming systems include agro-ecological and nature-friendly models which use fewer fossil fuels. These have a smaller land footprint and produce more and healthier sources of protein. One such example is [Hodmedods farm](#), a thriving sustainable local farming business. [Sustain’s research](#) has found that farmers receive much higher returns when selling in regional and local supply chains.

Agroecological, nature-friendly farming models are a proven route to improving food security, boosting local economies, [creating jobs](#), reducing emissions and improving biodiversity. We note that no such sustainable development options were proposed in the application and the application fails to consider such reasonable and more beneficial alternative models for development.

The farm area is 38.5 hectares, and a sustainable enterprise is feasible at this scale. A similarly sized farm in Suffolk - [Lodge farm](#) - produces fruit, vegetables and beans for the Co-operative. At [Wakelyns farm in Suffolk](#), over a dozen crops are grown on just 23 hectares, including livestock - and the site employs dozens of people.

I hope this letter is helpful to you in reaching a decision on how to proceed.

Yours sincerely,

Ruth Westcott
Campaign manager, climate and nature emergency
Sustain, the alliance for better food and farming.

Natasha Hurley
Campaigns Director, Feedback

Annex A: Relevant parts of England's National Planning Policy Framework for climate change (emphasis added):

8(c). Planning should '*protect and enhance our natural, built and historic environment*'; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, *and mitigating and adapting to climate change, including moving to a low carbon economy.*'

Chapter 14 deals with meeting the challenge of climate change, flooding and coastal change, including:

161. 'The planning system should *support the transition to net zero by 2050 and take full account of all climate impacts* including overheating, water scarcity, storm and flood risks and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.'

163. 'The need to mitigate and adapt to climate change should also be considered in preparing and assessing planning applications, taking into account the full range of potential climate change impacts.'

Annex B - Methodology for calculating climate impacts of the development

It is important that the developer should be required to provide all the necessary information to allow the public and decision makers to understand significant environmental impacts. This estimate is not intended as a substitute for the assessment that should be provided as part of an environmental statement.

Chickens:

Each broiler chicken produces about [1.5kg edible meat](#) and each kg meat causes [9.8kg CO₂e](#)

Total emissions for a development of 6 million chickens therefore = $(1.5 \times 9.8) \times 6,000,000 = 88,200$ tonnes CO₂e

Pigs:

Each pig produces about 55kg edible meat = [\(62% yield from 88kg carcasse\)](#), each kg pig meat emits [12.31kg CO₂e](#), and reach slaughter weight in [24 weeks](#), allowing 2 cycles per year.

A development producing 56,000 pigs per year therefore emits an estimated $(55 \times 12.31) \times 56,000 =$ approx **38,000 T CO₂e**

Total emissions for pigs and chickens there equals over **126,000 T CO₂e**

Annex C – Legal Submissions on the Environmental Impact Assessment (“EIA”) regarding Climate Change

A. Overview

1. The Council’s decision to scope out from the EIA the effects of the projects on the climate is unlawful and contrary to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (“**EIA Regulations**”). The reasoning relied upon by the joint applicants,² and accepted by the Council,³ to exclude climate from the EIA is legally deficient, as per *R (Finch) v Surrey County Council* [2024] UKSC 30 (“**Finch**”). More recently, the applicants have sought to rely on a legal opinion from Freeths LLP dated October 2024 (“**Freeths Opinion**”) to further justify the scoping out of climate change from the EIA process; however, this too is based on an erroneous understanding of the relevant legal position.
2. In order to remedy the legal errors, the Council must require the applicants to provide a full assessment of the greenhouse gas (“**GHG**”) emissions of the projects. This will necessarily require an assessment of both upstream and downstream Scope 3 GHG emissions.⁴

B. *Finch*: key principles

3. It is important to set out the core reasoning of the Supreme Court in *Finch*, namely:
 - (1) Whether something is an “effect” of a project is a question of law; not a question of judgment.
 - (2) As for the question of “indirect” effects specifically, “it is in the very nature of ‘indirect’ effects that they may occur as a result of a complex pathway involving intermediate activities away from the place where the project is located” [102].
 - (3) The key to establishing whether something is an “effect” of the project is whether factual and legal causation can be established in relation to that effect [65-67].
 - (4) Provided that there is “sufficient evidence on which to base an assessment” in relation to an identified effect, then it must be included in an environmental statement [75], where it is a ‘likely significant’ effect.
 - (5) The objective of the EIA regime is to ensure public participation, which is necessary to increase the democratic legitimacy of environmental decision-making while also serving

² Scoping Opinion Request (April 2021).

