



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

Case Reference : **BIR/00CN/EIA/2025/0652**

Property : **Grand Buildings, Trafalgar Square and
Standard House, 28 Northumberland
Avenue, London**

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

Representative : **Osborne Clarke LLP**

**Respondent
(Site Provider)** : **Barlaya Limited**

Representative : **Concorde Solicitors Limited**

Application : **Electronic Communications Code**

Paragraph 26 (MSV)

Date of Order : **4th August 2025**

DECISION

1. A Reference under Schedule 3A of the Communications Act 2003 was received by the Tribunal on 28 April 2025 including an application for an order imposing an agreement for rights under the Electronic Communications Code (“the Code”) on an interim basis.
2. On 30th May 2025 the Tribunal issued Directions for determination of the application for interim rights at the case management hearing.
3. The CMH took place by way of remote video platform on 4th August 2025. The Claimant was represented by Kester Lees KC and the Respondent by Michael Watson. I have considered a Bundle of documents [1-482].

Respondent’s case management applications

4. Paragraph 4 of Directions provided for the Respondent to file Witness Statement in Response no later than 7 days prior to the CMH. In addition, the parties were given liberty to apply for further Directions.
5. The Respondent has not filed a Witness Statement in Response. Instead on 30th July 2025 the Respondent applied to the Tribunal for permission to rely on Expert evidence in respect of Heritage Buildings in London and in respect of Valuation [457-467 and 468-477].
6. A similar application was made in **Covent Garden IP Limited v CTIL** [2025] UKUT 136 (LC). The Deputy Chamber President said at paragraphs [47-49]:

47. In summary, the application was hopelessly late, was not accompanied by any indication of the substance of the evidence which the Building Owner wished to adduce, did not propose a realistic timetable for evidence in response and was guaranteed to disrupt the determination of the substantive interim rights application.

48. Mr Holland KC suggested that the FTT could have given directions for a split hearing, with consideration being dealt with on a later date, or it could have given directions for sequential exchange of evidence. No doubt it could, although no proposal to that effect was made, but that misses the point that it was being invited to consider directions for expert evidence so close to the hearing date that a sensible timetable was simply not feasible. Had the FTT considered that it should permit reliance on expert evidence it was inevitable that the hearing would not be completed on 16 July.

49. The Building Owner was under a duty to cooperate with the FTT to enable it to manage the proceedings consistently with its overriding objective of dealing with the matter fairly and justly. For the reasons I have given its application of 19 June was not consistent with that duty. It was calculated to obstruct the achievement of that objective and, by necessitating the postponement of the hearing, to delay the resolution of the application and to waste the FTT’s resources.

7. The present applications are dismissed for the same reasons.

The Paragraph 21 Test

8. The Tribunal may grant Interim Code Rights under Paragraph 26 where it “*thinks that there is a good arguable case that the test in paragraph 21 for the making of an order under paragraph 20 is met.*”
9. The Tribunal may make an order if (and only if) the Tribunal thinks that both of the following conditions are met:

21(2) The first condition is that the prejudice caused to the relevant person by the order is capable of being adequately compensated by money.

21(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.

21(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.

10. In **EE Limited and Hutchison 3G UK Limited v London Underground Limited** [2021] UKUT 0128 (LC) the Deputy Chamber President, at paragraph 7, set out how a Claimant may demonstrate a good arguable case:

“For a claimant to demonstrate a good arguable case does require that it make out its case to the normal civil standard of proof on the balance of probability; as the Court of Appeal confirmed in University of London, at [77], a good arguable case is a lower test than is laid down by paragraph 21 itself. Instead it means that the claimant must show that it has a plausible evidential basis for its claim that the paragraph 21 conditions are satisfied. The test is flexible and fact specific.”

The Claimant’s Case

11. The Claimant relies on Claimant’s Statement of Case, as confirmed by the statement of truth, dated 28th April 2025 [32-39].
12. An initial MSV of the site was completed on 23rd September 2021. Mr Watson told me that, in fact, what took place was an initial site visit. In any event, on 29th September 2022 Westminster City Council refused to permit the development for the following reasons [268-272]:

Reason(s) for Refusal:

Because of their elevated position, height, bulk and alien appearance, the proposed antennae and associated equipment would harm the appearance of this building and fail to maintain or improve (preserve or enhance) the character and appearance of the Trafalgar Square Conservation Area, would harm the appearance of the roofline in important metropolitan views of Trafalgar Square from outside the National Gallery and from its Terrace and would harm the ensemble setting of surrounding Grade II listed buildings (Trafalgar Buildings, Drummonds Bank, 57-59 Trafalgar Square and National Westminster Bank). This would not meet Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021).

13. A further Notice under Paragraph 26(3) of the Code was served on 17th July 2023 [5-10].
14. On 24th March 2025 the Claimant served yet another Notice under Paragraph 26(3) [11-16]. The explanation for the delay given by the Claimant is that between August 2023 and March 2025 the Claimant paused its request for a further MSV whilst it prepared detailed RAMS.
15. The Claimant's case is that there is insufficient mobile connectivity in and around Northumberland Avenue. It wishes to improve connectivity on behalf of Telefonica who are one of the users of the Claimant's infrastructure system. Existing Telefonica cell sites in the surrounding area are unable to compensate for the lack of coverage and capacity. The Claimant therefore requires a new site.
16. The application relates solely to an MSV. At this stage the Claimant wishes only to assess suitability of the site with a view to resolving coverage issues. If the site is not assessed as suitable the Claimant will be able to search for other suitable sites.

