

Telecommunications Site Agreements - A Land Owner's Perspective

Deregulation in the telecommunications sector under the *Telecommunications (Jersey) Law 2002* has seen escalation in the use of wireless technology for communications services in Jersey. Coupled with that growth has been an increase in the amount of radio and telecommunications equipment on new and existing sites.

Telecommunications equipment is often located on property under a lease or licence between the site owner and telecoms operator ("Telecoms Site Agreement").

Form of Telecoms Site Agreement

The appropriate form of Telecoms Site Agreement is dictated by the circumstances of a site. For example, licences are suitable to sites where infrastructure, such as a pole or tower, is shared by two or more operators whereas leases are more suitable when control of all or part of a property is given to one particular operator.

Telecommunications (Jersey) Law 2002

Part 6 of the *Telecommunications (Jersey) Law 2002* governs 'Powers Relating to Land'. In particular, it deals with:

- Installation of apparatus on roads - Article 26 of Part 6 permits a public telecommunications operator (subject to the extent of its licence) to:
 - install, maintain, do work and operate any telecoms equipment on or above any road; or
 - break-up and open any road for that purpose.
- Removal of apparatus to allow building - Article 27 of Part 6 enables a land owner to require the company to remove or alter telecoms equipment installed on the owners land before the *Telecommunications (Jersey) Law 2002* came into force provided:
 - the land owner intends to develop, improve or alter its land or use it in a manner in which it was not used when the telecoms equipment was initially installed; and
 - the telecoms equipment will interfere with such intentions.

However, the provisions of Article 27 do not overrule any existing written agreement entered into by the land owner.

- Trimming trees - Article 28 of Part 6 gives the company the right to lop branches off any trees which overhang, obstruct or interfere with the satisfactory operation of any telecoms equipment installed in accordance with the *Telecommunications (Jersey) Law 1972*.
- Power of entry in relation to existing installations - Article 29 of Part 6 gives the company the right to enter land where it is necessary to do so in order to perform its functions under Articles 27(2) or 28 or to carry out any work on apparatus installed in accordance with the *Telecommunications (Jersey) Law 1972*.
- Compulsory acquisition of land for telecommunication services - Article 30 of Part 6 provides for the acquisition of land by compulsory purchase on behalf of the public in accordance with the *Compulsory Purchase of Land (Procedure) (Jersey) Law 1961* for the purposes of facilitating the provision of telecommunication services by one or more licensees.

Whilst the *Telecommunications (Jersey) Law 2002* deals with specific issues relating to telecommunications equipment on land it does not actually regulate the form or content of a Telecoms Site Agreement to be entered into by a telecoms provider and a land owner.

Most forms of Telecoms Site Agreements are based on a telecom operator's standard site agreement. This means that they often:

- strongly favour the operator; and
- do not include basic provisions expected in standard commercial leases dealing with indemnities, assignment and sub-letting, or the sale or redevelopment of property.

It is important to remember that a Telecoms Site Agreement is a long-term agreement for the occupation of property. It is recommended that a land owner instructs its lawyer to review the operator's form of agreement and seek necessary amendments to protect the land owner accordingly.

Telecommunications Site Agreements - A Land Owner's Perspective

Duration

The 'term', or duration, of a Telecoms Site Agreement needs to be considered carefully against the owner's long-term proposed plans for the property. This is particularly relevant where the telecoms provider intends erecting infrastructure to support the telecoms equipment because the physical presence of such infrastructure will restrict a land owner's ability to use or develop its site.

Commencement of Telecoms Site Agreements

The commencement date of a Telecoms Site Agreement is a critical date which should be documented accurately. This is because the provisions under the agreement relating to make good of dilapidations at the end of the agreement will require the telecoms provider to make good back to the condition of the premises at the commencement date.

Consequently, it is essential that a Telecoms Site Agreement commences before any equipment is installed. Similarly, insurance and indemnity obligations should operate immediately on the operator entering the property.

In some instances land owners are put under pressure to grant access to their land before the Telecoms Site Agreement commences to facilitate the installation of telecoms equipment. Land owners should resist this no matter how urgent the installation unless such early access is documented appropriately.

Telecoms Site Agreements should always provide for the removal of all equipment on termination or expiry of the Telecoms Site Agreement. The costs of removing equipment can be high and failure to remove it could impact on future dealings with the property.

