



Michael is a solicitor who has specialised on property litigation and risk management for most of his career and is a strong advocate of a proactive approach to the management of risks associated with owning and occupying property.

Michael has a particular expertise in relation to legal issues relating to telecommunications matters and property, for example, issues relating to the Electronic Communications Code, Code Rights, MSV surveys and phone masts. He also extensive experience in relation to commercial property dilapidations claims advising both landlords and tenants. He regularly presents CPD seminars, and he is also the founder of the LinkedIn Dilapidations Discussion Forum and Interest Group which has in excess of 2,500 members.

Having worked for a number of the large national law firms Michael established Concorde Solicitors in 2022 with the aim of "doing work I enjoy, for people I like working with at sensible prices".

# MOBILE PHONE INFRASTRUCTURE

## Mobile phone masts, property and multi-skilled visits

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Michael attended Eastern Branch at its December meeting in Cambridge, where he spoke entertainingly about strategies for dilapidations claims. Here he writes about mobile phone masts and multi-skilled visits and explains why: "A request to undertake an MSV may seem a very benign request in the first instance, but it is the first step in a process that can involve a property owner in litigation".

### Background

For many years permitting the installation of mobile phone masts on property assets provided a good additional source of income for the owners of such assets. Indeed, in years gone by, some property owners were proactive in promoting their assets as potential locations for the installation of telecommunications apparatus. Others were persuaded to enter into agreements permitting installation of apparatus following an approach by the telecommunications operators or their agents.

The whole process, like many aspects of business in the world of property, involved cooperation and negotiation because there was a mutuality of interest for both parties in securing an agreement. Telecommunications operators could expand their network coverage providing greater network capacity and, therefore, increasing revenue, while property owners benefitted from additional income and potentially enhanced capital values.

The world of telecommunications apparatus and property changed fundamentally with the introduction of the Digital Economy Act 2017 and, with it, the Electronic Communications Code. This legislation effectively brought in rent controls in the telecommunications sector with the consequence that, for many property owners, the potential installation of mobile phone masts or other electronic communications apparatus came to be

viewed as more of a burden than a benefit.

In short, with the cash incentives effectively removed, many property owners became reluctant to make their assets available to telecommunications operators for very little in return. Having spent, in some cases, many millions of pounds on acquiring assets, some property owners were reluctant to then just make those assets available for the benefit of shareholders in mobile phone companies and other telecommunications operators.

Where a mobile phone network operator needs to secure a new mast site, whether to increase network capacity or to replace lost capacity by virtue of another site having been removed, the first indication of interest in a property may come in the form of a request to undertake a survey. This is the first step in a process which may result in court action before the First Tier Tribunal and, therefore, any property owner receiving any such request would be well advised to tread carefully.

Anyone tasked with managing property assets would be wise to consider the property owner's strategic objectives in relation to their asset before even acknowledging any such request. In this context, any owner or property manager who is not familiar with the intricacies of the legislation and the litigation process would be well served in taking advice before responding to any request for access to property for the purposes of survey.

## Multi-Skilled Visit

The term Multi-Skilled Visit (MSV) is used to refer to the process by which telecommunications network operators assess the suitability of a property for the installation and operation of mobile telephone services infrastructure. This can consist of one or more visits to a property with a variety of specialists, to survey the property and to assess its suitability for use for mobile phone radio transmission or other telecommunications purposes.

A request to undertake an MSV may seem a very benign request in the first instance, but it is the first step in a process that can involve a property owner in litigation and ultimately can lead to the installation of electronic communications apparatus on the asset, irrespective of whether the owner is agreeable or not. Such apparatus can be substantial and can have significant consequences for the owner and their asset and, therefore, anyone tasked with responsibility for, or the management of, the asset should be very careful to ensure that they do nothing (intentionally or inadvertently) which may prejudice the asset or the interests of the owner.

Before any such request is even acknowledged, it is important that the property owner (and their asset managers) fully understand the process which is being initiated and what that ultimately looks like in terms of potential impact on their asset. Once an MSV has been completed and the network operator is seeking rights to actually install apparatus, it is likely to be too late for those involved in management of property to start informing themselves as to the provisions of the Digital Economy Act 2017 and the Electronic Communications Code.

The installation of electronic communications apparatus can sterilise a building with development potential, which could potentially have a substantial impact on future value. The practical consequences and impact of having substantial equipment installed on a property should be considered, along with issues such as whether the installation of power hungry apparatus may have a detrimental impact on the building, or potential improvements which may require further electrical capacity.

Property owners would be well served by understanding the nature of an MSV and the legal implications of any request to undertake an MSV, before even acknowledging any such request. Any asset manager engaging with such a request,

without fully informed decision making by their principle, may not be thanked when the potential impact and consequences flowing from such a request come to be appreciated by the property owner.

## Practicalities

A request to undertake an MSV could be quite innocuous and no more than a request to just have a look at a property to consider its suitability for potential telecommunications use. It is not unknown to find that by the time a property owner becomes aware of interest in their asset from a telecommunications operator, there has already been one (or more) visits to the property. This may be simply because a building manager has received an informal request from someone acting as agent for a mobile phone company and feels that the right thing to do is to allow them to have a look at the property – after all, what harm can be done by allowing someone to just spend some time looking at the rooftop?

