Local Councils and Telecom Mast Planning Adjudication

A correction of the misapprehension that evidence of adverse health effects is to be excluded in such adjudication

The key to understanding the current state of Telecom Mast adjudication in the UK, lies in the misconception that officers and councillors cannot include health factors when they are considering telecom mast planning applications.

This misconception rests in the false belief of many council officers and councillors that they must obey the NPPF and any ICNIRP guidance therein, and that this is mandatory and so they have absolutely no choice but to do so.

This is a most profound and fundamental misconception and it was drawn attention to in the Supreme Court by Lord Gill who reprimanded the Suffolk Coastal District Council for treating the NPPF as law, and when it is not.

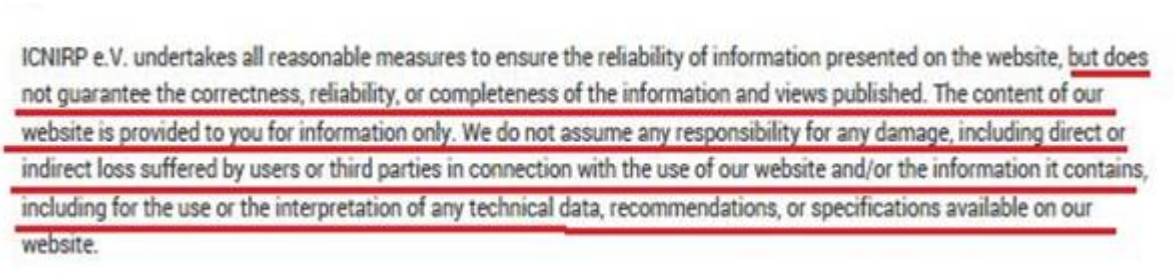
The NPPF is only policy and any ICNIRP guidance contained therein, is as it says, just guidance.

This is the key sentence in Lord Gill`s ruling :

'the guidance given by the Framework (the NPPF) is not to be interpreted as if it were a statute. Its purpose is to express general principles on which decision-makers are to proceed in pursuit of sustainable development.' (Suffolk Coastal District Council v Hopkins Homes Ltd)

As we will see in the Swisscom patent application, the telecom industry declared the telecom mast technology to be carcinogenic – so it is hard to consider such as "sustainable development".

In relation to ICNIRP guidance, which is exactly guidance, and so it is also not mandatory to adhere it, ICNIRP have the following disclaimer on their website, for public display, as follows:


ICNIRP e.V. undertakes all reasonable measures to ensure the reliability of information presented on the website, but does not guarantee the correctness, reliability, or completeness of the information and views published. The content of our website is provided to you for information only. We do not assume any responsibility for any damage, including direct or indirect loss suffered by users or third parties in connection with the use of our website and/or the information it contains, including for the use or the interpretation of any technical data, recommendations, or specifications available on our website.

In addition ICNIRP guidance does not cover those people who have pacemakers and metal implants and the like.

ICNIRP excludes many people

In their 2020 'Statement of Principles' ICNIRP states*:*

"Indirect effects - Most health effects considered in non-ionizing radiation protection are direct effects. However, health effects can also arise from indirect pathways. For instance they may

occur from an electric discharge arising from metallic objects charged by exposure to some types of non-ionizing radiation; these types of indirect effects are considered by ICNIRP. Other types are not, for example, heating of metallic objects in the body, such as prostheses, or an influence on the operation of medical devices such as pacemakers. The latter electromagnetic interference effects are of a technical nature and do not fall within the remit of ICNIRP."

This is re-iterated in the Guidance report itself ("Introduction" and "Purpose and Scope") which mentions protection of "humans" only from "substantiated adverse health effects" with no mention of any other forms of life nor the environment.

Since 2017 nano metal particulates have been found in vaccines and most people will have had a vaccine of some sort especially in recent times. Nano conductive particulates have also recently been found in dental anaesthetics. Too, many people have metal fillings or dental implants, have other metal medical inserts such as synthetic hips and or have pacemakers. All of these would mean the vast majority of people fall outside the scope of ICNIRP guidance and should be canvassed and specially safeguarded by their relevant local authority.

