

LEGISLATION UPDATE

Are you managing your mast?



Luke Maidens, a solicitor in [Shulmans](#) LLP's Property Litigation Department and a specialist in telecoms law, considers how facilities managers should best protect and maximise the benefits from a telecoms mast site.

There are more than 50,000 phone masts in place across the UK. For many landowners or landlords with small pieces of unused land or roof space, installing a phone mast proved a welcome and easy source of additional income over recent years. But the telecoms industry is currently in a period of significant transition, and it's vital that facilities managers and landlords protect their interests when it comes to renting or managing sites for telephone masts.

Now the UK has reached saturation point in terms of mobile ownership, all of the main operators are looking to drive down costs through network consolidation. This may ultimately mean many masts could be taken down. For those that remain, operators want to get the best possible terms and the lowest possible rent. In some cases, these new terms and lower rents are being offered to landlords on the basis that, if they are not accepted, then the mast will be removed. Faced with the option of reduced or no income then the choice can seem simple.

But before you do anything, it's vital you do your homework. You need to check what rights you have and make sure you protect them. The first thing to do is seek professional advice. But be cautious of 'independent' advisors who may not be what they seem. Someone who, on the face of it may appear to be an 'independent' advisor or surveyor, may in fact be operating with a conflict of interest. For example, they may be associated with the operator, or have some other financial interest in the revised deal going through.

Another piece of advice is to be cautious when an agent offers to lease

roof space from you then sub-let it. They must feel they could make a profit by paying you less than you could get direct. Similarly there are organisations which offer a substantial one-off capital payment for a mast site. A one-off lump sum may be the route you want to take financially, but make sure the site is offered to the wider market, and not just one purchaser. You may be able to get more than they are offering, and their plan may be to sell it straight on for a larger sum.

Paperwork can be confusing at the best of times. But beware the "standard form network operator agreement" which has been prepared by or on behalf of the network operators. It's common sense, but always take independent legal advice before signing anything.

If you have an existing contract with an operator, you may find they seek to exercise break rights contained within it. If you receive contact from an operator saying this is what they plan to do, again you should seek independent expert advice to check your position. These break rights often contain specific conditions which must be strictly complied with, otherwise they cannot legally be enforced. So it may be that even if your lease contains a break right, it is not appropriate to use it in this way.

I have also come across numerous instances whereby the operators are writing to landlords to inform them they are bringing other operators onto the site and that the landlord's consent or further payment is not required. Don't just assume this is the case, as often there is an absolute prohibition on site sharing contained in many leases.

Another tactic operators may deploy is

to contact landlords to state that, unless the rent is reduced, the operator will leave the site – therefore ending any related income. Often, this is simply a bluff or bullying tactics. Is there actually any right to break the lease within your contract? And are there realistically any suitable sites nearby for the operator to relocate to, if they did leave yours?

Regardless of whether or not an operator is looking to get out of a contract or reduce your rent, it is important that you manage your mast site as an ongoing concern. Don't just leave it ticking over – you may be missing out. For example, is the rent actually being paid, have the rent reviews been implemented, are you receiving any site share fees which are due? We came across one instance recently where the operator had not paid rent for 10 years and owed over £90,000 in back rent for one mast. A third of this was irrevocably lost, as rent over six years old cannot be recovered.

Finally, many telecoms leases completed in the boom years have either expired or are due to expire. In some cases, operators are benefitting from very low and out of date rents. Check your lease renewal date and seek expert valuation advice to check whether you should be implementing the renewal of the lease, to gain an updated market rent.

Phone masts continue to be a welcome source of income for many businesses – but by being aware of their rights, facilities managers can make sure they are not losing out.

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