

Raeshaw Farms Ltd v Scottish Ministers & EnergieKontor UK Ltd [2026] CSIH 10

A comprehensive legal review of the landmark Court of Session decision concerning the lawfulness of planning permission for the Wull Muir Wind Farm, where grid-connection infrastructure was excluded from the planning application and Environmental Impact Assessment. This document examines the decision, the legal principles confirmed and clarified, the relevant precedent considered by the court, and the significant implications for future planning applications in Scotland and the wider United Kingdom.

[\[2026csih10 — Full Opinion | PDF\]](#)



Introduction to the Case

This statutory appeal before the First Division, Inner House, Court of Session concerned whether planning permission for the Wull Muir Wind Farm was lawfully granted in circumstances where the **grid-connection infrastructure** was not included as part of the planning application or the Environmental Impact Assessment (EIA). On 15 December 2022, EnergieKontor UK Ltd submitted a planning application to Scottish Borders Council for the erection of eight wind turbines and associated infrastructure, to be sited approximately 1.3 kilometres north-east of the village of Heriot. The appellant, Raeshaw Farms Limited, operates a farm and estate in close proximity to the proposed development and lodged objections to the application.

The application was initially refused by the Council. On appeal by the interested party, Scottish Ministers appointed a Reporter, who issued a decision on 14 January 2025 granting planning permission subject to various conditions. That decision was challenged by the appellant in this statutory appeal under section 239 of the Town and Country Planning (Scotland) Act 1997.

The Court of Session, delivering its opinion through Lady Wise (with the Lord President and Lord Erich concurring), **quashed** the Reporter's decision and remitted the case to a different Reporter for a fresh determination. The court identified fundamental legal errors in the Reporter's approach, which are summarised below.



Project Definition

Failure to evaluate whether the wind farm and grid connection constituted a single "project"



Cumulative Impacts

Inadequate handling of cumulative environmental effects of interdependent components



Salami Slicing

Misapplication of the concept — wrongly requiring intent rather than focusing on effect



Irrationality

Reliance on operational benefits without assessing the unassessed adverse impacts of the grid connection

Legal Issues Considered by the Court

The Reporter's decision raised a series of interconnected legal issues, each of which the court found to have been inadequately addressed. The following analysis sets out the five principal legal questions considered, together with the court's findings on each.

What Counts as the "Project" Under the EIA Directive?

The core question was whether the wind farm and its grid connection **constituted a single project** requiring a combined EIA. The court held that the Reporter failed to carry out the required fact-specific evaluation mandated by both EU and domestic authority. The Reporter was not constrained by the terms of the application before him, yet he treated the developer's framing of the application as determinative of the project's scope.

Salami Slicing

The Reporter wrongly suggested that "salami slicing" requires **intent** to undermine the EIA process. The court was unequivocal: intent is irrelevant. What matters is **the effect of splitting** on proper environmental assessment. The authorities, including *Commission v Spain* and *Ashchurch*, are clear that the objective effect of separation — not the subjective motivation — is the legal benchmark.

Functional Interdependence

The wind farm **cannot operate without a grid connection** — a classic scenario of functional interdependence where the two components may constitute a single project. The Reporter failed entirely to consider this essential factor, which features prominently in the *Wingfield* criteria endorsed by the Court of Appeal in *Ashchurch*.

Adequacy of Reasons

The Reporter's single paragraph addressing project scope (paragraph 129 of the decision) was found to be **opaque and insufficient**. It contained largely assertion and conclusions, bereft of reasoning directed at the point at issue. It failed the standard set in *West Lothian Council v Scottish Ministers* [2023] CSIH 3.

Irrationality

The Reporter relied on **operational benefits** — energy output, climate benefits, socio-economic gains — that could only exist once a grid connection was in place, yet did **not** assess the environmental effects of that connection. This approach was irrational: one cannot rely on the benefits of the completed development while ignoring the accompanying unassessed disbenefits.

Key Legal Principles Confirmed or Clarified

The court's opinion confirmed and, in several respects, materially clarified the legal principles governing project definition and environmental impact assessment in the context of renewable energy developments. These principles will serve as authoritative guidance for decision-makers, practitioners, and the courts going forward.

1 Defining "the Project" Is a Mandatory First Step

A decision-maker must independently determine the true scope of the project and cannot simply defer to how the developer frames the application. The identity of the "project" for EIA purposes is not necessarily circumscribed by the ambit of the specific application for planning permission under consideration (*Ashchurch*, para 78).

