

Number 13

## Landlords on the Roof – An Update

Earlier this year we sent out a briefing note on the Telecommunications Act 1984 (which has now been superseded by the Communications Act 2003) and its implications for property owners. It was noted that the telecommunications operator, once it has entered into a written agreement with a land owner, will not only benefit from contractual rights but will also benefit from statutory powers conferred by the Telecommunications Code annexed to the Telecommunications Act 1984.

Since that briefing, this firm has been instructed by a client attempting to obtain vacant possession of a site it wished to dispose of and seeking to enforce the removal of the telecommunications equipment from that site. The position is regulated by

- Contractual law and
- Statutory law

In order to obtain vacant possession it is necessary to terminate the operator's contractual rights and also, but separately, the operator's statutory rights. In order to do this two separate notices must be served; this is because, under the Code, no party can terminate the statutory rights of the operator unless and until it is in a legal position to do so. Therefore, the operator's contractual rights must be terminated first.

Accordingly, there is a two-step procedure:-

### 1 Contractual notice

If the written agreement conferring the statutory rights contains provision for contractual termination then those provisions must be followed to the letter. It is vital that the correct terminology is used in any such notice and the notice should also confirm an intention to dispose of or redevelop the site. Most agreements provide for termination to be on a minimum of twenty-eight days' notice, but with the land owner obliged to use best endeavours to serve up to three months' notice. This is a loophole which the operator can and will use.

### 2 Statutory notice

Once the contractual notice has expired it becomes necessary to serve a statutory notice under the provisions of the Code. Again, great care needs to be taken in getting the terminology of the notice correct.

After the expiry period of the statutory notice the next step will depend on whether or not the operator has served a counter-notice under the Code. If it has, it will definitely be necessary to go to Court and, even if it has not, an application to Court may be necessary in order to remove the operator from the site.

From a practical point of view it is essential to find out on any disposal as soon as possible whether there is any telecommunications equipment on the property and to seek legal advice without delay.

### © RadcliffesLeBrasseur December 2003

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

For further information on property related issues please contact :

London Charles Farrer on 020 7227 7270 email: [charles.farrer@rlb-law.com](mailto:charles.farrer@rlb-law.com)  
Reena Patel on 020 7227 7351 email: [reena.patel@rlb-law.com](mailto:reena.patel@rlb-law.com)  
Leeds Michael Thorniley-Walker on 0113 234 1220 email: [michael.thorniley-walker@rlb-law.com](mailto:michael.thorniley-walker@rlb-law.com)

### PROPERTY

RadcliffesLeBrasseur  
5 Great College Street  
Westminster  
London SW1P 3SJ

Tel +44 (0)20 7222 7040  
Fax+44 (0)20 7222 6208  
LDE 113

6-7 Park Place  
Leeds LS1 2RU

Tel +44 (0)113 234 1220  
Fax+44 (0)113 234 1573  
DX 14086 Leeds Park Square

25 Park Place  
Cardiff CF10 3BA

Tel +44 (0)29 2034 3035  
Fax+44 (0)29 2034 3045  
DX 33063 Cardiff 1

[info@rlb-law.com](mailto:info@rlb-law.com)  
[www.rlb-law.com](http://www.rlb-law.com)