

# Mobile Phone Masts - Risks for landowners

**Following the significant growth in demand for telecommunications services and the major competition between operators to install equipment there has been a sharp increase in requests from operators to install mobile telephone apparatus on land/buildings.**

Mobile phone operators are prepared to pay relatively high rents to install telecommunications apparatus on buildings or land, usually by way of a lease, although it is important to be aware that an immediate entitlement to vacant possession is not necessarily available when the lease to a telecommunications operator expires.

At the end of the lease the parties can attempt to make a new agreement for the operator to remain on the premises. However, in the absence of any agreement, the Telecommunications Code entitles telecom operators to serve a notice on the landowner that it requires a new lease. After 28 days, if no agreement is made, the operator can make an application to the court. The court needs to decide that:

- the landowner can be sufficiently compensated for the depreciation in value of the land; and
- the mobile phone mast will benefit sufficient numbers of users to outweigh any prejudice incurred in making the order.

The court is guided by the general principle that no one should be denied access to the telecommunications system.

If, when the lease expires, the telecommunications operator does nothing and the landowner wants the equipment removed there are two possible ways under the Telecommunications Code.

1. They can serve a notice on the operator requiring removal of the equipment on the basis that they require the “alteration” of the land to enable a proposed improvement (eg development or change of use) to take place. The court will only make an order for removal if it is satisfied that the alteration is necessary and will not substantially interfere with the service provided by the operator. The court will consider factors such as the length of the interruption and whether it is to be temporary or permanent.

If the operator is not required to remove its equipment, the landlord will be entitled to compensation equal to the amount of the depreciation in the value of the land.

2. If the landowner does not intend to develop the land but nonetheless wants the equipment removed after expiry of the lease they must serve a notice on the operator.

The operator can serve a counter notice on the landowner within 28 days indicating why the occupier is not entitled to require the removal of the equipment or specify the steps it proposes to take to secure rights as against the occupier to keep the equipment on site.

If a counter notice is served, the occupier must apply to the Court to enforce the removal of the equipment.



The Court is only likely to make an order for removal if the operator is dilatory in acquiring rights, or does not list the steps it proposes to take to acquire rights . It is important to be aware that there is therefore no guarantee that the Court will order the removal of the equipment and, as yet, no guidance from case law as to how the Court will approach the Code powers.

For further advice and details of agents we would recommend when negotiating mobile phone mast agreements, please contact us at the offices below.

## Contact information

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