The Cheltenham Mast Case: Legal Error Without Remedy — and Why It Still Matters

The proposed telecommunications mast at Lansdown Road sat approximately 17 metres from Harris Court, a five-storey apartment building, with the upper floors aligned with the antenna head, placing occupants in a highly likely ICNIRP public exclusion zone.

A resident of Harris Court, who has metal clips in her bowel, objected to the proposal on grounds of proximity. At the time, she was unaware that the presence of metal in the body can increase vulnerability to electromagnetic exposure, and that such circumstances fall outside the scope of general ICNIRP guidelines, which are framed for the general population and do not address individual susceptibility.

Her objection was therefore made without access to information that was material to her own risk profile, and without any site-specific assessment explaining how exposure would be managed at that distance and height.

This context matters, because it shows that the issues raised in the case were not hypothetical. They concerned a specific building, a measurable distance, and a known vulnerability, yet there was no point in the planning permission decision or during the judicial review proceedings at which those facts were examined together.

What happened

Apr–Jun 2023
Application for a 15m telecommunications mast at Lansdown Road validated; officer report completed; Cheltenham Borough Council issued a decision that prior approval was not required.

Jun–Nov 2023
A Letter Before Action was issued challenging the "No Prior Approval Required" decision.
The Judicial Review was brought on two grounds:
(1) that the decision was irrational and unreasonable, as it posed avoidable risks of harm, injury, and nuisance to the public; and
(2) The LPA is obliged to address and dispose of the incompatible and unacceptable use material planning consideration arising from the proposed siting of the mast through an evidence-based decision determining whether or not to grant permission after having taken properly into account objections from the public in accordance with its obligations under planning law.

Permission was refused on the papers but granted at an oral hearing by HHJ Jarman KC.

Apr–May 2024
Substantive hearing and judgment. Legal error was found and ground 2 was deemed successful, but relief was refused under section 31(2A) of the Senior Courts Act 1981.

p44 "However, the failure on the part of the authority to grapple with potential impacts on medical implants was, in my judgment, an error and this ground succeeds."

Jul 2024–Jan 2025
Both parties appealed. Cheltenham Borough Council was granted permission to appeal; Steven Thomas was refused permission on his direct appeal and cross-appeal.

Judge Lewison considered:

“In any event, the material submitted to the LPA was sufficient for them to form the view that the mast did comply with ICNIRP guidelines.”

This was so even though the exclusion-zone diagrams delineating potentially ICNIRP non-compliant areas were absent.

13 March 2025
Court of Appeal judgment by Lady Justice Andrews: CBC’s appeal was dismissed.

p40 “Therefore, the Judge did not find that the potential impact of EMFs on pacemakers or other implants was material even in the circumstances of this specific case, let alone that it would always be a material consideration in applications of this nature. For those reasons, I would dismiss this appeal.”

The refusal of relief stood and the “No Prior Approval Required” decision was not quashed. The ruling acknowledged the European Electronic Communications Code (EECC) as part of the legal framework at p15, but the application of that framework remained unexamined.

“15. Directive EU 2018/1972 of the European Parliament and of the Council (which is part of EU retained law since the UK withdrew from the European Union) established the European Electronic Communications Code. The Directive contains in Annex I a long list of conditions which may be attached to general authorisations for electronic communications networks. They include ‘measures for the protection of public health against electromagnetic fields caused by electronic communications networks in accordance with Union law, taking utmost account of Recommendation 1999/519/EC’.”

July 2025
The Supreme Court refused permission on all Grounds of Appeal:

Ground 1
The Administrative Court and the Court of Appeal have failed to establish how the General Permitted Development Order (GPDO) empowers the Local Planning Authorities (LPAs) to grant or refuse planning permission to a prior approval application for the development of a proposed new telecommunications mast, nor the necessity of the LPA doing so, leaving the legality of this proposed construction in doubt. This is a legal error of public importance, as it effects the consistent and lawful application of the GPDO by LPAs across the country.

Ground 2
The Court of Appeal exercised its jurisdiction to hear an appeal against the order and judgment made by the Administrative Court by applying the Floe v Office of Communication (2009) case precedent on extraordinary circumstances that may prove justification for so doing, but in applying that precedent the Court denied me a justifiable right and opportunity to demonstrate that the extraordinary circumstance threshold for granting and determining that appeal on the grounds raised by the Appellant had not been objectively met. That failure undermined my rights under the CPR Overriding Objectives, and appears to legitimise an

unlawful application of the GPDO (related to grounds 1, above) with adverse consequences for the current Government policy and good practice guidance which require all new telecommunication mast planning applications under the scheme to be granted or refused planning permission by LPAs. That apparent consequence is contrary to the warnings of judicial over-reach made in the Floe case judgment, and needlessly so. It is a legal error of public importance.

