Primer for Councillors and Planners

Telco applications concerning 4G LTE, 5G, small cell networks

Here in the UK there has been an almost universal acceptance by national and local government that in relation to microwave in air technology (2g,3g,4g,5g wifi, bluetooth and smart meters) the thermal effects matter, and non-thermal effects do not.

HSPA (PHE) guidelines are out of date and still refer back to the ICNIRP. This anachronism is putting the Public in tremendous danger and is subject of the Judicial Review 'actionagainst5G'.

The absurdity of excluding non-thermal effects is also borne out by a large body of credible peer reviewed independent science that is disregarded by the telecoms industry in favour of science that it commissions itself, to reinforce the thermal harm dogma. However:

- Local Planning Authorities (LPA's) are **competent authorities** under the European Electronic Communications Code (EECC), and must also under the National Planning Policy Framework (NPPF) consider siting and health effects as material considerations

- In considering environmental and public health impacts, LPAs need to **risk assess** Radio-Frequency Radiation (RFR) exposures which PHE confirm are regulated under planning policy (including planning law and planning procedures). Telecoms applicants are self-mandated to risk assess RFR emitting equipment and services using International Standards Organisation (ISO) procedures. As competent authorities under the EECC, LPA's should require risk assessments on evidence of non-thermal risk/harm to be made available to make a precautionary planning determination if the applicant cannot prove that RFR exposures are entirely safe against the weight of evidence of risk/harm. The LPA will have to be receptive to reliable evidence and be proactive in obtaining necessary risk assessments from the applicants.

- Regarding **Prior Approval** of Telco applications: LPA duties still apply, notwithstanding the presumption in favour of development under Part 16 of the Town and Country Planning (General Permitted Development) Order 2015.

Local planning applications in this field have been governed until now by a narrow interpretation of "siting and appearance" aspects and all others have been excluded on the basis of, inter alia, NPPF paragraph 116:

"116. Local planning authorities must determine applications on planning grounds only. They should not seek to prevent competition between different operators, question the need for an electronic communications system, or set health safeguards different from the International Commission guidelines for public exposure"

However, sentence 1 of paragraph 180 of the NPPF which has been ignored until now, states:

"180. Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development".

This advisory ties in with UK law as in **The Pollution Prevention and Control Act 1999** which defines 'pollution' as including noise, heat, vibrations or any other kind of release of energy and

79(1) of the **Environmental Protection Act 1990** of which Paragraph 1(a) would apply for 'any premises in such a state as to be prejudicial to health or a nuisance'. The term 'premises' includes land which can also include radio masts. Paragraph 1(d) of this second Act applies to “any dust, steam, smell or other effluvia arising on industrial, trade, or business premises and being prejudicial to health or a nuisance”.

The word effluvia has been used in connection with a discharge – and microwave radiation is a discharge from the relevant transmitter.

The discharge is commonly referred to as RFR (radiofrequency radiation) and it is a pollutant that constitutes a **“material planning consideration”** which gives rise to **“unacceptable and incompatible use of land”** and this is a basis of legitimate rejection of such RFR polluting equipment planning applications.

Furthermore and this is critical – the UK government subsumed **the European Electronic Communications Code (EECC)** into UK law in December 2020 (days before Brexit took effect), so as to allow British telecom companies such as Vodafone and EE permission to supply into the EU telecom market as equal competitors.

'The European Electronic Communications Code (EECC) provides a 'legal framework' to ensure 'freedom to provide communications networks and services' subject to restrictions including public health through requirements placed on EU Member States (i.e. the UK Government) to take the necessary steps to implement the various provisions of the EECC into domestic law including Recital 106:

'Where mobile operators are required to share towers or masts for environmental reasons, such mandated sharing could lead to a reduction in the maximum transmitted power levels allowed for each operator for reasons of public health, and this in turn could require operators to install more transmission sites to ensure national coverage. Competent authorities should seek to reconcile the environmental and public health considerations in question, taking due account of the precautionary approach set out in Council Recommendation 1999/519/EC

The first sentence of Recital 110 reads, *'the need to ensure that citizens are not exposed to electromagnetic fields at a level harmful to public health is imperative'.*

In addition, the EECC states:

ARTICLE 45. 2 requires participating nation states to *‘promote the harmonisation of use of radio spectrum by electronic communications networks and services' ... (pursuing objectives including) ... (h) consistency and predictability throughout the Union regarding the way the use of radio spectrum is authorised in protecting public health taking into account Recommendation 1999/519/E'.*

EECC RECITALS 106 AND 110, AND ARTICLE 45.2 h) on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz) requires under Recommendation (19) that:

*'Member States should take note of progress made in scientific knowledge and technology with respect to **non-ionising** radiation protection, taking into account the aspect of **precaution**, and should provide for regular scrutiny and review with an assessment being made at regular intervals in the light of guidance issued by competent international organisations, such as the International Commission on Non-Ionising Radiation Protection'*

DLA Piper (Public Health England's solicitors) have already warned any “body” relying on ICNIRP without undertaking a proper investigation of the available scientific evidence would be liable themselves (not the government liable) if ICNIRP turns out to be wrong – as the BERINIS body of scientists in Switzerland seem to be implying now.

This technology is uninsurable and so “competent authorities” expose themselves to potential unlimited liability in the face of potential personal injury claims justified on the evidence of a huge body of independent science – if they do not apply their 'competency' appropriately, when making decisions that impact on the public health consequences of RFR exposure.

The UK government have named Ofcom as the national competent authority. From 2014, Local Planning Authorities were endowed with 'competent authority' re: their planning functions, as Recital 26 of Directive 2014/61/EU acknowledges that:

“a number of different permits (permissions) concerning the deployment of electronic communications networks or new network elements may be necessary, including building, town planning, environmental and other permits, in order to protect national and Union general interests. The Directive preserves the right of each competent authority to be involved and maintain its decision-making prerogatives in accordance with the subsidiarity principle, and in accordance with Article 2 Definitions – as set out in the Directive.”

Taking paragraph 180 of the National Planning Policy Framework (NPPF) and aggregating the above law, UK national and local government must by law now reassess their approach to the way they assess and approve planning requests in the field of microwave in air technological apparatus.

If they do not and continue paying sole attention to NPPF para 116, as they have until now, there would be multiple breaches of the international treaty, the EECC – with serious legal implications as well as serious commercial implications for the relevant telecom enterprises.

On top of all that Matt Warman’s draft proposal from the DCMS **to remove** such localized planning authority and make such permission automatic – would constitute a clear and serious breach of the international treaty – the EECC.

In this case Mr Warman could jeopardize sales by UK telecom companies. These companies could then be disqualified from the single European telecom market since they would be benefitting from an unfair competitive advantage arising from the UK Government's clear breach of the EECC in emasculating the approved and identified competent authorities from fulfilling their public health obligations as defined in the Code, and as required by UK planning law and policy.