Neutral Citation Number: [2024] EWHC 1035 (Admin)

Case No: AC-2023-CDF-000079

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Cardiff Civil Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: 3 May 2024

Before :

HIS HONOUR JUDGE JARMAN KC
Sitting as a judge of the High Court
Between :

STEVEN THOMAS	**Claimant**
- and -	
CHELTENHAM BOROUGH COUNCIL	**Defendant**
-and-	
CIGNAL INFRASTRUCTURE UK LIMITED	**Interested Party**

- -
- -

The **claimant** appeared in person
Mr Ryan Kohli (instructed by **One Legal**) for the **defendant**
The **interested party** did not appear and was not represented

Hearing dates: 11 April 2024
- - - - - - - - - - - - - - - - - - - -

Approved Judgment

This judgment was handed down at 10.45 am on 3 May 2024 and sent to the parties and to the National Archives

HHJ JARMAN KC:

Introduction

1. This is a challenge, by the claimant Mr Thomas, to a decision by the defendant as local planning authority (the authority) that prior approval is not required for a proposed development of electronic communications equipment, comprising a 15 metre pole with antennas at the top of the pole, ground based apparatus and ancillary development on a grass verge adjacent to Lansdown Road near its junction with Talbot Road, Cheltenham. The site is located within Cheltenham's Central Conservation Area.

2. 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. These grounds are more particularised in the summary grounds, by setting out five alleged failures on the part of the authority as follows: health concerns raised by objectors were not taken into consideration; a full assessment of risks on health was not undertaken; exclusion zone maps were not obtained; the potential harm of the equipment on medical implants was not taken into account; and the cumulative effect of similar development was not considered.

3. Insofar as Mr Thomas's submissions, written or oral, seek to go beyond the summary grounds and/or the grounds on which permission was given, then I accept the submission by Mr Kohli on behalf of the authority, that such an extension is not permissible.

The application

4. The application was made by CK Hutchison Networks (UK) Limited (CK), the trading name of which is Three. It is not clear what connection, if any, that company has with the interested party, which has taken no part in these proceedings. The application was validated on 1 April 2023 and determined under The Town and Country Planning (General Permitted Development (England) Order 2015 (the GPDO).

5. Schedule 2, Part 16, Class A of the GPDO allows for the installation, alteration or replacement of electronic communications apparatus. The development which is permitted thereunder is described as follows:

> "A. Development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network in, on, over or under land controlled by that operator or in accordance with the electronic communications code, consisting of—
>
> (a) the installation, alteration or replacement of any electronic communications apparatus,

> (b) the use of land in an emergency for a period not exceeding 6 months to station and operate moveable electronic communications apparatus required for the replacement of unserviceable electronic communications apparatus, including the provision of moveable structures on the land for the purposes of that use, or
>
> (c) development ancillary to radio equipment housing."

6. Paragraph A1 then sets out certain exceptions, for example where the apparatus, excluding antenna, would exceed a specified height above ground level, or where the ground area of the apparatus exceeds a specified square meterage, or where the land in question is a site of special scientific interest. Such development is not permitted development.

7. Paragraph A.2 sets out certain conditions to which the permission may be subject and paragraph A.3 sets out procedural requirements. A.3(3) provides that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting and appearance of the development. Paragraph A.3(6)(d) requires notice of the proposed development to be served on any adjoining owner or occupier, and paragraph A.3(7) provides that when determining an application as to whether prior approval is required, the local planning authority must take into account any representations made to them as a result of such notices.

8. The application was accompanied by a supplementary document, running to some 37 pages, which stated that there is a specific requirement for an installation on highways land on Lansdown Road, close to the junction with Talbot Road, to ensure that the latest high quality service provision is provided in that area of Cheltenham. The document included a heading "Health and Safety - including ICNIRP compliance." Included was a certificate of such compliance which declared that the proposed equipment and installation as detailed in the attached planning/ GPDO application was designed to be in full compliance with the requirements of the radio frequency public exposure guidelines of the International Commission on Non-Ionizing Radiation Protection (ICNIRP) "as expressed in EU Council Recommendation 1999/519/EC of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz)."

