

## The New Code – The Future of Site Acquisition

Since the New Code was introduced on the 28th December 2017, we have seen little action in the market.

It is still too early to tell if the Code Operators will be able to enter into agreements by negotiation with landowners to install their apparatus on buildings without having to resort to the courts to seek an order to do so. The Code Rights are firmly underpinned by a new court process that to many is indicative of an acceptance by Government that landowners will not be willing or able to agree terms with the operators.

In deciding whether to impose terms upon a landowner the court must first be satisfied that the operator can justify that the site satisfies specific requirements and that it is in the public interest to grant the operator Code Rights to install their apparatus on it.

We believe that the Code Operators will have a delicate balancing operation to perform to ensure that they do not alienate landowners. Whilst rural sites may not be such an issue in terms of ongoing maintenance and access if located next to a road and designed with its own access from that road, urban sites -where the operators maximise their profits- will prove far harder to design and access.

If Operators regularly resort to the courts to impose Code Agreements upon unwilling land owners, then they run the risk of having to deal with a hostile landlord. This could result in operators being unable to access sites to rectify a fault, putting the network at risk. A hostile landlord is also more likely to object to upgrades or addition of apparatus – precisely the opposite of what government intended.

Perhaps an early indicator as to how the Code Operators are intending to approach future site acquisition was given when the NFU, CLA, CAAV and other landlords telecoms representatives who were invited to contribute towards the drafting of template agreements and a new code of practice for operators, all withdrew from the joint operator/landowners committee due, we understand, to concerns that the legitimate interests of landowners were being excluded from the documents.

That the code of conduct for the operators is only a voluntary one, and therefore toothless should also start the alarm bells ringing.

Some may question whether any site provider would now be willing to enter into any agreement with the operator especially given the early suggestions that rents, which have always been the driving force behind site acquisition) are to be halved or reduced to such low levels that a single one-off payment for a ten-year term will be made. The Department for Culture Media and Sport have stated regularly in their Impact Assessments that “Owing to the Governments proposal’s focus on reducing barriers to further infrastructure development, **landowners are expected to experience more costs...**”. In terms of rent the DCMS Impact Assessment 23/09/2014 stated that “**changes to the wayleave valuation regime...is expected to lead to a 10% reduction in wayleave payments from telecommunications operators to landowners**”.

Statutory powers conferred upon the operators appear to some to be Draconian amounting to, effectively, compulsory purchase. In fact, compensation (NB not consideration/rent) is directly linked to compulsory purchase order valuation regime finally confirming that having a mobile phone operator on your land will devalue it.

The ball is now firmly in the operator’s court.