

Stand-off between telecoms operators and landlords threatens 5G rollout

By **Mitchell Labiak** | Thu 6 September 2018

The government's recently announced plans to roll out 5G in the UK do not lack ambition. Its aim is to have 15 million people connected to 5G by 2025 and achieve nationwide coverage by 2033.



Bad signal: new telecoms code sparked litigation over rent cuts for 5G rooftop masts

Source: Shutterstock/ Sunshine studio

However, legal experts fear that the plans could be hampered by a piece of legislation designed to make the rollout easier.

The Electronic Communications Code, **which came into force at the end of last year**, is so unfavourable to landlords that some believe they will not agree to install the telecoms masts that are needed to make 5G a reality.

Find out more - A new telecoms code is here, but what are the solutions for landowners?

The recalculation of rents under the new code is one issue that has particularly upset landlords. According to Katherine Anderson, surveyor at Arc Partners, rents for telecoms masts on rooftops have decreased from £30,000 a year to £5 a year in some extreme cases.

It is critical that the industry considers recent amendments as the driving force for the 5G rollout

Darren Zitren, Cluttons

What's more, Anderson claims that rents from all properties operated by CTIL – the Vodafone-Telefónica joint venture that manages their combined network – have fallen to £5 a year per mast, because of its strict interpretation of the code. “In the past, the money wasn't huge, but now it's unpalatable,” she says.

The new code also gives telecoms operators 24-hour access to the masts; landlords have complained that the increase in security needed to make this possible is another cost they are having to shoulder. Furthermore, whereas previously landlords only needed to give 28 days' notice to remove masts, the new code has introduced an 18-month notice period.

'Unpalatable' changes

Anderson claims these changes have made the installation of telecoms masts so “unpalatable” for landlords that the rollout of 5G masts “has ground to a halt”. In other words, without good enough incentives to install telecoms masts, many landlords have simply refused to do so.

Not surprisingly, the telecoms industry takes a very different view. Darren Zitren, a partner at Cluttons who represents the industry, concedes that the rollout of 5G masts had slowed, but adds that “positive landlord engagement has increased significantly over recent months”.

He believes the new level of “considerations”, the term he uses to refer to telecom mast rents, is justified for two main reasons. The first is the need to encourage telecoms operators to develop 5G infrastructure. Zitren says Cluttons' research shows London is one of the worst cities in the EU in terms of connectivity.

“Therefore, it is critical that the industry considers the recent amendments to the code as the driving force for the rollout of 5G,” he says.

The second reason is that the considerations factor in “commercial value-add delivered by a well-connected property”. In other words, although landlords are getting less direct income from these telecoms masts, Zitren argues they are getting a fair amount of indirect income because of the value of being in a city with better connectivity.



Staying posted: the 5G network requires lamp post-mounted mini-masts to provide effective coverage

Zitren also says that to claim that all CTIL rents have decreased to £5 a year is “wholly inaccurate”, stressing that “each valuation is assessed on a case-by-case basis”.

Anderson responds: “Then it must be entirely coincidental that every CTIL rent valuation my clients have received has been that amount and every landlord I’ve spoken to has said the same thing.” For her, the gripe is not just that the rents are low; it is the gulf between what was suggested and what actually happened.

“When the legislation was introduced, the government thought it would lead to a 30% to 40% fall in rents to help with 5G rollout,” she says. “But we’ve seen the operators push their luck and take a very strict interpretation of valuation, which has driven rents down to this level.”

While this disagreement between landlords and telecoms companies has primarily been sparked by the change from the old telecoms code to the new one, Alison Hardy, a partner at Ashurst, believes the old code was far from great. “It was widely recognised as one of the worst pieces of legislation on the statute book,” she says. “As a result, the industry largely ignored the code.”

To fix the problem created by the new code, Hardy says “the word on the street” is that compromises between landlords and telecoms operators are being made “on the back of litigation” to get deals done. Anderson adds that although legal challenges have been launched against telecoms companies’ interpretation of the code, most have resulted in out-of-court settlements.

However, Anderson claims that telecoms companies are starting to regret lobbying for a code that has so badly frozen the market. She adds that while telecoms companies have urged the government to resolve the situation, “my understanding is that the government has said ‘tough luck – make it work’”.

Seeking agreement

Cluttons’ Zitren denies that the operators are changing their minds or regret lobbying for the change in the telecoms code. He says they are “still seeking to engage in consensual negotiations with landowners and the intention is always to reach an agreement” – a statement both Anderson and Hardy agree with.

While both sides talk positively about moving beyond this issue, there are few suggestions as to how this might happen in practice. With “unpalatable” rents for landlords, telecoms operators unwilling to backtrack on the code and the government unlikely to step in, the impasse remains.

William Newton, president of WiredScore, which provides connectivity ratings for offices, says the stand-off between landlords and telecoms firms is “even more problematic than you might think”, because 5G is more than a matter of installing masts on rooftops. “While 5G is superfast, it doesn’t go very far,” Newton says. “We will probably need to consider installing these masts on lamp posts as well. And that’s just for the macro infrastructure. You’ll also need boosters on the sides of buildings.”

WiredScore technical director Sanjaya Ranasinghe adds: “Rolling out 5G is like rolling out wifi outside.” For the system to work the way the government has promised it will work, WiredScore estimates that London alone will need 500,000 masts and boosters across the city.

Find out more - WiredScore technical director Sanjaya Ranasinghe talks li-fi technology

While the technical challenge of installing thousands of boosters and lamp post masts may be very different to that of installing masts on rooftops, Arc’s Anderson notes that the legal challenge is very similar.

“However, I’m surprised we’ve not had more approaches about it,” she says. “From a landlord’s perspective, boosters on the side of your building present the same issue if you’re redeveloping.”

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Katherine Anderson, Arc Partners

Anderson concedes that “it certainly could become an issue” in the future, but doesn’t foresee the legal challenge being as great as with rooftop masts, because boosters require less rent and maintenance, while lamp posts are publicly owned.

Making 5G a reality with so many legal and logistical challenges might sound like a tall order, but the City of London Corporation has run a 5G trial in the Square Mile. It claims it has found a solution to the legal and technical conundrum 5G presents for landlords and telecoms operators, in the form of standardised wayleave agreements.

Find out more - Brighton & Hove leads the 5G charge as it launches testbed



Source: Shutterstock/Wright Studio

Philip Saunders, parliamentary affairs counsel for the City of London Corporation, says such agreements have already been successfully used to solve a similar gridlock between landlords and telecoms operators over broadband installation.

By providing a template contract, wayleave agreements take much of the guesswork and negotiation out of the whole process. Instead, landlords and telecoms companies can agree to the terms of the standardised agreement beforehand. All they need to do is fill in the blanks.

Saunders says there is no reason landlords and telecoms operators could not use a similar standardised agreement to move beyond their current logjam.

“The original, standardised wayleave agreement has been adopted nationwide with endorsement from the RICS, the GLA, London councils and leading trade body INCA,” he says. “This suggests that the creation of a uniform approach, in the form of a standardised wayleave for rooftop equipment and 5G technology, would also be well received by the industry.”

If such a thing does happen, the government’s dreams of complete 5G coverage could become a reality. If not, or if an alternative solution is not found, the deadlock between landlords and telecoms operators is likely to continue, at the expense of the government’s 5G plans.