

# Legal Alert

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## Is planning permission as well as a Wayleave agreement needed to install telecommunications equipment?

A High Court Judge ruled on the 16th February 2018 in *R (on the application of Mawbey) v Lewisham LBC* that a series of radio antennae mounted on top of a building in south-east London constitutes "radio masts". Mrs Justice Lang DBE ruled that, as such, they should not be able to benefit from the part of the General Permitted Development Order (GPDO) that allows much telecoms equipment to be erected without planning permission.

The new Electronic Communications Code that came into force on the 28 December 2017 regulates the granting of rights to telecoms operators to install and maintain telecoms equipment on, in or over private land. The way in which operators are granted such Code rights is primarily by voluntary grant by written agreement, often referred to as a 'Wayleave agreement'.

*R (on the application of Mawbey) v Lewisham LBC* suggests that it might not be just a Wayleave agreement that needs to be entered into in order to ensure operators can exercise rights in relation to telecoms equipment. It may be that the make-up of the equipment also requires a planning permission prior to its installation. The new Code makes reference and provides limits to operators' statutory rights in respect of lines on or over land, however no reference is made to the need for planning permission.

The case in question concerned radio antennae which were 3 metres high and were being installed on top of a 10-metre-tall building near South London's Telegraph Hill conservation area. The parties involved disagreed as to the categorisation of part of the equipment, namely the "support poles" which supported the antennae, and whether or not those poles constituted "masts" for the purposes of the GPDO.

Although it was agreed in this case that the purpose of the grant of permitted development under the GPDO was to facilitate the installation of telecoms equipment without the delay and uncertainty of an application for planning permission, the judge ruled that the support poles here were in fact "radio masts" as they supported antennae "which transmit and receive radio waves". They therefore required planning permission in order to be installed on top of the building, because they fell within the exclusions to the GPDO.

Telecoms operators might therefore need to consider more than just entering into a Wayleave agreement with the occupier of land when they want to install telecoms equipment. Indeed, landlords and tenants should also be alive to the possibility that when operators request a Wayleave agreement, the size and composition of the equipment, or advice in relation to the same, should be looked at carefully to ensure that any planning permission required is duly applied for.

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