³ Council’s Scoping Opinion dated 9 July 2021.

⁴ See *Finch* at [39]-[40] for an explanation of the GHG Protocol classification of GHG emissions into Scope 1, 2 and 3.

an important educational function by contributing to public awareness of environmental issues [3, 21].

C. Other relevant caselaw

4. There are three further cases which require mention for present purposes.
5. First, the Cumbria coal mine case – *Friends of the Earth Ltd v SSLUHC* [2024] EWHC 2349 (Admin) – which applied the *Finch* principles to quash the planning permission for a new coal mine. This decision confirmed that any ‘substitution’-based argument⁵ was not a relevant factor in determining whether GHG emissions were a likely significant effect of the project in question [106-108]. Further, the Court held that the EIA Regulations impose an evidential burden on the developer to produce information in its environmental statement to demonstrate any claimed substitution effect, “including legal causation in relation to substitution” [112, 115-116].
6. Second, the decision in *Squire*,⁶ which is dealt with (incompletely) in the Freeths Opinion. Given what is said at paragraphs 74, 75, and 82 of the Freeths Opinion, the Council should note that:
 - (1) It is no answer that *Squire* “preceded” *Finch*. To the contrary, *Finch* expressly dealt with *Squire* and drew support from the principles established in that case [160-162]. The Supreme Court did not overturn or query the reasoning of the Court of Appeal in *Squire*, such that it continues to apply with full force.
 - (2) The environmental statement in *Squire* did not specify the third-party land on which manure was going to be spread [65]. There was no clarity about where the remainder of the manure would be spread. That much is clear from [3] (which the Freeths Opinion draws upon): “[Claimant’s] home is about 300 metres from one of the fields on which manure might be spread” (emphasis added). More importantly, the Court of Appeal decision is in no way based on the (incorrect) premise that the Council had knowledge of where the manure would be spread [62-80].
 - (3) The Court of Appeal confirmed that a future manure management plan is not a substitute for a proper assessment within an environmental statement [68].
7. Finally, the Freeths Opinion refers to the Irish Supreme Court decision in *Kilkenny Cheese*,⁷ which dealt with the issue of upstream emissions in the context of a proposed cheese factory. However, the analysis of the Irish Supreme Court is not relevant to the issues before this Council. Instead, the question of whether the EIA must include an assessment of climate effects must be answered

⁵ In that case, for example, the developer had argued that even if combustion emissions of the coal mine were taken into account, there would be a nil increase in GHG emissions overall because the Cumbria coal would ‘substitute’ for or displace the supply of American coal.

⁶ *R (Squire) v Shropshire Council* [2019] EWCA Civ 888.

⁷ *An Taisce – The National Trust for Ireland v An Bord Pleanála (Kilkenny Cheese Ltd)* [2022] IESC 8.

by reference to *Finch* and subsequent cases decided in England and Wales, which are legally binding.

D. Application of the legal principles to the planning applications

8. The Feltwell and Methwold projects will give rise to both direct and indirect likely significant effects on the climate – and these effects must be assessed in an environmental statement to ensure a legally compliant EIA process. As for indirect effects, the projects will involve both upstream and downstream scope 3 GHG emissions. Each of these categories is dealt with in turn, followed by an analysis of the Council’s reasons for scoping out the climate effects of the proposals.

