

TOWN & COUNTRY PLANNING ACT 1990

**APPEAL AGAINST THE REFUSAL TO GRANT PERMISSION
FOR THE
INSTALLATION OF A 15M CELLULAR TELEPHONE MAST & CONTROL
CABINET**

AT

[a] CORNER OF CHARLTON PARK ROAD & CEMETERY LANE

&

[b] ON THE EAST PAVEMENT OF CHARLTON PARK ROAD

APPELLANT O2 (UK) LTD

FURTHER COMMENTS AND OBSERVATIONS

ON THE APPLICATIONS

APP/E5330/A/O4/1162800 & APP/E5330/A/O4/1162802

SUBMITTED BY

THE PETITIONERS – A COMBINE OF LOCAL RESIDENTS

(PREPARED BY LARGE & ASSOCIATES, LONDON)

5 DECEMBER 2004

FURTHER COMMENTS AND OBSERVATIONS OF THE PETITIONERS

The following further observations and comments are submitted by the Petitioners, a combine of 80 or so local residents, identified in the attachment to the letter of 10 August, 2004 of Edward Chapman of 11 MacArther Terrace, Charlton Park Road, SE7 8HY.

The Petitioners are in accord, wholly opposed to the development of either of the proposed sites, that is [a] at the corner of Charlton Park Road and [b] on the east pavement of Charlton Park Road. In their previous written objection to the planning authority (LB Greenwich) and also by direct communication with local elected councillors, the Petitioners have presented and voiced their concerns and opposition to the development on a number of grounds, including (in outline here):

- a) the Appellant's justification and choice of siting, with the Appellant reasoning that the two sites were optimal on the basis that neither of the sites were within residential areas – the Appellant failed to demonstrate that no other suitable site is available and no consideration seems to have been given the sharing of existing sites;
- b) the lack of informed consultation by both the planning authority and the Appellant with the local community – that is, the local community was ill-informed and ill-prepared to consider the proposed developments;
- c) the disregard of any aspect or assessment of impact with the local environment, particularly in respect to the fauna (birds and established colonies of bats) of the nearby metropolitan open spaces of Charlton and Maryon Wilson Parks, the cemetery, woodlands and common heathland beyond – the Appellant gave no regard whatsoever to protected species known to roost and feed in the area;
- d) the impact on the character of the area immediately local to the site(s), having a detrimental effect on the locality generally, and on amenities (the park lands and cemetery) that ought to be protected in the public interest.¹
- e) that the proposed development, both being on LB Greenwich land, places an indirect pecuniary interest with the planning authority being the owner of the land.

Here, with these further observations and comments, the Petitioners wish to voice their concern on the health issues and how the planning authority, LB Greenwich, has failed

1 Although the Petitioners note that the planning process should not be used to compensate individuals for loss (or gain), a court ruling of May 2003 awarded seven householders in Swindon sums of between £10,000 and £20,000 each from Swindon Council who allowed the erection of a mobile phone mast, causing their properties to lose value.

to apply the appropriately weighted material consideration to safeguarding public health and the concerns of the community.

Potential Health Impact: Relating to telecommunications development LB Greenwich has established policy D11 of its Unitary Development Plan (UDP). The UDP policy gives account to the benefits of telecommunications apparatus and operational needs but specifically notes that “*the Council and the public are concerned that there may be a risk to the health of residents in close proximity to electromagnetic fields*”.

The Petitioners point to the public’s growing awareness of the presence of electromagnetic fields (EMF)² in the environment and that this is accompanied by concern that exposure to EMF may have adverse effects on health; that the *Independent Expert Group on Mobile Phones (IEGMP or Stewart Report)*³ noted that “*there can be indirect adverse effects on their well-being in some cases*”, opining that the possibility of health harm cannot be entirely ruled out so that a precautionary approach should be applied; and, most recently, the government awarded a two-year research contract to Essex University to investigate electromagnetic hypersensitivity syndrome (EHS).^{4,5}

This latest research programme, which is to report its findings not until at least two years hence, serves to further heighten public health concern over EMF exposure. Because it specifically relates to the EMF generated by cellular telephone base stations and applies universally, not being a particular case, it may be taken to be a material consideration in determining planning permission and prior approval – see para 97-8 *Planning Policy Guidance 8 (PPG8)*.⁶ The Petitioners argue that for the government to order and sponsor this latest research it, the government and its regulators the Health & Safety Executive (HSE), must have recognised and/or acknowledged there to exist a specific gap in the understanding of the health impact of exposure to EMF. If there are gaps in knowledge then, as strongly recommended by the Stewart Report, a precautionary approach should be adopted.

