



Communications and Education

Version 1: Adopted 16th December 2023

FAQ Rural site providers

Q. Why is telecommunications infrastructure it needed?

Good quality digital infrastructure where we live, work or travel is needed to access online public services, social networks, as well as healthcare, retail, and financial services. A UK-wide rollout of mobile network coverage, broadband connectivity and fibre upgrades is needed to ensure everyone can fully realise the benefits of digitally integrated services and products. This Telecommunications Infrastructure provides a Public Benefit across the whole of the UK.

The COVID-19 pandemic has shown us how vital it is for people to stay connected - from home working and schooling to staying in touch with family. Greater digital connectivity will reduce the 'digital divide' between remote and urban areas, strengthen national resilience during crises and support social inclusion for vulnerable socio-economic groups. (Source: www.gov.uk)

Q. What is the Electronic Communications Code?

The Electronic Communications Code (Code) regulates the legal relationships between landowners and Mobile Network Operators (MNO's) and infrastructure providers. The Code (Schedule 3A Communications Act 2003) became law in December 2017 and sets out the legal rights of electronic communication service providers (including mobile and broadband). It sets out the process whereby a Code Operator may make an application to the court to impose an agreement on a landlord (akin to compulsory purchase), as well as various provisions in relation to terminating Code Agreements, sharing sites with other Code Operators, and upgrading equipment. View the Electronic Communications Code. Although Code Operators have these legal rights, the Code encourages agreements to be reached consensually and, therefore, an Operator will seek a voluntary and negotiated agreement before making an application to court for the agreement to be imposed. In essence, the legal rights of Code Operators are there as a backstop, should agreement not be reached (see below for more information).

Q. What is a Code agreement?

A Code agreement is the legal document entered into by a Code Operator and an occupier of the land (which will sometimes be the landowner but may also be the tenant of the land).

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The agreement will detail the rights that an Operator must keep and maintain their equipment on the land, as well as detailing other obligations, such as what the Operator must do if damage is caused.

The Code gives certain rights to Operators to build and manage telecommunications networks. This includes both fixed line (cables mainly underground) and mobile telephony services. However, before the Operator can proceed, these rights must be conferred on the Operator by the landowner. These rights are likely to cover a payment to the landowner, known as consideration, for renting a piece of land where a mobile mast or equipment is being installed, the right of the Operator to access the land and the provision of wayleaves for the laying of cables.

Q. Where can I find more information on the Code arrangements?

The telecommunications regulator, Ofcom, has produced a Code of Practice which sets out clear principles and expectations of how both Operators and landowners should behave. The Code of Practice can be found on the Ofcom website (www.ofcom.org.uk).

Q. An operator wants to install a mobile phone mast on my land, but I know nothing about telecommunications. What should I do?

On any issue relating to telecommunications law it is strongly advised to seek professional advice from professional bodies. Here are some useful resources:

- <https://www.rics.org/uk/>
- <https://www.caav.org.uk/>
- <https://www.compulsorypurchaseassociation.org/>
- <https://www.nfuonline.com/>
- <https://www.cla.org.uk/>
- <http://www.mobileuk.org>
- <https://www.ofcom.org.uk>

Q. What if I don't want telecoms infrastructure on my land?

Mobile networks are classified as Critical National Infrastructure and are installed as part of a national network. Therefore, in some cases a site is necessary to ensure ubiquitous coverage across an area.

Typically, if there are no firm plans for the land (development), a Code Operator can potentially ask the court to impose an agreement on you, regardless of whether you want to host the telecoms equipment. In considering whether to impose an agreement on a landowner, the court will consider whether the public benefit outweighs the prejudice to the landowner. It is recommended to seek advice on this matter from a Code expert.

Q. An operator has approached me wanting to install a mobile phone mast. What happens if I refuse?

One of the Government's key objectives in reforming the Code was to ensure that there was greater rollout of fixed and mobile telecommunications infrastructure to meet the public's growing demand for telephony and broadband connectivity. Because of this, an Operator

can ultimately ask the court to impose a Code Agreement on a landowner if a landowner is unwilling to engage.

An Operator can serve a Code notice on a landowner stating its intention to install electronic communications apparatus, such as a mast. If terms are not agreed within 28 days, an Operator can apply to the court to impose a Code agreement. It is very important a landowner seeks professional advice if they receive a Code Notice.

Q. Why is my land suitable, can't the mast be installed somewhere else?

The Operator will have chosen the location based on numerous factors, most importantly network coverage, but may include other operational requirements and ease of planning.

When considering whether a particular piece of land is suitable, there are few generic aspects of site selection, and each location has its own site specific challenges that must be considered.

Site selection is often based on topography – radio waves/signal cannot pass through material, therefore it's vital the base stations are sited at the highest possible point to see over trees, buildings, and landform so it may maximise the coverage footprint and provide meaningful service uplift.

