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1) JUNE 13th EMAIL TO COUNCILLOR ROPER WHO HAS SIGNED OFF THE ONEWORD SMART CITY TRIALS PROJECT

Dear Councillor Roper,

We are presenting this notice to you (attached) as the Bath&NES Cabinet Member responsible for the progression of this project, requesting your intervention to ensure that the on-going 'statutory considerations' phase of this project is brought into effect, and to completion with the inclusion of the following obligations:

i) the Council's enactment of public consultation concerning the public health/environmental consequences of the project made subject to objective, transparent, non-discriminatory and proportionate criteria,

ii) the Council's acceptance that it is a European Electronic Communications Code (EECC) competent authority for the purposes of its management of the ONE WORLD 5G Mobile Network Pilot project,

iii) the Department of Levelling Up, Housing and Communities, and the Department of Science, Innovation and Technology being asked by the Council to confirm Bath&NES Council's status as an EECC competent authority formally, and conclusively,

and the completion of,

iv) public consultations on public health/environmental considerations relating to the ONE WORLD 5G Mobile Network Pilot project should be conducted by the Bath&NES Planning Policy Team,

before any final decision is made by the Council on the proposed installation of 5G apparatus on Council assets.

These expectations are set within the context of Bath&NES Council decisions made upto, and including your single member cabinet decision of the 5th February 2024 (paragraph 1.9 of the notice with supporting evidence in Section 4).
Section 3 of the Notice presents the obligations of Local Authorities as EECC competent authorities, and validation of that status (particularly concerning planning civil works (mast siting), in response to two written questions raised by Wera Hobhouse MP, answered by Matt Warman, Under Secretary of State for the Department of Digital, Culture, Media and Sport in June 2021.
We are focussing here on Bath&NES Council's EECC competent authority status and obligations concerning civil works (ie: small cell deployment) as relevant to the ONE World 5G Mobile Network Pilot Project, given the fact that LA/LPA competent authority status for both types of civil works are complementary and interconnected.

We will copy this request to Mr Godfrey, as the Council's Chief Executive, in the expectation of receiving confirmation early next week that action will be taken by you, or by him to confirm that the notice will be addressed in accordance with due processes.

It appears appropriate to seek that assurance respectfully before informing the citizens of Bath&NES that we aspire to support, and possibly to represent, of the action that we are taking, and our success in gaining appropriate and receptive engagement with the Council through your and Mr Godfrey's good offices.

Thank you in anticipation of that confirmation.
Yours sincerely,
Neil McDougall and Karen Churchill

2) JUNE 13th EMAIL TO CEO WILL GODFREY

Dear Mr Godfrey,

We have issued this email request with the attached notice to Councillor Roper as the Bath&NES Cabinet Member responsible for the progression of this project, anticipating an early response as explained in the concluding paragraphs of our email.

Could you please confer with Councillor Roper and respond as soon as possible confirming the process that Bath&NES Council will now apply to accommodate the four obligations we list below, as being accepted as formal parts of the 'statutory considerations' phase of the project.

We assume that Bath&NES will accept that the four expectations qualify as 'statutory considerations', and that there should be a relatively straightforward process that can be used to establish the value and significance of each expectation in the public interest.

Thank you in anticipation of the confirmation that you can hopefully provide.

Yours sincerely,
Neil McDougall and Karen Churchill

3) LEGAL NOTICE SUBMITTED WITH JUNE 13TH EMAILS

1. The ONE WORLD 5G Mobile Network Pilot project, Bath&NES Council commitments, and its position on public health/environmental consequences of the proposed development as stated.
1.1 The Executive Forward Plan (Reference E3501) recommended Councillor Paul Roper's approval, on or after 13 January 2024 for,
'the installation of 5G apparatus on Council assets including street furniture such as CCTV and lighting columns (paragraph 2.3)',
through a Single Member Cabinet decision of the 5 February.
see: https://democracy.bathnes.gov.uk/mgIssueHistoryHome.aspx?IId=38190&PlanId=929&RPID=87795041 for project details as referenced

1.2 The 'Project Issue Details' document reported that,

i) 'the Business and Skills Team will ensure that local partners, business groups and residents are consulted once the grant offer letter is signed',
and that,
ii) 'a planning application will be submitted for the installation of the new mobile network, with associated consultation for local residents'.

1.3 Councillor Roper's 5 February approval, presumably, was founded upon the E3501 report that prior consideration had been given to 'Health & Safety' and 'other legal considerations', and that additional 'consultation and engagement' will be undertaken through the 'statutory considerations' phase of the project being completed as described in the 'Executive Forward Plan' to include:
i) 'a primary application … (being) … required for the installation of the 5G network' (paragraph 4.1),
ii) risk management as a necessary 'statutory consideration' which obviously requires completion well beyond the Business and Skills Team being,
'aware of concerns among the groups as to the safety of 5G and other mobile technologies' (paragraph 6.2),
and their expectation that
iii) 'vocal opposition',
will arise but,
'by way of mitigation ONE WORD offers an excellent opportunity for the Council to promote the benefits of new applications of mobile technologies' (paragraph 6.3).

1.4 Paragraph 6.2 of the report implies that safety 'concerns' are,
'a key project risk associated with communications and perception',
rather than actual or potentially avoidable risks of harm, injury and nuisance which cannot be mitigated against through better communication, nor changes in perception.

1.5 Citizens in the 'groups' referred to, alongside other citizens, are clearly entitled on public health and environmental grounds to participate in Bath&NES decisions on the sources and the terms upon which emissions of involuntary public exposure to radio-frequency radiation (RFR) are released into the environment.

1.6 The report confirmed that,
'a planning application will be submitted for the installation of the new mobile network, with associated consultation for local residents' (paragraph 10.3).
1.7 How this connects with the paragraph 4.1 requirement relating to the 'installation of the network', is unclear.

1.8 As explained below, the 'Issues considered' listed in Councillor Roper's 5 February decision notice as including Health & Safety, and other legal considerations, were not resolved satisfactorily, if at all, as demonstrated by the subsequent issue of the application for a 'Lawful Development Certificate' (LDC) on 15 May.

1.9 The on-going 'statutory considerations' phase of the project should be brought into effect and completion with the inclusion of the following obligations:

i) the Council's enactment of public consultation concerning the public health /environmental consequences of the project made subject to objective, transparent, non-discriminatory and proportionate criteria,
ii) its acceptance that it is an European Electronic Communications Code (EECC) competent authority for the purposes of its management of the ONE WORLD 5G Mobile Network Pilot project,
iii) the Department of Levelling Up, Housing and Communities, and the Department of Science, Innovation and Technology should be asked to confirm Bath&NES status as an EECC competent authority formally, and conclusively, and,
iv) public consultations on public health/environmental considerations relating to the ONE WORLD 5G Mobile Network Pilot project should be conducted by the Bath&NES Planning Policy Team (see: supporting evidence in Section 4, below),
before any final decision is made by the Council on the proposed installation of 5G apparatus on Council assets.

1.10 Where applicable in respect to the project, the Council should apply Equality Act 2010 duties as required to promote disability equality, and Aarhus Convention obligations as required concerning public access to information, participation in decision making and by bring access to mechanisms that are designed to secure environmental justice.
see https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf

1.11 The Aarhus 'Implementation Guide' identifies radiation explicitly as one of the factors relevant to questions of human safety (see page 56):
'for example, human health may include a wide range of diseases and health conditions that are directly or indirectly attributable to or affected by changes in environmental conditions. Human safety may include safety from harmful substances, such as chemicals, factors, such as radiation, or other natural or man-made conditions that affect human safety through manipulation of environmental elements'.

2. The application for a Legal Development Certificate (LDC) is not a primary application, nor does it trigger required consultations re: its legality, nor imperative public health/protection requirements, nor environmental protection requirements.

2.1 The installation of radio cells, antennas and associated infrastructure in connection with rollout of 5G mobile network (LDC application ref 24/10855/CLPU/Planning Portal reference PP-13059298, issued on 15 May), names the Business & Skills Team of Bath&NES Council as a 'company', and identifies the Principal Enterprise Officer as an agent acting on behalf of the applicant. With a further agent, being named as acting for Context Planning Ltd which issued a 'Statement of support'.

2.2 Under Section 3 paragraph 3.1 of that Statement, the proposal is described as qualifying under Part 12(A) of the GDPO (2015) being,

(a) 'equipment on land belonging to or maintained by them required for the purposes of any function exercised by them (the LA)',
and,
(b) 'similar structures or works required in conjunction with the operation of any public service administered by them'.
2.3 Paragraph 3.2 of the Statement reads,
'Section 33(1) of the Local Government Act 2003 outlines those bodies that are 'local authorities' for the purposes of the permitted development rights, which would include Bath&NES Council. The works themselves are likely to constitute 'development' for the purposes of the T&CPA 1990. This notwithstanding, were the Council to conclude that the operations were 'de minimis' (i.e. the operations to be so minor or inconsequential that they fall outside of the scope of the planning system) then the proposed operations would be lawful'.

2.4 The 'operations' need to be defined in terms of the service functions that the Council is required to perform. Particularly, in relation to how the public health/environmental impacts of the proposed development are controlled. The required control may operate through the planning system, through other regulatory obligations of the Council, or through overlapping systems of regulation.

2.5 Paragraphs 3.3, 3.4, and 3.5 of that Statement concern the terms upon which,
'radios and antennas would be defined as 'works or equipment' for the purposes of the permitted development right' (paragraph 3.3),
concluding that:

i) 'the GPDO Part 12 permitted development rights unquestionably apply to Bath&NES Council as a 'local authority' (also paragraph 3.3),
and,
ii) 'all of the proposed sites are locations which are owned 'belong' to the Council or are maintained by the Council', … (consequently) … 'all the physical works in connection with the project can, benefit from the exercise … (of those rights)' (paragraph 3.4),
and that the terms of permitted development would include,
iii) 'a requirement that for the buildings, works or equipment they; (a) need to be required for the purposes of any function exercised by the local authority; or in respect of (b) to be required in connection with the operation of any public service administered by them' (paragraph 3.5).

2.6 Paragraphs 3.6, 3.7 and 3.8 of that Statement refer to UK Government policies promoted through the Department of Science, Innovation and Technology's 'UK Wireless Infrastructure Strategy' (2023), and at paragraph 3.9 by the Local Government Association.
2.7 The 'UK Wireless Infrastructure Strategy' under the Section on 'Planning Reform' reports on the intent to make, 'clarificatory amendments to Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 in relation to the definition of small cell systems and the application of constraints on the alteration or replacement of a mast. The current provisions in legislation that require operators to minimise the impact of any

development on the surrounding local area as much as possible, particularly in more sensitive locations, will still apply in these cases … (alongside action) … where planning issues continue to act as a barrier to network deployment'.

