FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00CN/ECR/2024/0623 and others**
Properties (Abbreviated Site Name)	**:**	**Crownland Hall Farm, Chase Farm, Mumsford Farm, Manor Farm, Model Farm, Bradley Wood Estate Farm, Saddleworth Golf Club, Kingsthorpe Golf Club, Edgemead Close, Greenmount Golf Club and Rotherwas**
Claimants	**:**	**EE Limited and Hutchison 3G UK Limited**
Representative	**:**	**Oliver Radley-Gardner KC instructed by DAC Beachcroft LLP**
Respondent	**:**	**AP Wireless II (UK) Limited**
Representative	**:**	**Toby Watkin KC and Daniel Black instructed by Freeths LLP**
Application	**:**	**Electronic Communications Code**
Hearing	**:**	**1st and 2nd July 2025 Centre City Tower, Birmingham**
Tribunal	**:**	**Judge D Jackson**
Date	**:**	**8th August 2025**

DECISION – Preliminary Issues

---

1. This is my Decision on Preliminary Issues arising out of eleven references brought by the Claimants by way of renewal under Part 5 of the Electronic Communications Code following the expiry of subsisting Code agreements.

2. The Preliminary issues were heard in Birmingham on 1st and 2nd July 2025. I have considered a Bundle of documents [1-2397], Supplementary Bundle [SB1-21] and Correspondence Bundle [CB 1-303]. I have considered Witness Statements of Ashley Gary Kiernan-Firth on behalf of the Claimants dated 13th June 2025 [238-255] and David John Powell on behalf of the Respondents also dated 13th June [256-295]. I am grateful to Oliver Radley-Gardner KC for his Skeleton Argument and Toby Watkin KC and Daniel Black for their Skeleton Argument dated 25th June 2025. I am also grateful to counsel for preparing Bundle of Authorities [AB 1 – 491]

3. By agreement between the parties Mr Kiernan-Firth did not give evidence. However, I am grateful to Mr Powell who gave oral evidence at the hearing.

4. At the conclusion counsel helpfully suggested that I might be assisted by further written argument in respect of the Transitional Provisions contained in paragraph 6(2)(b) to Schedule 2 to the Digital Economy Act 2017. Mr Radley-Gardner has prepared Written Submissions for the Claimants and Mr Watkin has prepared Respondent's Additional Written Submissions.

5. The Preliminary Issues are as follows:

   (1) In respect of ***0612 Saddleworth Golf Club****,* ***0626 Manor Farm, Taunton****,* ***0624 Chase Farm****,* ***0629 Bradley Wood*** *and* ***0625 Mumsford Farm,*** *whether the existing Code agreements were successfully contracted out of ss. 24-28 of the 1954 Act, in accordance with the requirements of s. 38A of the 1954 Act and Schedule 2 of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003.*

   (2) In respect of each reference:

      (i) whether the Claimants served upon the Respondent a notice purportedly pursuant to Para 33 on or about 1 June 2023;

      (ii) if so, the date of service and the terms of that notice.

   (3) In respect of ***0625 Mumsford Farm****, whether either the Claimants or the Second Claimant is entitled to an order under Para 34 of the Code, given that:*

      (i) The Claimants are together the Claimants in that Reference, but the Existing Agreement remains vested in the Second Claimant, which is therefore the only relevant "party to the agreement".

(ii) the notice relied upon by the Claimants is served in the name of the Second Claimant but seeks the imposition of an agreement between the Respondent and the Claimants together (not the Second Claimant).

(4) Whether the Tribunal lacks Jurisdiction to hear some or all of the references on the basis that the Claimants have failed to serve upon APW a notice complying with the requirements of Para 33 of the Code, having regard to:

(i) whether the Claimants have established service of any purported notice, and the terms of any such notice (as determined under preliminary issue (2));

(ii) the date of service of any such notice and the date specified in the relevant notice as being the date after which a reference could be brought;

(iii) the fact that such notice fails to comply with the mandatory requirements of Para 33(3A) and Para 88(2).