Recently, Cheltenham Borough Council appealed an earlier ruling by Judge Jarman in a judicial review case brought against the Council. Judge Jarman said that the council had failed in not protecting residents who are excluded from the ICNIRP guidance (as detailed above for example). The appeal was dismissed. This means Judge Jarman`s ruling remains and it might have significant repercussions on councils across the nation.

Furthermore, ICNIRP guidance refers to exposure limits of 6 or 30 minutes. Importantly, the average is taken and this averaging hides the strength of the pulses and modulations. In other words, no matter how high the individual pulses, that averaging can lower the figure to well below the ICNIRP maximum. This can give a false impression of the true levels of exposure – especially when non thermal effects are taken into consideration and when it is known too that emf radiated effects are cumulative. For example dentists exit the room when small amounts of X-ray radiation are administered to patients because they know that even though the amounts are small, if they remained in the room each time an X-ray was administered, they would suffer cumulative effects of the radiation.

A statement by the telecom industry about the carcinogenicity of telecom mast technology:

Against this background the fact that telecom mast technology is carcinogenic, was made clear by the telecom industry itself, in the patent application by the large telecom company Swisscom and the salient paragraph below is:

https://patents.google.com/patent/WO2004075583A1/en

"These findings indicate that the genotoxic effect of electromagnetic radiation is elicited via a non-thermal pathway. Moreover aneuploidy is to be considered as a known phenomenon in the increase of cancer risk.

Thus it has been possible to show that mobile radio radiation can cause damage to genetic material, in particular in human white blood cells, whereby both the DNA itself is damaged and the number of chromosomes changed. This mutation can consequently lead to increased cancer

risk. In particular, it could also be shown that this destruction is not dependent upon temperature increases, i.e. is non-thermal."

The reason this is important is because ICNIRP, which is non mandatory, is concerned with **thermal effects** and **not non thermal effects** - but the telecom industry via the Swisscom patent application, is saying **non thermal effects** contribute to cancer.

Independent science backs up the telecom industry in this.

Below is a link to an online article, as abstracted below:

https://www.microwavenews.com/news-center/cell-tower-radiation-linked-geneti

"July 1, 2024

Senior European scientists are reporting that people living near cell phone towers show significant changes in their genetic makeup. This is the first time that chronic exposure to cell tower radiation has been linked to unrepairable genetic damage.

A team led by Wilhelm Mosgöller of the Medical University of Vienna and Igor Belyaev of the Slovak Academy of Sciences in Bratislava contend that years of low-dose RF exposure can increase the incidence of chromosomal aberrations. Such changes could lead to serious, though uncertain, health consequences, including cancer."

The Hensinger and Budzinsky paper of 2024 says:

An EMF exposure-related increase of oxidative damage has already occurred thousands of times below the limit values in the non-thermal range, from a power flux density of 0.1 µW/cm2 (= 1000 µW/m2) and from an absorption of SAR = 3 µW/kg. This is far below the limit values and exposures to which users are exposed during normal operation of end user devices, routers, transmission masts (respectively cell towers) and Wi-Fi hotspots.

Oxidative stress is a known precursor to cancer.

A huge number of studies, over many decades, confirm the carcinogenic nature of this technology such as that of the world famous Ramazzini Cancer Institute study, The NTP study and the huge amount work of Dr Martin Pall (professor emeritus Washington State University) and who shows the exact causation of oxidative stress, which, as stated already, is a widely known precursor to cancer.

Before this technology became ubiquitous, back in 1921, the UK cancer rate was 5.3 % . Today it is 50%.

https://www.cambridge.org/core/services/aop-cambridge-core/content/view/3316AA51D1578ABBF2F2020BED97CE04/S0022172400010937a.pdf/div-class-title-a-review-of-the-cancer-statistics-in-england-and-wales-and-in-scotland-between-1891-and-1927-div.pdf

Furthermore, PHE now UKHSA, solicitors DLA Piper, make it clear that any public body that relies in ICNIRP becomes liable and not the guidance itself nor the issuer of the guidance. MP Wera Hobhouse cited this advice in her letter to Government of 27 February, 2020.

https://aches.international/wp-content/uploads/2025/01/Letter-to-Minister-for-Digital-Culture_5G-liability.pdf

Councils might not be insured against health claims

A key issue being that local councils are unlikely to be insured for harm to health caused by radiation from this technology. Major underwriters like Lloyds of London and Swiss Re refuse to underwrite EMF health effects and Wandsworth Borough Council, a large London borough, confirmed in an FOIA reply below, that their insurer said they are not covered for such EMF effects.