2.8 Nonetheless, these policy measures and legislatory amendment to the GDPO fail to address the unresolved controversy concerning the obligations of LAs/LPAs as competent authorities under the 'European Electronic Communications Code' (the EECC Directive 2018/61/EC), and the interrelated Directive 'On measures to reduce the cost of deploying high-speed electronic communications networks' (Directive 2014/61/EC), which updated long-standing regulatory obligations that LAs/LPAs are required to apply when granting or refusing civil works authorisations such as this ONE WORLD 5G Mobile Network Pilot telecommunication system.

2.9 These functions may override LA permitted development rights under the GDPO.

2.10 'Planning issues' relating to civil works (small cell deployment) and planned civil works (the siting of masts) have public health and environmental consequences which cannot be disregarded, nor can they be assumed to be a needless 'barrier' nor a 'project risk associated with communications and perception'.

2.11 Rights accrued to Telecom companies, and therefore to citizens in relation to the LA/LPA civil works authorisations, are extant as a consequence of the EECC being agreed by the UK on the 11th December 2018. The agreement brought updated EECC provisions/measures into direct effect, which previously been made subject to superseded Directives. Thus, the implementation of the directly effective provisions/measures was not dependant on the 21 December 2020 EECC transposition deadline.

2.12 EECC Recital 5 reads,
'this Directive creates a legal framework to ensure freedom to provide electronic communications networks and services, subject only to the conditions laid down in this Directive … (quoting constitutional pre-Brexit limitations) … in particular measures regarding public policy, public security and public health … (and further pre-Brexit constitutional limitations)',
see: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972
however, the accrued public policy and the public health imperative requirements designed into the procedural provisions of the Directive, remain intact and unchanged post-Brexit as assimilated law.

3. Relevant EU Directives under contention re: legality, and as interpreted by Matt Warman, Under Secretary of State, Department of Digital, Culture, Media and Sport, in 2021.
3.1 EECC Recital 105 applied to small cell deployment by LAs as competent authorities, continues to apply as a condition relating to the operation of telecommunication undertakings providing services connected to the proposed ONE WORLD 5G Mobile Network.
3.2 Relevant parts of Recital 105 read:
'… improving facility sharing can lower the environmental cost of deploying electronic communications infrastructure and serve public health, public security and meet town and country planning objectives. Competent authorities should be empowered to require that the undertakings which have benefitted from rights to install facilities on, over or under public or private property share such facilities or property, including physical co-location, after an appropriate period of public consultation, during which all interested parties should be given the opportunity to state their views, in the specific areas where such general interest reasons impose such sharing … competent authorities should in particular be able to impose the sharing of network elements and associated facilities, such as ducts, conduits, masts, manholes, cabinets, antennae, towers and other supporting constructions, buildings or entries into buildings, and a better coordination of civil works on environmental or other public policy grounds … it should be for national regulatory authorities to define rules for apportioning the costs of the facility or property sharing, to ensure that there is an appropriate reward of risk for the undertakings concerned. In light of the obligations imposed by Directive 2014/61/EU, the competent authorities, in particular, local authorities, should also establish appropriate coordination procedures, in cooperation with national regulatory authorities, with respect to public works and other appropriate public facilities or property which should be able to include procedures that ensure that interested parties have information concerning appropriate public facilities or property and ongoing and planned public works, that they are notified in a timely manner of such works, and that sharing is facilitated to the maximum extent possible'.

3.3 EECC Article 44 on the 'Co-location and sharing of network elements and associated facilities for providers of electronic communications networks', defines the legal interrelationships between the LA as a competent authority participating in the development and the authorisation process that it must lawfully manage, in respect to the balance of rights between the public and telecommunication service 'undertakers' when civic works (small cell deployments) are intended, or are required to be shared.

3.4 The most relevant parts of the Article reads:
'1. Where an operator has exercised the right under national law to install facilities on, over or under public or private property, or has taken advantage of a procedure for the expropriation or use of property, competent authorities may impose co-location and sharing of the network elements and associated facilities installed on that basis, in order to protect the environment, public health, public security or to meet town-and country-planning objectives.
Co-location or sharing of network elements and facilities installed and sharing of property may be imposed only after an appropriate period of public consultation, during which all interested parties shall be given an opportunity to express their views and only in the specific areas where such sharing is considered to be necessary with a view to pursuing the objectives provided in the first subparagraph. Competent authorities may impose the sharing of such facilities or property, including land, buildings, entries to buildings, building wiring, masts, antennae, towers and other supporting constructions, ducts, conduits, manholes, cabinets or measures facilitating the coordination of public works …
2. Measures taken by a competent authority in accordance with this Article shall be objective, transparent, non-discriminatory, and proportionate. Where relevant, these measures shall be carried out in coordination with the national regulatory authorities'.

3.5 The foundations for the EECC Recital 105 authorisations are derived from the 2009 Directive 2009/140/EC, which amongst other binding legislatory acts replaced EU Directive 2002/20/EC on the 'authorisation of electronic communications networks and services'.
https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0037:0069:EN:PDF,

3.6 Recital 43 of the 2009 Directive read,
'the competent authorities, particularly local authorities, should also establish appropriate coordination procedures, in cooperation with national regulatory authorities, with respect to public works (ie: small cell deployment) and other appropriate public facilities or property which may include procedures that ensure that interested parties have information concerning appropriate public facilities or property and on-going and planned public works (ie: masts), that they are notified in a timely manner of such works, and that sharing is facilitated to the maximum extent possible'.

3.7 The Recital was enacted through Article 12 'Co-location and sharing of network elements and associated facilities for providers of electronic communications networks', by paragraph 5 which read,
'measures taken by a national regulatory authority in accordance with this Article shall be objective, transparent, non-discriminatory, and proportionate. Where relevant, these measures shall be carried out in coordination with local authorities'.

3.8 Directive 2014/61/EC 'On measures to reduce the cost of deploying high-speed electronic communications networks'
https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0061
still applies alongside the EECC, with Recital 8 reading that,
'a major part of those … (presumed excessive) … costs can be attributed to inefficiencies in the roll-out process related to the use of existing passive infrastructure (such as ducts, conduits, manholes, cabinets, poles, masts, antenna installations, towers and other supporting constructions), bottlenecks related to coordination of civil works, burdensome administrative permit granting procedures, and bottlenecks concerning in-building deployment of networks, which lead to high financial barriers, in particular in rural areas'.
3.9 Under Recital 16, the Directive provisions are required to be applied,
'without prejudice to any specific safeguard needed to ensure safety and public health, the security and integrity of the networks'.

3.10 Given that the Directive came into force ten years ago, it is not acceptable for uncertainty on how its provisions should be enacted through decisions made on 'objective, transparent, non-discriminatory and proportionate criteria', persists into the present day.

3.11 Particularly, with respect to requirements under Recital 26 concerning,
'a number of different permits 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 number of permits required for the deployment of different types of electronic communications networks and the local character of the deployment may entail the application of a variety of procedures and conditions. While preserving the right of each competent authority to be involved and maintain its

decision making prerogatives in accordance with the subsidiarity principle, all relevant information on the procedures and general conditions applicable to civil works should be available … ',
and under Recital 28 concerning,
'in order to ensure that such permits granting procedures are completed within reasonable deadlines, Member States could consider establishing several safeguards, such as tacit approval, or take measures to simplify granting procedures by, inter alia, reducing the number of permits needed to deploy electronic communications networks or by exempting certain categories of small or standardised civil works from permit granting. Authorities, at national, regional or local level, should justify any refusal to grant such permits within their competence, on the basis of objective, transparent, non-discriminatory and proportionate criteria and conditions. That should be without prejudice to any measure adopted by the Member States exempting certain elements of electronic communications networks, whether passive or active, from permit granting (28)'.

3.12 Under Recital 34,
'in line with the principle of subsidiarity … (the Directive) ... should be without prejudice to the possibility of Member States to allocate the regulatory tasks provided for to the authorities best suited to fulfil them in accordance with the domestic constitutional system of attribution of competences and powers and with the requirements set forth … (in the) … Directive'.

3.13 Under Article 2(10),
‘permit’ means an explicit or implicit decision of a competent authority following any procedure under which an undertaking is required to take steps in order to legally carry out building or civil engineering works'.

3.14 Under Article 7.3 the UK was obliged to,
'take the necessary measures, in order to ensure that the competent authorities grant or refuse permits within four months from the date of the receipt of a complete permit request, without prejudice to other specific deadlines or obligations laid down for the proper conduct of the procedure which are applicable to the permit granting procedure in accordance with national or Union law or of appeal proceedings … (it) … may provide that, exceptionally, in duly justified cases, that deadline may be extended. Any extension shall be the shortest possible in order to grant or refuse the permit. Any refusal shall be duly justified on the basis of objective, transparent, non-discriminatory and proportionate criteria'.

3.15 In a Parliamentary written question Wera Hobhouse MP for Bath asked,
'the Secretary of State for Digital, Culture, Media and Sport, with reference to the Answer of 17 November 2020 to Question 114987, whether local planning authorities that were made competent authorities under EU Directive 2014/61/EC (Directive 2014) retain that status under EU Directive 2018/1972/EC (the EECC)'.
https://www.theyworkforyou.com/wrans/?id=2021-06-14.15347.h

3.16 Matt Warman, then DDCMS Parliamentary Under Secretary of State, 22 June 2021 response read,
'the European Electronic Communications Code Directive updated the EU telecommunications regulatory framework, and was transposed into UK law via the Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020.
Whilst the Directive gave member states flexibility to assign certain functions to competent authorities, under prior EU and domestic law, Ofcom is retained as the designated telecoms national regulatory authority in the UK.
Local planning authorities were not made competent authorities through EU Directive 2014/61/EC, as the government was already content that the functions in question relating to planned civil works were already in place. The transposition of the EECC would have no effect on the status of local planning authorities where they are considered competent authorities under EU Directive 2014/61/EC'.

