



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LC-2023-000410**

Subject premises : **Chilton Court
Station Avenue
Walton on Thames
Surrey
KT12 1NG**

**Claimant
(Operator)** : **Cornerstone Telecommunications
Infrastructure Limited**

Representative : **Osborne Clarke LLP**

**Respondent
(Site Provider)** : **Chilton Court Residents Association
Limited**

Representative : **Eversheds Sutherland (International) LLP**

Type of application : **Application under paragraph 26(1) of the
Electronic Communications Code**

Date of hearing : **23 November 2023**

Tribunal members : **Deputy Regional Judge Nigel Gravells
Regional Surveyor Vernon Ward**

Date of Decision : **18 December 2023**

DECISION

Introduction

- 1 This is the Decision of the First-tier Tribunal on a Reference (received by the Upper Tribunal on 5 July 2023 and transferred to the First-tier Tribunal on 7 July 2023) including an application pursuant to paragraph 26(1) of the Electronic Communications Code (Schedule 3A to the Communications Act 2003 ('the Code')).
- 2 The Claimant is an 'operator' within the meaning of paragraph 2 of the Code. More specifically, the Claimant does not provide an electronic communications network of its own: rather it installs and maintains an infrastructure system (as defined in paragraph 7 of the Code) to providers of electronic communications networks.
- 3 The Claimant seeks interim non-intrusive multi-skill visit ('MSV') rights to assess the suitability of the roof of the subject premises for the installation and operation of telecommunications equipment.
- 4 The Respondent is the registered proprietor of the freehold of the subject premises, registered at HM Land Registry under title number SY336382, which comprise a five-storey residential block containing 30 apartments.
- 5 The Respondent does not object in principle to the Claimant having the interim rights sought but it does not agree to the proposed terms of the agreement that the Claimant seeks to have the Tribunal impose upon it.

The legal background

- 6 The Electronic Communications Code regulates the legal relationship between mobile telephone operators (whether providing a phone signal or physical infrastructure) and the landowners on whose land telecommunications equipment is to be placed. The Code provides protection for landowners while seeking to protect 'the public interest in access to a choice of high quality electronic communications services': see paragraph 21 of the Code.
- 7 Code rights are conferred upon operators by agreement with the occupier of land (paragraph 9), and an agreement may be imposed by an order of the Upper Tribunal (paragraph 20). However, paragraph 26 makes provision for interim Code rights, which can only be created by the Tribunal imposing an agreement upon the parties. The test that an operator must satisfy in order for the Tribunal to impose an agreement conferring Code rights under paragraph 20 is set out in paragraph 21 of the Code –
 - (1) ... the court may make an order under paragraph 20 if (and only if) the court thinks that both of the following conditions are met.
 - (2) The first condition is that the prejudice caused to the relevant person by the order is capable of being adequately compensated by money.
 - (3) The second condition is that the public benefit likely to result from the making of the order outweighs the prejudice to the relevant person.
 - (4) In deciding whether the second condition is met, the court must have regard to the public interest in access to a choice of high quality electronic communications services.
- 8 For interim rights under paragraph 26 the operator need only show that it has a 'good arguable case' that that test is satisfied. In the present case it is not disputed

that the Claimant has such a case and the Respondent does not oppose in principle the imposition of an interim Code agreement.

- 9 Interim Code rights can be conferred in the absence of an application under paragraph 20; and they are often sought, as in the present case, as the basis for the operator to carry out the investigation that is needed before deciding whether or not to seek the right to place equipment on the site.
- 10 Such an investigation is known as a ‘multi-skilled visit’ or MSV. It may be a simple visual inspection, or it may involve intrusive works that penetrate the fabric of a building.
- 11 Whether Code rights are sought under paragraph 20 or paragraph 26, the terms on which they are conferred are determined by the Tribunal in light of the provisions of the Code. Paragraph 23 refers to an order under paragraph 20 but is equally applicable to an agreement for interim rights (paragraph 26(4)(3)), and it provides so far as relevant -
 - (1) An order under paragraph 20 may impose an agreement which gives effect to the code right sought by the operator with such modifications as the court thinks appropriate.
 - (2) An order under paragraph 20 must require the agreement to contain such terms as the court thinks appropriate, subject to sub-paragraphs (3) to (8).
 - ...
 - (5) The terms of the agreement must include the terms the court thinks appropriate for ensuring that the least possible loss and damage is caused by the exercise of the code right to persons who—
 - (a) occupy the land in question,
 - (b) own interests in that land, or
 - (c) are from time to time on that land.

