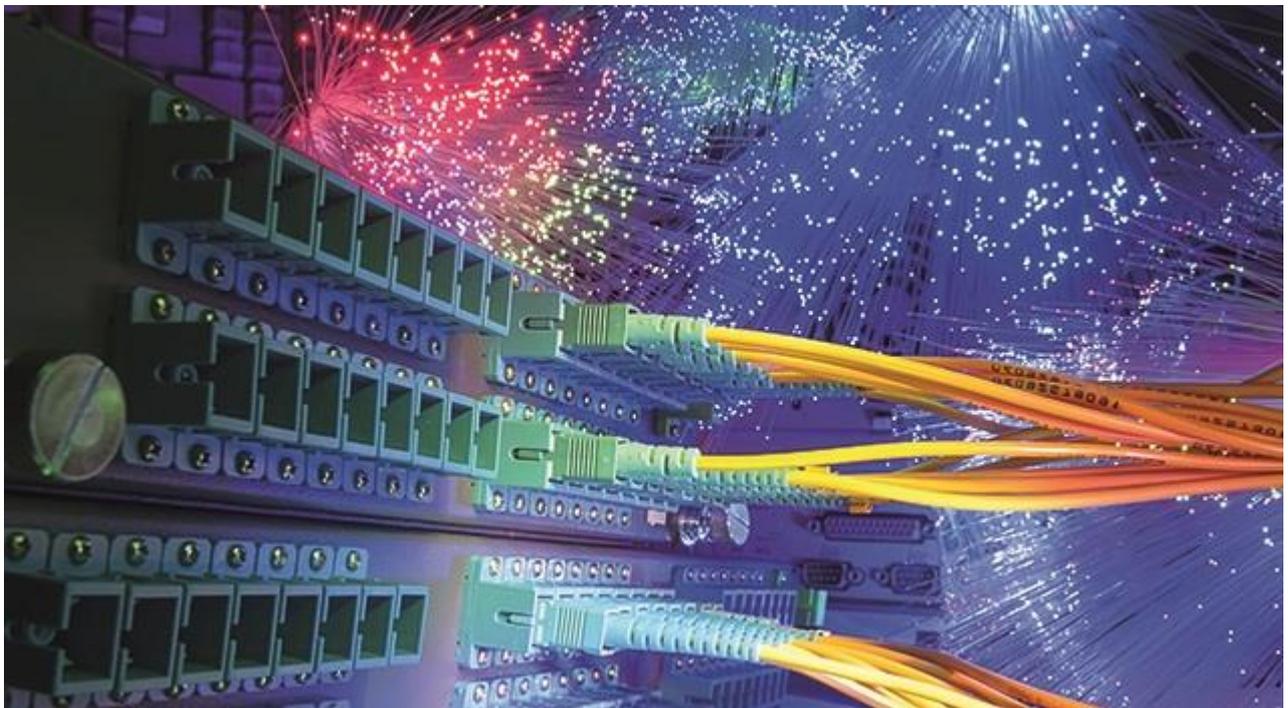


Mobile phone masts – are they still worth the income?

31 May 2016 | Updated: 1 June 2016 9:30 am | By Michael Watson

The Department for Culture Media and Sport recently published proposals for reform of the legislation which enables operators of electronic communications equipment to secure access to land so that communications infrastructure can be installed.



Property owners can no longer grant rights to mobile phone network operators to install transmission equipment - Source: [Shutterstock/Asharkyu](#)

The [proposals to reform the Electronic Communications Code](#) are presented by the government with the aim of supporting and sustaining the development of world class digital communications networks in the UK.

As a consequence of the proposals property owners with electronic communications apparatus on their property, or who are contemplating permitting the installation of apparatus, need to carefully re-evaluate their strategy and in particular should consider how the changes to the law may impact on them and their property assets.

It is quite possible that these proposals will fundamentally change the way property owners view the merits of allowing their property to be used for communications purposes.

Granting rights to mobile phone network operators to install transmission equipment has enabled many property owners to generate valuable additional income from their property assets. That will end under the proposed new Electronic Communications Code.

Background to the new Code

To date the terms of most agreements by which mobile phone masts (and other telecommunications equipment) are placed upon property have been mutually agreed between land owners and the telecommunications operators.

Agreements have been struck between the property owners and the communications companies that have provided for a market rent to be paid and have included restrictions on the network operators sharing sites, sub-letting and assigning. In short the market has operated effectively to set the rates and the terms of agreements by which apparatus was installed.

This has been against the backdrop of the current legislation comprising the Electronic Communications Code which ultimately enables telecoms operators to apply to the County Court for permission to install equipment against the will of the land owner.



Huge proliferation of smartphone use has created a sub market for masts

In practice these powers have rarely been used and the network operators have tended only to resort to relying on their “Code Powers” when they have actually been required to remove from a site.

For many landlords, particularly in the commercial property sector, the point has already been reached at which they question whether the income generated by permitting the installation of telecommunications apparatus is actually worth the inconvenience.

The proposals from the government are likely to exacerbate these concerns with the consequence that [sites are withdrawn from the market](#).