(5) Whether reliance upon any of the said notices and the issue of these references constitutes an abuse of process:

(i) because the notices are stale; and/or

(ii) because the notices do not contain the information required by Para 33 of the Code or comply with Para 88(2) of the Code; and/or

*(iii) in the case of **0625 Mumsford Farm**, because the same was served by the Second Claimant and sought an agreement between the Respondent and the Claimants together.*

(1) Landlord and Tenant Act 1954 – Contracting Out

6. Section 38 (1) of the Landlord and Tenant Act 1954 ("the 1954 Act") provides that an agreement to exclude the provisions of Part II of the 1954 Act is void. That general rule is subject to two exceptions. The first exception provided for court authorisation of an agreement and applied until 2003. The second exception, which in 2003 replaced the first, provides for the parties to reach agreement subject to the requirements of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 ("the 2003 Order").

   For convenience I have referred to the pre and post 2003 regime. In fact, the 2003 Order applies only to tenancies or agreements for tenancies granted on or after 1 June 2004. However, for the purposes of the references before me there is no dispute as to which regime applies.

Pre 2003

7. The Law of Property Act 1969 inserted a new section 38(4) into the 1954 Act which provided:

"(4) The court may—

(a) on the joint application of the persons who will be the landlord and the tenant in relation to a tenancy to be granted for a term of years certain which will be a tenancy to which this Part of this Act applies, authorise an agreement excluding in relation to that tenancy the provisions of sections 24 to 28 of this Act

(b) ....

if the agreement is contained in or endorsed on the instrument creating the tenancy or such other instrument as the court may specify; and an agreement contained in or endorsed on an instrument in pursuance of an authorisation given under this subsection shall be valid notwithstanding anything in the preceding provisions of this section."

Post 2003

8. Section 38A was inserted into the Act by the 2003 Order to make provision for the parties to agree to exclude the provisions of Part II:

"(1) The persons who will be the landlord and the tenant in relation to a tenancy to be granted for a term of years certain which will be a tenancy to which this Part of this Act applies may agree that the provisions of sections 24 to 28 of this Act shall be excluded in relation to that tenancy.

(3) An agreement under subsection (1) above shall be void unless—

a) the landlord has served on the tenant a notice in the form, or substantially in the form, set out in Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 ("the 2003 Order"); and

(b) the requirements specified in Schedule 2 to that Order are met."

9. The requirements specified in Schedule 2 are a Notice (paragraph 2) and either a declaration (paragraph 3) or a statutory declaration (paragraph 4). For present purposes the important provisions of Schedule 2 are:

5. A reference to the notice and, where paragraph 3 applies, the declaration or, where paragraph 4 applies, the statutory declaration must be contained in or endorsed on the instrument creating the tenancy.

6.The agreement under section 38A(1) of the Act, or a reference to the agreement, must be contained in or endorsed upon the instrument creating the tenancy.

10. Under both the pre 2003 and post 2003 regimes any agreement must be "*an agreement in writing between them"* (see section 69(2) of the 1954 Act). Both the pre 2003 and post 2003 regimes provide for the agreement to exclude (and the notice and declaration post 2003) to be contained in or endorsed on the instrument creating the tenancy. The authors of "Foskett on Compromise" [AB 484] suggest:

    "In the normal course of events, a provision will be included in the lease when executed to the effect that the parties have agreed that the provisions of ss.24–28 of the Act are excluded from the tenancy…"

    In the 6 references to which Preliminary Issue (1) applies the agreement to exclude is an express term of the tenancy rather than an endorsement. By incorporating the agreement to exclude as an express term of the tenancy the requirement for an agreement to be in writing is satisfied.

11. Mr Watkin refers me to Practical Law [AB 490] which, by way of example, contains suggested wording for inclusion in a lease where the landlord's warning notice was served less than 14 days before the lease was entered into (post 2003 Regime – Paragraph 4 of Schedule 2 to the 2003 Order):

    "The parties confirm that:

    (a) the landlord served a notice on the tenant, as required by section 38A(3)(a) of the Landlord and Tenant Act 1954 (LTA 1954), applying to the tenancy created by this lease, before [this lease] [DETAILS OF AGREEMENT FOR LEASE] was entered into; and

    (b) [the tenant] [[NAME OF DECLARANT] who was duly authorised by the tenant to do so] made a statutory declaration dated [DATED] in accordance with the requirements of section 38A(3)(b) of the LTA 1954.