By being so accommodating, they may already have compromised the asset and the interests of the owner.

Where requests to survey are more formal, they will often be accompanied by documentation explaining what an MSV is. An MSV can be very wide ranging, including physical surveys of the structure of a property, consideration of routes for cables and power, assessment of power capacity and potentially even intrusive surveys. Great care should be taken to assess the potential impact of an MSV – for example, could intrusive works through a roof membrane prejudice the integrity of the roof, and what would the impact be on any roof warranty that subsists?

For any building owner, and their advisers, faced with a request for access to the property to undertake a survey or surveys, the following are worthy of consideration:

- a. Would the MSV itself cause any detriment to the asset, the owner, occupiers, etc?
- b. Would the subsequent installation of electronic communications apparatus, including antennae, equipment cabinets, cable runs etc. have any detriment to the asset, the owner, occupiers etc?

If the answer to either is that there will be prejudice (either immediately or possibly at

some point in the future) then the response to the request for an MSV needs to be considered very carefully.

Everything that is written should be written cognisant of the fact that it may come to be read by a judge in court at some point.

Writing “without prejudice” does not necessarily prevent this.

## Procedure

If a property owner is content to make their asset available for telecommunications use, then there is nothing to prevent them simply granting consent for the MSV, either formally or informally, albeit this is generally not advisable. It would certainly be a brave property owner who simply signed up to an agreement presented to them by a network operator or their agent, but it does sometime happen.

The law in this area is complex and a full explanation would require more column inches than are available here today. For present purposes it suffices to say that, because of reasons relating to the operation of security of tenure and potential compensation under the Electronic Communications Code, property owners are generally best served by requiring the mobile phone network operator to make a formal application to court for the rights that they may require – whether that be to undertake an MSV or to actually install electronic communications apparatus.

The nature of an MSV agreement typically sought by mobile phone network operators will be one that provides access to the property for a period of 6 months. These are significant agreements and, even where the property owner has no objection to permitting the MSV, the agreement can require substantial negotiations to reach agreement in relation to matters such as the extent of the rights, over what parts of the property the rights may be exercised, whether there are any temporal restrictions on the exercise of the rights, and what is to be paid for the grant of the rights.

In the absence of agreement informally, the network operator will need to make an application to the First Tier Tribunal for the imposition of an interim rights agreement under the provisions of Paragraph 26 of the Electronic Communications Code. The first step in the process will be the service of notice by the mobile phone network operator giving notice of the rights they

require. This notice will then be followed up by the formal application to the Tribunal.

If the parties are agreed as to the principle of granting the rights for an MSV then, once the terms are agreed, the Tribunal can be asked to “impose” the agreement on them under the provisions of Paragraph 26. If the parties are not agreed as to the principle of the grant of an agreement, then each will prepare evidence and ultimately the matter will be decided by a judge at trial. As with any litigation, there can be costs consequences which can involve the payment of costs to an opponent and, therefore, potential costs liability (and the making of protective offers) are matters that should also be considered by property owners in formulating their strategy.

Early understanding and consideration of the law and procedure should be the priority of any building owner and their advisers.

If an agreement is “imposed” (either by agreement or against the will of the property owner) then access to the property should be strictly in accordance with the terms of the agreement; those with responsibility for managing the property should be diligent to ensure that nothing

is done that is not permitted by the strict terms of the agreement.

Once the MSV has been completed (by one or more surveys) then the mobile phone network operator will take a decision as to whether they wish to then progress with development of communications apparatus on the property. For property owners faced with litigation that they do not welcome, it may be tempting to just permit the survey in the hope that the network operator might then decide the site is not suitable for their purposes. It would be fair to say that such an approach would be naïve. By the time a request for an MSV is made, it is quite probable that desk top analysis will have been undertaken that identified the property as a good prospect. For this reason, any property owner faced with a request for an MSV, should take the matter seriously and evaluate what impact the installation of mobile phone network infrastructure on their asset might have both presently and in the future.

### **Proceed with caution**

The Electronic Communications Code can be found at Schedule 1 to the Digital Economy Act 2017.

It is a complex piece of legislation which can have significant implications for property owners and their assets. Property owners could find themselves engaged in litigation before the courts and must therefore be proactive in dealing with any approach from mobile phone network operators, or their agents, by which access to property is sought for the purposes of surveying.

As soon as any request is received, the property owner should assess the implications for their property, of both the request for survey and the potential subsequent installation of electronic communications apparatus in the present or the future. This should be done with the benefit of a proper understanding of the legal framework within which such requests are made and the consequences of the possible responses to such a request.

A property owner failing to consider their objectives and strategy properly could come to regret a laissez faire approach, for example, were they to subsequently receive a very lucrative proposal to redevelop their asset, which was frustrated by the presence of mobile phone infrastructure preventing the potential redevelopment and the realisation of substantial value.

