

Missing a Trick

Don't lose out to Telecoms Operators as Network Consolidation continues



Anybody with a lease for a telecoms mast on their land will be familiar with 'Site Sharing'.

For the unacquainted, Site Sharing is where the telecoms operator holding the lease of a site allows another telecoms operator to place its own equipment on it, usually for a fee or in exchange for sharing use of the other operator's site.

The Past

Historically landowners have sought to control this behaviour and share in the rewards from Site Sharing in three ways:

1. Prohibit Site Sharing in the lease altogether (so the telecoms operator is forced to negotiate new terms with the landowner when it wants to share the site and ends up pay something for the privilege);
2. Allow Site Sharing in the lease subject to conditions (such as payment to the landowner of a percentage of the fee obtained from the other telecoms operator)
3. Allow Site Sharing in the lease without restriction and attempt to charge an increased rent at the outset and at rent review on the basis of the increased value to the telecom operator in having a lease without such restrictions.

The Future

Due to recent advances in technology, the process of Network Consolidation could make Site Sharing a thing of the past. New technology has allowed existing telecoms equipment to be used by more than one telecoms

operator. Effectively two telecoms operators could now run one signal through the same equipment. This means the existing infrastructure can be shared without the need to install any further equipment and the landowner may not even realise it is happening.

Leases which are designed to capture the traditional method of Site Sharing may not be sufficient to capture and control this indirect sharing of equipment. Landowners could therefore be missing an opportunity to share in the rewards that this type of sharing offers to telecoms operators. As a landowner it is important that your lease is sufficiently robust to control Network Consolidation on your land.

If a lease is already in place and Network Consolidation occurs then the landowner's ability to control the behaviour of the telecoms operator and capture some of the rewards will depend largely on whether any of the following provisions have been adopted in the existing lease.

1. Is there is a direct restriction which prohibits Network Consolidation in the terms described above?
2. Do the provisions governing the use of the site make clear that it cannot be used directly or indirectly by more than one telecoms operator or by a telecoms operator which is not the named tenant?
3. Was the original rent negotiated with Network Consolidation in mind and does the lease make clear that this can be taken into account in determining the rent at rent review?

“Network Consolidation has the potential for ... significant savings”

4. Is there a direct obligation for the telecoms operator to pay over a percentage share of any benefit it receives directly or indirectly from the mast?

There are various other terms which can be added with the same aim but the above would go a long way to ensuring that telecoms operators do not escape sharing the rewards from Network Consolidation.

If you are granting a new lease or a renewing an existing lease then you would hope to have all of these provisions in it. They are likely to be resisted of course and landowners or their agents must be careful not to push the telecoms operator too far and into the hands of a neighbouring landowner who is not so demanding. If a telecoms operator is committed to a site however then it may still be prepared to accept such restrictions rather than incur the cost of finding an alternative location, potentially obtaining a new planning permission and dismantling the old mast and equipment.

Network Consolidation has the potential for telecoms operators to make significant savings by reducing the number

of sites they rent and the amount of equipment they need. As the process continues one would expect to see the total number of sites let to telecom operators to reduce steadily into the future.

Burges Salmon are experts in the telecoms field with a history of experience acting for landowners and telecoms operators alike on lease negotiations. **If you think you would benefit from advice on Network Consolidation then please feel free to contact Richard Walford below.**

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