3.17 This originating LA/LPA competent authority status is confirmed through tracing of the life span of the Directive 2009/140/EC which was,

'deleted by Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast)',

see: https://www.legislation.gov.uk/eudr/2009/140/introduction

3.18 EECC Recital 22,
'the tasks assigned to competent authorities by this Directive contribute to the fulfilment of broader policies in the areas of culture, employment, the environment, social cohesion and town and country planning',

demonstrates the direct assignment of LA/LPA competent authority status for the enactment of Recitals 105 and 106 concerning the granting or refusal of general authorisations for civil works (small cell deployment) and planned civil works (mast siting), through administrative procedures initially, followed if and as necessary through legislation, regulations or through other provisions made during the period 11 December 2018 upto 21 December 2020 or subsequently, should the UK Government so choose.

3.19 Therefore, Matt Warman's,
'the transposition of the EECC would have no effect on the status of local planning authorities where they are considered competent authorities under EU Directive 2014/61/EC',
as demonstrated at 3.16 above, is accurate as a consequence of LAs/LPAs competent authority status being derived directly from Directive 2009/140/EC, and the systems of general authorisation procedures it imposed for civil works and planned civil works which remain in effect through assimulated law post-Brexit.

3.20 The continued effect of Directive 2009/140/EC is achieved through 'infraction' as described in EECC Recital 325, which reads,
'the obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the repealed Directives. The obligation to transpose the provisions which are unchanged arises under the repealed Directives'.

4. Consequent expectations placed on Bath&NES Council as an European Electronic Communications Code (EECC) competent authority.

4.1 On receipt of this urgent public interest notice concerning its deficient management of the ONE WORLD 5G Mobile Network Pilot project, Bath&NES Council is expected to bring into the effect the following managerial obligations through the on-going 'statutory considerations' phase of the project:
i) its enactment of public consultation concerning the public health/environmental consequences of the project made subject to objective, transparent, non-discriminatory and proportionate criteria,
ii) its acceptance that it is an EECC competent authority for the purposes of its management of the ONE WORLD 5G Mobile Network Pilot project,
iii) the Department of Levelling Up, Housing and Communities, and the Department of Science, Innovation and Technology, should be asked to confirm Bath&NES Council's status as an EECC competent authority formally and conclusively,
and,
iv) public consultations on public health/environmental considerations relating to the ONE WORLD 5G Mobile Network Pilot project should be conducted by the Bath&NES Planning Policy Team working in conjunction the Council's Environmental Services, Sustainability, Health and Wellbeing Teams.

4.2 These four elements should be competed within the 'statutory considerations' phase of the project before any final decision is made by the Council on the proposed installation of 5G apparatus on Council assets.

4.3 The Council's 'Local Plan Sustainability Appraisal Scoping Report' (March 2023), identifies its use of a Health Impact Assessment framework at paragraphs 2.29 to 2.31 (page 16) which is described as a,
'practical tool which is used to access the potential impacts of a policy, programme or project on a population'.

4.4 A health impact assessment tool for this project should be developed to apply in relation to evidence generated from public consultations, and from other sources, organised in accordance with criteria that satisfy the requirements of element i) as described in paragraph 4.1, above.

4.5 This Public Health England 'Health Impact Assessment in Spacial Planning' Guidance (October 2020) might also prove helpful:
https://assets.publishing.service.gov.uk/media/5f93024ad3bf7f35f184eb24/HIA_in_Planning_Guide_Sept2020.pdf

4.6 Given that the ONE WORLD 5G Mobile Network Pilot project is a part of a Department of Science, Innovation and Technology funded programme, it is justifiable for Bath&NES Council to operate a public consultation process that adheres closely to the national principles, as follows :
consultation procedures should be clear and concise;
should have a purpose;
should be informative;
are only part of the process of engagement;

should last for a proportionate amount of time;
should be targeted;
should take account of the groups being consulted;
should be agreed before publication
should facilitate scrutiny
should have government responses published in a timely fashion
should not generally be launched during local or national election periods
see:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/ 69 1383/Consultation_Principles__1_.pdf

4) JUNE 19TH REPLY FROM COUNCILLOR ROPER CONFIRMING THE NOTICE HAS BEEN FORWARDED TO LEGAL DEPT

Dear Mr McDougall,

Thank you for your email which has been passed to our monitoring officer and legal team.

I am unable to comment further at this stage.

Yours sincerely,

Paul Roper.

5) JUNE 27h EMAIL TO WILL GODFREY and COUNCILLOR ROPER REQUESTING A COMMITMENT TO REPLY TO SPECIFIC REQUESTS.

Dear Mr Godfrey,

Could you please provide a substantive response to the email (as below), and the notice issued to Councillor Roper (as attached) copied to you on the 13th June 2024 justifying our expectation that the on-going 'statutory considerations phase of this project is brought into effect, and to completion with the inclusion of the following obligations:

i) the Council's enactment of public consultation concerning the public health/environmental consequences of the project made subject to objective, transparent, non-discriminatory and proportionate criteria,

ii) the Council's acceptance that it is a European Electronic Communications Code (EECC) competent authority for the purposes of its management of the ONE WORLD 5G Mobile Network Pilot project,

iii) the Department of Levelling Up, Housing and Communities, and the Department of Science, Innovation and Technology being asked by the Council to confirm Bath&NES Council's status as an EECC competent authority formally, and conclusively,

and the completion of,

iv) public consultations on public health/environmental considerations relating to the ONE WORLD 5G Mobile Network Pilot project should be conducted by the Bath&NES Planning Policy Team,

before any final decision is made by the Council on the proposed installation of 5G apparatus on Council assets.

Could you please address each expectation separately, giving clarity on Bath&NES Council's commitment to bring into effect each of them in accordance with due processes and through effective action being taken by the Council in the public interest.

We have become aware of the significance of EC Regulation 2020/1070 'on specifying the characteristics of small-cell wireless access points pursuant to Article 57 paragraph 2 of Directive (EU) 2018/1972 (the European Electronic Communications Code)', in respect to public health protection concerning this type of development, published here:

https://www.legislation.gov.uk/eur/2020/1070/introduction/data.xht?view=snippet&wrap=true

and, raising this now might be helpful.
Further, concerning expectation iv) we are able to present our perspectives and those of already interested Bath residents on the types of issues that warrant inclusion and appraisal in pre-consultation public information that Bath&NES should issue prior to opening consultations on the 5G Mobile Network Pilot project which we could provide to involved officers in relation to our expectation iv).
We would be grateful for an early response to this request.

Thank you
Neil McDougall and Karen Churchill

6) JULY 30th EMAIL FROM WILL GODFREY

Dear Neil and Karen,
Thank you for your email correspondence from June 2024 regarding the ONE WORD 5G Mobile Network Pilot Project ("the Project"). Please read this response alongside that already given by me, on 12 July 2024.
Background
The European Electronic Communications Code ("EECC") is an EU Directive (Directive 2018/1972) that consolidates and reforms the previous four main telecoms Directives (Framework, Authorisation, Access and Universal Service), and incorporates them in a single document. The UK implemented the new EECC requirements through the Electronic Communications and Wireless Telegraphy (Amendment) (European Communications Code and EU Exit) Regulations 2020 which amended the Wireless Telegraphy Act 2006 and the Communications Act 2003. It is important to appreciate the requirements within the EECC that were not new had already been incorporated into domestic law through a variety of domestic legislation. Similarly, other Directives concerning telecommunications, including EU Directive 2014/61/EC mentioned in your note, have been implemented through a variety of domestic legislation.

More specifically, in so far as the telecoms Directives impose obligations on the State in relation to planning (in other words, the authorization in planning terms of the infrastructure required to facilitate the provision of telecoms), these are reflected in our domestic statutory planning regime. This comprises, amongst other materials, the Town and Country Planning Act 1990 and the Town and Country Planning (General Permitted Development) (England) Order 2015.

The Council takes the view that it is not helpful to consider its obligations in relation to the Project in terms of whether it is a "competent authority" under the EECC. In part that is because, following Brexit, EU Directives no longer form part of domestic law (see the Retained EU Law (Revocation and Reform) Act 2023). Instead, consideration must be given to domestic legislation as the source of the Council's legal responsibilities. The language of "competent authority" is used in EU Directives because it gives member states flexibility to allocate a regulatory function to a public authority of its choosing. However, this language is not generally replicated in domestic legislation which instead tends to specify the responsible public authority

The Council accepts that under our domestic statutory planning regime it is the public authority (or one of them at least) responsible for deciding whether telecoms infrastructure should be permitted. In this sense, where EU Directives refer to the "competent authority" responsible for the authorisation in planning terms of telecoms infrastructure, it is accepted that the Council has this role (sometimes alongside other public bodies according to the context).

Your note appears to proceed on the basis that the Council is required to carry out a public consultation in relation to the Project as a result of recital 105 to the EECC and Article 44 of the EECC. This is not the case because:

(a) As explained above, EU Directives, including the EECC, no longer form part of domestic law. As such, EU Directives no longer confer rights in the UK. The question, instead, is that which the relevant domestic legislation requires. In this instance the Council is not aware of any domestic statutory provision requiring a consultation on the Project including in the Wireless Telegraphy Act 2006, the Communications Act 2003 and the planning regime.

(b) Even if the EECC still formed part of our domestic law, the recital to an EU Directive provides context but does not itself contain rights and obligations (these are instead contained in the Directive's Articles).

(c) Article 44 of the EECC (the interpretation of which is informed by the recitals) is concerned with the circumstances in which the state may compel an operator to share its network infrastructure with other operators. In the UK, the Council is not the public authority responsible for the imposition of co-location requirements. Further and in any event, the public consultation requirement in Article 44 only bites where the state is considering imposing on operators requirements to share network infrastructure. That is not what is proposed under the Project as it currently stands.

That said, please rest assured that the Council has every intention of ensuring that it complies in full with the legal and regulatory requirements applicable to the Project. To this end, the Council will seek specialist legal advice as it considers necessary.

Issue 1: Public consultation on the Project, including in relation to its public health and environmental consequences

The Council was not subject to any statutory requirement to carry out a public consultation before making the decision of 5 February 2024 to proceed with the Project ("the Decision"). As explained above, that includes any requirement contained in or derived from the EECC.

That said, the Decision was in any event informed by a Voicebox survey in which a significant proportion of residents cited connectivity problems as a barrier to accessing services online. In bidding for the Project funding and making the Decision the Council has proactively tried to address this issue.

Having made the "in principle" Decision to proceed with the project, the Council intends to carry out additional engagement to better understand the concerns of local people in the hope that these can be addressed in the way the Project is implemented.

Issue 2: The Council's role as a EECC competent authority for the purposes of its management of the Project

Please see the explanation above under the heading "Background".

