

18<sup>th</sup> September 2023

Planning Officer  
Council Office

Dear Colleague

### **Challenge under Schedule 8 paragraph 39(5) of EU Withdrawal Act 2018**

On 12th September 2023 a challenge was submitted to the *Department of Health & Department for Levelling Up, Housing and Communities* seeking remedies to their joint failure to enact public health protection provisions of the European Electronic Communications Code (EECC).

The requirement for LPA/LAs to risk reconcile environmental and public health consequences of radiofrequency emitting infrastructure is embedded within the EECC but has not been clarified nor reflected in policy by the UK government when it was transposed into UK Law in December 2021.

Campaigners have been informing councils about this and pursuing full risk reconciliation to include the risks not covered by the ICNIRP exposure guideline for over four years with inconsistent results across different councils. Mainly planning departments and case officers are not considering health and environmental impacts.

There is pressure on councils to accept the 5G roll out in principle via planning policy without addressing public health and environmental impacts. Councils are led to believe that 5G is safe via general statements made by Telecoms in documents supplied with applications and statements made by UKHSA. When these statements are addressed specifically with latest peer reviewed science in objections, the case officers do not answer to the specifics provided, and decision notices do not evidence that the information provided has been accounted for. Planning authorities do not seek to clarify the extent of public exclusion zones, this oversight is leading to some residents being condemned to living inside radiation zones.

#### **The submission gives the local authority strength.**

- the submission fully evidences (appendix 2) why accepting an ICNIRP certificate is not enough to protect the public even from the ICNIRP levels of exposure
- it presents full legal argument as to why when LPAs don't fully account for all the risks including all the non-thermal harms which we are evidencing in our objections when they make decisions on 5G masts and when local authorities sign contracts for small cells and street wifi, they are not fulfilling their statutory obligations
- the submission exposes the government for not having made it clear to local authorities what their obligations under the EECC are when it transposed the EU directive into law in December 2021
- the submission provides legal argument as to why government policy NPPF 118 is unlawful as it restricts risk reconciliation to sole application of the ICNIRP guideline contrary to the procedural standard within the EECC
- the submission presents legal argument demonstrating that the local authorities have autonomous decision-making obligations and need Telecoms specific environmental impact assessments to fulfill their role as competent authorities under the EECC
- the legal ambiguity perpetuated by the government cannot be sustained; the remedies within the submission includes the requirement for the introduction of Telecoms specific Environmental Impact Assessments (EIAs)

The LAs can now interact more easily with the Department of Health and Department of Levelling Up, Housing and Communities to change the system by expressing their interest in the outcome of this leg-

al challenge. Logically, and as demonstrated within the submission, a blank certificate is not enough to protect the public.

The current situation leaves people exposed and vulnerable (appendix 2).

It must stop.

Citizens have a right to be protected, and they have a right that procedures are in place to take proper account of evidence submitted before mast applications are determined. Citizens have a right to be protected from harm, injury and nuisance.

The submission fully justifies screening for people with Electrohypersensitivity (EHS) when decisions are made locally about the siting of RFR emitting equipment including 5G masts and small cells. Disability payments and education plans on the basis of EHS have been awarded in the UK and yet the literature provided with planning applications denies the condition (appendix 2.9).

This hypocrisy must stop - these people need to be acknowledged and accounted for when planning applications are processed.

Councils have a right to clarity, at present policy 118 is placing them in a precarious position.

Please find attached the submission which was filed with UK government legal services on September 12th 2023, and please register your interest in this matter being resolved with the relevant departments (DOH and DLUHC).

Best regards,

Constituent