


University of London v Cornerstone Telecommunications Infrastructure Ltd [2019] EWCA Civ 2075

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Facts

The respondent telecommunications operator (C) wanted to access the roof of a hall of residence owned by the appellant (UoL) to carry out a survey and other non-intrusive investigations (known as a “multi-skilled visit”) to establish if the building was suitable to install electronic communication apparatus on its roof. C served a notice on UoL under paragraph 26 of the Electronic Communications Code 2017 (the Code) seeking the grant of interim code rights to access the building for the purposes of a multi-skilled visit. UoL initially objected to the grant of the right on the basis that the definition of “code right” in paragraph 3 of the Code did not expressly cover access for the purposes sought by C.

Issue

Was the definition of “code right” in paragraph 3 of the Code sufficiently wide to include a right of access to undertake a survey to assess the suitability of a building for the installation of electronic communications apparatus?

Decision

The right sought by C was covered by paragraph 3(d) of the Code. This included as a code right the right:

“to carry out any works on the land for or in connection with the installation of electronic communications apparatus on, under or over the land...”.

The use of the phrase “for or in connection with” meant that it was enough that the works were in connection with a possible installation. The operations necessary to carry out a multi-skilled visit therefore amounted to “works” for the purpose of the Code, even if they were non-intrusive. It would make no difference if the multi-skilled visit ultimately concluded that the site was not suitable.

Points to note/consider

1. The Court of Appeal has reached a pragmatic decision to fill a potential drafting gap in the Code. In reaching that decision, the Court was heavily influenced by the purpose of the Code which was to facilitate the improvement of electronic communications throughout the country, a purpose that could not sensibly be achieved unless operators could acquire the right to assess the suitability of potential sites.

2. At this stage C was not seeking any permanent code rights under paragraph 20 of the Code. The Court was satisfied that the Code permitted a free-standing application to be made under paragraph 26, which did not need to be accompanied by an application under paragraph 20. Such a requirement would be impractical and would cause the parties to incur unnecessary costs, especially as, if the multi-skilled visit revealed that the building was not suitable, C would have no need to seek a permanent agreement under paragraph 20.

Contact



David Harris

Professional Development Lawyer

david.harris@brownejacobson.com

+44 (0)115 934 2019

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