Issue 3: Confirmation to be sought as to the Council's role as a competent authority under the EECC from the Department of Housing, Communities and Local Government and from the Department for Science, Innovation and Technology

The Council does not intend to seek any such confirmation in light of the analysis provided under the heading "Background".

Issue 4: Public consultation on the Project from a planning perspective

On 1 July 2024 a certificate of lawful development was granted in relation to development required by the project (24/01855/CLPU).[1] This type of application is not subject to statutory consultation requirements but a number of representations were received. These were considered but not ultimately taken into account since the points made were not relevant to tests for granting a certificate of lawful development). The Council is not required to hold any further consultation on related planning matters and does not intend to do so.

Will Godfrey

Chief Executive

Bath & North East Somerset Council

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www.bathnes.gov.uk

7) 14 AUGUST EMAIL TO WILL GODFREY(BANES CEO) FROM NEIL and KAREN, COUNCILLOR ROPER WHO SIGNED OFF THE PROJECT COPIED IN

(We do not accept his claims about the legal responsibilities and are challenging him in outline in the email and in 2 sections appended to the email, the first where ewe lay out the obligations in EU directives and how the competent authority status was transferred in 2018, and the associated admin provisions re small cells apply continue from previous 2009 directive at that point and still apply. The second section answers Will Godfrey's assertions about their legal obligations directly. If you have any questions and would like clarity, please email. Thanks.

Dear Mr Godfrey,

Thank you for your further response of the 30 July 2024 to our 'Notice of significant public interest relating to the 'statutory considerations' phase of the ONE WORD 5G Mobile' issued to Councillor Roper on the 13 June 2024.

B&NES Council's obligations as an European Electronic Communications Code (EECC) competent authority for the regulation of small cell deployment, and therefore in relation to the One Word 5G Mobile Network Pilot Project (the 'Project'), is as you accept in paragraph 6 of the 'Background' section of your response, a matter that requires B&NES Council to act further upon, to ensure that it complies in full with all legal and regulatory requirements as applicable.

We drew your attention to EC Regulation 2020/1070 on 'specifying the characteristics of small-area wireless access points …' as having direct effect in our email of the 27 June 2024, which we refer to again below, in paragraph 5 of section 1 'LA/LPA EECC competent authorities having direct effect on the 11 December 2018 assignment', appended to this response.

This EC Regulation demonstrates the direct effects of EECC Articles on B&NES Council which still apply, and have a genesis that can be traced back to 2002. As we explain in Section 1, B&NES Council should be applying a coherent regulatory assembly of assimilated and domestic law throughout all phases of the 'Project'.

To assist B&NES Council at this juncture,

i) in Section 1 we explain our understanding of relevant assimilated law to B&NES Council's competent authority status under the EECC,

ii) in Section 2 'In response to the Background Section of your 30 April 2024 email', we present our perspectives on the interpretation made in your 'Background' section of your email paragraph-by-paragraph, and our doubts about the reliability of the interpretations that B&NES Council adopt,

and,

iii) we reaffirm our belief that B&NES Council's position as presented in respect to Issues 1 to 4 as substantive cannot be deemed reliable, given our position on how the statutory obligations of B&NES Council concerning the required regulation of the 'Project' are perceived, and therefore are intended to be applied.

We therefore request:

1. that you confirm that our understanding of how B&NES Council's EECC competent authority status applies in respect to the assimilated law that we identify as being currently in force (in Section 1 and 2) is accepted in full,

and,

2. that full public consultations (Issue iv) of our Notice) are arranged forthwith on the inevitability that the 'Project' will trigger,

'co-location or sharing of network elements and facilities installed....',

as the Key Project Aim 5 for B&NES as reported in 'Appendix 1: One Word 5G Mobile Network Pilot Project Overview on the '5G Mobile Network - Western O-RAN Development (Word)', states explicitly that the 'Project' will support:

'Developing Open RAN Technology - significant technology investments in “Real Time Control” (energy use, spectrum efficiency) and “Multi Operator Functionality”, thus acting as a pilot for future use by a number of commercial 5G network operators'.

That Key Project Aim presumably, was agreed by Councillor Roper on the 5 February 2024 as a primary reason for B&NES Council's initial authorisation of the 'One Word 5G Mobile Network Pilot Project'.

Please will you confirm B&NES Council's commitment to applying a coherent regulatory assembly of assimilated and domestic law throughout all phases of the 'Project' in accordance with request 1; and further, that you will bring into effect the required complementary and full public consultation in accordance with request 2, both above, and as described in paragraph 3.2 of our Notice of 13 June 2024 referring specifically to EECC Article 44 and Recital 105, and as reinforced in Section 4 of the Notice, within 14 days of your receipt of this email.

Thank you,

Neil McDougall and Karen Churchill

1. LA/LPA EECC competent authorities having direct effect on the 11 December 2018 assignment

1. The Directive 'Authorisation of Electronic Communications Networks and Services', 2009/140/EC, required LAs/LPAs competent authority status to be applied in respect to Recital 4 and Article 12 obligations.

2. Recital 4 of Directive stated that,

'the competent authorities, particularly local authorities, should establish appropriate coordination procedures, in cooperation with national regulatory authorities, with respect to public works (ie: small cell deployment) and other appropriate public facilities or property which may include procedures that ensure that interested parties have information concerning appropriate public facilities or property and on-going and planned public works (ie: masts), that they are notified in a timely manner of such works, and that sharing is facilitated to the maximum extent possible (our comment in brackets)',

and Article 12 on,

'Co-location and sharing of network elements and associated facilities for providers of electronic communications networks', at paragraph 5, stated that,

'measures taken by a national regulatory authority in accordance with this Article shall be objective, transparent, non-discriminatory, and proportionate. Where relevant, these measures shall be carried out in coordination with local authorities'.

3. On agreement being given to the EECC on the 11 December 2018 by EU Member States (including the UK), the 2009 Directive was deleted, making UK LAs/LPAs EECC competent authorities from that date onwards.

4. UK tracing of the life span of the Directive

see: https://www.legislation.gov.uk/eudr/2009/140/introduction

reported that Directive 2009/140/EC was,

'deleted by Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast)'.

5. The 2009 Directive was no longer effective in the UK on the 11 December 2018, as the EECC Recitals, particularly Recital 22, maintained the pre-requisite and direct LA/LPA competent authority status sufficiently for the UK to proceed to transpose the EECC fully through Legislation, Regulations (including (EU) 2020/1970 of 20 July 2020 on 'specifying the characteristics of small-area wireless access points ...' see our response ii) to paragraph 1 sentence two and three of your 'Background' to your email, below), or through administrative provisions during the period between EU-wide approval of the EECC on the 11 December 2018 upto the 21 December 2020 deadline for full transposition.

6. The 2009 Directive Recital 4 and Article 12 paragraph 5 (quoted at paragraph 1 above), both highlight the importance of Ofcom as the UK national regulatory authority coordinating 'measures' with local authorities as competent authorities for the purposes of spectrum use, access and management, making it simply the case that to be 'generally authorised' to operate 'public works' (for small cell deployment) or 'planned public works' (for a mast/antenna) within localities, the 'undertaking' (ie: the telecommunication services operator) had to be granted a contract for the former, or planning permission for the latter by the relevant LA/LPA, as a 2009 Directive competent authority with some Ofcom oversight.

7. The foundational 2002 Directive on a 'common regulatory framework for electronic communications networks and services (Framework Directive)',

see: https://www.legislation.gov.uk/eudr/2002/21/contents

included LA/LPA related Recitals 17 and 23, reading consecutively that the,

'the activities of national regulatory authorities established under this Directive and the Specific Directives contribute to the fulfilment of broader policies in the areas of culture, employment, the environment, social cohesion and town and country planning (Recital 17)',

and that,

'facility sharing can be of benefit for town planning, public health or environmental reasons, and should be encouraged by national regulatory authorities on the basis of voluntary agreements ...(Recital 23)',

with Article 12 reading,

'where mobile operators are required to share towers or masts for environmental reasons, such mandated sharing may lead to a reduction in the maximum transmitted power levels allowed for each operator for reasons of public health, and this in turn may require operators to install more transmission sites to ensure national coverage'.

8. Therefore, it is legitimate to assume Matt Warman's (as Secretary of State for Digital, Culture Media and Sport) 22 June 2021 statement that,

'the transposition of the EECC would have no effect on the status of local planning authorities where they are considered competent authorities under EU Directive 2014/61/EC (quoted in Section 3 of the Notice originally sent to Councillor Roper on the 13th June 2024)',

'can be interpreted straightforwardly as meaning that LPA/LA EECC competent authority status applies 'where' town planning functions need to be performed under EECC spectrum management, and that 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 applications for a new mast/antennas are determined, or when considerations specific to contractual arrangements for small cell deployment arise'.

9. And, that those obligations:

i) have a genesis that stretches back to 2002,

ii) that competent authority status existed formally in Directive 2009/140/EC, and therefore through Directive 2014/61/EC 'Measures to reduce the cost of deploying high speed electronic communications networks',

iii) that it is legitimate to assume that the status of LAs/LPAs as competent authorities enacting EU Telecommunications services general authorisations originated as Directive 2009/140/EC came into effect.

iv) the UK Government's agreement to enact the EECC on the 11 December 2018 resulted in the direct assignment of EECC competent authority status to LAs/LPAs for the purposes of ensuring legal certainty and continuity for the updated general authorisation systems re: mast siting and small cell deployment.

and,

v) the LA/LPA EECC general authorisation systems are still in operation.

2. In response to the Background Section of your 30 July 2024 email

Your paragraph 1, sentence one: The European Electronic Communications Code (“EECC”) is an EU Directive (Directive 2018/1972) that consolidates and reforms the previous four main telecoms Directives (Framework, Authorisation, Access and Universal Service), and incorporates them in a single document.

Our response: Clearly, the 'Authorisation' component of EECC consolidation and reform had direct effect within EECC participating nation states, including the UK as an EU Member State when the EECC was agreed on the 11 December 2018, for reasons of legal certainty and continuity. Therefore, the obligations of competent authorities granting or refusing rights through their general authorisation powers under the terms of the new 'Authorisation' systems, and the rights of the parties is respect to those powers had direct effect through EECC assignment on the 11 December 2018. The status of EECC competent authorities concerning their general authorisation powers, remain unchanged from that date onwards upto to the present.