9. The certificate itself indicated that the declaration was made by Three UK Limited. Mr Thomas sought to take a late point that that company appears to have been dissolved several years ago. Mr Kohli, whilst submitting that the point was taken too late for him to deal with properly, nevertheless submitted that this might have been an administrative error, because of the trading name Three. The declaration was accompanied by and referred to in a letter from Clarke Telecom Ltd, which provides management services to telecommunications providers, expressed to be for and on behalf of CK. In my judgment it appears likely that the reference to Three UK Limited was an error. Although nothing turns upon it in the present case, it does emphasise the importance of local planning authorities checking the validity of such declarations.

10. The supplementary document also stated:

> "International Commission on Non-Ionizing Radiation Protection public compliance is determined by mathematical calculation and implemented by careful location of antennas, access restrictions and/or barriers and signage as necessary. Members of the public cannot unknowingly enter areas close to the antennas where exposure may exceed the relevant guidelines. When determining compliance, the emissions from all mobile phone network operators on or near to the site are taken into account. In order to minimise interference with its own networks and with other radio networks, CK Hutchison Networks (UK) Ltd operates its network in such a way the radio frequency power outputs are kept to the lowest levels commensurate with effective service provision. As part of CK Hutchison Networks (UK) Ltd network, the radio base station that is the subject of this application will be configured to operate in this way. All operators of radio transmitters are under a legal obligation to operate those transmitters in accordance with the conditions of their licence….The conditions of the licence are mandated by OFCOM an agency of national government…"

11. The document also referred to audits of exposure levels from existing equipment and to guidance issued by Public Health England (PHE), which advises the government in respect of public health issues in England, as follows:

> "Notably, Ofcom have now undertaken 5G audits in the major cities and the results indicate that the exposure levels are a small fraction of the limits. This further reinforces the PHE guidance in respect of 5G which states: "It is possible that there may be a small increase in overall exposure to radio waves when 5G is added to an existing network or in a new area. However, the overall exposure is expected to remain low relative to guidelines and, as such, there should be no consequences for public health."

12. ICNIRP is a not for profit, independent scientific commission based in Germany established to provide guidance and recommendations on protection from non-ionising radiation exposure. It is recognized by the World Health Organisation (WHO) and the International Labour Organisation (ILO). Its membership is limited to scientific experts who have no commercial or other vested interests. Non-ionising radiation means that which comprises packets of energy which are too small to break chemical bonds, and so cannot damage cells and cause cancer in the same way as ionising radiation. ICNIRP issues guidelines for the protection of humans exposed to radiofrequency electromagnetic fields (EMFs), which are used to enable communications equipment such as is proposed in the present case. The guidelines are highly detailed and technical.

13. After such notices were given in the present case, the representations subsequently received included 50 objections, one of which came from Mr Thomas. He referred to Lefroy Court at the other end of Talbot Road, which is a residential building for people who are over 55 years old. He included plans showing Lefroy Court. There

was no agreed measurement from Lefroy Court to the site of the proposed equipment. Mr Thomas says it is about 50 meters away, whereas the authority says it is more than double that distance. Mr Thomas included plans in his objections, one of which shows a 50 meter radius around the proposed equipment, and which appears to show Lefroy Court being a similar distance outside that radius. In his objection, he referred to the residents of Lefroy Court in this way:

> "Many elderly people have medical implants and hearing aids in this building. ICNIRP Guidance specifically states on page 2 that these people need protection. "

14. A further objection to the application came from a resident of Lefroy Court who has a pacemaker and who included this in the objection:

> "Strong EMF can interfere with the function of metal implants such as this and could seriously put my health at risk, making me very anxious. I strongly urge you not to consider this anywhere near my flat."

15. Mr Thomas in his objection provided a link to ICNIRP guidelines. The edition current at the time of the challenged decision is that published in 2020. At the outset, the guidelines make clear their purpose and scope as follows:

