Update On Case: Steven Thomas v Cheltenham Borough Council

Background:

A telecoms mast was waived through via Cheltenham Borough Council ("CBC") on Lansdown Road Cheltenham, in the middle of a Conservation area and sited 17m away from residential flats with no vertical separation from the top of the antennae. The Local Planning Authority (LPA) didn't believe their prior approval was required.

There were 50 objections, including numerous objections from people in the nearest building (Harris Court) who would be within the ICNIRP public exclusion zone. There was an objection from myself, highlighting the close proximity of Lefroy Court retirement home 100m away, where the manager had confirmed to me that many elderly people wear hearing aids. In addition, there was an objection from someone in Lefroy Court with a pacemaker (this objection somehow conveniently disappeared from the planning portal and had to be re-obtained via a Freedom of Information request).

Despite all the evidence submitted by objectors (including one who specifically asked for the exclusion zones), CBC decided that their "prior approval was not required", despite prior approval being explicitly required in planning law and through government guidance. This was challenged through Judicial review by myself, with the help of planning & legal advisor Neil McDougall, and experienced campaigner Karen Churchill.

Judicial Review April 2024:

I was successful at the judicial review in April, as Judge Jarman agreed that the effects on those with medical and metal implants should have been taken into account. However, the Judge decided to make his own risk assessment of the impact on residents of Lefroy Court Retirement Home, concluding it would be insignificant at a distance of 100 metres. We argue that he was not qualified to make this assessment.

Relief was denied under the Senior Courts Act 1981, on the assumption that "despite the unlawful behaviour, the same outcome would have resulted." This conclusion is obviously purely speculative and reflects the Judge's singular focus on the Lefroy Court medical implant issue, while ignoring other evidence relevant to the material planning consideration 'incompatible and unacceptable use of land'.

The Senior Courts Act 1981 was amended by the Government in 2015, enabling Judges to make subjective decisions, often without proper reasoning.

https://onlinelibrary.wiley.com/doi/10.1111/1468-2230.12556

Judicial Bias:

The Judge ruled that my Ground 2 was successful, but had actually rewritten it to avoid making a definitive ruling on the key points. My Grounds were as follows:

> ***Ground 1****: the decision made on the 26th May 2023 is irrational and unreasonable, as it*

poses avoidable risks of harm, injury and nuisance to the public,

and,

Ground 2: *the LPA is obliged to address and dispose of the incompatible and unacceptable use material planning consideration arising from the proposed siting of the mast through an evidence-based decision determining whether or not to grant permission after having taken properly into account objections from the public in accordance with its obligations under planning law'.*

Judge Jarman re-wrote my Ground 2 in his judgment. He stated:

> *'The challenge is put on two main grounds, which are interrelated. Permission was granted for each.*
> *Ground 1 is that the decision is irrational and unreasonable, as it poses avoidable risks of harm, injury and nuisance to the public.*
> *Ground 2 is that the authority was obliged to make an evidence-based decision having taken properly into account objections from the public in accordance with its obligations under planning law. Both of those grounds are disputed by the authority'.*

You will notice that the,

'addressing and disposing of the incompatible and unacceptable use material planning consideration',

has been omitted, as has the part about,

'determining whether or not to grant permission',

which are both crucial and underpin the entire case.

By omitting these two crucial parts he has not addressed the two fundamental reasons why I brought the claim for judicial review. Furthermore, the Judge incorrectly assessed my 'Summary Grounds' as clarified at two hearings (by looking at the evidence base, rather than the grounds). We are not happy with that as it is a breach of the 'over-riding objective of the court under CPR 1.1 ('Civil Procedure Rules'). The Judge seems to have taken his cue from the defendant, when he had tried to re-state my grounds at an earlier hearing.

Court of Appeal:

May 2024: Both sides have appealed the judgement. The Council (CBC) believe there are "extraordinary circumstances" because the issue of medical implants represents an "important

principal issue" which would "create chaos in the planning system" if LPAs up and down the country had to start taking into account health concerns, particularly around medical implants. They believe an ICNIRP Certificate is sufficient to absolve themselves of having to take into account any other health effects arising from mast siting.
I initially appealed on the basis of the proximity to residential homes (where there is a definitive ICNIRP public exclusion breach that can be shown using Three's compliance manual), a fraudulent ICNIRP certificate issued under the name of "Three UK Limited" and where pages 2-4 of the declaration had been deliberately removed, and finally the fact that the LPA has to either grant or refuse prior approval after taking into account all material considerations (we contend that the decision of "no prior approval required" is both invalid and unlawful). We contend that Judge Jarman's decision had completely ignored the European Electronic Communications Code (EECC) as a material planning consideration which had been consistently argued throughout the case, and which would have provided a solution to the disputes being contested. The Judge sided with the defendant by stating that there was "nothing in the GPDO or NPPF to require the LPA to check exclusion zones", which we assert is a violation of their duty of care to protect the public.

One of the twenty-one remedies sought in the **'5G - Rights, Regulations, Remedies (RRR)'** case, being brought by Neil McDougall and Karen Churchill against the two Government Departments, DSIT and DOH, is to require central government to empower LPAs to check exclusion zones do not penetrate public spaces.

July 2024: The Council's appeal was accepted on paper (without any reasoning) and mine was rejected. Both on the same day by the same Judge. This threatens to put me in an uncompromised position of not being able to seek finality at the February 2025 hearing and have my arguments properly heard.

Aug 2024: I filed a Respondent's notice and tried to cross-appeal based on the Council's "extraordinary circumstances" claim.

October 2024:

i) My appeal within the Respondent's Notice was dismissed as it was believed to be "abusive" by appealing twice
ii) I was directed to re-open his original appeal that was rejected in July

November 2024**:** I have just filed an application to re-open my original appeal that was rejected in July. It targets precisely the unfairness and unlawfulness of the decision at the High Court to afford relief on the Senior Courts Act (i.e. the decision allegedly would not have been substantially different had the LPA not acted unlawfully). We argue that the Judge:

- Distorted my original grounds and gave a ruling on a ground that is not my own (by omitting the key parts of my Ground 2 concerning "disposing of the incompatible and unacceptable use material planning consideration" and "whether to grant or refuse permission"). This is a direct violation of CPR 1.1, the "*over-riding objective of the court*"
- We identify that there seems to be collusion between the defendant and the Judge, as the defendant (CBC) had first tried to manipulate my grounds in its skeleton argument for the judicial review
- The Judge failed to identify all the material planning considerations
- The Judge breached his obligations under planning law as his remit was only to identify the material considerations, not to make a risk assessment himself (which is the sole responsibility of the LPA)
- The Judge ignored case precedents on prior approval, particularly the telecoms specific Orange (2006) case
- The Judge's failure to remedy misinterpretations of the prior approval procedures based on the Murrell case (the defendant (CBC) had deliberately misled the court by misquoting this)
- Failing to obtain finality
- There are ***public interest obligations*** of LPA re: potential harm, injury and nuisance that should have been enforced in ways compatible with my original grounds.

The result of this is that it has left a vulnerable resident living inside an unsafe public exclusion zone with metal clips in her bowel. The court has a duty of care to protect the public from harm.

The hearing is scheduled to be heard at the Royal Courts of Justice in London on 19th February 2025. Your support will be very welcome.

I am funding this case myself, but if you would like to donate to the central case that Karen and Neil are pursuing you can do so here:

https://www.gofundme.com/f/admin-fees-for-litigants-in-person