"Request for Information - WBC-FOI-05223 (Wandsworth Borough Council)

5. Please would the Council send me the exact clause in their public liability insurance that shows that the Council is indemnified against claims on the Council for harm caused by emf radiation

The current opinion of the Council's incumbent insurer is that such claims would not be covered under the Councils liability policy."

Perhaps this is why Verizon – the large US based telecom multinational, with offices in the UK, state that they make provision for such potential health claims, in their statutory accounts as revealed by EH Trust of the US.

Verizon acknowledges risks to its shareholders:

From page 17 of Verizon's 2022 10-K Report:

- "...our wireless business also faces personal injury and wrongful death lawsuits relating to alleged health effects of wireless phones or radio frequency transmitters. We may incur significant expenses in defending these lawsuits. In addition, we may be required to pay significant awards or settlements."

In the Verizon 2023 statutory submission is the following statement:

"**We are subject to a substantial amount of litigation, which could require us to pay significant damages or settlements. In addition, our wireless business also faces personal injury and wrongful death lawsuits relating to alleged health effects of wireless phones or radio frequency transmitters. We may incur significant expenses in defending these lawsuits. In addition, we may be required to pay significant awards or settlements."**

An invidious position for councils

So, in summary, local planning authorities, by this communication, are being given full knowledge of circumstance and this is places them in an invidious position if they follow ICNIRP, not if they don't .

Why is that ? Because if the public becomes aware of the Swisscom patent and all the independent scientific research backing it up, and if members of the public were to consider, for example, that their cancer was generated as a result of proximity to telecom mast, granted planning permission by their local council, such members of the public might resort to the courts for financial remedy.

Yet, as MP Wera Hobhouse made clear, the liability of the councils in this respect might be unlimited and today most councils are in a delicate financial position. If such court actions were to be successful for the claimants, that might drive councils into special measures if there is no underwritten indemnity for them.

The overarching legal obligation upon councils in this arena, is as set out in the Health and Social Care Act, 2012, which requires that "each local authority must takes steps as it considers appropriate for improving the health of the people in its area". It is indeed hard to imagine that carcinogenic radiation from telecom masts proximal to residential areas, sanctioned by local planners, would be in conformance with the Act.

GPDO and Siting and Appearance

The Government reaffirmed after a consultation on the GPDO, that all new masts require Prior Approval:

Ministerial Statement, March 2022**:**

"All new masts will still require the prior approval of the local planning authority, which will assess the proposed siting and appearance of the mast. Masts that exceed these heights will require full planning permission. The new Code of Practice will also provide detailed guidance on how operators could engage and consult with local communities on new development proposals to ensure that their views are considered."

In relation to the Brighton and Hove City Council (BHCC), the "Fishersgate" mast Judicial Review case, which was the adjudication of a Prior Approval telecom mast planning application and which case was publicly crowd funded – a legal opinion was sought and Richard Harwood KC said:

'Section 70(2) of the Town and Country Planning Act 1990 requires a planning authority to have regard to the development plan and other material considerations when determining a planning application. The General Permitted Development Order grants planning permission (article 3(1)) subject in some cases to a condition requiring prior approval of certain matters. In such a case the prior approval application is not an application for planning permission so section 70 does not apply. However, the Council is still obliged to take into account relevant considerations when determining a prior approval application, that being planning matters relevant to the details for which prior approval is required. This would also include relevant local or national policy. The only difference to section 70(2) is that the presumption in favour of the development plan (in s 38(6) Planning and Compulsory Purchase Act 2004) does not apply'.

And

'It must be stressed, however, that unlike statutory instruments, policy statements are not legally binding upon local planning authorities. Whilst the merits of the policy (or the merits of its application) cannot be reviewed by the courts the actual application or interpretation of policy can. Consequently, the local planning authority are entitled to adopt a policy and apply it, but are not entitled to fetter their discretion under section 70(2) or section 38(6). This is because "other material considerations" may point in different directions'.

What is interesting is that the Council backed down in the case and High Court Judge Holgate authorised the consent order and para 2.2 of the statement of reasons of it, below – is salient:

BH2021/01639 for the Installation of a 15m Phase 8 Monopole with wraproud cabinet at base and installation of 3no ancillary cabinets on land south of 91 Fishersgate Terrace, Portslade.