> "The main objective of this publication is to establish guidelines for limiting exposure to EMFs that will provide a high level of protection for all people against substantiated adverse health effects from exposures to both short- and long-term, continuous and discontinuous radiofrequency EMFs. However, some exposure scenarios are defined as outside the scope of these guidelines. Medical procedures may utilize EMFs, and metallic implants may alter or perturb EMFs in the body, which in turn can affect the body both directly (via direct interaction between field and tissue) and indirectly (via an intermediate conducting object). For example, radiofrequency ablation and hyperthermia are both used as medical treatments, and radiofrequency EMFs can indirectly cause harm by unintentionally interfering with active implantable medical devices (see ISO 2012) or altering EMFs due to the presence of conductive implants. As medical procedures rely on medical expertise to weigh potential harm against intended benefits, ICNIRP considers such exposure managed by qualified medical practitioners (i.e., to patients, carers and comforters, including, where relevant, foetuses), as well as the utilization of conducting materials for medical procedures, as beyond the scope of these guidelines (for further information, see UNEP/WHO/IRPA 1993)… Radiofrequency EMFs may also interfere with electrical equipment more generally (i.e., not only implantable medical equipment), which can affect health indirectly by causing equipment to malfunction. This is referred to as electromagnetic compatibility, and is outside the scope of these guidelines (for further information, see IEC 2014)."

16. The international standard document, the WHO document and the other document therein referred to were not before the authority and were not before me in these proceedings. The references are in the context of exposure to EMFs being managed by qualified medical practitioners, but nevertheless there is recognition in the guidelines that EMFs can indirectly cause harm by unintentionally interfering with active implantable medical devices or altering EMFs due to the presence of conductive implants.

17. The guidelines draw a distinction between occupationally-exposed workers and the general public. The former are subject to health and safety programmes which provide information and protection, such as the Control of Electromagnetic Fields at Work Regulations 2016. The general public is defined as individuals of all ages and of differing health statuses, which includes more vulnerable groups or individuals, and who may have no knowledge of or control over their exposure to EMFs, and so need more stringent restrictions. The health impacts dealt with are primarily heat in the body, but also include nerve stimulation or tingling, and cellular changes. The latter changes occur only with very high exposure levels.

The officer's report and decision

18. The application was the subject of a report dated 25 May 2023 by a planning officer of the authority, which set out the main considerations of the application as: principle, siting, design, impact on the character of the area, including the impact on the conservation area. The report included a plan of the area which shows the site for the proposed equipment and various buildings including Lefroy Court.

19. As for principle, the report referred to the National Planning Policy Framework (NPPF), paragraph 2 of which provides that it must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements. Section 10 deals with the provision of high quality communications. Paragraph 114 states that high quality and reliable communications are essential for economic growth and social well-being, and that policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband.

20. Paragraph 115 states that the number of electronic communications masts, and the sites for such installations, should be kept to a minimum. The use of existing masts, buildings and other structures for new electronic communications capability should be encouraged. Paragraph 117 requires applications for electronic communications equipment to be supported with the necessary evidence to justify the proposed works.

21. Paragraph 118 states:

> "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 communication systems or set health safeguards different from the international commission guidelines for public exposure."

22. Having summarised the relevant paragraphs of the NPPF, the report continued as follows:

> "Given the above, it is clear that the principle of electronic communications infrastructure should receive general support from the authority and that it is not for the local authority to question the need or to seek to impose different health standards from those set out in legislation. The GPDO provides the opportunity for local authorities to take a view of proposals based on siting and design and these are considered to be the key issues for consideration."

23. The report then went on to deal with siting, design and impact on the character of the area and conservation area. In terms of siting, it was noted that there were nearby residences, but no reference was made to Lefroy Court or to the fact that its residents were over 55 years old. The objections were dealt with in this way:

> "6.14 The LPA has received a total of 50 letters of objection to this application. Within these objections concerns are raised regarding the siting and design of the equipment, the impact on the design and character of the area, including impact on the conservation area. In addition, an objection and concerns have been raised by the Civic Society, details of which can be read above."

24. The remainder of the report in relation to siting dealt with such issues as impact on the character of the area, the historic environment, and visual impact on residences. Under the next sub-heading of "Other considerations" the report then dealt, in one paragraph, with objections relating to impact on health, as follows:

> "A number of concerns raised by the objectors relate to potential health implications, impact on the environment and also suggest that there is not a need for this form of equipment in this location. Whilst these concerns have been duly noted, paragraph 118 of the NPPF highlights that applications must be determined on planning grounds only; and that local planning authorities should not "set health safeguards different from the International Commission guidelines for public exposure". The applicant has submitted a pack of supporting information which includes a declaration of conformity with ICNIRP public exposure guidelines. This is sufficient to fulfil the requirement of para 118 of the NPPF in relation to self-certification. The supporting information also identifies that there is a need for coverage in this location."

