Council Address Your address

Date

Dear xxx, (Head of Planning),

Please can xxx local planning authority take immediate action to enact its public health/environmental obligations under the European Electronic Communications Code (EECC).

**A legal challenge** has been submitted to the Government Legal Services Department (GLD) on 12th September which seeks to remedy the government's ambiguity regarding RFR regulation, as the government has not resourced LPA’s to perform their role as competent authorities.

Public health/environmental risk reconciliation should be occurring according to the procedural standard and public health imperative required to properly enact the EECC (see para 1.7.1, set within section 1 of the attached submission).

It has been observed that local planning authorities are inconsistently applying EECC public health/environmental protection obligations, and **Appendix 2** of the submission reveals the gaps in regulation currently occurring even if ICNIRP certification is accepted as satisfactorily protective.

There is also inconsistency concerning the siting of masts outside schools.

Matt Warman, the former Under Secretary of State at the Department of Digital, Culture, Media, and Sport has recently intervened by contacting ‘Three’ Chief Executive after a 5G mast was approved outside a school in his constituency, in Wrangle. ‘Three’ consequently committed to not go ahead with installing the mast.

 <https://www.facebook.com/WarmanforBostonSkegness/posts/pfbid0rHTuMCkBzy81S5oFZBGeAJ23snferKaqAdeZxeDP7T4zaaGMspQTg1FYBhE9ujVql>.

The challenge, as attached, seeks to establish a robust regulatory framework in accordance with the EECC, rendering such political interventions unnecessary. Matt Warman's actions highlight the necessity for this to be established, as not all constituents have MPs who can pull rank in order to stop masts being placed outside schools.

The hypocrisy of the planning procedure requiring consultation with nearby schools whilst consultation with residents of adjacent housing occupied by children and preschool children, who are equally if not more vulnerable whilst sleeping at night, not being required, was recognised and correctly appraised by Mendip Planning Board.

Despite Officers assuming that public health obligations under the EECC could be achieved by solely applying **NPPF policy 117/118**, Mendip Planning Board decided to refuse an application (21/1952/FUL) for a 5G mast following the correct procedure of considering all available evidence alongside ICNIRP certification and supporting documentation from the Telecoms applicant about the benefits and risks.

**Your authority** is required similarly to **risk reconcile including all evidence** of risk after screening to prevent avoidable harm, injury and nuisance (paragraph 1.8.9 set within the context of 1.8 within the attached submission, referring to appendix 2 sections A2.1 to A2.10)

The DLUHC and the DoH have been asked to respond to the challenge by the 10th October bringing into effect immediately the following remedies:

*'required within the scope of the DLUHC and the DoH under Schedule 8 paragraph 39(5) EUWA 2018 powers'*,

being Remedies 5 and 6 (paragraph 5.2.9 of the challenge), Remedy 14 (paragraph 5.4.2 of the challenge), and Remedies 15 and 16 (paragraph 5.5.5 of the challenge).

**Remedy 5 being that:**

*'The DLUHC/DoH will have to determine whether Matt Warman's,*

*'where they are considered competent authorities',*

is where LPA/LA public health protection obligations are crucial to the efficient spectrum management in accordance with EECC Article 45.2(h). And if so, the required public health protection provision operated by LPAs/LAs must be brought into effect immediately.

**Remedy 6 being that:**

*'the immediate enactment of LPA/LA EECC competent authority status,*

*'where' town planning functions need to be performed under EECC spectrum management, and consequently those functions generate specific EECC related material planning considerations that LPAs/LAs are obliged to take properly into account alongside other material planning considerations that UK planning law requires LPAs/LAs to consider when an application for a new mast/antennas or contractual arrangements for small cell siting arise (Remedy 5, above)',*

*can be accomplished by the DLUHC accepting that the precedent set by the ruling in the* ***Wells*** *case, that,*

*'it is for the competent authorities of a Member State (the UK now being an EECC participating nation state) to take, within the sphere of their competence, all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment',*

*can be enacted by LPAs/LAs under the Town and Country Planning (Environmental Impact Assessment) 2017 Regulations (England) and its equivalent devolved powers in Scotland, Wales and Northern Ireland'.*

**Remedy 14 being that:**

***'****recognition that no progress is possible on the efficient management of the spectrum until LPA/LA EECC competent authority status is confirmed, and that status should be affirmed definitively in a Departmental response to this Schedule 8, paragraph 39(5) EUWA 2018 submission'.*