2. The grounds for judicial review are:

   (i) the Council unlawfully determined that the highway safety implications of the cabinets and the concerns expressed by the Council's highways team were not a relevant consideration;

   (ii) the Council failed to address the health impacts of this particular proposal and to obtain adequate evidence of the assessment of the proximity to the school and the amended proposal; and

   (iii) the Council failed to consider whether the facility could be sited on an existing building or structure, the Interested Party having failed to provide any evidence on that matter.

3. For these reasons the decision was unlawful and should be quashed.

4. The Defendant in its acknowledgment of service has stated that it does not intend to contest the claim and would agree to the decision being quashed.

5. The Interested Party has not responded to the claim.

6. The Defendant's decision notice of 30 July 2021 should therefore be quashed for the reasons set out above.

7. In the light of the above, it is requested that the Court make the Consent Order without the need for attendance by the parties.

Far from not being able to include health in telecom mast planning adjudication, the fact is that local planning departments should and must do so. The law so requires. Under the GPDO, "siting and appearance" are the criteria in mast planning adjudication and health effects can be absolutely key in assessing the "siting" aspect of a telecom mast planning application.

The Supreme Court ruling in *R (Wright) v Resilient Energy Severndale Ltd. and Forest of Dean Council* [2019] UKSC 53, establishes that Government policy statements cannot 'undermine' what the settled

case law has determined the term *'material consideration'* means in the planning statutes (paragraph 45). A policy statement cannot redefine the concept of a *'material consideration',* which is a legal question that has an answer *'consistent over time'*.

Paragraph 45 of the 2019 Supreme Court judgment includes the statement that,

'to say that the meaning of the term (ie material planning consideration) changes according to what is said by Ministers in policy statements would undermine the position … that what qualifies as a "material consideration" is a question of law on which the courts have already provided authoritative rulings'.

A decision-maker will err in law if he fails to take into account a material consideration. The tests to be applied in deciding whether or not a consideration was material and so ought to have been taken into account by a decision-maker were set out by **Glidewell LJ in *Bolton Metropolitan Borough Council v SSE (1990) 61 P & CR 343, at 352.***

The appropriate way to consider health in telecom mast planning adjudication is to take into account objections by residents on health grounds as evidence as part of the weighing up, for example, of the material planning consideration of the acceptable or unacceptable usage of land. That is the weighing up of the acceptable use of land against the incompatible and unacceptable use of land.

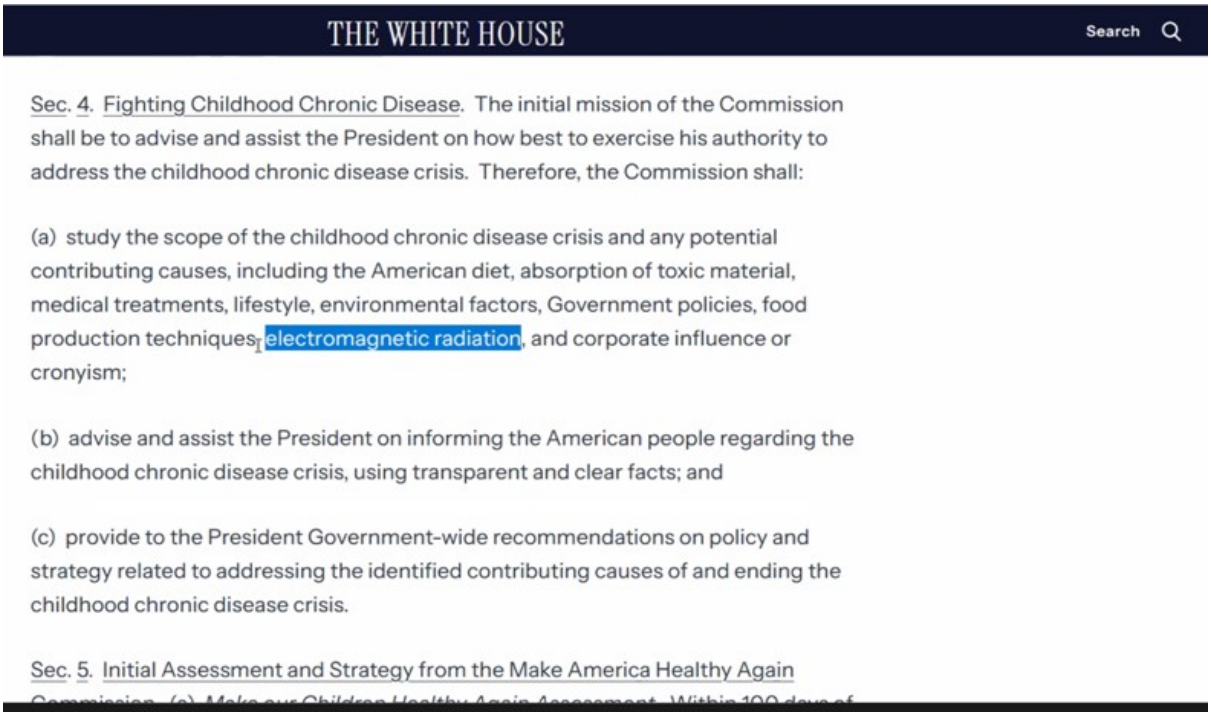
Evidence of harm to health submitted by residents in their objections can be included as evidence of incompatible use of land to be put alongside the NPPF`s ICNIRP guidance in support of compatible use of land. In this respect it would be hard for any local planning authority to consider carcinogenic technology as being in support of what Lord Gill of the Supreme court referred to as "Sustainable Development" wouldn't it be ? Especially against the background of a public being increasingly appraised of the fact.