Termination rights

Operators often seek a right to terminate Telecoms Site Agreements on relatively short notice despite a comparatively long overall term. This enables the operator to minimise rental costs whilst at the same time protect itself against changes in technology, market conditions, or the coverage obtainable at a site.

Where this is the case land owners should seek to negotiate as long a period of notice as possible or alternatively seek a termination fee from the provider. Owners should similarly seek to negotiate a right to terminate the Telecoms Site Agreement to ensure that their ability to use or develop the site is reserved. This is particularly relevant where the site forms part of a larger parcel of land.

Planning approval

Telecoms operators must comply with relevant planning legislation and the land owner's consent will be required for any necessary planning applications. Land owner's consent provisions must be carefully drafted to ensure that they do not adversely affect an owner's own use of its property.

Interference

Telecoms Site Agreements often prohibit owners from doing anything that might interfere with the operation of sites for telecommunication purposes.

An owner should ensure that any such provisions do not have unintended consequences such as preventing development of a site or even hamper its primary use. For example, if a site is located on an industrial property, industrial equipment might cause interference to an operator's service. The Telecoms Site Agreement should make clear that non-interference provisions do not prevent or impair the primary use of the owner's property.

Where two or more telecoms providers are located on one site the owner should ensure that it does not put itself in the position of having to resolve interference disputes between operators. In a worst case scenario, an owner could find itself liable under a site agreement with operator A to take action against operator B, but without any relevant provisions in the agreement with operator B on which it can rely.

The most effective way to deal with this potential problem is to require all operators to cooperate with one another in a reasonable manner to resolve interference issues.

Best engineering practice and standards

To keep an owner's land desirable for the location of telecoms equipment, and as a consequence a source of income to the owner, the Telecoms Site Agreement should contain provisions to ensure that best engineering practice is followed both on initial installation and throughout the duration of the Telecoms Site Agreement.

This has the effect of ensuring that existing installations do not deter other potential tenants from the site even if technology and industry practice changes.

Exclusivity, Assignment and subletting

Once a telecoms operator has identified a site as desirable, it is likely that others will want to follow to take advantage of the coverage or position.

Telecommunications Site Agreements - A Land Owner's Perspective

To prevent the loss of other rental streams owners should try to resist giving operators rights of exclusive possession and rights to assign or sublet. In this regard, the owner should try to negotiate a provision into the Telecoms Site Agreement whereby it reserves the right to enter into agreements with other operators at the same site.

Renovation and redevelopment of land owner's property

A land owner should ensure that a Telecoms Site Agreement does not restrict its ability to carry out maintenance work or to redevelop the property on which a telecoms site is located. This is particularly relevant if the property is subject to other occupational leases that oblige the owner to carry out such maintenance.

The owner can achieve this by reserving the right to require operators to relocate under certain conditions. This will require the owner and its commercial advisor to consider issues such as notice periods and liability for relocation costs during the initial negotiations for commercial terms to the Telecom Site Agreement.

Rental Rates

A telecoms operator will have a good handle on rental values for telecoms sites in any particular area and will seek to pay as little as possible. It is recommended that before entering into Telecoms Site Agreements land owners seek the advice of commercial agents to gauge the market rental value to ensure that they will be receiving the going market rate.

About Ogier

Ogier is an award winning world leader in the provision of offshore legal and fiduciary services. Our integrated legal and fiduciary approach has proved a winning combination which enables us to secure awards for the quality of our services and our people.

The Group employs over 850 people and provides advice on all aspects of BVI, Cayman, Guernsey and Jersey law and fiduciary services through our international spread of offices that cover all time zones and key financial markets. Our network includes Bahrain, BVI, Cayman, Guernsey, Hong Kong, Ireland, Jersey, London, Shanghai and Tokyo.

Telecommunications Site Agreements - A Land Owner's Perspective

Contact details

Jersey

Chris Renouf - Partner
+44 (0) 1534 504106
christopher.renouf@ogier.com

Peter Bertram - Partner
+44 (0) 1534 504111
peter.bertram@ogier.com

Jonathan Hughes - Senior Associate
+44 (0) 1534 504336
jonathan.hughes@ogier.com

Client briefing

This client briefing has been prepared for clients and professional associates of the firm. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Ogier includes separate partnerships which advise on BVI, Cayman, Guernsey and Jersey law. For a full list of partners please visit our website.