

Cornerstone Telecommunications Infrastructure Ltd v Ashloch Ltd and another [2021] EWCA Civ 90

An agreement under Part 4 of the Electronic Communications Code 2017 could not be imposed in favour of an operator who was holding over under section 24(1) of the Landlord and Tenant Act 1954 when the Code came into force.

07 April 2021

An agreement under Part 4 of the Electronic Communications Code 2017 could not be imposed in favour of an operator who was holding over under section 24(1) of the Landlord and Tenant Act 1954 when the Code came into force.

Facts

The claimant (C) is a joint venture company formed by Vodafone and Telefonica. It was the current tenant of a lease of a roof-top site housing telecommunications apparatus whose contractual term had expired in 2012. Following an assignment in 2019, C was now holding over under Part II of the Landlord and Tenant Act 1954 (the 1954 Act).

Although Part 5 of the Electronic Communications Code 2017 (the Code) deals with the termination and renewal of agreements, C could not use Part 5 to terminate its existing lease and request a new lease because its existing lease was not contracted out of the 1954 Act's security of tenure regime (the transitional provisions of the Code do not apply to agreements subsisting when the Code came into force on 28 December 2017 if the agreement is a lease to which the 1954 Act applies and the agreement is not excluded from the Act's security of tenure regime).

Instead of applying to the court for the grant of a new lease under the 1954 Act, C gave notice to its landlord (L) under Part 4 of the Code (paragraph 20) seeking the grant to it of new code rights (Part 4 is the section of the Code dealing with agreements to confer new code rights imposed by a court). When no agreement was reached, C applied to the Upper Tribunal (Lands Chamber) (UT) to impose an agreement under Part 4 of the Code.

L claimed that the UT had no jurisdiction to impose new code rights under Part 4 in C's favour.

Issue

Could C use Part 4 of the Code to claim new code rights from L?

Decision

In the case of *Cornerstone Telecommunications Infrastructure Ltd v Compton Beauchamp Estates Ltd* [2019] EWCA Civ 1755, the Court of Appeal held that a Part 4 agreement could only be imposed in favour of an operator on a person who was occupying the land. Part 4 was not therefore available to C as C was already the occupier of the site and Part 4 could not be used to impose code rights; or an existing operator already in situ.

To obtain a new lease, C had to apply to the County Court using the procedure in the 1954 Act.

Points to note/consider

1. This decision has significant implications for an operator currently holding over under a lease with the benefit of the 1954 Act's security

of tenure provisions. In particular, section 34 of the 1954 Act will apply to fix a market rent, meaning that the operator may not for now be able to take advantage of the lower rent that is likely to be payable using the so-called 'no network' assumption under the Code. In addition, the operator will not be able to take advantage of the rights to upgrade and share sites and to assign agreements contained in the Code. Any renewed lease will itself be a lease to which the Code applies, so when that lease comes to an end, an operator will then be able to renew the lease under Part 5 of the Code (and take advantage of the Code's more generous treatment for operators).

2. It is hard to disagree with Lewison LJ's statement in this case that many of the operator's submissions about supposed defects in the Code are really about what the law ought to be, rather than what it currently is. An appeal to the Supreme Court in the *Compton Beauchamp* case mentioned above will be heard shortly. If that appeal is successful, some of those defects might be removed and an operator in the same position as C in the future might be able to use Part 4 of the Code to claim new code rights straight away from its landlord.

Contact



David Harris

Professional Development Lawyer

david.harris@brownejacobson.com

+44 (0)115 934 2019

Related expertise