Your paragraph 1, sentence two and three: The UK implemented the new EECC requirements through the Electronic Communications and Wireless Telegraphy (Amendment) (European Communications Code and EU Exit) Regulations 2020 which amended the Wireless Telegraphy Act 2006 and the Communications Act 2003. It is important to appreciate the requirements within the EECC that were not new had already been incorporated into domestic law

through a variety of domestic legislation. Similarly, other Directives concerning telecommunications, including EU Directive 2014/61/EC mentioned in your note, have been implemented through a variety of domestic legislation.

Our response: New EECC requirements can be brought into domestic application by means other than through domestic legislation:

i) by direct assignment (such as through the 'Authorisation' components as explained above, and as demonstrated by EECC Recital 22),

ii) directly through EU Regulation as demonstrated by the Commission Implementing Regulation (EU) 2020/1970 of 20 July 2020 on 'specifying the characteristics of small-area wireless access points pursuant to Article 57 paragraph 2 of Directive (EU) 2018/1972 of the European Parliament and the Council establishing the European Electronic Communications Code'

https://www.legislation.gov.uk/eur/2020/1070/data.pdf

The direct application of the European Commission Regulation (EC Regulation 2020/1070 'on specifying the characteristics of small-cell wireless access points pursuant to Article 57 paragraph 2 of Directive (EU) 2018/1972 (the European Electronic Communications Code)', in respect to public health protection concerning this type of development came into direct effect on the 18 December 2020, and still applies as UK legislation

published here:

https://www.legislation.gov.uk/eur/2020/1070/introduction/data.xht?view=snippet&wrap=true

as raised in paragraph 3 of our email to you of the 27 June 2024 as being applicable to B&NES Council's EECC competent authority obligations in relation to the One Word 5G trial (the 'Project').

iii) through the implementation of administrative provisions (such as through EECC Recitals 21 and 121),

and,

iv) through the terms of the European Union Withdrawal Act (EUWA) 2018 and the saving systems within that Act, with the possibility that additional savings may have retrospective effect through EUWA 2018 Schedule 8 paragraph 39(5).

The Articles of relevant Directives 2014/61/EC and 2018/1972, and the Regulations 2020/1970 became assimilated EU law under the Retained EU Law (Revocation and Reform) Act 2023, and remain assimilated. This should not effect the implementation of the measures and provisions of Directives that were properly transposed, as their Recitals described the pre-requisite mechanisms that were required to enable the Articles to be binding in respect to obligations of competent authorities when exercising their functions in accordance with the rights of involved parties.

Your paragraph 2: More specifically, in so far as the telecoms Directives impose obligations on the State in relation to planning (in other words, the authorization in planning terms of the infrastructure required to facilitate the provision of telecoms), these are reflected in our domestic statutory planning regime. This comprises, amongst other materials, the Town and Country Planning Act 1990 and the Town and Country Planning (General Permitted Development) (England) Order 2015.

Our response: This general statement is not specific enough to guide B&NES Council reliably through to compliance with it's obligations as an EECC competent authority in relation to the public health and environmental protection obligations it must fulfil on the One Word 5G trial small cell deployment proposal.

Your paragraph 3: The Council takes the view that it is not helpful to consider its obligations in relation to the Project in terms of whether it is a “competent authority” under the EECC. In part that is because, following Brexit, EU Directives no longer form part of domestic law (see the Retained EU Law (Revocation and Reform) Act 2023). Instead, consideration must be given to domestic legislation as the source of the Council’s legal responsibilities. The language of “competent authority” is used in EU Directives because it gives member states flexibility to allocate a regulatory function to a public authority of its choosing. However, this language is not generally replicated in domestic legislation which instead tends to specify the responsible public authority.

Our response: Quite simply, B&NES Council are required to apply relevant assimilated law (as defined under the REUL Act 2023), alongside interconnected planning and/or public health legislation to meet its statutory functions in relation to small cell deployment.

Your paragraph 4: The Council accepts that under our domestic statutory planning regime it is the public authority (or one of them at least) responsible for deciding whether telecoms infrastructure should be permitted. In this sense, where EU Directives refer to the “competent authority” responsible for the authorization in planning terms of telecoms infrastructure, it is accepted that the Council has this role (sometimes alongside other public bodies according to the context).

Our response: We have explained our current understanding of relevant assimilated law and its origins and genesis in respect to the 2018 competent authority status of LAs/LPAs, which remain unchanged post-Brexit. Our current expectation is that B&NES review these sources of law, so they can be applied appropriate in accordance with our previously stated expectations.

Your paragraph 5 (a): Your note appears to proceed on the basis that the Council is required to carry out a public consultation in relation to the Project as a result of Recital 105 to the EECC and Article 44 of the EECC. This is not the case because:

As explained above, EU Directives, including the EECC, no longer form part of domestic law. As such, EU Directives no longer confer rights in the UK. The question, instead, is that which the relevant domestic legislation requires. In this instance the Council is not aware of any domestic statutory provision requiring a consultation on the Project including in the Wireless Telegraphy Act 2006, the Communications Act 2003 and the planning regime.

Our response: We do not accept that EU Directives 'no longer form part of (UK) domestic law'. Our final paragraph of our response to 'Your paragraph 1, sentence two and three of your 'Background'' above, demonstrates.

Your paragraph 5 (b): Even if the EECC still formed part of our domestic law, the recital to an EU Directive provides context but does not itself contain rights and obligations (these are instead contained in the Directive’s Articles).

Our response: B&NES Council will need to determine its position on the applicability of (a) and or (b), or take advice which Mr Godfrey has assured us that he will in paragraph 7, below. Our current understanding of relevant assimilated law and it's origins and genesis, in respect to the 2018 competent authority status of LAs/LPAs, may help in this regard.

Your paragraph 5 (c): Article 44 of the EECC (the interpretation of which is informed by the recitals) is concerned with the circumstances in which the state may compel an operator to share its network infrastructure with other operators. In the UK, the Council is not the public authority responsible for the imposition of co-location requirements. Further and in any event, the public consultation requirement in Article 44 only bites where the state is considering imposing on operators requirements to share network infrastructure. That is not what is proposed under the Project as it currently stands.

Our response: We do not agree that EECC Article 44 applies to 'the state', as the Article refers specifically to competent authorities in the plural, as it reads,

'Where an operator has exercised the right under national law to install facilities on, over or under public or private property, or has taken advantage of a procedure for the expropriation or use of property, competent authorities may impose co-location and sharing of the network elements and associated facilities installed on that basis, in order to protect the environment, public health, public security or to meet town-and country-planning objectives'.

Co-location or sharing of network elements and facilities installed and sharing of property may be imposed only after an appropriate period of public consultation, during which all interested parties shall be given an opportunity to express their views and only in the specific areas where such sharing is considered to be necessary with a view to pursuing the objectives provided in the first subparagraph. Competent authorities may impose the sharing of such facilities or property, including land, buildings, entries to buildings, building wiring, masts, antennae, towers and other supporting constructions, ducts, conduits, manholes, cabinets or measures facilitating the coordination of public works. Where necessary, a Member State may designate a national regulatory or other competent authority for one or more of the following tasks:

(a) coordinating the process provided for in this Article ….' (other tasks were specified)

Whilst B&NES Council is ambivalent about:

1. its EECC competent authority status,

2. the relevance and status of applicable assimilated legislation,

3. whether or not it will as a competent authority with an intent to grant a general authorisation, or as the owner of the street furniture deployed, will in the pursuit of public health or town-and-country-planning objectives, impose 'co-location and sharing of network elements and associated facilities' on telecommunication service operators, it is nonetheless clear from the proviso stated in paragraph 6,

'that is not what is proposed under the Project as it currently stands',

the One Word 5G trial may have to operate under the trial period or subsequently under an imposed 'co-location or sharing of network elements and facilities'.

Further, it is surely the case that B&NES Council has already been nominated as the 'competent authority' to,

'(a) co-ordinate the process provided for (in EECC Article (44))',

as the host Council conducting this trial (through its agents, as and when appointed).

For these reasons we argue again that it is appropriate and necessary for BANES Council to undertake proper and formalised public consultations on the One Word 5G trial proposals, rather than to rely upon wish-list type public attitude survey where members of the public questioned had no prior knowledge of any proposal nor the consequeses of any proposal that BANES Council might support in the what it might perceive as being in the public interest.

Your paragraph 7: That said, please rest assured that the Council has every intention of ensuring that it complies in full with the legal and regulatory requirements applicable to the Project. To this end, the Council will seek specialist legal advice as it considers necessary.

Our response: This appears to be essential and urgent.

8) 23 AUGUST WILL GODFREY REPLY DISMISSING HIS RISK ASSESSMENT OBLIGATIONS

Dear Neil McDougall and Karen Churchill

The Council has reviewed your latest e-mail and advises th**at it intends to rely upon the interpretation of domestic legislation as set out in its previous e-mail dated 30 July 2024.** However, as previously indicated, even were it wrong in that view, the Open Network Ecosystem (ONE) funding targets investment in new next generation open mobile networks that **multiple vendors can share in order to unlock innovation,** boost connectivity and reduce digital and economic inequalities. Therefore, the Council does not accept there is a need to consult where, if the pilot is successful, the stated aim is to share the infrastructure provided and thereby minimise the impact on residents and reduce digital exclusion.

Regards

Will Godfrey

9) 27 SEPTEMBER – ISO NCR REPORT SENT TO WILL GODFREY REPLY DISMISSING HIS RISK ASSESSMENT OBLIGATIONS

Dear Mr Godfrey,

Our Issue of an ISO Non-Compliance Report re: One Word 5G Mobile Network Project/ Aarhus Convention applicability

1. Background

In the light of your position stated in your 23 August 2024 email that,

'**the Council does not accept there is a need to consult where, if the pilot is successful, the stated aim is to share the infrastructure provided and thereby minimise the impact on residents and reduce digital exclusion**',

and One Word/TELET undertaking as stated at the head of Appendix 1 as attached to the Notice of Decision (ERP ref E3501) link:

https://democracy.bathnes.gov.uk/mgIssueHistoryHome.aspx?IId=38190&PlanId=929&RPID=0

that,

'risk assessments will be actioned at the start, regularly during the course of the project and when any relevant changes are made which may include technical changes to networks and systems, changes in procedure or new threat information',

represents a stated condition upon which the One Word 5G Mobile Network Pilot project was authorised on 5 December 2023 to proceed through a statutory considerations' phase, and possibly beyond that phase, we are intervening further by:

i) issuing the attached project specific ISO Non-Compliance Report (NCR),

and,

ii) asserting our and public rights more generally under the 'Aarhus Convention on access to information, public participation in decision making and access to justice in environmental matters', in relation to involuntary public exposure to electromagnetic radiation (EMR) that would be generated by the 5G trial (summarised in 3. below).