25. The report did not deal with the specific health concerns in respect of residents of Lefroy Court with such medical devices as pacemakers or of the precise scope of the ICNIRP guidelines. The authority accepts that it gave no weight (its stance at the hearing of Mr Thomas's renewed application for permission) or little weight (its stance at the substantive hearing) to the objections relating to health concerns because of the compliance with the ICNIRP guidelines.

26. The recommendation of the officer was that prior approval for the proposal was not required. By a notice dated the next day, 26 May 2023, issued by the head of planning, that recommendation was approved:

> "NO PRIOR APPROVAL REQUIRED TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) ORDER 2015, as amended Determination for prior approval for Installation of 15m pole inc. antennas, ground based apparatus and ancillary development AT: Telecommunications Mast Site CLM26627 Lansdown Road Cheltenham In accordance with the requirements of the above Order, Cheltenham Borough Council, as the local planning authority, hereby determines that no prior approval will be required."

27. The authority at the renewal stage stated that the officer's report and decision should have said prior approval was required and given, rather than prior approval not required. However, by the substantive hearing this stance had changed and Mr Kohli submitted that the report was correct. Although the report stated that prior approval was not required, it nonetheless assessed the proposal's siting and appearance against the requirements of the development plan. Matters of siting and appearance were assessed in the officer's report at [6.7] to [6.19] and the conclusion was that the siting and appearance of the development was acceptable.

Case law on prior approval

28. Lang J held in *Smolas v Herefordshire Council* [2021] EWHC 1663 (Admin); [2021] PTSR 1896 at [73] that whilst the GPDO appears to contemplate two stage process as to whether prior approval is required, and if so whether it is granted, the language used in it does not point to it being a mandatory requirement.

29. In *Nunn v First Secretary of State* [2005] EWCA Civ 101; [2005] Env LR 32, the objectors' representations on a prior approval application were not taken into account because the decision-maker failed to issue a decision within the 56 day timeframe, which is a different scenario to that in the present case.

30. In *Murrell and anor v SSCLG, etc.* [2010] EWCA Civ 1367*,* Richards LJ at [46] recognised that an analogy between a prior approval process and outline planning permission is not a precise one, but continued:

> "Nevertheless, the two situations call for a broadly similar approach, and the analogy with outline planning permission has a real value in underlining the point that the assessment of siting, design and external appearance has to be made in a context where the principle of the development is not itself in issue."

31. Fosket J in *Infocus Public Networks Ltd v SSCLG & Anor* [2010] EWHC 3309 held that where the GPDO granted permitted development rights to telephone kiosks, the existence of advertising materials on the kiosks did not go to their siting or appearance.

32. In *Keenan v Woking Borough Council & Anor* [2017] EWCA Civ 438, Lindblom LJ said at [36]:

> "The condition in paragraph A.2(2)(i), which required the developer, before beginning the development, to apply to the local planning authority for a determination as to whether its "prior approval" would be required to the "siting and means of construction" of the "private way", did not impose on the authority a duty to decide whether or not the development in question was, in fact, permitted development under Class A – albeit that the guidance in paragraph E14 of Annex E to PPS7 might have been read as encouraging it to do so. Nor did it confer upon the authority a power to grant planning permission for development outside the defined class of permitted development. The sole and limited function of this provision was to enable the local planning authority to determine whether its own "prior approval" would be required for those specified details of that "permitted development". If the authority were to decide that its "prior approval" was not required, the condition would effectively have been discharged and the developer could proceed with the "permitted development" – though not of course with any development that was not "permitted development". If, however, the authority failed to make a determination within the 28-day period, again the developer could proceed with the "permitted development", but again not with any development that was not "permitted development". The developer would not at any stage have planning permission for development that was not, in fact, "permitted development"

33. In *Harris v First Secretary of State* [2007] EWCA Civ 1505, an inspector granted permission for telecommunication equipment despite concerns from a nearby resident as to the effect of resulting radiation upon an electronic device which she relied upon for sustenance. The developer certified that the installation would comply with ICNIRP guidelines and as a result the inspector considered that the resident's concerns about what was perceived to be the health risks associated with the appeal proposals did not justify withholding planning permission. Lloyd Jones J, as he then was, dismissed an appeal, and Pill and Pumfrey LJJ refused permission to appeal to the Court of Appeal. At [16] of the refusal Pill LJ said:

> "There is no suggestion by way of evidence, or indirect evidence, or press concern or anything else that there is any concern about this particular piece of apparatus. No evidence was called as to grounds for that concern. In those circumstances it appears to me that the inspector was entitled to take the course he did. He was entitled to have regard to the several paragraphs which I have cited and to hold on the basis of them that no planning objection had been made out. …"

Discussion

34. In my judgment it is clear that the *Harris* decision was confined to the particular evidence available in that case about the particular piece of apparatus concerned. Moreover, in the present case, the guidelines referred to evidence that EMFs can indirectly cause harm by unintentionally interfering with active implantable medical devices or altering EMFs due to the presence of conductive implants, and makes clear that such issues are beyond the scope of the guidelines.

35. In my judgment the issue of whether prior approval should have been given in the present case is closely related to whether the authority should have given consideration to potential impacts on medical implants. Although a number of health concerns were noted, and although this particular issue was raised in the objections, on a fair reading of the officer's report as a whole, it was not given any weight. The reason for this is that the officer clearly took the view that the declaration of conformity with the guidelines was sufficient to deal with these concerns and that by going any further would be to set health safeguards different to the guidelines.

36. I accept that that was a proper approach in relation to the health concerns generally. The objections from residents of dwellings nearest to the proposed equipment raised health concerns such as anxiety. The authority could only deal with objections received before the decision was made. Emails from residents after the decision was made sought to raise other concerns, but these were not before the authority when it made its decision. The purpose of the guidelines was in part to offer a high level of protection to all people. Whilst I understand how some residents may nevertheless feel anxious, the authority was obliged to give effect to the NPPF and to proceed on the basis that compliance with the guidelines would offer such a level of protection.

37. However, as indicated, the objections in relation to the residents of Lefroy Court, situated further away, raised the related but distinct issue of potential impact of EMFs on medical implants. Mr Kohli submits that the weight to be given to health concerns was entirely a matter for the decision maker. He relies on the well-known passage in the judgement of Lord Keith in *Tesco Stores v Secretary of State for the Environment* [1995] 1 WLR 759 at 780 as follows:

> "The law has always made a clear distinction between the question of whether something is a material consideration and the weight which it should be given. The former is a question of law and the latter is a question of planning judgement, which is entirely a matter for the planning authority. Provided that the planning authority has regard to all material considerations, it is at liberty (provided it does not lapse into Wednesbury irrationality) to give them whatever weight the planning authority sees fit or no weight at all. The fact that the law regards something as a material consideration therefore involves no view about what part, if any, which it should play in the decision-making process.
>
> The distinction between whether something is a material consideration and the weight which it should be given is only one aspect of a fundamental principle of British planning law, namely that the courts are concerned only with the legality of the decision making-process and not the merits of the decision.

> If there is one principle of planning law more firmly settled than any other, it is that matters of planning judgement are within the exclusive province of the local planning authority or the Secretary of State."

38. Mr Kohli also relies on the assumption in NPPF at [122] that regulatory regimes outside the planning system including those concerned with public health will operate efficiently. In *Preston New Road Action Group v Secretary of State for Communities and Local Government* [2018] EWCA Civ 9 Lindblom LJ at [93] observed that apart from the NPPF, that assumption would be a reasonable one for a planning decision-maker, unless there was clear evidence to cast doubt on it. Mr Kohli further submits that the guidelines specifically provide that there is no evidence of adverse health effects at EMF exposure levels below the restrictions in the guidelines and that Ofcom (who operate the regulatory regime which controls EMF exposure) and PHE have declared that there are no adverse risks to health arising from 5G masts. In my judgment that assumption does not assist the authority in this case. The issue is not whether there will be compliance with the guidelines but whether such compliance obviates the need to consider the potential impact on medical implants.

39. However, as already indicated, the guidelines expressly stated that EMF's can cause harm by interfering with medical implants, and that such issues were beyond the scope of the guidelines. A consideration of such an issue, for example by considering whether the proposed development in the present case should be sited further away from Lefroy Court, would not in my judgment involve setting health guidelines different from ICNIRP guidelines for public exposure so as to fall foul of [118] of NPPF. The reason for that is that the guidelines do not address the issue of potential harm caused by EMFs in relation to medical implants. I do not accept Mr Kohli's submission that it should be inferred from the absence of reference in the guidelines to potential impact from telecommunications equipment on medical implants, that there is no such impact. The wording of the guidelines, albeit in the context of medical procedures, clearly refers to such a potential impact, and indeed goes further and refers to a potential impact on electrical equipment more generally.