2 EIA Must Consider Cumulative Effects of Interdependent Components

If components are functionally inseparable, an EIA must address **both** together unless there is a clear, rational justification to do otherwise. The failure to take account of the cumulative effect of several components must not mean in practice that they cease to be covered by the obligation to carry out an assessment (*Umweltanwalt von Kärnten*).

3 Environmental Effects Must Be Assessed "at the Earliest Possible Stage"

The court reaffirmed the 2011 Directive's recital (2) enjoiner that effects on the environment should be taken into account at the earliest possible stage in all technical planning and decision-making processes. This supports early, holistic assessment rather than postponing evaluation of essential project elements such as grid connections.

4 Staged Assessments Are Lawful — but Only with Safeguards

A staged approach (construction now, grid works later) is permitted **only when** cumulative impacts can still be properly assessed at a later stage and there is no risk that impacts escape assessment altogether. The Reporter had not demonstrated that these safeguards existed. Where, as here, whether there will be any future EIA is unknown, compliance may require addressing cumulative environmental impact before the first decision on planning permission is made.

5 Decisions Must Be Accompanied by Clear, Intelligible Reasons

Opaque, conclusory reasoning is inadequate and constitutes an error of law. The decision must leave the reader in no doubt about what the reasons for the decision were and what considerations were taken into account (*West Lothian Council v Scottish Ministers* [2023] CSIH 3).

Relevant Precedent: EU and CJEU Jurisprudence

The court drew extensively upon European jurisprudence to anchor its analysis of project definition and the prohibition on impermissible project splitting. The following CJEU decisions were central to the reasoning.

Bund Naturschutz v Freistaat Bayern (Case C-396/92) [1994]

1

Advocate General Gulmann's influential opinion established the principle that environmental impact assessment must, as far as practically possible, take account of any current plans to extend the specific project in hand. Although the ECJ's formal decision was restricted to a time-limits issue, Gulmann's reasoning has been consistently cited as a foundational statement of the holistic assessment principle and was described by the court in this case as "influential".

2

Commission v Spain (Case C-227/01) [2004]

The landmark ruling establishing that it is impermissible to split or "salami slice" projects into shorter sections where doing so would undermine the basic objective of the EIA Directive. The court confirmed that a **broad view** should be taken of what constitutes the scheme or project for which development consent is sought, and that the focus must be on the significant effect that a particular project is "likely" to have on the environment.

Umweltanwalt von Kärnten (Case C-205/08) [2009]

3

Expressly stated that the failure to take account of the cumulative effect of several projects must not mean in practice that they all cease to be covered by the obligation to carry out an assessment, when taken together they are likely to have significant effects on the environment within the meaning of Article 2(1) of Directive 85/337. This decision directly underpinned the court's criticism of the Reporter's failure to consider cumulative effects.

- The court also noted a decision of the **High Court of Galicia, Spain** — *Asociación Ambiental e Cultural Petón do Lobo v Dirección Xeral de Planificación Enerxética e Recursos Naturais* (Judgment 00368/2025) — which held that wind turbines and power lines form a single project requiring a single EIA. This was discovered and translated at the court's request, demonstrating a consistent pan-European approach.

Relevant Precedent: Domestic UK and Irish Cases

The court's analysis drew upon an extensive body of case law from both the UK jurisdictions and the Republic of Ireland. The Irish authorities were treated as particularly persuasive, given their direct engagement with the question of wind farm and grid connection separation.

Domestic UK Authorities



Wingfield [2020]

Lang J compiled the non-exhaustive list of factors relevant to project definition: common ownership, simultaneous determinations, **functional interdependence**, and stand-alone justification. This framework was endorsed in *Ashchurch* and applied in the present case.



Ashchurch [2023]

The Court of Appeal emphasised the need to understand "project" **broadly and realistically**. Andrews LJ confirmed that it was irrational to take account of prospective benefits of a wider development without considering adverse impacts — the principle directly applied to the Reporter's error in this case.



Sizevell C [2023]

Lindblom LJ confirmed that a "staged approach" to assessment is in principle legitimate and can prevent sclerosis in the planning system — but only where cumulative effects can be identified for meaningful assessment. The court in the present case distinguished this on the basis that whether there would be any future EIA for the grid connection was unknown.

