

Site-specific public-health and environmental assessment required

Before determining this application, the local planning authority must exercise the applicable EEC Annex I(B)(3) public-health protection power and undertake a transparent, site-specific assessment addressing the following matters.

1. Metal implants and medical devices

The assessment must address risks to people with active or passive medical implants, metal implants, surgical clips and other implanted or body-worn medical devices.

These matters are not resolved by the applicant's ICNIRP certificate. Electromagnetic interference with medical devices and the particular effects associated with metal implants fall outside the protective scope of the ICNIRP public-exposure limits.

The authority must identify nearby homes, schools, workplaces and other places where affected individuals may be present. It must then determine whether refusal, alternative siting, mitigation or enforceable public-health conditions are required.

2. People with electromagnetic hypersensitivity

The authority must consider the submitted evidence concerning people with electromagnetic hypersensitivity ("EHS"), including the possibility of significant effects at exposure levels below the ICNIRP limits and the particular vulnerability of people with existing chronic illness or disability.

Relevant sources include:

- the ICBE-EMF paper, *Scientific evidence invalidates health assumptions underlying the FCC and ICNIRP exposure limit determinations for radiofrequency radiation: implications for 5G*;
- the ICBE-EMF [2024 position statement on EHS](#); and
- the EM Radiation Research Trust's [EHS scientific resources](#).

The authority must assess this evidence, identify the weight given to it and consider the position of affected people under the Equality Act 2010, including its Public Sector Equality Duty. It cannot treat the ICNIRP certificate as disposing of these matters.

3. Bees, insects, birds and other wildlife

The assessment must examine potential effects upon bees, pollinators, other insects, birds, bats and protected or locally important species. This must include evidence concerning possible effects upon orientation, navigation, reproduction, behaviour, population resilience and habitat use.

The ICNIRP Guidelines are human-exposure guidelines. They are not environmental-protection guidelines and do not establish that radiofrequency exposure is harmless to wildlife.

The authority must therefore assess the environmental evidence separately and determine whether further ecological information, alternative siting, mitigation, monitoring or protective conditions are required.

4. Trees, plants, habitats and the wider environment

The authority must assess potential effects upon trees, vegetation, habitats and the functioning and connectivity of the local ecosystem.

This assessment must address:

- the proposed frequencies and technologies;
- the proximity and orientation of the antennas in relation to trees and habitats;
- the duration, modulation and pattern of exposure;
- existing background exposure;
- cumulative exposure from existing and proposed installations; and
- the foreseeable consequences of future intensification or equipment upgrades.

These environmental matters fall outside the scope of an ICNIRP human-exposure certificate and require their own evidence-based determination.

5. Exposure zones, cumulative exposure and mitigation

The applicant must provide the complete technical information necessary for the authority to undertake the required site-specific assessment. This should include:

- the dimensions, shape, height and orientation of every public and occupational exclusion zone
- antenna heights, tilts, powers, frequencies and beam patterns
- the position of the lower boundary of each exclusion zone above ground level
- the applicable basic restrictions, reference levels and sensory-effect limits
- the contribution of all existing transmitters and other relevant sources
- cumulative and simultaneous exposure at publicly accessible locations; and
- the operational assumptions upon which the ICNIRP certificate depends.

The authority must reconcile this information with the actual use of the surrounding land and buildings. It must then determine whether the development should be refused, re-sited or made subject to reduced power, monitoring, access controls or other enforceable public-health and environmental conditions.

Permission must not be granted until the authority has completed this assessment and provided intelligible reasons for its conclusions.

Five legal grounds requiring the assessment

1. The EECC forms part of the applicable domestic statutory framework

The European Electronic Communications Code was implemented in the United Kingdom principally through the Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020.

Those Regulations amended the Communications Act 2003 and other domestic legislation. The EECC general-authorisation system was thereby brought into effect through domestic legislation and binding domestic administrative and planning procedures.

The authority must therefore exercise its planning functions consistently with the purposes and requirements of that system, including the public-health protection function attached to the authorisation of electronic communications networks.

2. EECC Annex I(B)(3) must be exercised

EECC Annex I(B)(3) expressly provides for conditions comprising:

“measures for the protection of public health against electromagnetic fields caused by electronic communications networks in accordance with Union law, taking utmost account of Recommendation 1999/519/EC.”

EECC Recital 110 states:

“the need to ensure that citizens are not exposed to electromagnetic fields at a level harmful to public health is imperative.”

It further requires particular regard to the precautionary approach taken by Recommendation 1999/519/EC.