The Respondent's Case

17. The Respondent relies on Statement of Case signed by Rachael Anne Trimble (Director) and dated 2nd July 2025 [51-63].
18. The site sits within the Trafalgar Square Conservation Area. The present buildings known as Grand Buildings, Trafalgar Square and Standard House, 29 Northumberland Avenue, London sit on the site of the former Grand Hotel which was demolished in 1986. The present buildings were designed by Sidell Gibson and include 27,000 individual Portland Stones including detailed cornices and window surrounds. Presently the building is used as office accommodation with retail units at ground level. The building is also subject to leasehold interest including Flats 1 and 2 and 7th & 8th Floor, One Strand, London.
19. The site is a Landmark Building described by the City of Westminster Area Audit as having "a dominant elevation to [Trafalgar Square] and continues its impressive façade down Northumberland Avenue."

20. The Respondent identifies three areas of prejudice. The first is diminution in value of a building which it says is presently valued in the order of £400 million. Secondly there are aesthetic considerations and the impact on the visual amenity of the property. Thirdly there is reputation damage in terms of how the Respondent is regarded by the public as the custodian of a landmark building. The second and third matters are incapable of being adequately compensated by money. Such prejudice is simply too much to ask.

Deliberation

21. The application is for a non-invasive MSV. The Claimant proposes only measurements and the taking of readings. The proposed MSV is for a 6 month period and on 7 days' notice. Code rights sought are therefore limited in their extent.
22. I find that the Claimant has established connectivity issues in respect of the Telefonica network in Northumberland Avenue. It has also established that other cell sites are unable to compensate for the lack of coverage.
23. The prejudice caused to the Respondent by a non intrusive MSV is very limited. At this stage the Respondent's well founded concerns about visual amenity and reputational damage simply do not arise. However, should the Claimant ultimately make an application for permanent rights under Paragraph 20 the Respondent's arguments in respect of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 will be highly relevant.
24. I find that the first condition in Paragraph 21 is satisfied. Any prejudice caused to the Respondent by the proposed MSV is capable of being adequately compensated by money. The draft Agreement already provides for the Claimant to pay specified fees for time spent by the Respondent in providing information (including health and safety), for the costs of the Respondent's electrical contractor attending the MSV and for the costs of reviewing RAMS (see paragraph 1.2 of the Schedule to the draft Agreement at [68]).
25. I find that the Second Condition is also satisfied. The public benefit likely to result from proposed MSV outweighs any prejudice to the Respondent. Access for site surveys is an important first step in replacing lost capacity and improving the quality of the service available to the public (see **CTIL v University of London** [2018] UKUT 0356 (LC) at [140]). The code rights sought in connection with a non intrusive MSV are modest and any prejudice resulting from the exercise of such rights will be at most minimal.
26. Finally, I stand back and consider whether or not I should exercise my discretion to make the Order. There are three matters that I take into account. The first is the refusal of planning permission for the installation of ECA. Second is the delay on the part of the Claimant between the MSV carried out in 2021 and the present reference. The delay has been nearly 4 years. Throughout that period the Respondent's property has

been under threat of expropriation. Thirdly the service of three Paragraph 26 notices is in itself oppressive.

27. The Tribunal will always be astute to scrutinise cases where multiple notices have been served. However, I am satisfied that I should make an Order in the present reference. Planning requirements in such a sensitive area as Trafalgar Square Conservation Area are likely to prove challenging for operators. Site design may need to be revised several times in order to accommodate planning constraints and more widely the visual amenity aspects as identified by the Respondent. Accordingly, it is not unreasonable for there to be more than one MSV to accommodate changes in design and planning/visual amenity objections. In addition, there is clearly a substantial public interest in access to a choice of high-quality electronic communications services in the Trafalgar Square Conservation Area both from visitors/tourists and from those who work in the area including those who occupy the office and retail premises at Grand Buildings and Standard House.
28. The Claimant has satisfied me that there is a good arguable case that the test in paragraph 21 for the making of an order under paragraph 20 is met.

Terms

29. Mr Watson has helpfully identified three areas of dispute in respect of the draft MSV agreement a copy of which is to be found at [66-75].
30. The Agreement is to last for 6 months. As was said in the Covent Garden case at paragraph 35 MSV's are "for a limited period, usually 6 months".
31. The Claimant now seeks rights over the rooftop, Towers 3 and 4 and such parts of the communal areas and service areas as are reasonably required (see MSV Site definition at [66-67]). Accordingly, Towers occupied under residential leases have been excluded from the Agreement. Towers 3 and 4 comprise Building Managers Office and Plant Room as shown edged green and blue on Plan 2 [72].
32. Mr Watson conceded that, absent expert evidence, he was unable to put forward a figure for consideration. I therefore determine notional consideration of £1 (if demanded) [66]. It should be noted that the Respondent's rights to claim compensation under Paragraphs 25 and 84 are unaffected by the Agreement I impose.

Costs

33. Mr Lees asked for costs. That application was refused. Although the Claimant has been the successful party, I entirely understand the Respondent's concerns around planning, visual amenity, delay and the repeated service of Paragraph 26 Notices. The usual order in MSV cases is for the operator to pay the site provider's costs. Mr Watson took a realistic view and asked me to make no order for costs. I make the order as requested by Mr Watson.

ADR

34. Mr Watson has proposed ADR on behalf of the Respondent. I remind both parties of their obligations under the OFCOM Code of Practice and the amendments to the Code introduced by section 69 of the Product Security and Telecommunications Infrastructure Act 2022 which introduced the use of ADR into Paragraph 20 and also into Paragraph 96 in respect of costs.

D Jackson
Judge of the First-tier Tribunal

Either party may appeal this Decision to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal for permission. Any application for permission must be in writing, stating grounds relied upon, and be received by the First-tier Tribunal no later than 28 days after the Tribunal sends its written reasons for the Decision to the party seeking permission.