Site selection must also consider Town and Country Planning matters. Operators attempt to minimise impact upon residential and visual amenity in their siting. They also consider street scene and landscape protection, as well as being respectful of localised designations such as AONB, Conservation Areas, National Parks or Listed Buildings. This may make some locations more acceptable or suitable than others.

Locations for base stations must be capable of having power delivered to them and must also be capable of transmission connection for backhaul. Backhaul is how you link the site/base station back into the network. This transmission or backhaul connection can be done via delivery of fibre to the site or the site being at a location that will facilitate perfect line of sight to a remote base station for microwave dish link backhaul. After all of this, sites must also be accessible and buildable – a real challenge in remote/rural deployment.

Operators must find a balance across all these numerous technical and location-specific aspects for a site to be deliverable.

Q. Can I contract out of the Code?

The revised Code makes it very clear that neither party can contract out and an Operator has certain minimum rights within the Code which, if sought as part of the agreement, would likely be imposed by a Court if agreement could not be reached voluntarily. Therefore, landowners are generally not able to limit an Operators' rights to less than what would be available under the Code.

Q. Will the operator need planning permission?

Telecommunications companies are governed by strict planning regulations, which govern what can be built and where. Like any other form of development, telecommunications infrastructure is governed by the planning system. Proposals for telecommunications

infrastructure typically fit within three planning types and could require either a full planning application, an application for prior approval or a permitted development notification. The legislation that determines what planning type will be required is the General Permitted Development Order (GPDO) – the 4 nations of the UK each have their own GPDO and various nuances within.

This legislation allows certain permitted development rights for the Mobile Operators and allows the alteration, installation and replacement of certain equipment and masts.

Permitted Development Rights (PDR) is a national grant of planning permission that allows certain building works and changes of use to be carried out without having to make a planning application, as they are deemed as approved in law. Prior approval is a form of permitted development where the principle of the development is established but the Local Planning Authority (LPA) may make a determination on siting and appearance. This application is meant to be a light-touch process and carries a statutory 56-day determination period.

When a determination is required (i.e., not straight permitted development), applications must be submitted and determined by the LPA. Prior to applying, the Operators carry out local stakeholder consultation as defined by best practice principles. The LPA will also do their own consultation as part of the application process. Applications are then determined against local and national planning policy and guidance, and other material considerations including public consultation response.

To help better understand the planning system and planning legislation, it is recommended to take formal Planning advice.

Scotland, Wales and Northern Ireland

Planning law is devolved so Scotland, Wales and Northern Ireland all have their own set of laws, national policies, and guidance governing telecoms deployment.

Q. How much income can I expect?

This will be determined by the type of agreement, the location and the circumstances of your site. Case law and numerous consensual deals are settling on a typical range of values for different site types and locations, but the precise valuation is always site specific and depends on a variety of factors.

Q. Will my professional and legal costs be covered?

Yes, professional fees will normally be reimbursed, provided that the costs sought are reasonable. To ensure you costs will be recoverable from the Operator, please check with your professional adviser.

Q. I am an existing landlord. Why is the rent I am receiving being reduced?

There has been a dramatic increase in public demand for mobile services over recent years. Recognising this, the Government updated the corresponding legislation (The Electronic Communications Code) to support the rollout of digital communications infrastructure. This includes a change in how land is valued. The law seeks to put telecommunications

infrastructure on a similar footing to essential services such as utilities and to reduce rents to enable reinvestment into national mobile networks.

Q. If an operator shares a mast or equipment with another operator, can I charge rent?

Under the Code, if an Operator either shares a mast with another Operator or upgrades the installed equipment, there is no additional payment. However, landowners should note that having additional Operators on the land may lead to increases in access provision which, in turn, can lead to additional compensation items (for example, increasing traffic on a private road may lead to a higher contribution towards maintenance of the road surface).

Q. I have a lease with an Operator which has another five years to run. What happens when the lease expires?

The revised Code does not apply to existing leases (other than termination provisions in some cases) meaning that the provisions of the old Code will apply. However, once the lease has expired and has been renegotiated, the new Code will take legal effect. If site sharing arrangements are laid out in an existing agreement, these will have effect under the old Code. Where there is a new agreement that includes site sharing, the revised Code has legal effect.

Q. Will the installation and ongoing maintenance disrupt my business?

If there is a genuine and foreseeable effect on your business that can be demonstrated, such compensation can be included within the agreement. The Operator's contractors should invite you to any pre-start meetings and make you aware when disruption, albeit for a limited period, may occur to your business. For on-going maintenance, it is important to agree in advance with the Operator/infrastructure provider, the rights of access as part of the legal agreement.

Q. How many site visits will there be in a year?

Site visits will take place for installation, upgrades or maintenance. The number of visits will depend on your site and other factors. You can get an indication from the Operator/infrastructure provider but it's important to note that sometimes unforeseen circumstances can occur and therefore may require additional visits e.g., if the telecoms equipment has been damaged due to severe weather conditions, it would require an unplanned visit to solve the issue.

