

DO YOU UNDERSTAND THE ELECTRONIC
COMMUNICATIONS CODE?

HOW DOES IT IMPACT YOUR BUSINESS
OR PROPERTY?

TELECOMMUNICATIONS

Carter Jonas





THE ELECTRONIC COMMUNICATIONS CODE

Until December 2017, the rights for telecoms operators to install and maintain apparatus on land were contained within “*one of the least coherent and thought-through pieces of legislation on the statute book,*” according to a senior judge. So, when the government announced a wide-ranging review of communications law in 2011, many felt it was long overdue.

Following a Law Commission report in 2013 and subsequent Government consultations, a revised Electronic Communications Code (the Code) was implemented in the Digital Economy Act 2017 and became effective on 28th December 2017.

The main aim of the Code, apart from clarifying the law, was to facilitate the development and installation of telecommunications infrastructure, to allow the network to catch up with the exponentially increasing societal needs.

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THE NEW CODE IMPACTS THE FOLLOWING KEY ISSUES FOR BOTH NEW AND RENEWAL AGREEMENTS:

BASIS OF VALUATION

When calculating the amount an operator should pay for land and rights, the rent (or “consideration”) is now based on market value with a special assumption that the operator’s network does not exist. This has been referred to as “no scheme” or “no network” value; effectively value to the landowner, rather than the telecoms operator. In most cases, this has the effect of significantly reducing rental income for telecoms installations.

SHARING

If certain conditions relating to visual impact and burden are met, an automatic right to share apparatus will apply. Where a “payaway” or share of other operator income has been received in the past, it is expected to cease under new Code agreements.

TERMINATION

Code rights will effectively be perpetual, unless a genuine intent to redevelop can be proved at the term expiry of an agreement. Even if successful, a subsequent two-stage termination and removal process is likely to be onerous and costly for landowners.

DISPUTE RESOLUTION

Almost all disputes under the Code will be resolved by the Lands Chamber of the Upper Tribunal. Whilst the specialist nature of the Tribunal is welcomed, the sheer volume and contentious nature of cases referred since the new Code became effective mean that the aspiration to reduce delay and costs of decisions has yet to be realised.



IMPACT ON THE MARKET: A PERFECT STORM

Many agreements entered into 15 years ago (for 3G) are now coming up for renewal. The operators' current need to upgrade and improve infrastructure for 5G, whilst seeking to realise the operational rent savings that the new Code delivers, has been met with an understandable reluctance amongst landowners to sign agreements under the new Code.

In addition, landowners are now faced with approaches from both mobile and fibre operators wishing to install new apparatus on their land for the first time – either as a result of an existing nearby site being redeveloped, or simply the need for additional infrastructure to provide connectivity and capacity – particularly in dense urban areas.

The above brings several key questions sharply into focus for any impacted landowner:

- What is the market value of the existing or proposed site and rights?
- Are the Code rights requested reasonable, fair and proportionate?
- What will be the impact on my business or the surrounding land, and how is my loss compensated?
- How does a Code agreement impact on my future plans for use, redevelopment or disposal of the land?

OUR EXPERTISE

Carter Jonas has a dedicated Telecommunications team, with an average of 18 years' experience. Their expertise spans:

- Estate and asset management
- Management of operational telecoms estates
- Project delivery
- Valuations

Our Telecommunications experts are RICS registered valuers, recognised sector experts and frequently invited to contribute to policy discussions.

OUR MULTI-DISCIPLINARY APPROACH

Telecoms apparatus and rights exists on, under or over land which will generally have another primary purpose: agricultural, commercial, residential, owner-occupier, institutional or investment.

Cross-discipline collaboration within Carter Jonas gives us unique access to advice which reflects the primary purpose of the land or the client's aspirations.

