

Telecoms rights: landowner's intention to redevelop



A recent Upper Tribunal decision^[1] confirmed that landowners cannot avoid rights being imposed on their land under the Electronic Communications Code 2017 (the Code) simply by designing a redevelopment scheme with the sole purpose of avoiding them.

Under the Code, it is possible for a mobile operator to apply to the tribunal for a conferral of a range of Code rights. A landowner can seek to defend the imposition of those rights if the landowner “*intends to redevelop all or part of the land to which the Code right would relate ... and could not reasonably do so if the order were made*”.

In this case the mobile phone operators' lease of the site had expired in 2017 and negotiations between the mobile phone operators and the landowner for the new lease had failed. The mobile phone operators therefore applied to the Tribunal for an order imposing their rights under the Code to allow them to retain a telecoms mast on the site which would also allow them to use the site on more favourable terms than they may otherwise have done under a lease granted by the landowner. The landowner objected and explained that they planned to redevelop the site by placing their own masts on the site and could not do so if the rights were imposed on their land.

A two-stage test was applied by the Upper Tribunal:

1. Did the landowner have a reasonable prospect of being able to carry out the redevelopment;
2. Did the landowner have the necessary firm, settled and unconditional intention to put their scheme into effect.

In the Upper Tribunal's view stage 1 was satisfied – the landowner had obtained the necessary planning consents



for one of the mast sites and had the means to do the works. However, under stage 2, the landowner lacked the necessary firm and settled intent as the scheme had been designed solely to prevent the operators from acquiring Code rights.

This decision means that a landowner seeking to defeat an application to apply Code rights to the telecoms on their land, must show that the scheme is viable and is being done for a reason other than for the purposes of preventing Code rights being imposed. Any plans and proposals for a site will therefore be scrutinised by the Tribunal to check that motives behind the redevelopment of the site are genuine and a development partner may be called on by landowners when promoting their sites for planning to assist them in any such application.

[1] *EE Ltd and Hutchison 3G UK Ltd v Trustees of the Meyrick 1968 Combined Trust of Meyrick Estate Management* [2019] UKUT 164 (LC)



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