The factual background

- 12 There is a long history to this case, although there were substantial periods when negotiations effectively came to a standstill. However, the parties’ versions of (non-) events are not always the same.
- 13 Thus, the parties give different dates when the Claimant first contacted the Respondent to seek the Respondent’s agreement to the Claimant undertaking a MSV to the subject premises. According to the Claimant it was in August 2018; according to the Respondent it was in April 2017. In any event, the Respondent acknowledges that there was no further contact between those dates.
- 14 Between August 2018 and July 2019 there were some inconclusive negotiations.
- 15 On 17 October 2019 the Claimant served on the Respondent a (first) notice under paragraph 26(3) of the Code, seeking interim MSV rights (both non-intrusive and intrusive) to survey the subject premises. That notice was defective (including only alternate pages of the proposed agreement) and a replacement (second) notice was served on 11 November 2019.
- 16 On 28 May 2020 the Claimant served a (third) notice on the Respondent.

- 17 On 13 October 2020, in response to an approach by the Claimant, the Respondent indicated that access could not be granted while works then being carried out to the subject premises continued.
- 18 Between March and May 2021 correspondence and a travelling draft MSV agreement passed between the representatives of the parties and then between the Claimant's representative and the Respondent itself. (Eversheds ceased to be instructed by the Respondents in April 2021 and were not re-instructed until November 2022.)
- 19 On 4 May 2021 the Respondent circulated a new draft agreement.
- 20 By this time transactional costs were becoming a significant issue.
- 21 On 22 June 2021 the Claimant served a (fourth) notice on the Respondent, addressing the level of costs that the Respondent was claiming. The draft agreement appended to the notice purported to incorporate (i) terms ordered by the Upper Tribunal in a similar MSV case and (ii) terms previously agreed between the parties in earlier negotiations.
- 22 Up to this point the draft agreements had included terms providing for an MSV that was both non-intrusive and intrusive. However, on 8 November 2022 the Claimant served on the Respondent a (fifth) notice and a draft agreement, which provided for the Claimant to undertake a non-intrusive MSV only and removed terms relating to an intrusive MSV. It is that draft agreement ('the November 2022 draft agreement'), which the Claimant states is in line with the latest decision of the Upper Tribunal and which the Claimant wishes to form the basis of the agreement to be imposed by the Tribunal.
- 23 The Respondent was not willing to enter into an agreement for an MSV visit on the terms proposed by the Claimant in the November 2022 draft agreement; and it continued to base its comments on the pre-November 2022 draft agreement.
- 24 However, negotiations continued against the background of both the pre-November 2022 draft agreement and the November 2022 draft agreement. Concessions were made with a view to reaching a consensual agreement but progress was slow and eventually stalled in relation to a number of outstanding matters, including costs.
- 25 On 5 July 2023 the Claimant made the present reference to the Tribunal; and on 7 July 2023 the Upper Tribunal transferred the reference to the First-tier Tribunal under rule 5(3)(k)(ii) of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010.
- 26 On 28 August 2023 the First-tier Tribunal scheduled a case management hearing for 23 November 2023 with an indication that the application for interim rights would be determined on that occasion if that proved to be possible.
- 27 The hearing took place by remote video conference. The Claimant was represented by Miriam Seitler of Counsel and the Respondent was represented by Fern Schofield of Counsel.

Determination of the Tribunal

- 28 In determining the issues in dispute between the parties, the Tribunal took full account of the written and oral representations of the parties so far as relevant to the issues in dispute.