Ground 3
The Court of Appeal adopted, solely on the pleadings of the Defendant/Appellant, guidance and approaches to decision-making drawn from the R (Friends of the Earth Ltd) v Secretary of State for Transport [2021] case—approaches that were not raised in, nor considered by, the Administrative Court. That case is not relevant to the decision-making framework applicable to LPAs under the Town and Country Planning Act, and it is not linked to established precedents concerning: (i) material planning considerations; (ii) the proper use of evidence in relation to such considerations; or (iii) the application of the Newbury criteria for planning conditions attached to permissions. This constitutes a legal error of public importance, as it introduces an unrelated legal framework into planning law, thereby creating uncertainty in the principles governing LPA decision-making and the lawful use of planning conditions.

Ground 4
The Administrative Court and the Court of Appeal failed to recognise that the EECC, as assimilated direct legislation, designates LPAs as competent authorities for the purposes of granting or refusing general authorisations under the EECC. As a result, the LPAs role extends beyond national planning considerations to include obligations under the EECC in relation to the siting of telecommunications infrastructure. This status triggers public health-related material planning considerations, over which the LPA has distinct and specific powers. These include a general obligation to reconcile relevant health and environmental impacts in the exercise of its planning functions. This is legal error of public importance, which undermines the proper interpretation of assimilated EU law and the role of LPAs under that law.

Ground 5
The Supreme Court is empowered under the European Union Withdrawal Act 2018 (revised) under Section 6D to make an 'Incompatibility Order' to mitigate the impact of unresolved conflict between the application of domestic law (such as the Town and Country Planning legislation) and assimilated direct legislation (such as the EECC). Those provisions provide a mechanism for bringing finality to the dispute, and legal certainty as I suggested might be possible in ¶6.5 of my 5 August 2024 Skeleton Argument as filed with the Court of Appeal. Mitigation through an EUWA Section 6D 'Incompatibility Order' would be in the public interest.

What the courts decided – and why it mattered:

1. The decision that triggered everything: why permission was granted at the permission stage for judicial review

That decision was based on ICNIRP compliance being treated as effectively determinative.

From the outset, the issue was not whether concerns existed, but whether the legal framework allowed them to be meaningfully examined. Permission is granted only where a case is arguable in law. Both grounds were allowed to proceed. At that stage, the system accepted that the decision raised real legal questions, not merely local objection.

2. Error found — but no remedy

At the substantive hearing, the court accepted that legal error had occurred in the decision-making process. However, relief was refused under section 31(2A) of the Senior Courts Act 1981 on the basis that the outcome would not have been "substantially different" even if the error had not occurred.

For those affected in Harris Court, the result was stark: error without consequence.

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3. The exclusion zone: technically identifiable, but legally sidelined

An exclusion zone was requested but was not provided before or after the planning decision.

Steven Thomas submitted the MBNL compliance manual (used by EE and Three), a technical document setting out the methodology by which exclusion distances are calculated. From that document, it was possible to derive the likely spatial extent of an exclusion zone and to infer that Harris Court would fall well within the zone generated by the proposed installation.

In this context, the exclusion zone was not an abstract precaution. It referred to an area in which there was a high probability that ICNIRP guideline levels would be breached, based on the operator's own technical assumptions.

The council attempted to submit exclusion zone diagrams in their bundle the day before the substantial hearing without having agreed the bundle with Steven Thomas. It was only made apparent on the day of the hearing and the judge rightly refused to accept it.

A site-specific question about likely guideline exceedance was never answered by the council and they accepted that they had not done anything to determine if the area around the mast was safe.

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4. Why the exclusion zone was treated as legally irrelevant

HHJ Jarman KC ruled that there is no requirement in the GPDO or the NPPF for a local planning authority to obtain or determine an exclusion zone as part of a prior-approval decision. On that basis, the absence of an exclusion zone was treated as legally immaterial, despite the fact that residents were living inside such a zone where radiation levels could exceed the recommended ICNIRP limits.

However, in reaching that conclusion, the court did not apply the autonomous obligation arising under the European Electronic Communications Code to assess and weigh evidence before deciding whether to impose a health-related condition under Annex I(3)(b).

The issue was not whether domestic planning instruments mandate exclusion zones in every case. It was whether, where technical material exists indicating a high probability of guideline exceedance in a defined area, the decision-maker must engage with that evidence before concluding that no health condition is required.

