

CENTRAL ASSOCIATION OF AGRICULTURAL VALUERS

Jeremy Moody



Secretary and
Adviser

Communications Review
DCMS,
2-4, Cockspur Street,
London.
SW1Y 5DH

29th June 2011

By e-mail to: communications.review@culture.gsi.gov.uk

Dear Sirs,

Communications Review – Response to Letter of 16th May 2011

We welcome this consultation and the consideration of how to so develop the framework for the communications sector that it can thrive on a practical, sensible and sustainable basis.

In this, the essential interest of the CAAV, with members working not only for the very many landowners and farmers affected by the infrastructure for communications services but also for the communication operators. Much of the infrastructure of masts, cables and supporting equipment is necessarily in the countryside and on land not owned by the communications companies. It is installed and operated under the intermeshing rules of the well-established laws for tenancies, licences, wayleaves and easements in combination with the Electronic Communications Code. That Code provides powers for the compulsory taking and holding of rights over private land with compensation, all in the interests of public access to communications systems. Those compulsory powers of acquisition are, however, used by private companies with their own commercial interests.

The CAAV - The CAAV represents, briefs and qualifies about 2400 professionals who advise and act on the very varied matters affecting rural and agricultural businesses and property throughout Great Britain. Our members are instructed by a wide range of clients, including farmers, owners, lenders, public authorities, conservation bodies, government agencies and charities.

The CAAV does not exist to lobby on behalf of any particular interest but rather, knowing its members will be called on to act or advise both landowners and tenants under developing policies, aims to ensure that they are designed in as practical a way as possible, taking

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account of circumstances and the very varied matrix of issues that bear on the decisions they will take.

The Electronic Communications Code - The Code does not just relate to cables but, consistent with its more recent title, to all electronic communications infrastructure. In recent years its greatest impact has been in respect of radio masts.

We have explored communications issues in detail in our publication, *Telecommunications Masts* (published September 2010), to assist members and others wrestling with the complex Code with which few are familiar. This is in the unusual commercial circumstances of this market in which a very small number of very large, commercial Code Operators with the statutory powers of the Code interact with a very large and diffuse number of landowners.

In simple terms, a handful of Code operators have 50,000 masts on perhaps 45,000 different landowners. The position is not significantly different for cable networks. The imbalance of scale, commercial culture and statutory power between those wanting to take rights (in their own commercial interest) and those who are affected is considerable. While those rights are intended to serve the general public interest in enabling a useful communication networks, their actual exercise is directly in commercial interests of individual operators who will use the Code's statutory powers to their own ends. Large commercial companies can be very careless of small private interests in pursuing their ends. Similar issues are often found with major utilities such as water and electricity, now operating as private companies but with statutory powers and lead to great difficulties that it seems can only begin to be tackled by an available and effective disputes procedure to govern the culture with which large companies can intrude of individual and family businesses. In all these cases, the economics of the impact on the small businesses affected, however important to them, are small in comparison to the commercial enterprise of the operator – fair treatment would not be at disproportionate cost.

In the communications market, it is the job of the Code to hold this ring and at present it does not do this either well or clearly. Not only does it not always correct imbalances but its drafting can set traps for both operator and landowner. The powers governed by the Code are given shape in each instance by the individual tenancy agreements, licenecs, wayleaves, easements and other property agreements which establish further webs of rights and obligations, often under separate codes of law. The drafting of the Code fails to recognise such issues and, as an important example, the operation of the Landlord and Tenant Acts which govern business lettings (as used for masts) in England and Wales.. A root and branch overhaul is needed and we are happy to participate in discussing that with your officials and others, bringing practical professional experience to the table.

The Code has developed and been amended over many years. Its currently tangled state does not suggest it has ever been drafted by anyone familiar with the land law with which it has to interact. More generally, its drafting was described brutally by the judge in *Bridgewater Canal v Geo Networks*.

Code operators clearly need the reserve of statutory powers but the people they affect equally clearly need protection. Both interests need clarity as well as the effective remedies that

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encourage good and considerate behaviour. Case law is only now beginning to intervene to assist this but the key to matters working successfully in the future lies in the Code.

What would be very destructive in this market is for Code operators to be able to enter onto land ahead of establishing the land law basis for their use of it and the basis on which they would pay for it. Were that to be the case, the individuals and small businesses affected would find it very difficult to resolve these matters afterwards – the operators, having got what they need, would have lost practical interest in these important issues. It is essential that the three key parts of the process are dealt with together, that is:

- the definition and establishment of the rights over the land in, for example a tenancy agreement with its terms, rights and obligations defined
- the installation of the operator's infrastructure (the part that most interests the operator at the time)
- the determination of the compensation, consideration or other payment to the person from whom the rights have been taken.

The rights taken under the Code can have significant impacts on other intended uses of the land.

As a professional body whose members work across rural Britain, we fully support the need for high quality communications services in all parts of the country. These issues need to be tackled as a key part of doing that successfully. We are very happy to engage with all concerned to achieve this and, indeed, to table proposed reforms of the Code to these ends.

Yours faithfully,

Jeremy Moody
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Central Association of Agricultural Valuers