2. The ISO Non-Compliance Report

As the NCR includes substantial evidence of risks associated with involuntary public exposure to RFR (as presented in the three appendices at pages 16 to 26), and for reasons of the mutual obligations that Bath&NES Council and One Word/TELET share on the requirement to prevent avoidable harm, injury and nuisance effectively in the public interest, and if by necessity the trial not going ahead. We expect our previous interventions (being: our notice issued to Councillor Roper on the 13 June; our request for a response made to you on the 27 June; and our further notice issued to you on the 14 August to which your 23 August email is a response) to be reviewed to secure consistency with your 30 July 2024 assurance that Bath&NES Council will comply,

'in full with the legal and regulatory requirements applicable to the project',

with the Council seeking specialist legal advice,

'as it considers necessary'.

Your 23 August email is provisional within the terms you describe, and those terms must be brought into alignment with Bath&NES Council's obligations under its contractual relationship with One Word/TELET as significant project management obligations triggered by our issue of the ISO NCR and its accompanying evidence, and additionally with Bath&NES Council's obligations under the Aarhus Convention public interest obligations which we summarise below.

Our issue of the NCR with this email requires the following action to be taken by Bath&NES Council re:

Section 2. Context - under paragraph 2.1, please issue the NCR to One Word/TELET and any ISO compliant authorised service supplier. We assume that One Word/TELET will co-ordinate all required responses through the network of service suppliers acting under ISO management systems.

Section 2. Context - under paragraph 2.2, please complete required action within the five-day 'on-notice' deadline, following Bath &NES's receipt of the attached NCR.

Section 5. Stated timescales for Action - re: paragraphs 5.1 to 5.5, please inform One Word/TELET of my mcdougall1@protonmail.com email address, for the purpose of the paragraph 5.1 five day confirmation of intent to enact interim containment action, and for all phased actions ie: the First, Second and Third actions under paragraph 5.1, and subsequent actions under paragraphs 5.2, 5.3, 5.4 and 5.5.

3. Background to Aarhus Convention ('three pillar') obligations placed on public authorities

The UN Economic Commission for Europe 'Aarhus Convention Implementation Guide' (2014), Introduction, Section 4 at page 24,

https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf

reports that,

'health is explicitly referred to in many parts of the Aarhus Convention'.

Article 1, which sets out the objective of the Convention, refers to:

'the right of every person of present and future generations to live in an environment adequate to his or her health and well-being',

and this statement is supported by similar phrases in the preamble. Human health is also referred to in article 5, paragraph 1 (c). In article 2, the Aarhus Convention defines,

'environmental information',

to include a qualified but explicit reference to human health and safety and the conditions of human life.

The European Charter on Environment and Health (see below) gives a definition of 'environmental health' by stating that the term,

'comprises those aspects of human health and disease that are determined by factors in the environment'.

It also refers to the theory and practice of assessing and controlling factors in the environment that can potentially affect health. 'Environmental health', as used by the World Health Organization (WHO) Regional Office for Europe, includes,

'both the direct pathological effects of chemicals, radiation and some biological agents, and the effects (often indirect) on health and well-being of the broad physical, psychological, social and aesthetic environment, which includes housing, urban development, land use and transport'.31

The Aarhus Convention Implementation Guide confirms that,

'by implication, these factors are also included in the implied definition of “environment” under the Convention. Thus the entire Convention — not just its information provisions—should be interpreted as applying to health issues, to the extent that they are affected by or through the elements of the environment (see the commentary to article 2, paragraph 3 (c))'. 32

The Aarhus Convention was developed from the World Health Organisation (WHO) 'European Charter on Environment and Health (1989)' first entitlement which states that,

'every individual is entitled to:

• an environment conducive to the highest attainable level of health and well-being;

• information and consultation on the state of the environment, and on plans, decisions and activities likely to affect both the environment and health;

and,

• participation in the decision-making process'.

The Charter provides an interpretation of the relationship between environment and health. The term 'environment and health' encompasses the health consequences of interactions between human populations and a whole range of factors in their physical (natural and man-made) and social environment.

The two main aspects in contention are:

'how well can the environment sustain life and health and how free is the environment of hazards to health'.

The Aarhus Convention entered into force 30 October 2001, with UK ratification on the 23 February 2005.

The three “pillars” of the Convention (are clarified at page 19 of the 'Implementation Guide' providing the definitions and the impacts of the pillars) as being:

'access to information; public participation; and access to justice — which are provided for under its articles 4 to 9. The three pillars depend on each other for full implementation of the Convention’s objectives'.

Pillar I — Access to information - since effective public participation in decision-making depends on full, accurate, up-to-date information. However, it is equally important in its own right, in the sense that the public may seek access to information for any number of purposes, not just to participate.

The first part concerns the right of the public to seek information from public authorities and the obligation of public authorities to provide information in response to a request. This type of access to information is called “passive”, and is covered by article 4. The second part of the information pillar concerns the right of the public to receive information and the obligation of authorities to collect and disseminate information of public interest without the need for a specific request. This is called “active” access to information, and is covered by article 5.

Pillar II — Public participation in decision-making - it relies upon the other two pillars for its effectiveness — the information pillar to ensure that the public can participate in an informed fashion, and the access to justice pillar to ensure that participation happens in reality and not just on paper.

The first part concerns the participation of the public that may be affected by or is otherwise interested in decision-making on a specific activity, and is covered by article 6. The second part concerns the participation of the public in the development of plans, programmes and policies relating to the environment, and is covered by article 7. Finally, article 8 covers participation of the public in the preparation of laws, rules and legally binding norms.

Pillar III — Access to justice - the access to justice pillar is contained in article 9. It helps to enforce both the information pillar (specifically, article 4 concerning information requests) and the public

participation pillar (specifically, article 6 on public participation in decisions on specific activities) in domestic legal systems, as well as any other provisions of the Convention that Parties specify in their domestic law to be enforced in this manner. The access to justice pillar also provides a mechanism for the public to enforce environmental law directly.

Please confirm your issue of the NCR to One Word/TELET under NCR Section 2. Context - under paragraph 2.1 by the 2 October 2024.

Thank you,

Neil McDougall and Karen Churchill

10) OCTOBER 3RD EMAIL TO K AND N ASKING US TO SERVE NCR ON TELET

Dear Neil McDougall and Karen Churchill

B&NES are not ISO accredited and therefore B&NES do not intend to respond to your ISO NCR notice. If you consider the notice relevant to the other parties involved in the project then you will need to serve it on those parties directly.

For clarification B&NES replied to the following extract of your e-mail dated 27 September 2024

In the light of your position stated in your 23 August 2024 email that,

'the Council does not accept there is a need to consult where, if the pilot is successful, the stated aim is to share the infrastructure provided and thereby minimise the impact on residents and reduce digital exclusion',

For context. The Council's e-mail dated 23 August was in reply to your e-mail of the 14 August where it was claimed that B&NES as "competent authority" under the EECC required it to consult in respect of forcing an operator to share its network. The Council's position was that it was not the competent authority because the legislation, in that context, did not apply to it but that even if it did there was no need to undertake the consultation requirement because B&NES were not imposing a network sharing obligation that you had sought to place reliance upon.

The Council intend to provide further information to the public as its part in the project progresses.

Regards

Will Godfrey

11) OCTOBER 7th EMAIL FROM K AND N TO WILL GODFREY & CLLR ROPER PRESENTING FARNWAORTH CASE LAW – FURTHER JUSTIFYING ISSUING NCR

Dear Mr Godfrey,

In response to your email of 3 October (as below), denying our 27 September email request to issue the attached ISO Non-Conformance Report NCR to One Word/TELET we present further validation as to why Bath&NES Council should issue the NCR in the interest of all parties.

Irrespective of the current impasse on our respective differences on the regulatory obligations of Bath&NES Council for the public health consequences of the One Word/TELET 5G RAN trial and small cell deployment generally, your responsibility remains:

i) to serve the public interest generally,

ii) to protect the public against avoidable harm, injury and nuisance caused by involuntary exposure to radio frequency radiation (RFR),

and,

iii) to ensure that i) and ii) above, are not undermined by Bath&NES Council commercial interests in hosting the 5G trial nor its outcome.

As stated in Section 2 'The ISO Non-Conformance Report' of our 27 September email request, the requirement to prevent avoidable harm, injury and nuisance effectively is shared by the Council and One Word/TELET, and the acts of the latter as a contractor are 'treated for all purposes as done by the relevant minister or official, or both', in administrative law.

You have declined to commit Bath&NES Council to undertaking public consultations and independent risk assessments on the RFR emitting equipment proposed for deployment in the 5G trial, and you have declined to act in accordance with Aarhus Convention obligations as described in Section 3 'Background to Aarhus Convention ('three pillar') obligations placed on public authorities' of our 27 September email request.

We now demand that our evidence of potential harm, injury and nuisance brought forward in the NCR as three appendices (pages 15 to 26) is accepted by Bath&NES Council as compelling enough in combination with the legal position explained below, for you to act on issuing the NCR through the simple sequence of actions we specified in paragraph 3 of the Section 2 of our 27 September email request, in compliance with Bath&NES/One Word/TELET shared contractual obligations.

Bath&NES does not need to be ISO accredited to serve the interests of the parties by issuing the NCR as we requested.

The case Manchester Corporation v Farnworth (1930), AC 171, is summarised in Wade & Forsyth's 'Administrative Law', 12th Edition, Oxford University Press, 2023, under Chapter 10 'Liability of Public Authorities', sub-heading 3B 'Nuisance and Inevitable Injury',

'If there is a choice of sites and methods, some of which will injure private rights and some which will not, a public authority may have a duty to choose the latter. In each case the court has to consider whether Parliament presumably intended to permit the infringement. The presumption is that infringement is to be avoided unless reasonably necessary, and the onus on proving necessity is on the public authority' (page 611).

'The House of Lords held that the degree of nuisance which might have to be accepted as inevitable would vary with the state of scientific knowledge from time to time, so the Corporation would have to keep abreast of the best current practice in this respect in order to discharge the onus lying upon them.

‘When Parliament has authorised a certain thing to be made or done in a certain place, there can be action for nuisance caused by the making or doing of that thing if the nuisance is the inevitable result of the making or doing so authorised. The onus of proving that the result is inevitable is on those who wish to escape liability for nuisance, but the criterion of inevitability is not what is theoretically possible but what is possible according to the state of scientific knowledge at the time, having also in view a certain common sense appreciation, which cannot be rigidly defined, of practical feasibility in view of situation and of expense’.