The starting point

- 29 Both Ms Seitler and Ms Schofield invited the Tribunal to determine first which draft agreement should form the basis of the agreement to be imposed by the Tribunal. For the Claimant Ms Seitler submitted that the starting point should be the November 2022 draft agreement; for the Respondent Ms Schofield submitted that the starting point should be the pre-November 2022 draft agreement.
- 30 Ms Seitler submitted -
- (i) that the November 2022 draft agreement reflected the non-intrusive MSV rights currently sought by the Claimant whereas the pre-November 2022 draft agreement was drafted in the different context of paragraph 26 notices that also included intrusive MSV rights;
 - (ii) that the November 2022 draft agreement reflected the current jurisprudence of the Upper Tribunal on (a) the relationship between non-intrusive and intrusive rights and (b) the supervision of the operator's contractor(s);
 - (iii) that the pre-November 2022 draft agreement incorporated concessions made by the Claimant in the hope that the parties could reach a consensual agreement; but that, in the absence of such agreement, the Claimant was not bound by those concessions, which did not reflect the current view of the Claimant as to what was appropriate;
 - (iv) that the November 2022 draft agreement was the subject of the reference to the Upper Tribunal in July 2023;
 - (v) that the November 2022 draft agreement was professionally drafted and its terms were appropriate to reflect the rights sought by the Claimant and to provide more than adequate protection for the Respondent;
 - (vi) that the (unreasonable) expenditure of time and money on numerous revisions to the pre-November 2022 draft agreement did not justify the retention of that draft agreement as the basis of the agreement to be imposed by the Tribunal.
- 31 Ms Schofield submitted –
- (i) that the Code both expressly and by implication encourages negotiation and consensual agreement between the parties and that the pre-November 2022 draft agreement was the result of that process;
 - (ii) that the pre-November 2022 draft agreement had been the subject of extensive negotiation and revision, that both parties had continued those negotiations even after the Claimant produced the November 2022 draft agreement and that the proposed switch to the November 2022 draft agreement would undermine the consensual philosophy of the Code;
 - (iii) that the Claimant's reference to the Upper Tribunal should have been based on the pre-November 2022 draft agreement;
 - (iv) that very significant expenditure would be wasted if the pre-November 2022 draft agreement were discarded;
 - (v) that the pre-November 2022 draft agreement could be amended to remove terms relevant only to intrusive MSV rights;

- (vi) that the Claimant should not be permitted to withdraw from the pre-November 2022 draft agreement.
- 32 The Tribunal finds the submissions made by Ms Seitler on behalf of the Claimant more persuasive. In particular –
- (i) Although the Tribunal acknowledges that the Code encourages negotiation and consensus, the negotiations between the parties stalled in mid-2023, resulting in the reference to the Upper Tribunal and the likelihood (which has materialised) that an agreement would be imposed by the Tribunal.
 - (ii) Although the Tribunal acknowledges that negotiations over approximately four years have resulted in significant expenditure of time and money, there will be no further expenditure on negotiation since the agreement will be imposed by the Tribunal.
 - (iii) The Upper Tribunal has made it clear that concessions agreed by parties in the course of negotiating Code agreements (which may be made for a wide range of reasons) do not bind the parties when the terms of an agreement are in dispute before the Tribunal and are not relevant to the Tribunal’s decision about the terms that are appropriate: see *Cornerstone Telecommunications Infrastructure Limited v Hackney LBC* [2022] UKUT 210 (LC) at paragraphs 43-49.
 - (iv) Since the Tribunal is therefore starting from a ‘clean sheet’, it is sensible to take as its starting point a template agreement which is concise and straightforward and which has been adopted by the Upper Tribunal as appropriate both to provide for the no-intrusive MSV rights sought by the Claimant and also to provide appropriate protection for the Respondent.
- 33 For the reason set out above, the Tribunal determines that the starting point should be the November 2022 draft agreement.

The terms in dispute

- 34 The Respondent had annotated a copy of the November 2022 draft agreement with 47 proposed amendments. In the course of the hearing eight of those proposed amendments were not pursued by the Respondent; but an additional amendment was proposed.
- 35 The significant number of proposed amendments still outstanding at the date of the hearing seemed to reflect the fact that the Respondent was persisting in its wish to conclude an agreement based on the pre-November 2022 draft agreement. Most of the proposed amendments to the November 2022 draft agreement identified instances where the November 2022 draft agreement did not incorporate the results of negotiated amendments to the pre-November 2022 draft agreement. In other words, the Respondents were apparently attempting largely to recreate the pre-November 2022 draft agreement.
- 36 In the view of the Tribunal that is not the proper approach: rather the proper approach is summarised in paragraph 32(iv) above. The agreement imposed on the parties should be as concise and straightforward as possible consistent with achieving two principal objectives - first, the agreement must provide for the no-intrusive MSV rights sought by the Claimant; and, second, the agreement must provide appropriate protection for the Respondent.

