Your Reference:
Our Reference: **PWS/HR/PL/181/004B**

27th October 2016

To: **scrunity@parliament.uk**

Dear Sirs,

DIGITAL ECONOMY BILL – PROPOSED ELECTRONIC COMMUNICATIONS CODE

I am a Chartered Surveyor of over 30 years post qualification experience operating in rural areas and concerned with development in the urban fringe.

I act for clients who between them have over 40 telecommunication mast sites and land crossed by approximately 35 km of telecommunications cables, including Peel Holdings Limited, the Manchester Ship Canal Company, Lord Lilford and a number of smaller land and property owners in Lancashire and Greater Manchester. I acted for the Bridgewater Canal Company in its arbitration against Geo Networks that led to the *Bridgewater* case, which was instrumental in interpreting the existing Code. It was the Judge in that case who was so critical of the existing Code, which I believe triggered Government to consider the revision of the Code that is now proposed.

Following the Law Commission's review of the Code and the recommendations that followed after it, I am disappointed with the draft Code now proposed within the Digital Economy Bill.

Leaving aside my grave misgivings about how skewed the provisions now are in favour of the telecoms operators, the most concerning proposal is to disregard the Law Commission's recommendations and promote a basis of valuation based on a 'no-scheme' world. I know that others are commenting in greater detail on the unsatisfactory nature of the provisions in this respect, as it is contradictory and unworkable as presently drafted. Particularly I would lend support to and endorse the views expressed by the CAAV, of which professional body I am a Fellow, and also of Ian Thornton-Kemsley, a recognised expert in this field.

Taking a more pragmatic view than many, I understand that the Government wish to make life easier for the telecoms operators to roll out services – essentially this must include all rural areas, where coverage is quite honestly a shambles for those who live and work in the rural sector. I can appreciate that within the Code you are looking to permit operators to assign, sub-let and share use of their facilities without the need to obtain the consent of their landlord and even to upgrade and increase the levels of equipment on their installations. However, if such sweeping rights are to be granted to operators, there needs to be a much better and fairer balance struck between the parties than that presently drafted.

At the heart of that balance must lay the rent payable for the site. If operators are to have such *carte blanche* rights, the rent needs to reflect that. Proposing to value those rights in a no-scheme world is simply not a fair or reasonable way to achieve that balance. The corner of the farmer's field where a mast is currently sited generating an income of, say, £4,500 per annum, may soon only command a rent of less than £5 per annum if the new Code is introduced in its currently proposed form. The existing Code, for all its faults, did allow a proper and workable market for rents of telecommunications cables and mast sites to become established. Indeed, the Law Commission acknowledged this and recognised that a change to a different basis of valuation would *"generate resistance and litigation"*. It recommended that *"landowners should continue to be paid a market price for the right to use land"*.

ACLAND BRACEWELL SURVEYORS LIMITED

The Barrons
Church Road, Tarleton
Preston PR4 6UP

Tel: 01772-813211
Fax: 01772-815172

www.absurveyors.co.uk

Chartered Surveyors
Land Agents and Property Consultants

R.J.T.A. Bracewell M.R.I.C.S., F.A.A.V.
roger.bracewell@absurveyors.co.uk
P.W. Smith B.Sc., F.R.I.C.S., F.A.A.V.
paul.smith@absurveyors.co.uk
R.J. Rawlinson B.Sc., M.R.I.C.S., F.A.A.V.
robert.rawlinson@absurveyors.co.uk
S.L. Valentine B.Sc., M.R.I.C.S.
sarah.valentine@absurveyors.co.uk

Registered No. 3372284 UK

Regulated by RICS

ACLAND BRACEWELL SURVEYORS LIMITED

It has to be noted that on those of our clients' sites where assignments have been allowed (often from, say, Vodafone to Cornerstone Telecommunications Infrastructure Limited or from Orange (EE Ltd) to Arqiva), our clients have experienced a huge increase in the number of access requests. For one mast site alone, we have received no less than 32 such requests in the space of the last five months. I would suggest that this level of disturbance to landowners will not be atypical under the proposed arrangements suggested by the draft Code, where site sharing and subletting of rights and equipment is commonplace.

The *quid pro quo* for such disturbance and loss of potential additional income, which otherwise might have been agreed under the existing lease arrangements and present Code, must be the retention of market rent as a fairer basis for valuation.

Unless landowners can be adequately protected from the wide rights now being proposed for telecoms operators or they can be adequately compensated by payment of a fair and reasonable consideration based on the established market rents, many landowners are considering whether it is actually worth granting the operators any rights at all. This is especially the case on the urban fringe where more profitable uses of their land are being presented through the expansion of residential development opportunities.

In the North West this month, we have heard how far back the green belt may be rolled around Greater Manchester. I cannot see any landowners with potential sites for future residential development wishing to compromise the prospect of large financial gains by tying up their land with telecoms operators, under agreements that are complex and restrictive, which ultimately may not be able to be terminated. I am presently negotiating with one operator where the landowner, whose land is being promoted for development, has told me he is not interested in having a telecoms operator's mast on his land unless he can be certain he can get it relocated should the land be redeveloped in future. He is far from a lone voice. Others now have sought advice as to how best to terminate the arrangements before the new Code comes into effect.

Finally, in relation to one of the more minor aspects included within the draft Code, may I implore Government to treat owners of "transport land" (formerly linear obstacles under the present Code) in the same way as owners of other land and property. There is no need to differentiate between the two. The valuation process of ascertaining a market rent under the present Code precludes taking into account any ransom position, as Judge Hague ruled in the leading case, *Mercury v London & India Dock Investments Ltd*. This principle is accepted throughout the profession.

In conclusion, I would urge Government to reconsider its ill advised proposal to adopt a no-scheme basis of valuation and reaffirm the Law Commission's proposal to retain market rent as the fair basis of valuation. Landowners then will be less concerned about the rights that the telecoms operators might enjoy under any new Code and, if coupled with greater ability to terminate the arrangements or relocate the telecommunications installations, will not be forced to consider rejection of operators' proposals for new sites. The current drafting is so far weighted towards operators that landowners will consider that it is simply not worth the potential consequences of entering or continuing with any further agreements. The result would be that all that the operators have built up under the existing Code in assembling their current networks may be jeopardised under the new Code in its currently presented form.

Yours faithfully,

Paul W. Smith BSc FRICS FAAV