Annex I(B)(3) must be applied as part of the EECC general-authorisation system implemented in the United Kingdom. It requires the authority to examine and reconcile the site-specific public-health evidence before authorisation and to determine whether public-health conditions, mitigation or alternative siting are necessary.

“Taking utmost account” of Recommendation 1999/519/EC does not make ICNIRP compliance legally conclusive. Mere receipt of an ICNIRP certificate does not constitute the required site-specific assessment and does not discharge the Annex I(B)(3) function.

The authority must confirm expressly:

1. that it is exercising the relevant competent-authority function at the planning stage;
2. that it has considered the exercise of the Annex I(B)(3) power in this case;
3. that it has assessed the submitted public-health and environmental evidence;
4. what weight it has given to each category of evidence and to the applicant’s ICNIRP certificate; and
5. whether refusal, re-siting, mitigation, monitoring or enforceable public-health and environmental conditions are required.

A decision that treats ICNIRP compliance as the end of the inquiry would fail to exercise the Annex I(B)(3) power for its public-health purpose.

3. Material evidence must be taken into account under domestic planning law

Without conceding that the authority may disregard, decline or disapply its EECC Annex I(B)(3) obligation, the same evidence must independently be considered under domestic planning law.

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require the authority to have regard to considerations material to the proposed development.

Evidence concerning the consequences of the proposed use for neighbouring occupants, people with relevant disabilities or medical implants, wildlife, trees and habitats relates directly to the use of the land.

Whether a consideration is legally capable of being material is a question of law. The weight assigned to it is a matter of planning judgment. The authority may determine the weight of particular evidence, but it cannot lawfully exclude a material consideration from its assessment.

As the Supreme Court confirmed in [*R \(Wright\) v Resilient Energy Severndale Ltd* \[2019\] UKSC 53](#), the statutory meaning of a material consideration does not vary according to government policy.

National policy may influence the authority's planning judgment concerning weight. It cannot make legally material evidence immaterial or require the authority to treat an ICNIRP certificate as conclusive.

4. The DLA Piper statement requires a genuine weighting exercise

In its letter of 8 August 2019, DLA Piper, acting for Public Health England, explained how another public body should approach PHE's ICNIRP-based guidance:

"If in any other context regard is had to the Guidance that is entirely a matter for the discretion of the relevant body and it must determine what weight to place on the Guidance given the clear indication as to the sources from which the advice and recommendations in the Guidance are derived. Equally, that body must determine what other evidence from your clients or other members of the public or interested parties to consider in making any decision."

The planning authority must therefore undertake a genuine weighting exercise. It must determine:

- what weight to give the PHE or UKHSA guidance
- what weight to give the applicant's ICNIRP certificate
- what other public-health and environmental evidence requires consideration; and
- what conclusions follow from the evidence in the circumstances of this particular site

The DLA Piper statement is not itself a court judgment. It is nevertheless a direct statement made on behalf of Public Health England about the status and use of its own guidance. It contradicts any suggestion that PHE or UKHSA guidance requires a planning authority to disregard evidence submitted by objectors or to treat ICNIRP compliance as the end of its inquiry.

6. ICNIRP compliance does not discharge the wider legal obligations

An ICNIRP certificate addresses compliance with specified human-exposure limits on the technical information and operational assumptions supplied by the operator.

It does not determine:

- risks concerning metal implants and medical-device interference
- the position of people with EHS or particular individual susceptibility
- effects upon bees, pollinators, other insects, birds or bats
- effects upon trees, plants and habitats
- all cumulative or simultaneous environmental effects
- the authority's Equality Act 2010 obligations
- the dimensions and implications of the public exclusion zones; or
- every site-specific consequence for the use and enjoyment of neighbouring land and buildings.

The authority must assess these matters through the EECC Annex I(B)(3) procedure and its cumulative planning, equality and environmental duties.

If the authority disagrees with particular evidence or assigns it limited weight, it must still demonstrate that it understood the evidence, asked the correct questions, obtained sufficient information and gave legally adequate reasons for its conclusions.

The authority is therefore requested to refuse or defer the application until the required information and assessment have been provided. If it concludes that permission can properly be granted, it must first demonstrate how the identified risks have been reconciled and impose effective, precise and enforceable public-health and environmental conditions.

These domestic planning, equality and environmental duties reinforce the EECC Annex I(B)(3) obligation. They are relied upon cumulatively and independently, not as substitutes for that obligation and not on the basis that the authority may reject, disregard or decline to apply the EECC public-health framework.