Impactful proposals for property

The proposals put forward by the Government will have a significant impact on this sector of the property business. Landlords who have previously generated a significant income from mobile phone masts will no longer be able to do so.

In addition property owners may find network operators trying to force their way onto properties. Once rights to install apparatus have been acquired by the network operators they will then be able to freely assign or share occupation of the site without any requirement to obtain consent from the property owner.

There are three areas of proposed change that property owners particularly need to consider when evaluating the risks and rewards associated with telecommunications apparatus:

1. The move to a “no scheme” basis of valuation
2. The right to upgrade and share apparatus without prior agreement or payment to site providers
3. The prohibition on contracting out of the code

“No scheme” valuation

“No scheme” valuation was proposed by the Law Commission in their consultation paper published in June 2012. The initial proposal by the Law Commission was for the adoption of the valuation basis used in compulsory purchase valuation in that consideration for rights conferred under the code should be assessed on the basis of their market value between a willing seller and a willing buyer, assessed using the second rule contained in section 5 of the Land Compensation Act 1961, without regard to their special value to the grantee or to any other Code Operator.

The Commission reported in February 2013 and having considered responses to the consultation concluded that the “no scheme” approach would be risky:

“Accordingly, our consultation has not produced evidence that could justify our recommending a “no-scheme” pricing basis in the public interest. Even if we could be sure that that change would not have the adverse effects for which consultees argue, it would be risky to recommend a “no-scheme” basis merely in the hope that it would speed up deals or would result in lower prices or better investment in electronic communications. Change is likely to be costly in itself and the market would take some time to settle; there would inevitably be some disputes even if consultees proved to be wrong in their prediction of widespread unwillingness to reach agreements. But as it is, the evidence with which we have been presented is such that we take consultees’ concerns very seriously. We conclude that the risks of economic damage, to individuals, businesses, the public purse and the electronic

communications industry itself far outweighs the potential benefit to that industry, on the basis of the evidence we have.”

The latest proposal from the government overrules this conclusion and therefore property owners need to be considering what this means for the generation of income from mast sites.

In practical terms the proposal will mean that a mast site with a footprint of 100 sq m will be valued in the same way as an equivalent size electricity pylon site so a site that might have previously commanded a rent in the region of £5,000 - £10,000 may now be worth something in the region of £50 - £200.

Upgrading and Sharing

In negotiating and drafting agreements for mast sites one of the key issues for site providers is the ability to retain control of who accesses their property and for what purposes. At present many agreements are tightly drafted to prevent the network operator allowing others to use the site and where permission is granted it is usual for the property owner to receive a further payment for this additional use and exploitation of their asset.

The proposal by DCMS is to sweep away this ability of property owners to control who uses their property and to give that right to the network operators.

Not universally well received by property owners

Whilst the motivation behind the proposed amendment to the Code is laudable the reality is that the proposals provide a mechanism by which companies competing for profit can drive down a significant element of their overhead at the expense of landlords. The rationale for this seems to be that rather than retaining the cost savings as extra profit the network operators will choose to then spend that money deploying infrastructure in areas where it is currently not profitable to do so.

The government seem to acknowledge that the proposals may not be an attractive proposition to many landlords and therefore the proposals will be underpinned by some form of compulsory acquisition regime and also the specific provisions preventing the contracting out of the Code.

This would seem to suggest a degree of naivety on the part of DCMS. City centre landlords will be hardest hit by these proposals. At present a landlord with a city centre office block considering allowing telecommunications apparatus on their property would probably retain a specialist agent to negotiate the terms upon which they might contract and specialist solicitors to draft the agreement. Ultimately the final decision on rent and how many users of their property they would allow remains with the landlord.



Rooftops could end up occupied by many operators on terms imposed upon them by compulsory acquisition - Source: [Hu Totya/Creative Commons](#)

Under the proposed new code they could find their rooftop occupied by many operators on terms imposed upon them by compulsory acquisition. In return the landlord may be receiving only a few hundred pounds per year whilst they and their other tenants suffer inconvenience such as armies of engineers repeatedly transiting through their property in order to access the roof for the purposes of installing, upgrading and maintaining equipment.

Over the years the mobile operators have acquired many sites and built up successful networks delivering the latest in communications technology – GSM, 3G, 4G and in the future 5G and so forth. This they have done by freely negotiating rents and other terms with property owners and without a statutorily imposed low cost rent regime. The Law Commission has expressed significant concerns about implementing such a mechanism and yet the Government has disregarded those concerns.

It will be interesting to see how the property industry reacts to this and whether it simply opens its doors to the network operators or whether a hard line is taken. If a hard line is taken then the network operators will have to rely upon whatever powers of compulsory acquisition are vested in them or revert to negotiating “market rates” as at present.

If landlords do withdraw wholesale from the market then the network operators having to rely on compulsory purchase powers is unlikely to deliver significant numbers of sites quickly in the absence of a summary and brutal compulsory purchase mechanism. It is quite possible therefore that the proposals by DCMS could achieve exactly the opposite of that which they are intended to achieve.

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