Irish Jurisprudence

Though not binding, the Court of Session treated the Irish authorities as persuasive and consistent with EU law. The court rejected the respondents' submission that Irish cases should be treated with caution, noting that while each member state will have transposed the 2011 Directive into its own national laws, that does not detract from the value of domestic courts considering the interpretative approach taken by other states.

Ó Grianna v An Bord Pleanála [2014]

Peart J held that wind turbine development and grid connection is "**one project, neither being independent of the other**". The wind turbine development on its own serves no function if it cannot be connected to the national grid. The lack of formulated proposals for the grid connection did not justify treating phase 1 as a stand-alone project — rather, it was suggestive of permission being sought **prematurely**.

Daly v Kilronan Windfarm Limited [2017]

Baker J concluded that while it cannot be said in absolute terms that the only permissible way to apply is for the whole project including grid works, an EIA was required for the whole project. No individual part could be separated and treated as a stand-alone planning-exempt element. The grid works could not be lawfully separated from the project as a whole.

Sweetman v An Bord Pleanála [2023]

Quinn J derived five clear propositions from the earlier case law, including that construction of a wind farm and its grid connection is **one project**, and that an EIA which does not assess the entire project does not comply with the Directive. Screening for EIA of any part of the project does not meet this requirement. Each case must be examined on its own facts, but the conclusions were directly applicable.

The Court's Disposition and Reasoning

Having identified multiple material errors of law in the Reporter's approach, the court proceeded to quash the decision and remit the matter for fresh determination. The court's reasoning on each ground is summarised below, together with the formal order.

The Project-Splitting Error

The court held that the Reporter erred in failing to conduct the necessary fact-specific evaluation of whether the wind farm and grid connection constituted a single project. It was incumbent upon the Reporter to do so before reaching a conclusion. The Reporter's focus on the way the application was framed — rather than considering the true nature and scope of the project — demonstrated a failure to understand the central issue in contention. The issue of functional interdependence was clearly relevant, as the wind farm could never become functional without a grid connection. The respondents' argument that this was not a material error was firmly rejected.

The Salami-Slicing Misdirection

The Reporter misdirected himself by defining "salami slicing" as requiring an **attempt** to circumvent the EIA Directive. The court was clear: what matters is the **objective effect** of project splitting, not the developer's subjective motivation. This misdirection resulted in a failure to focus on the fundamental question of the interrelationship between the two phases of development.

Inadequate Reasoning

Paragraph 129 of the Reporter's decision — the single paragraph addressing the project-splitting objection — was found to contain "largely assertion and conclusions" and to be "bereft of reasoning directed at the point at issue". It failed the standard articulated in *West Lothian Council v Scottish Ministers*.

Irrationality in Weighing Benefits

The Reporter had placed considerable weight on the operational benefits of the wind farm — energy generation, climate change benefits, socio-economic gains — all of which could arise **only once the grid connection was in place**. Yet no assessment of the grid connection's environmental effects had been undertaken. Citing *Ashchurch*, the court held that "you cannot have one without the other".

Formal Order: The decision of 14 January 2025 is **quashed**. The interested party's appeal is **remitted** to a different Reporter for a fresh determination consistent with the legal principles identified in this opinion.

Impacts and Implications for Future Planning Applications

The decision in *Raeshaw Farms* represents a **major development** in Scottish and UK EIA law. Its implications extend well beyond the individual case and will shape the approach of developers, planning authorities, and objectors to renewable energy projects for years to come. The following analysis sets out the principal practical and legal consequences.



Stricter Scrutiny of Renewable Energy Projects

Wind farm developers will now face heightened scrutiny of their applications. Applications are more likely to require **integrated EIAs** that include grid-connection works. The practice of delaying grid-connection assessment until later stages is now legally risky. Any future Reporter considering such an application will need to demonstrate, with clear reasoning, that the project scope has been properly evaluated.



Explicit and Reasoned Evaluations of Project Scope

Planning authorities can no longer rely on applicant-defined boundaries to determine the scope of a project for EIA purposes. Decision-makers must conduct an **independent, fact-specific evaluation** applying the *Wingfield* criteria — including functional interdependence, common ownership, and simultaneous determinations. Expect significantly more detailed reasoning in planning decisions, particularly for large infrastructure projects.