The Petitioners have sought and considered expert advice on the exposure conditions and biological responses to EMF. In summary, the present state of scientific knowledge is that, first, the current criteria based around the *Specific Absorption Rate (SAR)*⁷ is not all-

2 Sometimes referred to as *Radiofrequency Electromagnetic Radiation (RFR)*, a form of energy between 10 KHz-300 GHz in the electromagnetic spectrum, is used in wireless communication and emitted from antennae of mobile telephones and from cellular masts - RFR can penetrate into organic tissues and be absorbed and converted into heat as illustrated by a familiar application of this energy in the microwave oven used in cooking.

3 IEGMP, *Independent Expert Group on Mobile Phones and Health*, c/o National Radiological Protection Board, Chilton, Didcot UK 2000 (Stewart Report)

4 A team of multidisciplinary researchers at the University of Essex have received funding from the Department of Health Mobile Telecommunications and Health Research Programme to investigate whether the electromagnetic fields emitted from mobile phone base-stations have a direct affect on human health and well-being.. The project started in January 2004 and is scheduled to be completed in June 2006 and is of approximately £328,000 worth.

5 For the results of a similar Swedish study see Granlund-Lind R, Lind John, *Svart på Röster och vittnesmål om elöverkänslighet*, www.feb.se/feb/blackonwhite-complete-book-pdf

6 The Petitioners note that the report *Mobile Phone Masts, Report of an Inquiry by the All Party Mobile Group* July 2004 strongly recommended that in line with the Stewart Report that ‘*permitted development rights*’ for the erection of all base stations should be revoked.

7 *Specific energy Absorption Rate (SAR)* averaged over the whole body or over parts of the body, is defined as the rate at which energy is absorbed per unit mass of body tissue expressed in watts per kilogram (W/kg). Whole body SAR is the normally accepted measure although local SAR values are necessary to evaluate and limit excessive energy deposition in small parts of the body resulting from special exposure conditions (such as the use of

encompassing in relating the biological response and, second, there is clear evidence suggesting that exposure gives rise to the introduction of neurological effects that are not directly related to or indexed by the SAR level, these being also influenced by frequency, modulation and cumulative exposure to the EMF sources.^{8,9}

Also, the Appellant's statement that the output of the base station is acceptable because it will not exceed the guidance limit set out by the *International Commission on Non-Ionizing Radiation Protection* (ICNIRP) is misleading and inappropriate. This is because the ICNIRP limitation system applies only to the potential health impact deriving directly from the dissipation of the radiation (ie heating) in tissue. Thus ICNIRP does not provide an absolute health-safeguarding criterion for other actual or perceived health effects for which Stewart recommends application of the precautionary approach.

In this respect, the Petitioners note that there is a growing body of properly conducted and reviewed research, together with sound anecdotal evidence, that is sufficient to throw considerable doubt on the somewhat narrow definition and scope of the health effects associated by government in PPG8, whereby the health effects are defined solely in terms of the SAR and the ICNIRP limitation system.

This interpretation that compliance with ICNIRP does not entirely cater for all forms of potential health impact has also been tested in the courts in two respects. In the first respect, rulings have given that the *perception* of a risk to health is material to the consideration of applications¹⁰ and, in the second respect, a ruling gave that an Appeal

mobile phone handsets). Examples of whole body exposure would be such conditions where a grounded individual exposed to RF in the low MHz range and individuals exposed in the near field of an antenna.

- 8 Energy intensity, frequency and localised conditions are all factors that contribute to the biological response but, importantly, more evidence is emerging that the effects are cumulative and could, with long term exposures even at low SAR, result in irreparable damage and, similarly, that the modulation or pulsing of the EMF seems to be more effective than exposure to continuous wave radiation. There is a body of evidence demonstrating that morphological, electrophysiological, and chemical changes can occur when the brain or nervous system is disturbed by EMF which could give rise to changes blood-brain-barrier, morphology, electrophysiology, neurotransmitter functions, cellular metabolism, calcium efflux, responses to drugs that affect the nervous system and behaviour – for a general discussion see Lai H, *Neurological Effects of Radiofrequency Electromagnetic Radiation*, Workshop on Possible Biological and Health Effects of RF Electromagnetic Fields", Mobile Phone and Health Symposium, October 1998, University of Vienna, Austria. and, more specifically, ARPANSA Australian Radiation Protection and Nuclear Safety, *Maximum Exposure Levels to Radiofrequency Fields – 3 kHz to 300 GHz, Annex 3 Epidemiological studies of exposure to radiofrequencies and human health*, Sydney, Royal Society of Canada 1999, *A review of the potential health risks of radiofrequency fields from wireless telecommunication devices*, an Expert Panel Report prepared at the request of the Royal Society of Canada for Health Canada, Ottawa, Royal Society of Canada, RSC.EPR 99-1 and *Recent Advances in Research on Radiofrequency Fields and Health: 2001-2003 A Follow-up to The Royal Society of Canada Report on the Potential Health Risks of Radiofrequency Fields from Wireless Telecommunication Devices, 1999 J Toxicology & Environmental Health, Part B, Vol. 4-4, 2001.*
- 9 Absorption of microwave radiation causes heating of biological tissue, which if excessive is deleterious to health; this is undisputed, and forms the basis of current *Safety Guidelines*, both national and international. In the case of exposure to the microwave radiation in the case of the emissions from base-stations, it has been repeatedly confirmed by field measurements that the emissions are *far* below - by orders of magnitude - the limits set by the Guidelines. What *is* currently disputed, however, is whether, in the case of the living human organism, this radiation can exert other, more subtle, kinds of non-thermal influences, which might also entail adverse health consequences. The root of the continuing public concern is that if this is, in fact, the case, then the existing Guidelines leave an exposed person vulnerable to these hazards. As has been explained, the heating ability of microwave radiation depends primarily on its intensity, and it is this that the Guidelines restrict. non-thermal effects, on the other hand, depend primarily on the existence of an 'oscillatory similitude' between the frequencies of the radiation and those of certain endogenous biological electrical activities that the organism supports when alive, which effectively opens it to informational aspects of the radiation; it is this dimension of the problem that is not addressed by existing Safety Guidelines.
- 10 Newport County Borough -v- Secretary of State for Wales