Q. I am worried about my neighbours / business tenants who are adjacent landowners. What should I do?

If you have any concerns regarding this, please let the Operator/infrastructure provider know at an early stage, so they can accordingly advise. It is also worth discussing these concerns with your professional adviser if you have instructed one.

Q. What happens if your contractors cause any damage? (Planned/unplanned)

You will be compensated for any damage caused as a result of work carried on your land. Every organisation will handle this differently. Please ensure you report any issues, accidental or not, immediately so it can be addressed as soon as possible and made safe if necessary. The terms of your agreement will be reviewed for liability and the cost of reinstatement. It is recommended to get a record of condition before any works begin.

Q. What happens if the landlord causes any damage?

You must notify your Operator tenant as soon as possible regarding any damage, whether accidental or not, in order for them to assess the site as soon as possible and make safe.

Q. How can I protect my business / address security concerns etc (Telecoms Operators gaining access - agreeing an access protocol)?

Access arrangements would be agreed with you when the agreement is made. It is important to confirm and agree any proposed security protocol in advance with the Operator/infrastructure provider as part of the legal agreement between the parties.

Q. Will coverage be improved in the area?

While coverage is one part of a mast installation, applications may also be made to upgrade a site to provide additional capacity rather than simply coverage. Additionally, a site might also introduce a sharing element to provide additional capacity and coverage to an Operator that either does not provide a signal or is seeking to strengthen its signal in that particular area (i.e., partial or total not-spots).

Q. I want to redevelop a piece of land which has a mobile mast situated on it. What do I need to do?

The landowner needs to give a minimum of 18 months' notice to the Operator/infrastructure provider stating their intention to terminate the agreement for the purpose of redeveloping the site and comply with any other contractual obligations which may have been agreed by the parties. It should be noted, however, that, under the Code, the termination will only take effect at the end of the lease unless a redevelopment break clause has been negotiated.

It is recommended that you seek professional advice, as the provisions of the Code can be complex. You should start conversations early and allow plenty of time before needing the site back, to commence any development work, as it can take longer than 18 months for the apparatus to be removed. Your initial discussions can also look at the possibility of relocating the mast nearby.

Q. I am worried that if I enter into an agreement with an Operator a number of ancient and valuable trees will be destroyed. What can I do?

It appears that the Code only relates to the lopping of trees and other vegetation where they overhang a street. Here the operator retains the right to remove any interference or obstruction. The landowner retains the right to compensation for any loss or damage.

However, the Code does not mention other trees and vegetation that may cause interference or obstruction on land other than at street level. It is, therefore, recommended that the rights conferred on an operator in this situation should be negotiated at the time the Code agreement is made. Landowners should seek professional advice.

Q. Who is MBNL and what connection do they have with the Operators?

MBNL is jointly owned by EE and Hutchison 3G (who trade as "Three") and provides mobile telecommunications infrastructure services for serving their customers in the UK. MBNL

installs, operates and maintains mobile telecommunications infrastructure sites across the country on behalf of both EE and Three.

Q. Who is Cornerstone and what connection do they have with the Operators?

Cornerstone is a mobile infrastructure services company. They acquire, manage and maintain over 20,000 sites across the UK which house their customers (e.g., Mobile Network Operators') telecoms equipment. They lease land from site owners by entering into an agreement so they can manage the infrastructure that is placed on sites including rooftops, street work sites and greenfield locations.

Q. Is there any link to health issues by having a mast on a site?

Radio base stations and handsets use electromagnetic fields (EMFs) to transfer information and make communication possible with mobile phones and devices. EMFs are used for television and radio transmissions, by the police, fire and ambulance services, by taxi firms and public utilities.

Radio base stations are designed to comply with the stringent, precautionary public exposure guidelines set out by ICNIRP (International Commission on Non-Ionizing Radiation Protection). These guidelines have been developed following a thorough review of the science, including both thermal and non-thermal effects. UK radio base station installations have been surveyed by independent bodies and found to be hundreds and sometimes thousands of times below these guidelines.

There is also currently no scientific evidence to establish that birds, bees or wildlife are negatively affected by 5G radio waves.

You can find more information on Mobile UK's website: <https://www.mobileuk.org/5g-and-health-concerns> #5Gcheckthefacts

Q. What is ICNIRP?

The International Commission on Non-Ionizing Radiation Protection. ICNIRP aims to protect people and the environment against adverse effects of non-ionizing radiation (NIR). Mobile phone base stations and devices use radio waves, high-frequency electromagnetic fields (EMF), to transfer information and make communication possible. The guidelines that apply to the construction and operation of base stations were developed by the International Commission on Non-Ionizing Radiation Protection (ICNIRP), following a comprehensive assessment of all the peer reviewed scientific literature. The Government has adopted. www.icnirp.org