

Landlords on the Roof

Recent years have seen runaway growth in the mobile telecommunications industry. With the advent of third generation mobile telephone technology (3G) many new mast sites will be required. Property owners with available rooftops and land are likely to be approached by operators with attractive offers to site equipment on their land.

Operators usually have their own form of agreement, which may look deceptively simple, and the potential landlord may see no reason to take legal advice. He will be gaining extra revenue and it is tempting to sign up and bank the cash. However, there are practical considerations which the potential landlord should be aware of.

The Telecommunications Act 1984

If an operator holds a public telephony licence then any agreement with a landowner will be subject to the Telecommunications Code which confers statutory powers upon the operator and implies rights into an agreement separate from any contractual and proprietary rights.

These rights include the ability to retain telecommunications equipment on a site at the end of the term. Whilst the Code does provide mechanisms for the landlord to obtain vacant possession it may involve a Court application.

If an operator approaches a landowner for consent to install equipment on property and is refused, the operator may use the Code to seek a court order allowing it to site the equipment on the property nonetheless.

Mast or no mast?

Before entering into an agreement it is worth considering and understanding the Code and the consequences of allowing an operator onto your land.

If a landowner is looking for a short-term income or has plans to redevelop then it is probably not a wise idea to allow an operator to set up. However, if the landowner is looking at a long-term arrangement and has no specific plans for redevelopment then it is likely to be less concerned by the Telecommunications Code.

When granting an occupational lease to a tenant, the landowner should prohibit the tenant from entering into an agreement with an operator. Otherwise, such agreement would bind the landowner but allow the tenant to receive the income.

Points to consider when entering into an agreement with a telecommunications operator

1. Standard documentation

Do not automatically sign up to the operator's standard agreement. The standard documentation can nearly always be negotiated and the landlord's position strengthened.

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
www.rlb-law.com

RadcliffesLeBrasseur

2. Landlord and Tenant Act 1954

We would recommend that agreements are excluded in all instances to ensure the operator does not obtain security of tenure along with the statutory powers conferred by the Code.

3. Demise and Equipment

Ensure that the demise is shown by reference to a plan and there are detailed specifications of the equipment to be erected.

4. Permitted User

Operators agreements tend to have very wide user clauses. Keeping the use specific to the equipment installed means the landlord may be in a position to increase rent when new, more valuable technologies are required by the operator.

5. Alterations and Additions

Consider an absolute prohibition upon alterations and equipment upgrades for the reason mentioned above.

6. Alienation

It is unlikely that an operator would wish to assign to another operator as the assignee would want to install its own equipment. There should be an absolute bar on sharing (except for sharing with group companies) or sub-letting.

7. Insurance and Indemnity

Given current environmental concerns, the operator should provide a full indemnity in relation to any harmful effects arising from the use of the site or the equipment and this should be backed by a suitable level of insurance.

8. Nuisance and Interference

The operator should ensure that use of the equipment does not cause any nuisance, inconvenience or disturbance to the owner, occupier or any other person in a building or any neighbouring or adjoining buildings. There should be provision for use of the equipment to be suspended if it is causing interference with other equipment until such time as the interference is remedied.

9. Landlord Interference

Operators often seek to prevent the landlord from interfering with equipment. Be aware this might be electromagnetic interference from within the building and could have an impact on the landlords other lettings.

10. Rights and Reservations

The operator may need to run cabling across rooftops and enter retained parts of the property to maintain and inspect equipment. Make sure sufficient rights are granted for access to the site but ensure adequate control over how these rights are exercised is retained. It may be necessary to restrict access to office hours or weekends, using specific routes through the property.

You may need to reserve rights to enter the site for specific purposes, for example, inspection of air conditioning units or the equipment itself to ensure the operator is complying with its obligations under the agreement. Consider reserving a right to require the resiting of the equipment to carry out works.

11. Installation

The agreement should require the operator to serve notice of when it intends to start works. The installation works should be carried out in a good and workmanlike manner. Ensure that the operator covenants to obtain all necessary consents for the installation and operation of the equipment.

Daryl Rivero

Assistant Solicitor

Investment and Development Team

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing. For further information on property issues please contact Charles Farrer or Michael Higginson on 020 7222 7040

BRIEFING

PROPERTY

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Westminster
London SW1P 3SJ

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

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Fax +44 (0)113 234 1573
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