

Cornerstone Telecommunications Infrastructure Ltd v Ashloch Ltd and another [2019] UKUT 338 (LC)

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Facts

The claimant (C) is a joint venture company formed by Vodafone (V) and Telefonica. It took an assignment from V of a lease of a roof-top site housing telecommunications apparatus whose contractual term had expired, but where V had been holding over under Part II of the Landlord and Tenant Act 1954 (the 1954 Act).

Under the transitional provisions of the Electronic Communications Code 2017 (the Code), C could not use Part 5 of the Code 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. Instead, therefore, C gave notice to its landlord (L) seeking the grant to it of new code rights under Part 4 of the Code (new code rights can be acquired by an operator by agreement with the relevant occupier (Part 2) or by an agreement imposed by court order (Part 4)).

L claimed that the Upper Tribunal (Lands Chamber) (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 recent case of *Cornerstone Telecommunications Infrastructure Ltd v Compton Beauchamp Estates Ltd* [2019] EWCA Civ 1755, the Court of Appeal upheld the decision of the UT 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 in favour of an existing operator already in situ. Although Part 5 did allow for code rights to be granted by someone other than the occupier, Part 5 could not apply here because of the transitional provisions of the Code.

To obtain a new lease, C had to apply to the County Court using the procedure in the 1954 Act. That renewed lease would be a lease to which the Code applied, so when its contractual term was close to expiry, at that point C could make use of the Code to seek its further renewal under Part 5.

Points to note/consider

1. This is the first time that the UT has had to consider the relationship between the Code and the 1954 Act. In reaching the decision it

has, the UT has interpreted the Code to comply with the Law Commission's stated intention (in its original report on the Code) not to apply the Code retrospectively.

2. The UT's decision that C must use the 1954 Act procedure to renew its lease 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.

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