That evidential obligation was not applied.

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5. What the decision meant for the resident

In effect, the ruling accepted that a resident could be more vulnerable and could be living within a technically identifiable ICNIRP exclusion zone, yet still not be entitled to know that fact.

Rather than remitting the matter for lawful reconsideration by the local planning authority, the court assessed the risk itself and concluded that no different outcome would have resulted. In doing so, it substituted judicial assumption for a decision-making process that had never examined the site-specific evidence.

That is not a precautionary outcome.
It is the displacement of precaution by assumption.

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6. Recognition without remedy

At the Court of Appeal stage, the refusal of relief stood. The court accepted that impacts on individuals with metal can sometimes be material, but not always. Judge Andrews confirmed that the EECC forms part of the legal framework.

Annex I(3)(b) of the EECC does not require proof of harm, nor does it mandate exclusion zones in all cases. What it does require is that where material exists capable of informing health-related risk or mitigation, that material must be considered and weighed before deciding that no health condition is required.

In the Cheltenham case, such material existed. It was not obtained, assessed, consulted upon, or weighed. The courts acknowledged elements of that failure, but no remedy followed.

7. What "NO PRIOR APPROVAL REQUIRED" really means – and why it is not just wording

To protect the rights of people affected by a particular mast siting, it is vital that **"NO PRIOR APPROVAL REQUIRED"** is not treated as meaning an application can be waved through without the authority determining health effects as part of its statutory decision-making function. That is why Steven Thomas sought clarity from the courts on the legal distinction between a decision expressed in that form and one recorded as **"PRIOR APPROVAL REQUIRED – GRANTED"** (or refused).

The courts did not rule on the lawfulness of that wording, and the decision was allowed to stand in that form.

As explained above, the ruling recognised that risks to people with metal or medical implants fall outside the scope of ICNIRP. That acknowledgement undermines the idea that ICNIRP certification can ever be determinative of all health risks, and supports the proposition that a prior-approval application may require examination of evidence beyond the certificate, rather than being bypassed altogether.

Judge Jarman carried out his own assessment of when such effects might become relevant, but did not clarify what risk-assessment procedures authorities should follow in future. As a result, the wider procedural safeguard Steven sought remains unresolved.

Campaigners can nonetheless continue to assert that proper determination requires a full and structured assessment of health and environmental effects, including evidence raised in objections alongside the ICNIRP certificate, before deciding whether health-protection conditions should be set under EECC Annex I(3)(b). ICNIRP certification is part of that evidential process; it is not the endpoint.

Following Cheltenham, it can safely be said that making a determination of a prior-approval application is not discretionary, and that risks to people with metal implants or active implantable medical devices may, in appropriate cases, require evaluation within the legal framework, which includes the EECC.

Whether recorded as “prior approval granted” or “no prior approval required”, a decision can only be considered procedurally sound if it follows a genuine determination of the application that engages with relevant health and environmental evidence, including the authority’s obligations under the EECC.

8. Why the case still matters

The Cheltenham mast case exposes a structural gap between legal recognition and legal consequence.

The courts accepted that ICNIRP compliance does not address all health-related considerations, that impacts on people with metal or medical implants can be material, and that the EECC forms part of the applicable legal framework. Yet the planning decision stood, despite the absence of the very evidence needed to apply those principles in practice.

The result is that a planning authority may lawfully approve a mast without knowing where guideline exceedance is likely to occur, without disclosing exclusion information to affected residents, and without assessing whether individuals outside the scope of ICNIRP guidelines are placed at avoidable risk.

That is not because the risks were examined and found acceptable, but because they were never examined at all.

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9. The broader implications

The case illustrates how section 31(2A) of the Senior Courts Act 1981 can insulate unlawful decision-making from correction, even where the missing analysis concerns public health and individual vulnerability.

Legal error was identified.
The framework was acknowledged.
The evidence gap was visible.

But the absence of remedy meant the decision remained in force.

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10. What ultimately happened

In December 2025, following a sustained local leafletting campaign that raised the issues described above and generated public opposition to council expenditure defending the placement of a vulnerable resident within an evidenced exclusion zone, the telecommunications operator announced that it would not proceed with the erection of the mast.

The risk was not resolved through law.
It was resolved through community action.

That outcome does not negate the legal issues raised by the case.
It underscores them.

Where legal error is acknowledged but left uncorrected, the burden falls not on those exposed to risk, but on the system to be challenged until precaution is restored to decision-making.

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