    [(c) There is no agreement for lease to which this lease gives effect.]

    The parties agree that the provisions of sections 24 to 28 of the LTA 1954 are excluded in relation to the tenancy created by this lease."

    A further example of best practice can be found at clause 19 of the lease for the site at Edgemead Close [868].

12. However, it should be noted that neither regime sets out a prescribed form of wording to be contained in or endorsed on the tenancy (in contrast, for example, to the prescribed forms of declaration and statutory declaration contained in Schedule 2 to the 2003 Order). Although Mr Watkin advances a counsel of perfection, all that matters is that the statutory requirements of the relevant regime are satisfied.

13. The statutory purpose behind the requirement for the agreement to exclude to be endorsed on or contained in the instrument creating the tenancy is explained in the context of the pre 2003 regime by Lawson J in Tottenham **Hotspur v Princegrove Publishers Limited** [1974] 1 WLR 113 at 119 C:

    "The reason for the formula which is adopted in the latter part of subsection (4) can, in my judgment, only be that these procedural devices were introduced in order that third

parties, prospective assignees, or prospective mortgagees of the tenant's interest under a lease should know, on the assumption that they are dealing with a lease of business premises, that this is a lease which, by agreement of the parties and by the authority of the court, has a special restriction; that is, it is a lease to which, basically, Part II of the Act of 1954 does not apply, because the court has so authorised. Unless the agreement was either contained in, or endorsed on the document creating the tenancy, or some other instrument, of course it would be extremely difficult for a third party to know of the existence of this special feature of a lease which, by the authority of the court, contracts out the tenant from his statutory rights under Part II of the Act of 1954."

14. In **Essexcrest Ltd v Evenlex Ltd** (1988) 55 P&CR 279, a pre 2003 regime case, unilateral endorsement of a memorandum of the order on an agreement that had been entered into before the grant of the order did not constitute the agreement authorised by the court. At 284 Dillon LJ concluded:

    "Even so when Registrar Taylor made his order all would, as it seems to me, have been well if the parties had re-executed the lease or had endorsed on it some form of agreement which excluded the provisions of the Act in terms which would have constituted a new tenancy thenceforth in respect of the premises. But I cannot think that the unilateral endorsement of the memorandum of the court's order is enough to constitute the agreement authorised by the court excluding, in relation to the tenancy referred to, the provisions of the sections of the Act. The whole of the relevant wording of the Act relates to the future and the way these parties have gone about things unfortunately does not achieve the objective which they had in mind, in my judgment."

    Taken together with **Princegrove,** in my judgement, what is required is that third parties, assignees and mortgagees should know that the lease is one to which the Part II of the 1954 Act does not apply and that it is sufficient for there to be *"some form of agreement which excluded the provisions of the Act".* Perfection is not required.

15. As Males LJ said in TFS **Stores Ltd v Designer Retail Outlet Centres Ltd** (CA) [2021] Bus. L R 1407 at 40 what matters is whether what has been done fulfils the statutory purposes*:*

    It is relevant in this regard that the declaration is to be completed by the tenant, who is therefore responsible for deciding how to fill in the blanks in the form. No doubt the landlord will in practice wish to satisfy itself that the declaration has been properly completed, and may sometimes produce a draft for the tenant's signature, but it is the tenant's responsibility to read the Warning Notice and (if necessary with professional advice) to ensure that it understands and accepts the consequences of entering into an agreement without the statutory protection of security of tenure. When the landlord has done all that it is required to do by serving a Warning Notice in proper form, it is an unattractive submission on the part of a tenant to say that it has filled in the blanks in the declaration in a way which invalidates the parties' agreement. (Indeed, Ms Wicks was constrained to accept that the logic of her submission is that if a tenant deliberately sabotages the declaration by inserting the wrong date and the landlord failed to correct it, the declaration will be invalid.) That is in my judgment a relevant consideration which means that Parliament cannot have intended that the courts should strive to find that a declaration has been completed in a way which has this effect. What matters is whether the declaration fulfils the statutory purposes."