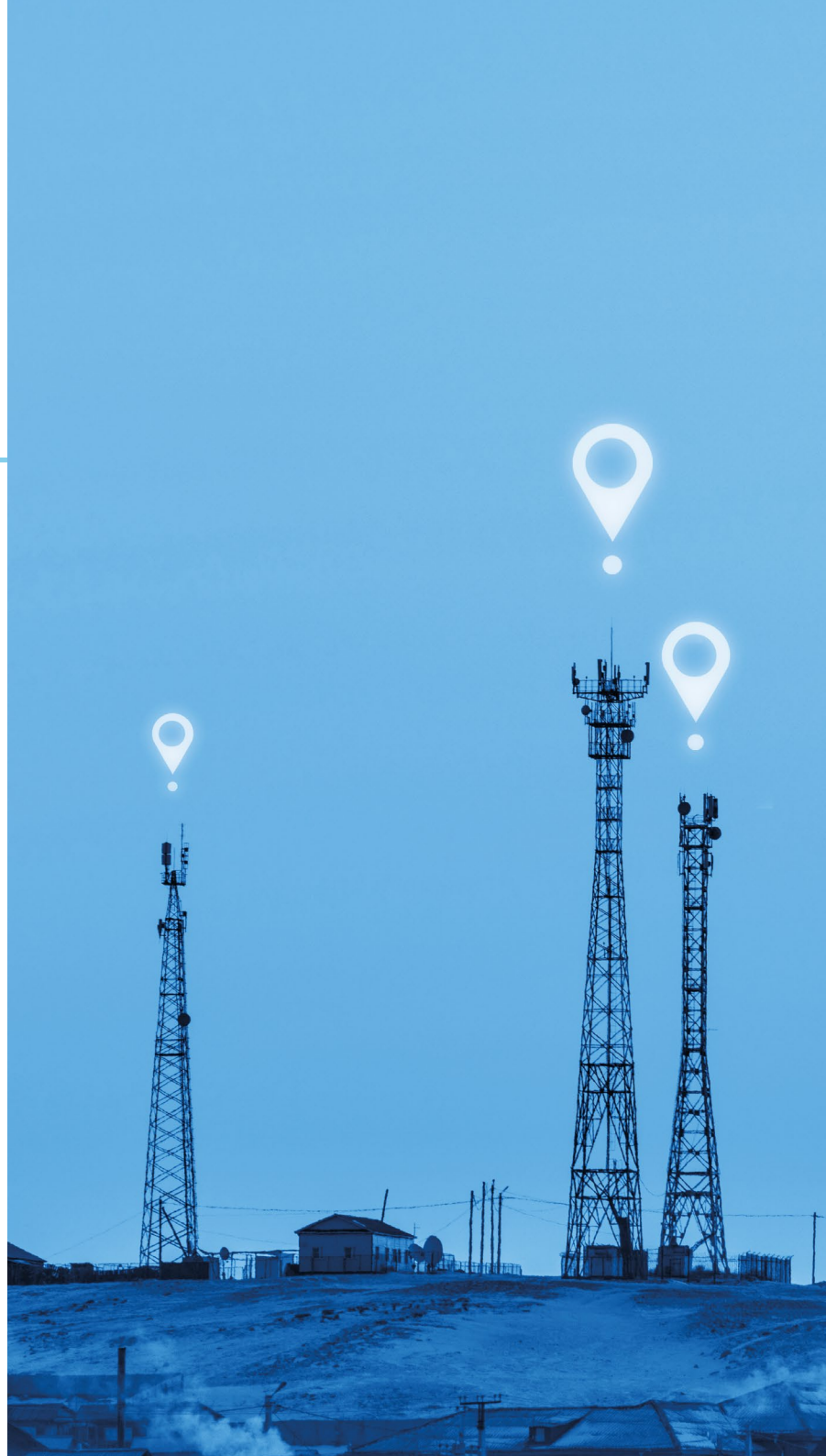
The reformed Code draws many comparisons with compulsory purchase and the “no scheme” basis of valuation. Carter Jonas' compulsory purchase experts act for both claimants and acquiring authorities, and have significant experience dealing with assessment of value and loss, including expert witness at the Upper Tribunal.

Our energy sector specialists can advise on alternative land uses, including solar PV, wind generation, battery storage and EV charging – all alternative income streams which often share land characteristics with telecoms.

We offer pragmatic, holistic, expert advice.

OUR TELECOMMUNICATIONS SERVICES INCLUDE:

- Portfolio and site management
- Negotiation of renewal and new site agreements
- Valuation
- Rent review
- Lease and equipment audit
- Apparatus removal or relocation for redevelopment
- Alternative Dispute Resolution (mediation, arbitration, expert determination)
- Expert witness
- Strategic advice
- Policy advisory (5G and small cells)
- Regulator (Ofcom) representations
- Fibre wayleaves and concessions



OUR CLIENTS INCLUDE:

- Highways England
- Severn Trent Water
- HS2
- The Crown Estate
- Secretary of State for Defence
- Buckinghamshire County Council
- Hertfordshire County Council
- Shropshire Council
- Westminster Council
- Southern Water



33 OFFICES ACROSS THE COUNTRY, INCLUDING 7 INFRASTRUCTURE HUBS

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Winchester

9-10 Jewry Street, Winchester SO23 8RZ

OUR INFRASTRUCTURE TEAM IS THE FASTEST GROWING OF ITS KIND IN THE COUNTRY.

In the last decade we have expanded from a team of four to over 80, and we aim to continue to grow and to achieve our mission to be the leading provider of property expertise for the development, management and trading of assets arising from the infrastructure sector.



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