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Our Ref: NJT/VF/35538/634/AB  
Your Ref: 05/02485/FUL



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**RECORDED DELIVERY**  
Bath & North East Somerset Council  
Planning Services  
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BATH  
BA1 2DP

For the attention of Mr Andrew Ross



27<sup>th</sup> April 2006

CS/01626/VAR

Dear Sir

**TOWN & COUNTRY PLANNING ACT 1990 – SECTION 73**

**PROPOSED VODAFONE INSTALLATION AT ST MARY'S THE VIRGIN CHURCH, BATHWICK, BATH – CS 35538 – PLANNING REFERENCE 05/02485/FUL**

We refer to a planning permission dated 6th October 2005, reference 05/02485/FUL, which gave consent for the installation of equipment for Vodafone Limited at the above site.

More particularly, we refer to Condition 2 attached to the said planning permission, which requires a program of regular EMF monitoring to be submitted and approved by your authority before the proposed development is put in place. We note that no reference was drawn to local planning policies within the wording of the condition.

Vodafone consider this condition to be unduly onerous and unnecessary, and we are therefore instructed to apply for the renewal and lifting of the aforementioned condition, thereby allowing Vodafone to operate equipment at the site without the need to carry out periodic EMF monitoring.

You will be familiar with Circular 11/95, which states that conditions should only be imposed where they satisfy all of the relevant tests (i.e. they should be necessary, relevant to the development, enforceable, precise and reasonable).

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With regards to the test of necessity, Circular 11/95 advises that, in considering whether a condition is necessary, local authorities should ask themselves whether a planning permission would have to be refused if that condition were not imposed. A condition should not be imposed (or retained) unless there are sound and clear-cut reasons for doing so. A condition, which duplicates other controls, will normally be unnecessary and should not be imposed.

PPG8 advises local authorities that the planning system is not the appropriate mechanism for determining health safeguards. If a proposed development meets the ICNIRP guidelines, it should not be necessary for a planning authority, in processing an application, to consider the health effects further.

An ICNIRP-certificate was submitted with the application, which confirms that the installation is designed to operate significantly below the recommended exposure guidelines of ICNIRP. Consequently, there is no necessity for the condition to be imposed.

To continue, PPG 8 follows on from the Stewart Group's report on "Mobile 'Phones and Health" and contains Central Government planning policy on telecommunications, stating within paragraph 94 that "*Enforcement of health and safety legislation in this area is a matter for the Health and Safety Executive (HSE) and not the Local Planning Authority.*"

The operative legislation is the Health and Safety at Work Regulations 1992 under which the operators have a duty to ensure that the installation does not present a risk to the general public.

As inferred above, Circular 11/95 (paragraph 22) advises that a condition duplicating the effect of other controls will normally be unnecessary. Therefore, having regard to the advice in PPG8 regarding the role of the HSE, the matter of potential EMF emissions from the proposed development is considered to be of no relevance to planning.

We believe we have shown that Condition 2 does not meet the tests of necessity and relevance set down by Circular 11/95. In view of the above, it is probably not necessary to consider the remaining tests contained within Circular 11/95 at this time.

However, we would draw your attention to the enclosed appeal decision relating to a telecommunications development on land at Lodge Farm, Hook. The appeal related to the removal of a condition whereby the LPA had sought to exercise control over electromagnetic conditions and you will note the brevity of the Inspector's decision letter.

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Likewise, we would specifically draw your attention to a recent appeal case, APP/V6945/A/01/1061239 dated 13<sup>th</sup> June 2001, for a cell since acquired by this Practice.

In this particular case, the Local Planning Authority issued refusal on the basis that O2's proposed due "... to its siting would be detrimental to the amenities and well being of existing and future residents of the surrounding area".