- 37 The Tribunal appreciates that the subject premises are residential and that the Respondent is rightly concerned with ensuring that appropriate safeguards are in place in order to protect the (predominantly elderly) residential leaseholders and their homes. Nonetheless, the Tribunal is of the view that the Respondent overstates the actual and potential risks that might be created by a non-intrusive MSV. Objectively, a non-intrusive MSV is a 'light touch' survey (involving the gathering of information and the taking of photographs, measurements and recordings); and many of the amendments to the November 2022 draft agreement proposed by the Respondent are unnecessarily complicated and/or burdensome and/or would require the Claimant to follow procedures that are disproportionate. They are therefore not 'appropriate' for the purposes of paragraph 23(1) of the Code in the context of a non-intrusive MSV.
- 38 Applying the above principles, the Tribunal determines that in most instances the terms proposed by the Claimant are to be preferred over the corresponding terms proposed by the Respondent. The terms proposed by the Claimant have been held to be appropriate by the Upper Tribunal in a number of recent non-intrusive MSV cases comparable to the present case. The Tribunal is satisfied that those terms meet the principal objectives identified in paragraph 36 above and determines that they are the appropriate terms to be included in the agreement imposed by the Tribunal in the present case.
- 39 The following paragraphs therefore address only those terms where the Tribunal determines that the appropriate term is not that proposed by the Claimant or where the Tribunal determines that the term proposed by the Claimant should be qualified. (Transaction costs are considered separately.)

Definition: Grantor's Access Contact

- 40 The Tribunal acknowledges that the Respondent is entitled to choose Hub Telecoms Consultancy Limited as its appointed Access Contact. However, the Tribunal is of the view that it is neither necessary nor appropriate to appoint a telecoms expert to perform the function of Access Contact; and that view is reflected in the level of payment specified in clause 1.2.3.2.

Definition: Professional fees

- 41 It is clear from paragraph 84 of the Code and previous decisions of the Upper Tribunal that professional fees include valuation fees.

Clause 1.2 Professional and Grantor Fees

- 42 The Tribunal acknowledges that the Respondent is entitled to appoint Hub Telecoms Consultancy Limited to attend MSV visits. However, the Tribunal is of the view that it is neither necessary nor appropriate for the Respondent to incur the costs of a professional telecoms expert to oversee the Claimant's own professionals: see *Cornerstone Telecommunications Infrastructure Limited v St Martins Property Investments Limited* [2021] UKUT 26 (LC) at paragraph 30. The figure in clause 1.2.3.2 reflects that view.

Clause 2.1.2

- 43 Clause 2.1.2 requires Authorised Personnel to carry (and produce on demand) relevant training certification.

Clause 2.2.2

- 44 Clause 2.2.2 provides a warranty by the Claimant that Authorised Personnel hold appropriate public liability and third party liability insurance.

Clause 3.1

- 45 In the view of the Tribunal, given that the subject premises comprise a block of flats, largely occupied by elderly residents, it is not appropriate to require the Respondent to provide the Claimant with keys and/or access codes to the subject premises.
- 46 However, if the Respondent is unwilling to provide such unaccompanied access, it must undertake to arrange for an appropriate person to provide the Claimant with unrestricted access to the MSV site.

Transaction costs

- 47 Paragraph 25(1) of the Code provides:

If the court makes an order under paragraph 20 the court may also order the operator to pay compensation to the relevant person for any loss or damage that has been sustained or will be sustained by that person as a result of the exercise of the code right to which the order relates.

- 48 Paragraph 84(2)(a) provides:

Depending on the circumstances, the power of the court to order the payment of compensation for loss or damage includes power to order payment for—

(a) expenses (including reasonable legal and valuation expenses, subject to the provisions of any enactment about the powers of the court by whom the order for compensation is made to award costs or, in Scotland, expenses)

- 49 Paragraph 26(4)(e) provides that the provisions of paragraphs 25 and 84 apply in relation to an order under paragraph 26 and an agreement imposed by it as they apply in relation to an order under paragraph 20 and an agreement imposed by it.

- 50 The test to be applied when considering transaction costs is set out by Judge Cooke at paragraph 94 of *Cornerstone Telecommunications Infrastructure Limited v The Mayor and Burgesses of the London Borough of Hackney* [2022] UKUT 210 (LC) -

Finally we come to transaction costs. The MSV, and the process of negotiation leading up to it, should not leave the Respondent out of pocket; it is well-established that it can expect the Claimant to reimburse the legal and professional fees that it has occurred in the negotiation of the agreement.