Influences Globally

The USA Federal Communications Commission (FCC) is the regulating authority for America ***and*** is the recognised body for antenna design for the whole world. Antenna design is a fundamental aspect in telecommunication masts and therefore in the adjudication of relevant planning applications here in the UK.

In 2021, the FCC lost an important court case in the DC, US Court of Appeal – and the judgement meant that the FCC must consider non thermal effects of EMF radiation. ICNIRP, the body the UK government locally and nationally rely in, is concerned with thermal and not non thermal effects. This is a landmark case court case.

The second global influence which is bound to affect public awareness in this arena, is the recent Executive Order, issued by the US President, which tackles a wide spectrum of issues including "electromagnetic radiation" as one such potential cause contributing to childhood chronic disease.


THE WHITE HOUSE

Search

Sec. 4. Fighting Childhood Chronic Disease. The initial mission of the Commission shall be to advise and assist the President on how best to exercise his authority to address the childhood chronic disease crisis. Therefore, the Commission shall:

(a) study the scope of the childhood chronic disease crisis and any potential contributing causes, including the American diet, absorption of toxic material, medical treatments, lifestyle, environmental factors, Government policies, food production techniques, electromagnetic radiation, and corporate influence or cronyism;

(b) advise and assist the President on informing the American people regarding the childhood chronic disease crisis, using transparent and clear facts; and

(c) provide to the President Government-wide recommendations on policy and strategy related to addressing the identified contributing causes of and ending the childhood chronic disease crisis.

Sec. 5. Initial Assessment and Strategy from the Make America Healthy Again

Scientists such as Dr Martin Pall and Dr Klaus Buchner have written papers elucidating how electromagnetic radiation causes Autism and ADHD which have hugely escalated amongst the children of today.

All these global influences are bound to impact on public awareness in this arena here in the UK.

In conclusion:

The public at large are about to be educated about the non thermal effects of telecom mast radiation.

It would be intelligent for councils to reflect deeply on the contents of this communication for they might soon face wide public scrutiny for the justification of any reliance by such councils on the non-mandatory thermal metric of ICNIRP guidance. The public might conclude that on receipt of this communication, that councils now do indeed, **have full knowledge of circumstance.**

The public might start to ask, on becoming educated in this arena, as to why officers and councillors might **choose to adhere** to a **thermal metric** (ICNIRP guidance) – and the word choose is key – when the telecom industry and the independent science shows that the carcinogenic and other deleterious health effects are generated through **non thermal** pathways, by the electromagnetic radiation emitted from such telecom masts.

As the judge Recorder Noland stated in a UK court of law when making a ruling in this arena " The public has a right to know"

For and on behalf of ACHES

Nicholas Martin **Ian Jarvis**