40. In my judgment that specific issue was an important one raised by the objections which the authority should have grappled with. As is clear from the passage in *Tesco* cited above, the authority must have regard to all material considerations, and it is a matter for the court as to what is a material consideration. Mr Kohli submits that it was not one of the principle issues to be dealt with as there was only one specific objection from someone who had a pacemaker. Although there were objections from residents in apartments closer to the proposed site of the equipment, some 17 meters distant, such objections that were before the authority at the time of the challenged decision from these residents related to issues such as anxiety rather than potential impact on medical implants. However, in my judgment that issue is an important one and was clearly raised in respect of residents in Lefroy Court.

41. Mr Thomas in these proceedings gave examples of where applicants for a prior approval decision such as the one under challenge, including CK, have submitted plans showing exclusion zones in respect of other telecommunications equipment. It is not clear how similar or otherwise that equipment is to that proposed in the present case. For example one refers to a multiple operator site and a "fixit" required because of "ICNIRP failings." The plans show various zones vertically and horizontally and

differing zones of up to about 50 meter in diameter for workers and occupiers. In any event, such zones are not required in the guidelines, the NPPF or the GPDO, and in my judgment this omission takes Mr Thomas's case no further.

42. The final particular in the summary grounds was in relation to a failure to consider the cumulative effect of EMF's. There is a reference in the officer's report to an existing nearby mast but the officer accepted the applicant's explanation that that was not suitable for 5G. It is not clear what cumulation is referred to and this aspect was not pursued at the hearing.

43. However, the failure on the part of the authority to grapple with potential impacts on medical implants was, in my judgment, an error and this ground succeeds. The question of what relief, if any, is appropriate is another question and one to which I now turn.

Relief

44. Mr Kohli next submits that even if the authority was in error in not grappling with the potential impact of the development on such implants as pacemakers, it is highly likely that the outcome for Mr Thomas would not have been substantially different had the specific issue of potential harm on medical implants been considered. If it appears that that is the case, then pursuant to section 31(2A)(a) of the 1981 Act, I must refuse to grant relief. Is it highly likely, for example, that the siting of the proposed development would not have been moved further away from Lefroy Court if this had been taken into account? The threshold remains a high one: *R (on the application of Public and Commercial Services Union) v Minister for the Cabinet Office* [2017] EWHC 1787 (Admin).

45. I have come to the conclusion that that threshold has been reached in the present case. The issue of medical implants was not raised in respect of the residences closest to the proposed equipment. If it had been so raised, then it may well been a factor in a decision to re-site the equipment. However, it was raised in respect of Lefroy Court, which is significantly further away. There was no medical evidence to show what a potential impact on a pacemaker at such a distance may be. The objection was put on the basis that *strong* (my emphasis) EMFs could interfere with medical implants. However, the supplementary information submitted with the application showed that exposure levels would amount to a small fraction of the limits and that overall exposure was expected to remain low relative to the guidelines. It also showed that the proposed equipment was to fill a gap in coverage at this particular locality. There was thus no evidence that the proposed equipment would generate strong EMFs. Having regard to the evidence in this particular case relating to the low level of EMFs from the proposed equipment, its local coverage, and its distance from Lefroy Court, it is highly likely that the outcome would have been the same had this issue been properly addressed. In my judgment no exceptional pubic interest is shown within the meaning of section 31 (2B) of the 1981 Act which would permit me to disregard the requirements in subsection (2A0(a).

46. It is regrettable that the authority did not deal with the issue in this way. Had it done so then the concerns in respect of the effect on medical implants might well have been allayed, as least to some extent. I understand that because the issue was not dealt with by the authority, as in my judgment it should have been, such concerns may have

remained real. However, now that the issue has been fully argued, I hope that this decision will go some way to addressing the concerns in this particular case. I would also hope that given my findings, the authority and any developer of the proposed equipment will do what reasonably can be done to engage with objectors voicing such health concerns with a view to further addressing them.

47. Accordingly, notwithstanding Mr Thomas's clear, full and careful submissions, I must refuse relief.