- 51 Transaction costs in that reference (£29,580 less litigation costs to be stripped out) were 'higher than normally seen for an MSV, because this has been an unusually fraught and indeed hostile negotiation'.
- 52 In *EE Limited and Hutchison 3G UK Limited v Affinity Water Limited* [2022] UKUT 8 (LC) the Deputy Chamber President reiterated that –
- A site provider is entitled to seek advice on the lease and recover the reasonable cost of doing so.
- 53 In that case legal expenses were reduced from £7,449 to £6,000, 'allowing for some duplication'.

- 54 In *On Tower UK Limited v AP Wireless II (UK) Limited* [2022] UKUT 152 (LC) Judge Cooke allowed transaction costs in respect of two properties in the sums of £6,276 and £6,472, observing at paragraph 261 –

These were never going to be inexpensive transactions, in view of the number of terms that the parties had to negotiate and of the fact that both parties regarded the health and safety terms as issues of principle. As is pointed out for APW the complexity is seen by the number of colours on the travelling drafts; these were not three matching leases and none of them was simple. We accept the transaction costs as claimed, and we point out that there is no reason for them to be matched in less complex deals where the parties are able to reach agreement.

- 55 In *Cornerstone Telecommunications Infrastructure Limited v St Martins Property Investments* [2021] UKUT 262 (LC) the Deputy Chamber President stated at paragraph 34 –

The notion that an operator should be required only to make a contribution towards the legal expenses incurred by a site provider, and that the site provider should thereby be left out of pocket, is flawed. The site provider is entitled to recoup its reasonable legal expenses – all of them.

- 56 In that case the reasonable legal costs were £11,000. However the Deputy Present Chamber continued at paragraph 35 –

I appreciate that that is a substantial sum, but this case concerns a particularly valuable building where it was reasonable for the Respondent to engage [a substantial firm of City solicitors] and to take the points which it has taken. The sum is not significantly different from compensation ordered by the Tribunal in other cases. In the case referred to colloquially as *Dale Park* (admittedly a paragraph 20 case in which transactional costs may be expected to be higher) the Tribunal awarded £8,000 for negotiating the agreement. Neither that figure nor the figure that I award in this case should be regarded as setting a norm; they are simply the figures produced by the application of the proper principle to the circumstances of a particular case. They could no doubt be reduced if the Claimant chose to use a simpler form of agreement.

- 57 At the risk of oversimplification, the principle that emerges from the jurisprudence of the Upper Tribunal is that the site provider is entitled to recover its reasonable transaction costs in full.

- 58 In the present case the Respondent claims transaction costs of £61,449.47.

- 59 Ms Schofield, on behalf of the Respondent, argued –

- (i) that negotiations between the parties started in 2019;
- (ii) that two lengthy period of silence on the part of the Claimant led to ‘pick-up’ costs when negotiations resumed;
- (iii) that the Claimant served five statutory notices;
- (iv) that the Claimant only removed its request for *intrusive* MSV rights in November 2022;
- (v) that the inclusion of *intrusive* MSV rights in earlier notices justified the instruction of specialist solicitors with Code expertise;
- (vi) that the Respondent was entitled to pursue issues that it regarded as important;
- (vii) that transaction costs must be determined in the circumstances of each case.

