

Mast on rural site raises questions over operators and site providers' rights (Cornerstone Telecommunications Infrastructure Ltd v Keast)

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Property Disputes analysis: Oliver Radley-Gardner, barrister at Falcon Chambers, discusses the case of Cornerstone Telecommunications Infrastructure Ltd v Keast that deals with several practical aspects of the new Electronic Communications Code (Code).

Cornerstone Telecommunications Infrastructure Ltd v Keast [\[2019\] UKUT 116 \(LC\)](#), [\[2019\] All ER \(D\) 55 \(Apr\)](#)

What are the practical implications of this case?

Cornerstone Telecommunications Infrastructure Ltd v Keast deals with several practical aspects of the Code, as amended into [Schedule 3A](#) to the Communications Act 2003 ([CA 2003](#)). The practical implications of the case are that the presence of electronic communications apparatus falls to be ignored when applying for rights over land, and that it is unlikely that claiming fewer rights than contained in a notice pursuant to paragraph 20 of the Code (paragraph 20 notice) would invalidate the notice. Most importantly, it confirms that the operator may seek wide terms of an imposed agreement, but always and only subject to the supervision of the Upper Tribunal (UT) under paragraph 23 of the Code. The decision confirms a pragmatic approach by the UT.

What was the background?

This case was a first round of preliminary issues concerning a mast on a rural site (a corner of a field). The second round of issues is stayed behind *Cornerstone Telecommunications Infrastructure Ltd v Compton Beauchamp Estates Ltd (Electronic Communications Code – jurisdiction – mast site)* [\[2019\] UKUT 107 \(LC\)](#). The site was being used by Vodafone when the notice was given. Cornerstone wished to acquire rights over this site in its own name and Vodafone was agreeable to this course being taken.

In this first round of litigation, the site provider's complaint had been that the notice seeking an imposed agreement under Part IV of the Code was invalid because:

- the reference sought fewer rights than the notice did
- the notice sought terms the site provider claimed were not capable of being imposed under Part IV of the Code
- rights were being sought over land which already had apparatus, vested in Vodafone, located upon it
- it was contended that Cornerstone, the claimant, had a limited reference under [CA 2003, s 106](#)

The second round will consider the point in *Cornerstone Telecommunications Infrastructure Ltd v Compton Beauchamp Estates Ltd (Electronic Communications Code – jurisdiction – mast site)*, namely whether the UT can grant Code rights as a matter of jurisdiction where there is a subsisting right for a third party operator to be at the site.

What did the UT decide?

The UT doubted whether it was unlikely that a discrepancy between a paragraph 20 notice and what was claimed, where what was claimed was less than what was in that notice, would invalidate the process (para [29]).

The UT found that Code rights could not be asserted purely against electronic communications apparatus within paragraph 5 of the Code, as those rights could only be asserted against land, and land excludes electronic communications apparatus (para [108]). However, if rights were sought to keep apparatus on land, then (even if the apparatus was vested in a different operator who had agreed to transfer ownership), that was permissible under the Code, as the Code rights in such a case related to the land and not the apparatus. The UT helpfully clarified the effect of paragraph 101 of the Code and made clear that conventional common law annexation principles were not relevant in cases falling within that paragraph (paras [44]–[49]).

The UT found that policing the terms sought under a Code agreement was a matter of discretion not jurisdiction under paragraph 23 of the Code. It was in principle open to grant any terms, but the discretion to grant was naturally ring fenced by the principles in paragraph 23 of the Code. The UT doubted that the inclusion of a term which the UT could not grant would invalidate the whole process (paras [56]–[61]).

The UT found that an old Code ‘system of conduits’ operator was converted by the operation of the transitional provisions into a ‘system of infrastructure’ operator (paras [79]–[100]).

Oliver Radley-Gardner specialises in commercial and residential property and agricultural law and is recommended in the leading legal directories. He has a ‘burgeoning reputation in telecoms’ (Chambers 2017) and regularly advises on, and litigates, issues affecting electronic communications operators under the Code. He has appeared in several of the cases under the Code, old and new, including the first reported decision: Cornerstone Telecommunications Infrastructure Ltd v The University of London [\[2018\] UKUT 356 \(LC\)](#). In Cornerstone v Keast, Radley-Gardner was counsel for the claimant.

Interviewed by Kate Beaumont.

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