

The New Code Valuation Regime

Landlords agents are reporting that compulsory purchase order (CPO) values contained in Part 14, Paragraph 84 of Schedule 3A of the "New Code" are mistakenly being applied to determine consideration (rental values) whilst the relevant section that actually deals with consideration- paragraph 24, is being ignored.

The valuation model in Para 24 requires that the Occupier is a willing party to the agreement. When a court determines the consideration payable under paragraph 20, this must be an amount **representing the market value of the relevant persons agreement to confer or be bound by the code right (as the case may be).**

This is the amount that, at the date the market value is assessed, a willing buyer would pay a willing seller for the agreement, in a transaction at arm's length and on the basis that the buyer and seller were acting prudently and with full knowledge of the transaction. This would include value attributed to rights granted.

Sub clause 3(a) excludes:- the value of sharing, upgrading and subletting apparatus; being able to assign rights; value being attributed to the use of the apparatus as a radio base station and it always being assumed that there is a competing alternative available site.

If totally unrealistic rents of say £500.00 are offered for a rooftop site for commercial offices in central London (existing rents for subsisting agreements are IRO £25k), then the operator should not expect to agree terms.

If a sensible position is not set out in the first instance and operators take to resorting to the courts to impose agreements, then why should the Occupier waste his time in even attempting to respond at all to even the initial contact from the agent or operator. After all the New Code does not grant the operators any rights of access until and unless a Code agreement is in place.

The Government made it clear that it expects operators to use all reasonable means to reach an agreement before resorting to the courts. In other words they still have to be seen to be trying to negotiate and to try to reach agreement in order for the Occupier to become a willing party to the agreement.

If the operator offers a ridiculously low rent, then it could be argued that there has been no real attempt to negotiate- the operator is trying to force an agreement and flawed valuation on an unwilling buyer- a hostile landlord who will not want to cooperate when it comes to granting access for emergency works.

Land owners must be mindful of the Code Rights that operators have and carefully consider what they are being offered.