This 'criterion of inevitability' will depend in each case on the true implications of the empowering statute, and this may pose difficult questions of construction' (all three paragraphs at page 612).

The Farnworth case is referenced by Carnwath L, in Coventry and others v Lawrence and another, (2014) UKSC 13, at para. 226,

'where the evidence shows that a set of conditions has been carefully designed to represent the authority’s view of a fair balance, there may be much to be said for the parties and their experts

adopting that as a starting-point for their own consideration. It is not binding on the judge, of course, but it may help to bring some order to the debate. However, if the defendant seeks to rely on compliance with such criteria as evidence of the reasonableness of his operation, I would put the onus on him to show compliance (see by analogy Manchester Corpn v Farnworth [1930] AC 171, relating to the onus on the defendant to prove reasonable diligence under a private Act). By contrast, evidence of failure to comply with such conditions, while not determinative, may reinforce the case for a finding of nuisance under the reasonableness test'.

https://www.supremecourt.uk/cases/docs/uksc-2012-0076-judgment.pdf

Clearly, the public interest being met in relation to the Bath 5G trial (as listed as i) to iii) in the opening paragraph of this email) is paramount.   Particularly, as the justification for the trial proceeding (as stated in paragraph 3.2 of Bath&NES 'Notice of Decision' of 5th December 2023) being that,

'there is currently a market failure in the sector, with lack of investment from private telecoms companies which is exacerbated by UK Government restricting some international vendors. As a result, the Department for Science Innovation and Technology have issued a series of Open Network Ecosystem (ONE) funding calls to unlock investment in new next generation open mobile networks that multiple vendors can share',

confirms that the pilot is publicly funded, and with cuts in local government spending, and public finances generally the investment is contentious.

Further, the One Word/TELET undertaking made in the Appendix 1 to the Notice of Decision as recalled in Section 1 'Background' in our 27 September email was that,

'risk assessments will be actioned at the start, regularly during the course of the project and when any relevant changes are made which may include technical changes to networks and systems, changes in procedure or new threat information',

which demonstrates with absolute certainty that the 5G trial, if it proceeds,

i) requires evidence-based risk assessments to be prepared 'at the start' by One Word/TELET,

and the,

ii) 'choice of sites and methods' and a developed 'criterion of inevitability' are objectives that can be pursued though ISO good industry practice relating to quality, environmental and health & safety assurance procedures when objective evidence of risk is properly brought into account.

Bath&NES and One Word/TENET should value our interest in ISO good industry practice being applied to serve the public interest though the mechanisms that we are prompting the Council and it's potential partners to apply.

Please notify us by Friday 11th October that the simple sequence of actions we specified in paragraph 3 of the Section 2 of our 27 September email request, are enacted to meet Bath&NES/One Word/TELET shared contractual obligations to protect public health.

Your sincerely,

Neil McDougall and Karen Churchill

12) OCTOBER 10th REPLY FROM WILL GODFREY COMMITTING TO DISCUSS OUR PROPOSALS WITH HIS COLLEAGUESError! Bookmark not defined.

From: Will Godfrey <Will_Godfrey@BATHNES.GOV.UK>
Date: On Friday, 11 October 2024 at 10:19
Subject: RE: Our issue of an ISO Non-Compliance Report re: One Word 5G Mobile Network Project/ Aarhus Convention applicability
To: mcdougall1 <mcdougall1@protonmail.com>, Paul Roper (CLLR) <Paul_Roper@bathnes.gov.uk>

Dear Neil McDougall and Karen Churchill,

Thank you for your further correspondence.

I am working with colleagues to consider the points you have raised.

I will respond as soon as possible.

Yours sincerely,

Will Godfrey

Will Godfrey

Chief Executive

Bath & North East Somerset Council

Tel: 01225 477400

Email: Will_Godfrey@BATHNES.GOV.UK

www.bathnes.gov.uk

www.twitter.com/bathnes

13) 15TH OCTOBER – WILL GODFREY 2ND REFUSAL TO ISSUE ISO NON COMPLIANCE REPORT

On Tuesday, 15 October 2024 at 20:34, Will Godfrey <Will_Godfrey@BATHNES.GOV.UK> wrote:

Dear Neil McDougall and Karen Churchill

Please see the Council's response in bold to each point detailed in your email of 7th October, copied below for ease.

Dear Mr Godfrey

In response to your email of 3 October (as below), denying our 27 September email request to issue the attached ISO Non-Conformance Report NCR to One Word/TELET we present further validation as to why Bath&NES Council should issue the NCR in the interest of all parties.

Irrespective of the current impasse on our respective differences on the regulatory obligations of Bath&NES Council for the public health consequences of the One Word/TELET 5G RAN trial and small cell deployment generally, your responsibility remains:

i) to serve the public interest generally,

ii) to protect the public against avoidable harm, injury and nuisance caused by involuntary exposure to radio frequency radiation (RFR)

and,

iii) to ensure that i) and ii) above, are not undermined by Bath&NES Council commercial interests in hosting the 5G trial nor its outcome.

The trial is not being hosted for commercial interests, but is part of a government-funded initiative to test 5G technology in high density, high demand environments. The Open Networks Ecosystem competition saw circa 20 successful bids across the UK to trial this technology. The ONE WORD project itself covers four locations in the South West and Wales. If the trial is successful there may be subsequent commercial benefit but that is not the purpose of the trial.

As stated in Section 2 'The ISO Non-Conformance Report' of our 27 September email request, the requirement to prevent avoidable harm, injury and nuisance effectively is shared by the Council and One Word/TELET, and the acts of the latter as a contractor are 'treated for all purposes as done by the relevant minister or official, or both', in administrative law.

The Council are part of a consortium undertaking a trial project. Telet is a member and lead partner of the consortium, while ONE WORD is simply the project's name. Telet are not contractors of the Council, as alleged.

You have declined to commit Bath&NES Council to undertaking public consultations and independent risk assessments on the RFR emitting equipment proposed for deployment in the 5G trial, and you have declined to act in accordance with Aarhus Convention obligations as described

in Section 3 'Background to Aarhus Convention ('three pillar') obligations placed on public authorities' of our 27 September email request.

B&NES has not declined to do the acts alleged in the paragraph above. The Council has simply declined to act as postal service for the form marked ' ISO Non-Conformance Report' because it is not ISO accredited and it doesn't consider it has any significance to B&NES. The Council has invited you to serve the notice on the Consortium members directly if you consider it is relevant to them.

We now demand that our evidence of potential harm, injury and nuisance brought forward in the NCR as three appendices (pages 15 to 26) is accepted by Bath&NES Council as compelling enough in combination with the legal position explained below, for you to act on issuing the NCR through the simple sequence of actions we specified in paragraph 3 of the Section 2 of our 27 September email request, in compliance with Bath&NES/One Word/TELET shared contractual obligations.

The Council do not accept the evidence of potential harm as compelling. The legal issues referred to are addressed separately below.

Bath&NES does not need to be ISO accredited to serve the interests of the parties by issuing the NCR as we requested.

B&NES do not consider the form has any relevance to it. Each consortium member is a separate legal entity and B&NES has no legal responsibility for any other member of the consortium. If you consider the Form has relevance to a consortium member then B&NES invite you to serve that party directly.

The case Manchester Corporation v Farnworth (1930), AC 171, is summarised in Wade & Forsyth's 'Administrative Law', 12th Edition, Oxford University Press, 2023, under Chapter 10 'Liability of Public Authorities', sub-heading 3B 'Nuisance and Inevitable Injury',

'If there is a choice of sites and methods, some of which will injure private rights and some which will not, a public authority may have a duty to choose the latter. In each case the court has to consider whether Parliament presumably intended to permit the infringement. The presumption is that infringement is to be avoided unless reasonably necessary, and the onus on proving necessity is on the public authority' (page 611).

'The House of Lords held that the degree of nuisance which might have to be accepted as inevitable would vary with the state of scientific knowledge from time to time, so the Corporation would have to keep abreast of the best current practice in this respect in order to discharge the onus lying upon them.

'When Parliament has authorised a certain thing to be made or done in a certain place, there can be action for nuisance caused by the making or doing of that thing if the nuisance is the inevitable result of the making or doing so authorised. The onus of proving that the result is inevitable is on those who wish to escape liability for nuisance, but the criterion of inevitability is not what is theoretically possible but what is possible according to the state of scientific knowledge at the time, having also in view a certain common sense appreciation, which cannot be rigidly defined, of practical feasibility in view of situation and of expense'.

This 'criterion of inevitability' will depend in each case on the true implications of the empowering statute, and this may pose difficult questions of construction' (all three paragraphs at page 612).

The Farnworth case is referenced by Carnwath L, in Coventry and others v Lawrence and another, (2014) UKSC 13, at para. 226,

'where the evidence shows that a set of conditions has been carefully designed to represent the authority's view of a fair balance, there may be much to be said for the parties and their experts adopting that as a starting-point for their own consideration. It is not binding on the judge, of course, but it may help to bring some order to the debate. However, if the defendant seeks to rely on compliance with such criteria as evidence of the reasonableness of his operation, I would put the onus on him to show compliance (see by analogy Manchester Corpn v Farnworth [1930] AC 171, relating to the onus on the defendant to prove reasonable diligence under a private Act). By contrast, evidence of failure to comply with such conditions, while not determinative, may reinforce the case for a finding of nuisance under the reasonableness test'.

https://www.supremecourt.uk/cases/docs/uksc-2012-0076-judgment.pdf

Clearly, the public interest being met in relation to the Bath 5G trial (as listed as i) to iii) in the opening paragraph of this email) is paramount. Particularly, as the justification for the trial proceeding (as stated in paragraph 3.2 of Bath&NES 'Notice of Decision' of 5th December 2023) being that,

'there is currently a market failure in the sector, with lack of investment from private telecoms companies which is exacerbated by UK Government restricting some international vendors. As a result, the Department for Science Innovation and Technology have issued a series of Open Network Ecosystem (ONE) funding calls to unlock investment in new next generation open mobile networks that multiple vendors can share',

confirms that the pilot is publicly funded, and with cuts in local government spending, and public finances generally the investment is contentious.

