

Which way is the wind blowing for cases under the Electronic Communications Code?

Which arguments can landlords deploy to
preserve the value and long-term potential of their
property assets?

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The Context

- Old Code – July 2003 – 2017
 - Interface between Property & Comms law (including statutory schemes)
 - Sharing arrangements
 - Both side perceived a distortion of the market
- New Code – 28 December 2017 -.....
 - One statutory scheme or the other
 - Sharing with added cost/rent
 - 18 month notice
 - Wholesale infrastructure providers into the fold

Which way is the wind blowing



The Cases

- CTIL v University of London [2018] UKUT 0356
- *EE & Hutchinson 3G v LB Islington* [2018] UKUT 0361 (LC)
- Evolution (Shinfield) v BT plc [2019] UKUT 0127
- *EE Ltd & Hutchinson 3G v LB Islington* [2019] UKUT 0053
- *EE Ltd & Hutchinson 3G v Chichester & ors* [2019] UKUT 0164

CTIL v University of London

- Access for prospective inspection can be Code right §3
 - §3(a) to install – inspection is a necessary element
 - §s(d) to carry out works on the land for or in connection with installation
- §26 application for interim can be made without §20 application for permanent rights



EE Ltd & Hutchinson 3G v LB Islington [2018] UKUT 0361 (LC)

- LO redeveloping/O leaving existing site
- O seeking new long-term agreement & interim rights
- §26 Interim rights granted!
 - Summary procedure adopted (no prejudice to LO)
 - Standard “good arguable case” §21 test
 - Willingness to negotiate relevant
 - Urgency – public benefit & discretion
 - Terms amended to reflect short-term
 - Conditional on planning permission
 - NB Aesthetic or personal factors



Evolution (Shinfield) LLP & ors v BT Plc

- § 40(6) application by neighbour for removal of equipment on publicly maintained highway
- New access road for development required by planning permission obstructed by existing equipment
- §13 prohibits O interfering with or obstructing a means of access unless has acquired
 - Code right §3h to obstruct or interfere with a “means of access”
- § 13 applies only to current i.e. pre-existing access
 - Not to a means of access a neighbour is entitled to but does not yet physically exist



EE Ltd & Hutchinson 3G v LB Islington

- §20 application (following successful §26)
- §21 Test conceded
- Tribunal could impose Code Rights via a Lease
- Consideration
 - Can have regard to rental values for alternative uses
 - No-network assumption = consideration will not reflect right to install – does not = diminution in value
 - Should include
 - running costs of the site
 - Costs of LO's obligations to O
 - Compensate for loss or damage sustained – including posts agreement



NB § 84 is a non-exhaustive list



EE Ltd & Hutchinson 3G v Chichester & ors

- §20 application
- Resisted on redevelopment grounds §21(5)
- '54 Act ground f case law applies
 - Intention at the date of the hearing
 - Realistic/feasible etc
 - Intention exist independently of statutory rights



The Cases – but for the Code...

- CTIL v University of London – mandatory injunctions & pre-action?!?
- *EE & Hutchinson 3G v LB Islington* – as above but in line with *Amercian Cyanmide*
- *Evolution (Shinfield) v BT plc* [2019] UKUT 0127 – if RoW exists it can't be substantially obstructed!!
- *EE Ltd & Hutchinson 3G v LB Islington* [2019] UKUT 0053 – no diminution in value & no *Wrotham Park* damages
- *EE Ltd & Hutchinson 3G v Chichester & ors* [2019] UKUT 0164 – redevelopment equivalence

Landlord's arguments ...

- Keep the family jewels out of sight – Failed
- Play the long game – Very likely to fail
- Redevelopment is a good & familiar card – be strategic
- Consideration & compensation
 - Good valuation evidence
 - Alternative uses
 - Creative identification of current and future losses
 - ????



Thank you! Any questions?

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