

# Property owner perspectives on the Electronic Communications Code (ECC)



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## The British Property Federation

1. The British Property Federation (BPF) represents the real estate sector – an industry which contributed more than £100bn to the economy in 2018 and supported more than 2 million jobs.
2. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work and relax.
3. We would be happy to provide further information on any aspect of this paper. Please contact Laurence Raeburn-Smith (Senior Policy Officer) at: [lraeburn-smith@bpf.org.uk](mailto:lraeburn-smith@bpf.org.uk), or on 020 7802 0121, if you would like to discuss any of the points raised.

## Executive summary

4. Property owners stand to gain immensely from the fast rollout of high-speed telecommunications. Both residential and commercial buildings with good connectivity are more productive, more attractive to tenants and better places to be. The UK is also clearly lagging behind its international counterparts when it comes to the rollout of fast connectivity and the sector supports radical interventions that right this.
5. There are however some significant problems with the how the Electronic Communications Code (ECC) is working, despite amendments made to the legislation in 2017. These issues are discouraging property owners from hosting telecommunications equipment, encouraging poor and aggressive behaviour from telecoms operators and ultimately hampering the advancement of connectivity. More specifically, these concerns centre on:
  - 5.1. Telecoms agreements causing an unnecessary obstacle to redevelopment
  - 5.2. Extremely low and varied compensation and consideration payments being offered under 'no-scheme' valuations, which no longer represent a fair return to property owners for the downsides of hosting equipment
  - 5.3. A lack of lift and shift provisions within the ECC and therefore difficulties for property owners needing to repair or maintain their buildings
  - 5.4. Increased property management and liability pressures as a result of hosting equipment, spanning access arrangements for telecoms operators, design and health and safety, and little incentive for operators to be supportive
  - 5.5. Few effective avenues through which to make complaints about frequent poor or aggressive telecoms operator behaviour, and a resulting lack of trust between parties
  - 5.6. Hosting properties having little way of benefiting from enhanced connectivity themselves.

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6. In order to resolve these problems with the ECC, we believe the following measures are needed:
  - 6.1. The redevelopment break offered by the ECC should be shortened from 18-months to 12
  - 6.2. Public land should be designated for interim, 'roll-on-roll-off' hosting of equipment where another host site cannot be immediately found
  - 6.3. The ECC should be reformed so that property owners can claim for compensation amounts as they arise without having to go to Tribunal
  - 6.4. An industry standard of the likely type and levels of compensation and consideration should be produced, so that property owners can make more informed decisions
  - 6.5. The ECC should be reformed so that parties can 'contract out' of its terms; thereby offering the option of a restrictive ECC agreement at market rent or more flexibility but for low levels of compensation and consideration
  - 6.6. In any future reform of the Code, lift and shift provisions should be clearly outlined
  - 6.7. Measures should be put in place that ensure stricter adherence by operators to the OFCOM Code of Practice, such as an enhanced complaints and dispute resolution regime
  - 6.8. There should be a requirement or incentives for operators to offer a distributed antenna system (DAS) to provide indoor coverage, installed at the same time as a rooftop site.

## What is the ECC?

7. The ECC is the legislation that governs new agreements between property owners and telecoms operators over the installation and maintenance of communications equipment.
8. In December 2017, the Code was reformed, with the intention of making it easier for network operators to install and maintain their equipment - such as phone masts, exchanges and cabinets - on land. In the event that an agreement cannot be reached with the owner of private land, the Code now gives telecoms operators the right to ask a court to impose an agreement that allows them access.
9. Notably the new Code also introduced:
  - i. A "no scheme" valuation mechanism, whereby rent is assessed on the land's use value to the landowner, rather than the operator;
  - ii. Operators no longer must seek consent to upgrade or share their apparatus, so long as this does not impose any additional burden on the property owner;
  - iii. Operators are no longer able to rely on Landlord and Tenant Act 1954 security of tenure provisions, but property owners must usually rely on their grounds to terminate set out in the Code.
10. More information on the Code is available on the OFCOM [website](#).