- 60 Ms Seitler, on behalf of the Claimant, argued –
- (i) that the Claimant is only entitled to recover the legal costs of negotiating an agreement. Despite repeated requests for a breakdown of costs claimed by Gateley Legal (for work in 2019) and by Eversheds Sutherland (for work in the periods October 2019-July 2020 and December 2022-June 2023), no such breakdown has been provided;
 - (ii) that fees charged by Eversheds Sutherland included fees for property *litigators* which are not recoverable as transaction costs;
 - (iii) that from April 2021 to December 2022 the Respondent negotiated on its own behalf without professional legal advice;
 - (iv) that legal costs associated with amending the Respondent’s Articles of Association (£1,185.60) are not recoverable as transaction costs;
 - (v) that costs incurred for the roof access and health and safety assessments by Smart FM (£570) and for the site survey by Hub Telecoms (£900) are not recoverable as transaction costs;
 - (vi) that the Respondent failed to engage directly with the November 2022 draft agreement;
 - (vii) that the Respondent demonstrated almost no willingness to compromise but persisted in pursuing matters that were pointless and/or pedantic and/or unsupported by authority;
 - (viii) that the Claimant first highlighted the issue of transaction costs in June 2020;
 - (ix) that the claimant offered to pay transaction costs of £12,000 plus VAT which is more than the amount awarded by the Upper Tribunal in any comparable case.
- 61 The Tribunal accepts that the site provider is entitled to recover its reasonable transaction costs in full.
- 62 However, that principle requires the Tribunal (i) to identify what constitutes *transaction* costs and (ii) to determine whether those transaction costs are *reasonable*.
- 63 In relation to the first issue, the Tribunal determines that some of the costs included in the Respondent’s claim are not transaction costs for the purposes of paragraph 84 of the Code –
- (i) the legal costs associated with amending the Respondent’s Articles of Association (£1,185.60);
 - (ii) the costs incurred for the roof access and health and safety assessments by Smart FM (£570) and for the site survey by Hub Telecoms (£900);
 - (iii) the litigant in person costs other than out of pocket expenses;
 - (iv) the fees of litigation fee-earners.
- 64 In addition, certain out of pocket expenses (£739.64) claimed by the Respondent and included in the claim for transaction costs are payable under clause 1.2.3.1 of the agreement.

- 65 Ms Schofield did not question Ms Seitler's submission that the fees charged by Eversheds Sutherland included fees for property litigators. However, it is not possible to attribute a figure to those fees since the two invoices from Gateley Legal and the eight invoices from Eversheds Sutherland provide no breakdown of the professional fees and no such breakdown has been provided subsequently.
- 66 Turning to the second issue, the Respondent has made no attempt to establish the reasonableness of the costs claimed as transaction costs. Despite repeated requests from the Claimant, the Respondent has failed to provide any breakdown of the constituent figures included in the legal costs claimed and has therefore denied the Claimant the opportunity to question the reasonableness of those figures.
- 67 It therefore falls to the Tribunal to assess the reasonableness of the costs claimed. In doing so the Tribunal is mindful of the observation in *Cornerstone Telecommunications Infrastructure Limited v St Martins Property Investments* that costs awarded in previous cases should not be seen as setting a norm. However, in the view of the Tribunal it would be perverse in the present case to award anything like the costs claimed, which are four times the highest figure for costs awarded even in the most difficult of previous cases.
- 68 The Tribunal accepts that the negotiations spanned a period of approximately four years (although there were significant periods of inactivity), that those negotiations might reasonably be described as 'fraught', if not 'hostile', that until November 2022 the Claimants were seeking both non-intrusive and intrusive MSV rights and that it was reasonable to instruct specialist solicitors to advise on the terms of any agreement.
- 69 However, the involvement of the solicitors was limited in time; and, on the basis of the documents in the hearing bundle, the Tribunal finds that the involvement of Eversheds Sutherland in negotiations with the Claimant was not extensive. The Tribunal finds that the Respondent demonstrated almost no willingness to compromise but persisted in pursuing matters that were pointless and/or pedantic and/or unsupported by authority; and that the Respondent failed to engage directly with the November 2022 draft agreement, which was subject of the reference to the Upper Tribunal in July 2023.
- 70 For the reasons set out above, the Tribunal determines that the Respondent's reasonable transactions costs are £15,000 and the Tribunal determines that those costs are recoverable in full.

Order

- 71 In order to give effect to this Decision, the Tribunal has issued a formal Order pursuant to paragraph 26 of Schedule 3A to the Communications Act 2003, imposing on the parties the Agreement annexed to the Order.

Litigation costs

- 72 In *EE Limited and Hutchison 3G UK Limited* [2022] UKUT 174 (LC) the Deputy Chamber President stated at paragraphs 9-10 –

Where parties have not agreed that there should be no order for costs, the Tribunal's usual order in such cases is that the operator should pay the site provider's costs, which will then usually be summarily assessed. ... The costs incurred by a site provider in a

reference made necessary because an operator wishes to have a Code right to undertake a survey ought not in principle to fall on the site provider.

- 73 The parties may make representations on the issue of litigation costs to be received by the Tribunal **not later than 5 January 2024**.

Appeal

- 74 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 75 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- 76 If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- 77 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

18 December 2023

Professor Nigel P Gravells
Deputy Regional Judge