Hence, the Inspectorate was explicit and therefore we quote verbatim:-

Turning to the matter of health, the Appellant has confirmed that the installation would meet the International Commission for Non-Ionising Radiation Protection (ICNIRP) and the National Radiological Protection Board (NRPB) guidelines. These guidelines relate to public exposure limits. The Government has issued guidance to local planning authorities in England that states that *'if a proposed development meets the ICNIRP guidelines it should not be necessary for a planning authority, in processing an application, to consider the health effects further.'* Guidance to authorities in Wales states that applications for telecommunications development should be dealt with *'on the basis of current legislative arrangements and policy guidance.'*

No evidence has been submitted to support the view that the proposed development would breach the ICNIRP guidelines. Neither has any specific evidence been submitted to support the view that developments within the guidelines present a health risk. It is considered that in terms of health risks associated with the operation of the proposed equipment itself there is no justification to dismiss this appeal.

It is acknowledged that public concern on the matter of health risk can be a material planning consideration in that such concern can be detrimental to peoples' lives, to their general amenity. The extent to which public fear will be allayed by the assurance now given by the Appellant that the radiation emissions from this installation would be well within the guidelines cannot of course be assessed.

Nevertheless, on the evidence that the Government sees no reason for local planning authorities to refuse an application for a telecommunications development that falls within the guidelines and in view of the lack of firm evidence to the contrary in this appeal, it is considered that there is no reasonable basis for public concern. The Stewart Report recommended that, *'as a precautionary approach, the ICNIRP guidelines for public exposure be adopted for use in the UK.'* It is concluded that as the proposed development meets those guidelines it therefore complies with the precautionary approach. As it is considered that the precautionary approach has been satisfied, it is concluded that here is insufficient reason to dismiss the appeal on this basis."

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Similarly, we would specifically like to draw the Council's attention to a further Appeal Case AAP/F0114/A/05/1186839 dated 25th October 2005 for a cell since acquired by this Practice.

In this instance the Local Planning Authority attached a condition to the planning approval whereby the applicant should submit a detail programme of regular monitoring of the equipment, which was to be approved by the Local Planning Authority, prior to the development being brought into use "... and that in the event that the monitoring reveals that the equipment is not operated within the ICNIRP exposure guidelines, the equipment hereby permitted should be immediately removed from operation and should not be brought back into use unless measures have been implemented to ensure that, cumulatively the equipment and the site operate within the approved ICNIRP radio frequency public exposure guidelines."

In this instance the applicant submitted a planning application for the removal of the condition however, the Planning Authority subsequently refused the application. The applicant subsequently appealed against the decision on the basis that the attached condition was unreasonable and beyond the remit of the Local Authority.

In this instance the appeal was allowed by the inspectorate and to quote ver-batum "I do not, therefore, consider that there is anything in the evidence relating to this appeal that is of sufficient weight to cause me to depart from the general advice set out in PPG8. PPG8 advises that the Council should not seek to replicate through the planning system controls under the health & safety regime – advice that it reiterated in general terms set out in 11/95 which cautions against conditions that duplicate the effect of other controls – and that it should not seek to implement its own precautionary policy."

We would particularly like to draw the Council's attention to these two appeal cases and how these expand on advice previously given by Central Government to Local Planning Authorities in PPG8 and not to impose unreasonable planning conditions on telecom operators in processing applications in relation to Health issues. Further details with regards to the most recent inspectorate's decisions are enclosed.

In view of the comments contained above, on behalf of Vodafone Limited we formally request the removal of Condition 2 attached to planning permission 05/02485/FUL.

Under Section 73 Town & Country Planning Act 1999 an application can be made to the Local Authority to remove the said Condition by letter, provided that it is clear which planning permission and site is being referred to. We have therefore attached a plan, on which the site has been marked red. We have also attached a cheque in the sum of £135, which we understand is the due planning fee payable.

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It only remains for us to thank you again for your kind assistance in this matter and we look forward to hearing from you shortly that the Condition has been removed. Should you require any additional information in respect of the above, please do not hesitate to contact Nick Thorne from this office.

Yours faithfully

*Needham Haddrell*

**NEEDHAM HADDRELL**

For and on behalf of Vodafone Limited

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