Upstream scope 3 GHG emissions

9. While *Finch* addressed the issue of downstream emissions specifically, a straightforward application of the Court’s key reasoning in *Finch* applies with equal force to upstream emissions. **This appears to be common ground and is not disputed by the applicants.**⁸ For completeness, however, the legal position in relation to upstream emissions is set out below.
10. It is uncontroversial that agriculture is a significant contributor of GHG emissions globally, including not only carbon dioxide but also nitrous oxide and methane. The key upstream emissions of concern with the current proposals relate to animal feed, which are primarily attributable to: (i) land use change (i.e. the emissions associated with land conversion for feed crop production) by way of deforestation; (ii) feed production processes (i.e. the emissions associated with its cultivation and processing); (iii) fertiliser production which is used for the growing of feed crops and can often involve the release of nitrous oxide; and (iv) the transportation of animal feed.
11. As per *Finch*, the **first** question is whether these emissions meet the causation tests in relation to the proposed developments.
 - (1) The factual causation test is plainly met because it is a straightforward case of applying scientific knowledge to the factual background. The link between animal farming (including pig and poultry farming) and GHG emissions is uncontroversial and well documented.
 - (2) The legal causation test is also made out. In *Finch*, the Supreme Court explored three potential tests without concluding on the relevant test for the EIA Directive. The applicable test must be determined by reference to the language and purpose of the legislation [50, 61]. The EIA Directive is “wide in scope and its purpose very broad”; the purpose “is to ensure that decisions whether to give development consent for projects which may affect

⁸ The Freeths Opinion does not dispute the application of *Finch* to upstream emissions, but relies on a different reason for scoping out the effects of the projects on the climate.

the environment are made on the basis of full information” [61]. On that basis, the correct legal test is the ‘but for’ test [68].

- i. Applying the ‘but for’ test, it is plainly the case that but for the mega-farm proposals, there would be no need for the animal feed; and but for this imported feedstock, there would be no associated GHG emissions. The ‘but for’ test is met.
- ii. Even if the Council were to apply the stronger, ‘intervening act’ test [70] this test would clearly be met on the facts. While there are a number of intervening stages between the upstream GHG emissions and the farming proposals (i.e. the clearing of land, the production of feed, its transportation to the Farms, etc.), these are matters of “ordinary occurrence” such that they cannot be said to break the causal connection between the GHG emissions and the proposals. None of these intervening steps is an extraordinary or unusual event. The ‘intervening act’ test is accordingly met.
- iii. This analysis is further supported by the principles in *Finch* that: (a) there is no geographical limit on the scope of environmental effects, particularly given the nature of GHG emissions and climate change [93, 97]; and (b) it is irrelevant that effects arise from activities beyond the project site boundary [102-103].

12. The **second** step is to ensure that there is a sufficient methodology on which one can base a reasoned conclusion. It is entirely feasible to estimate the scope 3 emissions associated with the proposals. There is available methodology, for example that produced by WRAP or the UK’s Centre for Innovation Excellence in Livestock. More to the point, industrial farm operators appear to be routinely assessing their scope 3 emissions. Cranswick Food Plc (“**Cranswick**”), i.e. the parent company of the two applicant companies making the planning applications, already reports on its scope 3 emissions as part of the Carbon Disclosure Project.

13. On the basis of (i) the causation tests being met and (ii) well established methodology, it follows that the upstream GHG emissions associated with the planning proposals are indirect effects which fall within the scope of the EIA Regulations and which must be assessed – provided they are deemed ‘likely significant’ effects.

14. Turning then to these elements of judgment, they do not in any way negate the legal requirement to assess the indirect GHG effects in this case.

- (1) As a matter of fact and science, the upstream GHG emissions are highly likely (if not inevitable) and should therefore be scoped in as part of the environmental assessment. A failure to ‘scope in’ these likely effects would be contrary to the precautionary principle, which has been found to underlie the EIA Directive and under which “cases of material doubt should generally be resolved in favour of EIA”: *R (Champion) v North Norfolk* [2015] 1 WLR 3710, [51] (Supreme Court).

- (2) While the question of significance is one of judgment, it can only rationally be assessed once the emissions have been quantified. The approximate assessment produced by Feedback and Sustain (Annex B) shows that the proposals will lead to an estimated 6% increase in borough-wide emissions. This is plainly significant.