Inspector failed to adequately consider the weight to be given to health concerns,¹¹ and, similarly, another ruling gave that the Appeal Inspector had misinterpreted the health guidance in PPG8.¹²

These rulings have the effect of questioning the validity of the ICNIRP limits, which is so heavily (exclusively) relied upon by the Appellant, and demonstrate that (in Law) adoption of ICNIRP in itself does not amount to an adequate consideration of health fears and concerns.

PPG8 states that health considerations and public concern can, in principle, be material considerations, but that it is for the decision-maker to determine what weight to attach to such considerations in any particular case. Moreover:

- a) **The Petitioners believe that in refusing the Appellant's Planning Applications on visual ground alone, LB Greenwich's grounds for refusal were incomplete and should have given consideration to and weighted the uncertainties over health effects; and**
- b) **research contracts for health-related studies and trials of base-station emissions recently placed by government must be interpreted in context that government recognises there to be gaps in the knowledge of the causal effects of exposure to EMF, so much so that the Petitioners argue that the precautionary approach should be adopted for any current telecommunications developments.**

On these bases, the Appeal Inspector should now consider health grounds and the failure of both the planning authority and the Appellant to properly address these important issues.

The Petitioners note here that although they, individually or collectively as a local community, were not involved in the siting and planning decision-making processes (other than the very limited participation afforded by the Town and County Planning Act), their concerns about the potential health impact have not been driven by sense of protest and conflict by this failing of the planning authority and Appellant to properly consult with the public. Their concern is soundly based, being drawn from their own research and understanding, endorsed by the advice of expert opinion.

The Choice of Siting of the Appellant's Base Station: LB Greenwich D11 policy considers the choice of siting of telecommunications equipment almost wholly on the visual intrusion aspects, reasoning that consideration has been given to locating a site which *'causes minimal visual impact'* with the equipment *'designed, coloured and landscaped so as to minimise visual impact'* and to preserve the *'special character and appearance of listed buildings, or conservation areas'* all *'subject to operational needs'* and on the proviso that the *'ICNIRP guidance is met'*.

11 Yasmin Skelt -v- The First Secretary of State and Three Bridges District Council and Orange PCS Limited (September, 2003)

12 T Mobile (UK) Ltd, Hutchison 3G UK Ltd, Orange Personal Communications Services Ltd -v- First Secretary of State and Harrogate Borough Council, High Court, 2004

As previously noted, the Petitioners consider that compliance with ICNIRP not to be wholly sufficient to safeguard against all potential health impacts so that, as long as the risk to health remains unknown, the planning authority has a clear duty to reduce these risks (even that of perception) by adopting the precautionary approach to siting and location of base stations and the associated masts.

Location immediately adjacent to a (Special Needs) School and Kindergarten:
The Petitioners are also very concerned that the Appellant chose a site [a] that is immediately adjacent to a school and kindergarten.

The basis for the Appellant's original reasoning for this choice of site was that, in all six sites were considered and that, save for one site in Charlton Park itself, all were in residential streets. However, the two sites [a] and [b], although in residential locations and with [a] being immediately adjacent to a school, were considered preferable to the Charlton Park site because although it *"was considered a viable alternative, however, the unitary development plan is specifically clear that development such as the proposed (ie the mast) will be resisted in such locations"*. In other words, the Appellant disregarded one particular site (that within Charlton Park) on the grounds that it would have been difficult to win over the local authority, instead choosing at least one site [a] that was nearby a school and kindergarten. That is the Appellant prioritised ease of winning through the application at a potential health detriment associated with the appeal sites [a] with school, kindergarten and nearby residential and [b] with residential and reasonably nearby school/kindergarten.