Response to the legal issues highlighted above

The Council do not accept that a nuisance is created by installing the 5G network envisioned by the project. The Council is aware of your opposing view but has appraised itself of the best current evidence of harm and in doing so has considered the government's latest guidance (July 2024) on this issue as set out here:

https://www.gov.uk/government/publications/mobile-phone-base-stations-radio-waves-and-health/mobile-phone-base-stations-radio-waves-and-health

The Council has acknowledged that 5G Mobile is a contentious issue and the Single Member Decision report highlighted that fact. Nevertheless, the Council believes the benefits outweigh

any perceived risks because installing the 5G network, envisioned by the project, provides much needed connectivity whilst not exceeding the EMF exposure levels, beyond which there is a risk to health as detailed in the guidance.

In the Manchester Corporation v Farnworth case the corporation knew their electricity generating station created a nuisance by emitting sulphur dioxide and subsequently admitted in the proceedings that it did and had chosen to do nothing about it. That case is clearly distinguishable from the pilot envisaged for B&NES The current scientific evidence has been considered by the governments' UKHSA and the guidance in the link above confirms that the World Health Organization (WHO) states that, to date, and after much research performed, no adverse health effect has been causally linked with exposure to wireless technologies. We are aware from the guidance that the WHO are preparing a review covering the evidence and that the UKHSA continues to monitor the health-related evidence applicable to radio-wave exposures and is committed to providing any advice that might be necessary. Any change in the guidance resulting from the review by the WHO or the UKHSA will be considered and acted upon if relevant to the pilot.

Further, the One Word/TELET undertaking made in the Appendix 1 to the Notice of Decision as recalled in Section 1 'Background' in our 27 September email was that,

'risk assessments will be actioned at the start, regularly during the course of the project and when any relevant changes are made which may include technical changes to networks and systems, changes in procedure or new threat information', which demonstrates with absolute certainty that the 5G trial, if it proceeds,

i) requires evidence-based risk assessments to be prepared 'at the start' by One Word/TELET,

and the,

ii) 'choice of sites and methods' and a developed 'criterion of inevitability' are objectives that can be pursued though ISO good industry practice relating to quality, environmental and health & safety assurance procedures when objective evidence of risk is properly brought into account.

Bath&NES and One Word/TENET should value our interest in ISO good industry practice being applied to serve the public interest though the mechanisms that we are prompting the Council and it's potential partners to apply.

Please notify us by Friday 11th October that the simple sequence of actions we specified in paragraph 3 of the Section 2 of our 27 September email request, are enacted to meet Bath&NES/One Word/TELET shared contractual obligations to protect public health.

Your sincerely,

Neil McDougall and Karen Churchill

Regards

Will Godfrey

Chief Executive

Bath & North East Somerset Council

Tel: 01225 477400

Email: Will_Godfrey@BATHNES.GOV.UK

14) 21ST OCTOBER – FURTHER JUSTIFICATION & DEMAND PLACED ON COUNCIL TO ISSUE NCR REPORT

Dear Mr Godfrey,

Thank you for your 15 October response.

We are still keen to represent the public interest in these matters, and believe that due process can still be secured through compromise and collaboration.

We raise three primary questions to help in this regard.

Are we correct in assuming Bath&NES Council is now subject to the Department for Science, Innovation and Technology (DSIT) *'Open Networks R&D Fund Collaboration - Programme Participation Agreement'*, as the One Word/TELET 5G RAN trial is funded through the DSIT programme?

Question 1 - could you please confirm whether Bath&NES Council acknowledged and agreed to the DSIT*'Open Network R&D fund Collaboration Programme Participation Principles'*,being principles that we quote and reference below?

From our perspective, the five principles properly applied by the One Word Consortium partners and DSIT (as the sponsoring public authority authorising development subsidies for the trials) support Bath&NES triggering the ISO NCR with its relevant evidence base as submitted to you with our 27 September email, for two primary reasons:

1. the public interest requirements as specified in paragraph 2 points i) and ii) of our email of the 15 October (below) would be met, and possibly now, would only be met by Bath&NES issuing the NCR to One Word/TELET as the lead partner in the Consortium as we requested,

and,

2. the precautionary principle requiring application by all parties to prevent, guard against, and mitigate adverse public health consequences arising from the 5G trial and its outcome can be achieved through good industry practice, where the DSIT participation principles and Bath&NES regulatory obligations could be met on the outcome of the ISO quality assurance procedures by One Word/TELET applying ISO based precautionary actions following their receipt of the NCR.

As stated in the penultimate paragraph of our 15 October email,

'Bath&NES and One Word/TENET should value our interest in ISO good industry practice being applied to serve the public interest though the mechanisms that we are prompting the Council and it's potential partners to apply',

and clearly the value of that interest is reinforced by the DSIT programme participation principles, which we now assume all parties to the Consortium have agreed to apply.

We explain our position further, as follows.

Your comment on paragraph 2 point iii) of our email of the 15 October (below), that,

'The trial is not being hosted for commercial interests, but is part of a government-funded initiative to test 5G technology in high density, high demand environments ... if the trial is successful there may be subsequent commercial benefit but that is not the purpose of the trial',

is undermined by TELET's,

'the City of Bath has had an incorporated city for the last few hundred years that is the dominant landowner and landlord in the city which owns substantial assets. The council is adept at turning them into revenue to generate more public services. The Word project will use the extensive investments in CCT, ducting, buildings and street furniture to run a neutral host mobile network ***that they can then rent out****, which will improve the mobile coverage in the area while generating revenue for the city'*

see: https://word5g.uk/city-of-bath/ .

Question 2 - can you provide us with a copy of any rental agreement made between One word/TELET or TELET and Bath&NES Council, concerning the future use of Council infrastructure and buildings described in that statement?

Further, the 'Appendix 1: *ONE WORD 5G Mobile Network Pilot Project Overview'* provided as background to Councillor Roper's 5 February Single Member Decision authorising Bath&NES Council's continuing participation in the project inclusion of a statement that,

'the ***West of England Combined Authority*** *will develop the lessons learned and develop digital team capacity in the project trial areas as an integral component of the new West of England Digital Strategy.*

Key outcomes of the pilot:

- *provide Local Authorities with a technically proven model, a **solid business case** and a **cost/benefit analysis** for **authority-owned 5G Neutral Host networks**'.*

implies that the outcome of the One Word/TELET 5G RAN trial is likely to result in the creation of a Bath&NES owned income generating asset.

Question 3 - can you please explain if, and how Bath&NES may acquire the operational network during the trial or after the trial is complete?

In response to paragraph 3 of our email of the 15 October (below), you suggest that Bath&NES Council has,

'simply declined to act as postal service for the form marked 'ISO Non-Conformance Report'.

Yet, in response to paragraph 5 of the email you state that,

'the Council do not accept the evidence of potential harm as compelling',

and as comment made in *'response to the legal issues highlighted',* you state that,

'the Council do not accept that a nuisance is created by installing the 5G network envisioned by the project. The Council is aware of your opposing view but has appraised itself of the best current evidence of harm and in doing so has considered the government's latest guidance (July 2024) on this issue as set out here:

https://www.gov.uk/government/publications/mobile-phone-base-stations-radio-waves-and-health/mobile-phone-base-stations-radio-waves-and-health'.
Your paragraph 3 response, is incompatible with both your paragraph 5 response, and your response to the 'legal issues highlighted', because the ISO Non-Compliance Report presented the rationale for the investigation of the evidence of potential harm, which you simply declined to issue to One word/TELET. Therefore, Bath&NES Council was not in a position to determine whether the evidence was or was not compelling, nor whether it reached the threshold status of preventable or avoidable nuisance.

Quite simply, Bath&NES Council could not make those assessments unless it enacted formal public health regulatory obligations.

The precautionary principle needs to be applied through project risk assessments to:

i) bring into balance interests that need to be served as highlighted in paragraph 2 points i), ii) and iii) of our email of the 15 October (below),

ii) to meet Bath&NES Council regulatory obligations, if they are not meet independently through other appropriate means,

iii) Aarhus Convention obligations need to be met as the project is publicly funded by a public authority,

iv) Telecom equipment and service supplier ISO compliance is central to good industry practice, and can be justifiablyconsidered as a precautionary mechanism of last resort,

and,

v) DSIT's *'Acknowledgment and agreement to the Open Network R&D fund Collaboration Programme Participation Principles'* should embrace precaution where it is proven necessary, on evidence, to secure safe and effective deployment of technologies and service deployments.

Under ***'Principle 3: Standards and Patents development'***for instance,

'activities under the Programme, including projects, are expected to build on and apply emerging international standards, protocols and ways of working adopted by the Fund ecosystem, with the aim of achieving openness and interoperability',

that principle, alongside all other stated principles, should be pursued without bias, prejudice or pre-determination of the significance of evidence that programme participants are required to bring into focus appropriately (particularly, if standard compliance mechanisms based on the precautionary principle are operated by programme participants such as ISO procedures).

That **first** principle 3, must be activated by programme participants in accordance with DSIT **third** principle 3 that,

'participants should identify which technical standards the project should address, be impacted by, or that the participants may seek to influence remain in dialogue with DSIT on standards and IPR issues,

with:

I) ISO Quality, Environmental and Health & Safety standards being the *technical standards that the project should address',*

ii) being *'impacted upon'*, through the dissemination, absorption and action taken on relevant evidence made available by the public exercising their rights to protect their legitimate interests;

iii) *'or that theparticipants may seek to influence'* through obligations a participant has in relation to citizen rights;

and,

iv) that the *'dialogue with DSIT on standards'* should concern the precautionary principle being applied to reinforce good industry practice, and for instance, World Trade Organisation (WTO) rules linked to the European Electronic Communications Code, and other UK procurement legislation or policy.

Bath&NES Council has no reason to assume that ISO compliance and the dissemination of relevant evidenceto ISO compliant programme participants through the NCR and the formalised scientific evidence upon which the NCR relies, will not result in a safer and more effective deployment of technologies and services that are proposed to be trialled in the Bath *ONE WORD 5G Mobile Network Pilot Project* trial.

In light of the above, we respectfully urge Bath&NES Council to reconsider its position, particularly regarding the issue of the ISO NCR and the precautionary principle. Doing so would not only safeguard the public interest but also ensure compliance with regulatory obligations, as well as DSIT's Open Network R&D fund participation principles.

We trust that Bath&NES Council will take the necessary steps to engage constructively with One Word/TELET (and all relevant stakeholders), to ensure that transparency, safety and accountability for all concerned is prioritised and public health responsibilities are fulfilled.

Yours sincerely.

Neil McDougall and Karen Churchill