

Property prepares for war over 5G roll-out

With a different telecommunications regime in force than for 4G, will landowners be unfairly treated?



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For many years property owners have been prepared to enter into agreements with telecommunications operators to permit the installation of mobile phone masts and other apparatus on their properties in order to generate additional income from their real estate assets. This free market worked well for many years as UK operators rolled out several networks and upgraded to 3G and 4G. However, major problems lie ahead with the roll-out of 5G because the market for mast sites has effectively seized up.

Since the Electronic Communications Code (the Code) came into force in December 2017, telecoms operators have reduced the prices they are prepared to offer landowners in order to install their apparatus on properties. Unsurprisingly, this has resulted in the withdrawal of property owners from the market. Where they were previously prepared to make rooftop or other space available for mobile telephony apparatus, the sums now being offered simply do not make it worthwhile.

Why has the price offered dramatically fallen?

The price fall is due to the ability of network operators to rely on the Code to seek the imposition of rights on reluctant property owners. Commentators have referred to this as a compulsory purchase mechanism but, in reality, it is not. Nothing is purchased, no ownership is transferred, but a tribunal can impose an agreement on the parties that grants rights over property, and one of the key terms of this agreement is



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around the rental fee paid to property owners.

Network operators seemingly want the use of landowners' properties for business without the need to pay very much at all. If the owners do not agree, the operators will threaten to ask the tribunal to impose their terms regardless.

This approach is not finding favour with landlords and, in turn, there is no longer an effective market for mast sites. Network operators are resorting to the courts and property owners are digging their heels in and resisting these actions. So far, the operators have primarily focused their efforts on trying to reduce the rents they pay in relation to existing sites, but there have been some cases involving the potential acquisition of new sites.

Network operators have ambitious plans to roll out 5G and it may therefore be that this process will quickly accelerate and the property sector needs to be prepared.

Property owners need to give careful and early consideration as to whether they are prepared to make their assets available for the use of network operators with little consideration in return. Any response to an approach from a network operator needs very careful consideration in order to avoid the risk of prejudicing

the property owner's position.

Anyone managing a portfolio of assets which derives income from telecoms apparatus at present needs to be aware that they are likely to be targeted for significant reductions in payment and they can realistically expect to be threatened with action under the Code.

Those in the property sector who manage or own assets with telecommunications apparatus should not wait until an approach is received from an operator but plan a proactive strategy.

Likely conflict

It is likely that many property owners are going to be faced with the prospect of either effectively donating the use of their assets to the network operators or having to defend their interests in a tribunal.

Network operators are substantial organisations with the resources to pursue actions against property owners through the courts, but there are also many well-resourced property owners who will not refrain from defending their interests. Some companies are already putting strategies in place to defend their assets against telecommunications operators.

Currently, the industry has only seen the early battles in what is likely to be a long war between the property sector

and the telecommunications network operators.

This does not bode well for the operators, property sector or the country as a whole. As matters stand, the property sector seems to believe it is grossly unfair that, after investing substantial sums in property assets, the shareholders of telecommunications companies should be able to benefit from that investment and those assets without making fair payment in return.

Final word

After many years of operating effectively through agreements being reached on a consensual basis, the new Code, coupled with the attitude and approach of network operators, has alienated the very people on whose cooperation the telecommunications sector previously relied. The market for mast sites has been destroyed and something will have to change for 5G to be delivered.

Generally, the view of property owners and investors is that they are not responsible for subsidising network operators and are prepared to fight hard, and commit substantial resources to avoid having to do so.

Even if the operators simply decide to put every site into the tribunal, it is unlikely that cases could be dealt with to deliver sites in the volumes, locations and timescales required to effectively roll out 5G. The property sector seems reluctant to fund the roll-out of 5G and is questioning how it was possible to roll out 3G and 4G while paying property owners reasonable amounts, but is not going to be for 5G.

Unless there is a fundamental change of approach by the network operators, the property industry is going to have to face up to the reality of the new Code and either accede to the demands of the operators or prepare and respond accordingly.