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## What's holding back telecommunications rollout?

11. Despite the enhanced powers afforded operators within the new Code and the ability for court to impose an agreement, the expectation is that parties should come to consensual agreements. Since reform of the Code in 2017 however disputes have slowed down rollout and cases have routinely been taken to the Upper Lands Tribunal.

### **Problem – restrictions on redevelopment**

12. One reason some property owners are justifiably resistant to hosting equipment concerns the impact doing so has on their ability to redevelop.
13. The Code sets out a break right for the property owner of 18-months in cases where there is a settled intention to redevelop. In reality though, a developer can expect to have to wait 24 months as an operator can still seek a further 6-months in which to remove equipment. Furthermore, uncertainty exists if the operator cannot find a suitable alternative site, leaving the developer at the mercy of factors outside of their control.
14. These timescales do not sit comfortably with office redevelopment schemes in particular; as a well-managed development property, even with Landlord and Tenant 1954 Act protected leases, could usually achieve vacant possession within six months.
15. To reduce development timescales, some site providers may make the decision to serve the 18 months' notice before achieving planning consent. This runs the risk of an operator then seeking a Tribunal hearing within months of receiving the Notice to Quit, meaning proving settled intention to develop can come at a far earlier stage than in a 1954 Act procedure.
16. Given the small financial reward of accommodating a telecoms site (which may easily be offset by the legal costs in seeking vacant possession) and the uncertainty of when vacant possession can be achieved, it is not surprising that this is a concern to site providers. It's also a catch 22 for operators, who need to find new, willing property owners happy to enter into agreements in cases where equipment is being relocated.
17. This should further be of concern to government as it runs in direct contradiction to the property sector's efforts to regenerate our town and city centres; a task that has become ever more pressing in light of the impact Covid-19 has had on demand for certain types of commercial space.

### **Solution 1) – a shortened break right**

18. There is though a way to both give property owners comfort that they can redevelop their sites within an acceptable timescale whilst at the same time providing comfort to operators that they will be able to relocate equipment without issue.
19. We propose that the development break right offered in the Code be shortened to 12-months.

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## Designation of sites for roll-on-roll-off equipment hosting

20. To compliment this, local authorities should be tasked with designating public land for the provision of interim roll-on-roll-off hosting of telecommunications equipment. This would mean that land is always available for operators across city and town centres, and that equipment can be hosted on a temporary basis whilst either terms are agreed with a new landlord or redevelopment has been completed.

## Problem – unattractively low and varied compensation and consideration payments

21. As was set out by then Minister of State for Culture and Digital Economy, Ed Vaizy when [proposing](#) to reform the Code in 2016, property owners are expected to be fairly compensated for use of their land under the ECC's provisions.
22. This is however not happening. As illustration, one City of London site with a £32,000 per annum rent under the old Code was quoted renewal terms by the operator of Consideration of £50 for 10 years and Compensation of £750 for 10 years. This equates to £80 per annum.
23. Operators are sending out renewal terms at the very bottom of what should be appropriate levels of compensation and consideration, and capitalising on their greater knowledge of the Code to drive down costs. For sites on renewal, there are dramatic decreases that do not reflect a worthwhile return to property owners for hosting equipment.

## Solution – 1) reform of the ECC so that property owners can claim compensation amounts as they arise without having to go to Tribunal

24. The requirement to establish all future compensation at the outset of an agreement means site providers, who often don't initially appreciate the degree of cost and disruption involved (especially when it comes to property management and insurance costs), are frequently left out of pocket in the future. There is no guarantee that future amounts could be claimed and a visit to the Tribunal is likely to prove inequitable.
25. A simpler, out of court alternative needs to be established through reform of the ECC so that property owners can expect to be compensated fairly for what is owed as it is accrued.