15. Notably, the applicants appear to accept that the upstream GHG emissions are indirect effects of the projects on the climate. The only reason given in their legal opinion for excluding these effects is that Cranswick's "business-wide assessments show that the effects on climate change/green house gas emissions are not likely to be significant". This is an entirely deficient basis on which to scope out the climate effects. By way of example only:

- (1) The business case wrongly prays in aid of the applicants' allegedly lower emissions compared to an industry average. That is the wrong question. For the purposes of the EIA Regulations, the threshold question is likely significance of the scheme in issue – not whether there may be more polluting schemes elsewhere. That separate question (which the applicants seek to rely on) is simply irrelevant to the scoping decision. The same is true of the alleged improvements that the applicants may have made in recent years in terms of emissions. That is also irrelevant to the question of likely significance at the scoping stage.
- (2) In any event, no sufficient level of detail is provided for the Council itself to form a reasoned conclusion on the question of significance. The alleged 'business level' assessment is high-level, unevidenced and cannot be a substitute for the thorough assessment required by the EIA Regulations. The precautionary principle therefore requires the effects to be scoped in.
- (3) The applicants' approach (to exclude these effects from the ES) undermines a principal objective of the EIA regime, namely public participation to ensure democratic legitimacy and public awareness.

16. For the avoidance of doubt, the updated Environmental Statement (October 2024) on why climate change should remain scoped out (p.17) is legally deficient for the same reasons.

Downstream scope 3 GHG emissions

17. For completeness, we stress that any GHG assessment will also need to include likely significant downstream emissions. The latter will include any emissions arising from manure management. As set out above, the applicants' understanding of *Squire* is incorrect. There is therefore no basis on which to distinguish from the reasoning in *Squire*. Moreover, the applicants' proposal – to leave matters to future manure management plan⁹ – was explicitly found to be unlawful by the Court of Appeal in *Squire*.

⁹ Freeths Opinion, paragraph 75.

Overall

18. It follows that applying *Finch*, and with a proper understanding of *Squire*, a failure to include within the EIA the direct and indirect GHG emissions (both upstream or downstream) is unlawful. This conclusion is strengthened by reference to the objectives of the public participation requirements under the EIA regime: namely, enhancing democratic legitimacy and public education when it comes to environmental decision-making.

E. Council's scoping decision

19. Finally, turning to the Council's decision-making in this case, the joint scoping request (April 2021) stated that climate change, including GHG emissions, should be scoped out as they are not considered to be significant (para.4.12). Table 4.2 explained as follows:

“The Proposed Development will be built to the appropriate regulatory standards, such as climate change and environmental performance standards. This will include meeting emissions standards required according to separate environmental permitting requirements. Climatic factors will also be considered within the Flood Risk Assessment.

Ammonia and other compounds which may have an effect on air quality will be assessed as part of the Air Quality Assessments. The need for a stand-alone greenhouse gas emissions assessment is not required.

Climate change will, therefore, be scoped out of the EIA.”

20. The Council issued its scoping opinion in July 2021 and accepted the findings of the scoping request, noting that it is “comprehensive”. The Council did not require climate change to be included within the environmental statement.
21. Following the publication of the joint environmental statement (and its update), the Council commissioned a review of the statement which was published in January 2024. This review notes that the topic of climate has been scoped out of assessment, but makes no further comments as to whether that approach is lawful.
22. Applying *Finch*, however, it is immediately clear that the reasoning given by the applicants, and accepted by the Council, is legally flawed. In relying on other emissions standards and separate environmental permitting regimes, the Council has fallen into the same trap as the county council in *Finch*. As clarified in *Finch*, the reliance on other environmental regimes to control emissions is a clear legal error. Further, as was the case in *Finch*, there does not appear to be any separate regime which could effectively avoid or reduce the upstream GHG emissions associated with the proposals [108, 110].

23. The erroneous reliance on separate permitting requirements by the Council in this case is therefore a standalone legal error, and one which renders the EIA decision-making process unlawful.