**Remedy 15 requires the DLUHC's**

*'acceptance that the case R (on the application of Delena Wells) v Secretary of State for Transport, Local Government and the Regions (2004) is a comparable 'of a kind' case to the case made in this Schedule 8, paragraph 35(9) submission, where the relevant principles of European law that led to the decision on the flawed transposition of the relevant directive in the* ***Wells*** *case, that include the 'principle of legal certainty' (used as a defence to justify inaction by the UK government in the* ***Wells*** *case), concerned direct citizen rights that were under contention, which parallel the direct rights under contention in the case presented in this submission,*

**And, Remedy 16 requires the DLUHC's**

***'****acceptance that the deficiency is constitutionally significant, irrespective of the changing status of EU Retained law over the past four years'.*

Irrespective of the current ambiguities and whilst the government process the submission, your authority should recognise that there are only **three possible** **outcomes** re: the siting of telecommunications equipment (outlined in paragraph 1.7.10 of the submission, set in the context of section 1 of the attached submission):

*'LPA/LA appraisal of established adverse health effects of mast/antennas siting and small cell deployment in accordance with the European Council Recommendation 1999/519/EC (paragraph 4, see paragraph 1.5.9, above), when applied to the incompatible and unacceptable use material planning consideration 'in situ', may result in three outcomes:*

*i) incompatible and unacceptable use may not be evidenced through established adverse health effects,*

*ii) incompatible and unacceptable use may be validated by established adverse health effects,*

*or,*

*iii) compatibility and acceptability may not be evidenced sufficiently concerning established adverse health effects',*

**Please will you confirm** back to me that your authority will register its interest in the outcome of the challenge by emailing **Claire Jones** Claire.jones@governmentlegal.gov.uk representing solicitor for the Department of Levelling Up, Housing and Communities (DLUHC), quoting case number Z2309835.

Best Regards,

**xxx**

**The full set of remedies sought in Section 5 of the submission expressed in the positive are summarised below.**

1 Alter the NPPF to affirm the competent authority status of Local Authorities

2 Resource LPAs/LAs to perform as regulators of RFR exposure

3 Acknowledge the primacy of the public exposure procedural standard within the EECC

4 Alter all policies and practices to reflect that material planning considerations arise from EECC public health/environmental provisions

5 Determination of whether the EECC public health provisions is ‘where’ Matt Warman considered LPAs/LAs operated as EECC competent authorities

6 Introduce Telecom specific Environmental Impact Assessments

7 Acknowledge that LPAs/LAs EECC competent authority status is made direct by EECC Recital 22

8 Acknowledge that the EECC is the only legal framework for ‘*in situ’* decision making re RFR public and environmental exposure

9 Acknowledge that LPAs/LAs multi-factorial decision-making demand cognisant, attuned, and responsive decision-making to balance policy, procedural requirements and compliance with legal obligations

10 Clarify that public/citizen direct rights arise when LPA/LA make decisions on mast/antennas siting and small cell deployment

11 Set objectives and criteria (EECC Recitals 21 and 121) for the protection of public health/environmental effects

12 Clarify significance of answers regarding the LPA/LA competent authority from Matt Warman to Wera Hobhouse (DDCMS) and lack of response by the DLUHC to Solihull MBC

13 Confirm the “weighting” of evidence as part of the EECC procedural standard, presented by DLA PIPER in August 2019

14 Confirm that the “efficient management of the spectrum” requires LPA/LA EECC competent authority status to be applied effectively

15 Confirm the Wells v Secretary of State for Transport, Local Government and the Regions (2004) is a comparable *'of a kind*' case to the case made in this Schedule 8, paragraph 35(9) submission

16 Confirm that the case is significant regarding the incomplete transposition of the EECC

17 Protect citizen rights via a complete transposition of EECC in line with transposition guidance

18 Resource LPAs/LAs to fulfil the EECC ‘public health imperative’ and distinguish between 'inevitable nuisance' and 'avoidable nuisance'

19 Provide clarity on the government's on-going responsibilities when it delegates public health/environmental regulatory functions to LPAs/LAs

20 Require LPAs/LAs to perform Telecommunication specific EIAs to fulfil EECC Recital 106 re mast siting

21 Require LPAs/LAs to perform Telecommunication specific EIAs to fulfil EECC Recital 105 re: small cell deployment