## Solution – 2) an industry standard template for compensation and consideration

26. Our members testify that operators are not willing to be open and transparent about true management costs over the lifetime of a code agreement. Property owners therefore often engage agents to advise them which is itself expense and ultimately leads to delays.
27. An industry standard of the likely type and level of costs should be produced so that property owners can make informed decisions about the levels of remuneration they are being offered.
28. Without this transparency, Code agreements will continue to be treated with suspicion by property owners.

## Solution - 3) reform of the ECC so that parties can 'contract out' of its terms; thereby offering the option of a restrictive ECC agreement at market rent or more flexibility but for low levels of compensation and consideration

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29. Further, to overcome site providers concerns over levels of rent and restrictions on their ability to seek vacant possession, options similar to 1954 Act Protected and Contacted Out agreements could be offered.
30. By creating a two-tier system, agreements with full Code powers could be entered into but at a market rent. On the other hand, if property owners would rather have more control they could sign agreements with watered down Code powers at a no scheme valuation. Both parties then have the option of considering what is most important to them, rent or control.
31. We appreciate this would require a major reform of the ECC. It would also however reverse the perceived one-sided nature of the Code and would provide either the financial reward or the retained control needed to incentivise property owners into signing agreements.

## **Problem – a lack of lift and shift provisions in the Code**

32. The ECC does not contain provisions that deal with relocation of equipment so that property owners can carry out repair.
33. Despite the OFCOM Code of Practice stating that parties should negotiate in good faith over such 'lift and shift' provisions, some operators are being unreasonable in the timescales they are willing to agree to. In some cases, they are only willing to temporarily relocate equipment and refuse to serve notice to end agreements. This can halt landlords' ability to carry out essential repair and maintenance works that make their buildings safe for tenants and the public.

## **Solution - in any future reform of the Code, lift and shift provisions should be clearly outlined**

34. Relying on the Code of Practice and template agreements clearly is not enough to ensure lift and shift provisions are in place and can be agreed. If they are to enter into Code agreements, property owners must be assured they can repair and maintain their buildings. This should be reflected in future reform of the ECC with lift and shift provisions clearly outlined within the legislation.

## **Problem – weak adherence to the OFCOM Code of Practice**

35. Both parties need to use the Code of Practice more. This document helps both sides understand each other's positions better. Like the standard template agreement, the Code of Practice was developed after much discussion between operator and property owner representatives. Yet, some seemingly still ignore the responsibilities set out within it and we have, since the Code's introduction, continued to hear of examples of aggressive and poor operator conduct.
36. Adhering to the Code of Practice would help to rebuild the issue of trust and the reputation of ECC agreements.

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## **Solution – strengthen the avenues through which property owners can make complaints about poor operator behaviour**

37. Consideration needs to be given to whether the Code of Practice can be made more binding and there need to be clear avenues through which to complain about poor conduct. This is after all the telecoms operators own industry and they rely on property owners in order to broaden their coverage and reach their customers. If operators are held accountable for ensuring better communication with property owners the industry at large will benefit.

38. This solution could, to a degree, also help solve the aforementioned issues with lift and shift provisions.

## **Problem - hosting properties having little way of benefiting from enhanced connectivity themselves**

39. Having a rooftop installation on your building does not necessarily guarantee great mobile reception for your occupants. In fact, it is more likely that neighbouring buildings will benefit, thereby putting property owners hosting equipment at a competitive disadvantage.

40. Internal cellular boosting equipment will usually be required for the host building itself to benefit from the enhanced connectivity provided, and this can cost 10s of thousands of pounds to install.

## **Solution - a requirement or incentives for operators to offer a distributed antenna system (DAS) to provide indoor coverage, installed at the same time as a rooftop site**

41. In order to solve this issue and make hosting equipment a far more equitable prospect, operators installing equipment should be required to provide internal cellular boosting equipment (DAS system), where warranted, for free or at a reduced market rate. Government could consider how this might be achieved through revision of the Code itself or industry could come to an agreement. Whilst it may not be in an operator's interest to provide this on a case-by-case basis, the issue is discouraging landlords more widely from engaging in discussions on Code agreements and it would be to their commercial benefit to help provide a solution.