Early Design Work and Environmental Analysis

Developers may need to: identify likely grid routes earlier in the process; engage with Distribution Network Operators sooner; and commission environmental studies for grid connection works **before** submitting the main application. The evidence of Mr Kelly, the independent planning consultant, supported the view that this would not be unrealistic and that identification of off-site infrastructure requirements at an early stage is standard procedure for all other land-use development projects.



Reduced Tolerance for Salami-Slicing Practices

The judgment firmly closes the door on separating interdependent elements to minimise environmental assessment obligations or accelerate planning determinations. The court's emphasis on **objective effect** rather than subjective intent makes it significantly harder for developers to justify the exclusion of essential off-site works from an EIA, regardless of commercial or practical justifications.

Risks, Practical Consequences, and the Broader Legal Landscape

Beyond the immediate implications for developers and planning authorities, the decision carries broader significance for the legal landscape governing infrastructure development in Scotland and the United Kingdom.

Risk of Legal Challenge to Existing or Pending Consents

Objectors may increasingly argue that grid connections — or other off-site infrastructure — were improperly excluded from EIAs, and that authorities failed to determine the true scope of the project. Existing consents granted on the same basis as the Reporter's approach in this case may now be vulnerable to challenge, particularly where functional interdependence between the consented development and off-site works can be demonstrated.

More Detailed, Front-Loaded Applications

Although the requirement for early, integrated assessment may increase upfront costs and introduce delays for developers, it substantially reduces the risk of consent being quashed at a later stage. This aligns with the EU principle — reaffirmed in the 2011 Directive's recital (2) — that environmental impacts should be assessed at the **earliest meaningful stage**. The practical and financial difficulties relied upon by the interested party were acknowledged by the court but were not considered sufficient to override this fundamental requirement.

Alignment with Irish and EU Jurisprudence

The decision brings Scottish law more closely into line with Irish and EU jurisprudence, particularly in relation to renewable energy infrastructure. The court's willingness to treat Irish authorities as persuasive — and to seek out and consider a Spanish regional decision — signals a broadly European interpretative approach to the 2011 Directive, one that prioritises holistic environmental assessment over the commercial expediencies of phased development.

Balancing Competing Interests

Developer Concerns

The evidence of Mr Briggs, Head of Planning for the interested party, highlighted genuine practical difficulties: the highly structured process for securing grid connection agreements, the significant financial commitments involved, and the congested connection queue. In none of his 28 previous wind farm projects had the potential impact of the off-site grid connection been assessed in detail as part of the EIA for construction. The court acknowledged these realities but did not accept them as a sufficient basis for departing from the requirements of the 2011 Directive.

Environmental Protection

The court endorsed the view expressed by Baker J in *Daly* that it cannot be said in absolute terms that the only permissible way to apply is for the whole project to include the grid connection — the Regulations cater for multistage consent processes. However, where, as in this case, whether there will be any future EIA is unknown, the approach that may best secure compliance is to address the **cumulative environmental impact of the whole project** before the first decision on planning permission is made.

Overall Assessment and Conclusions

This decision is a **major development** in Scottish and UK EIA law. It reasserts the primacy of holistic environmental assessment, realistic evaluation of interdependent infrastructure, strong reasoning obligations, and fair public participation. For developers, planning authorities, objectors, and their legal advisers, the ruling carries clear and far-reaching consequences.

Project Definition Cannot Be Taken for Granted

Grid connections, access roads, and other "off-site" works may need to be treated as part of the same project whenever they are essential to the operation of the main development. The developer's framing of the application is not determinative.

Objective Effect, Not Subjective Intent

The prohibition on salami slicing is triggered by the effect of separation on environmental assessment — not by any intention to circumvent the Directive. This clarification raises the bar significantly for any staged approach.

Reasoning Must Be Transparent

Decision-makers must demonstrate, through clear and intelligible reasoning, that they have grappled with the project-definition question. Opaque, conclusory paragraphs will not survive judicial scrutiny.

Benefits and Disbenefits Go Hand in Hand

It is irrational to rely on the operational benefits of a completed development — energy generation, climate change mitigation, socio-economic gains — without considering the environmental effects of the infrastructure necessary to realise those benefits.

"The objectives of the Directive and the Regulations cannot be circumvented (deliberately or otherwise) by dividing what is in reality a single project into separate parts."

— Andrews LJ, *Ashchurch* [2023] EWCA Civ 101, para 78, endorsed in *Raeshaw Farms*

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