The Petitioners are concerned that in making the original applications the Appellant's consultation with the School and the adjacent kindergarten, both located immediately to the South of base station site [a], was not properly undertaken in that the School governors did not have, nor were provided with at the time of the consultation meeting, independent and well informed means to assess the potential health impact of the development; that evidence of this consultation provided by the Appellant to the local planning authority was, to say the least, superficial comprising just a single paragraph in the Application;¹³ and that, the local planning authority itself did not properly consult with the school, other than (the Petitioners assume) by serving the statutory planning notice.

In fact, on the information that the Petitioners have been able to gather, it seems that the Appellant disregarded its own Mobile Operators Association (MOA) guidelines for consulting with local communities: There was no attempt whatsoever to address the community's concerns, nor to gain public trust, and its *'traffic light model'* rated site [b] as *AMBER* and not, as it should have been, *RED* on the basis of its proximity to a listed building and residential properties.^{14,15} The Petitioners have not been able to access the site [a] MOA assessment, although their assessment of this site would be *RED*, swayed by the very close proximity of the school and kindergarten.

13 Application document 04/1626 undated, refers to the school consultation of 6 July 2004 although there is no other note or report of such. The public notification of the Appellant's application for site [b] is dated 13 July, so it is most unlikely that the school consultation was completed in a timely manner prior to the application being lodged.

14 O2 UK, *Ten Commitments Consultation*, 29 June 2004.

15 The Petitioners do not have access to the Appellant's assessment of the [a] site which, according to its MOA consultation guideline would be classified *RED*.

The Petitioners are concerned that the Appellant has chosen to disregard the specific recommendation of the Stewart Report (para 6.68) with regard to ensuring that the beam of the greatest RF intensity should not fall on any part of the school grounds or buildings without agreement from the school and parents.¹⁶ The Petitioners have questioned both a number of employees and parents¹⁷ of children attending the school, none of whom can recall being informed of the potential health effects of the base station and mast, nor of the recommendations relating to the beam of greatest RF intensity.¹⁸

Moreover, the headmaster of the school, Mr Mark Dale-Emberton, has stated to the Petitioners that for the first application [a] there was no consultation whatsoever and that, subsequently, when consulted in advance of the second application [b], such was the school's concern that Mr Dale-Emberton presented a '*most strong objection*' to the local planning authority. Also, the Petitioners understand that an elected ward councillor (Cllr E Lewis), who is a governor of the school, cannot recollect being informed of the 6 July consultation meeting, he did not attend any such consultation meeting, nor has he received any notes or report of the meeting.

The Petitioners consider the means by which the Appellant chose the Appeal site(s) not to have been carried out with due diligence and with regard to and in accord with PPG8 guidance and the Stewart Report recommendations. This is an important issue, particularly because the higher susceptibility of children to absorb EMF¹⁹ and since they, as individuals, have no say in the matter, especially when their parents have not (apparently) been informed of the outcome of the consultation meeting of 6 July. In this respect, the proposed development so far as these children represent a future generation who have not been consulted, is neither a justified nor a sustainable development.

Accordingly, the Appeal Inspector should consider that a proper consultation process has not been undertaken at the school and in the local community.

IN CONCLUSION

The Petitioners urge the Appeal Inspector to:

- **Rule that LB Greenwich should have given consideration and weighting to potential health effects**
- **Consider that the recent research contract awarded by government establishes that there remain gaps in our knowledge of the health effects and, as recommended by Stewart, rule that LB Greenwich should have adopted the precautionary principle**

16 The DFES considers it is good practice for schools to consult parents when considering the siting of a base station on their premises.

17 The names and addresses of those parents and employees interviewed will be made available to the Inspector under separate cover if requested.

18 Of course, the beam of greatest RF intensity must comply with the ICNIRP limitation – para 6.66 of the Stewart Report makes the same recommendation for base stations and masts placed just outside school grounds.

19 Para 6.23, Stewart Report

- **Consider that both the Appellant and LB Greenwich²⁰ have not undertaken a proper consultation process, particularly with regard to the proposal to site [a] in close vicinity to a school and for sites [a] and [b] in close proximity to residential properties**

And that, overall, the Inspector should not grant the Appeal.

EDWARD L CHAPMAN
(for the Petitioners)

²⁰ The Petitioners note here that the LB Greenwich Strategic Planning and the individual planning officer managing these applications and appeals have been far from co-operative, indeed, if not sometimes obstructive when responding to requests from the Petitioners and their expert.