Saddleworth Golf Club – post 2003

16. The agreement under section 38A(1) at Saddleworth Golf Club is contained at clause 15 of the Agreement of 9th August 2006 [732]:

    "*Notwithstanding that the arrangements being entered into are not intended by either party to constitute the relationship of landlord and tenant the Owner has served a Notice on T-Mobile by letter dated 12 June 06 and T-Mobile has made a Declaration to the Owner dated 12 August 2006 pursuant to Section 38A(3) of the Landlord and Tenant Act 1954 ("the 1954 Act")(and in accordance with the procedure set out in the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003) confirming that T-Mobile will not have security of tenure under the provisions of Sections 24 to 28 inclusive of the 1954 Act*"

17. It is accepted that the requirements as to notice and declaration under Paragraph 5 of Schedule 2 to the 2003 Order are satisfied. The Respondent's case is that Paragraph 6 (reference to the agreement to be contained in or endorsed upon the instrument) is not satisfied.

18. The clause refers to "*arrangements being entered into*", what was "*intended*" by the parties and "*confirming*" that the tenant will not have security of tenure. The usual everyday meaning of "confirm" is to make an arrangement definite. I read clause 15 as confirming that the arrangements in respect of security of tenure are being made definite. I am quite satisfied that arrangements, what was intended, and the confirmation taken together amount to "*the agreement under section 38A(1) of the Act*" that T- Mobile would not have security of tenure. A third party reading clause 15 would know that the 1954 Act does not apply. The statutory purpose is satisfied and the agreement that the parties reached is faithfully recorded. I find that Paragraph 6 of Schedule 2 to the 2003 Order is satisfied and that the agreement to exclude the provisions of Part II under section 38A(1) is not void.

Manor Farm – pre 2003

19. The agreement excluding Part II of the 1954 Act in respect of Manor Farm is contained at clause 9 of the Agreement date 24th June 2002 [534]:

    "By an Order of the ***Pontypridd*** *County Court (****Order Number P0021264****) dated the* ***19th*** *day of* ***June 2002*** *the security of tenure provisions of sections 24-28 of Part II of the Landlord and Tenant Act 1954 are excluded from this Agreement*"

    I have emphasised in bold the manuscript additions to the clause. This speaks of the care with which the clause was completed and shows that then clause was not completed until after the Court Order was made.

20. The jurisdiction of the Court under section 38(4)(a) was to "*authorise an agreement excluding in relation to that tenancy the provisions of sections 24 to 28 of this Act*". As Mr Watkin rightly submits the Court does not itself exclude security of tenure. However,

the Court is to be taken to have competently exercised its jurisdiction and, indeed, it is not seriously contended otherwise.

21. The endorsement clearly satisfies the **Princegrove** test of alerting third parties to exclusion of 1954 Act protection. Clause 9 should be taken in context. It appears in a document which commences with the words [527]:

    "**THIS AGREEMENT** is made the 24 day of June 2002."

    The heading to cause 9 is:

    "**Security of tenure**"

    The attestation clause provides [535]:

    "**AS WITNESS** whereof his deed has been duly executed and delivered the day and year first before written"

    Taken that context I find that clause 9 clearly passes the **Essexcrest** test of being *"some form of agreement which excluded the provisions of the Act"*. The agreement was made on 24th June 2002 after the Order of the Court which was made on 19th June. Clause 9 fulfils the statutory purpose of alerting third parties to the exclusion of Part II of the 1954 Act.

22. The provisions of Part II of Act of 1954 have been effectively excluded under section 38(4).

Transitional Provisions

23. Paragraph 6(2) of Schedule 2 to the Digital Economy Act 2017 states that:

    "Part 5 of the new code (termination and modification of agreements) does not apply to a subsisting agreement that is a lease of land in England and Wales, if—

    (a) it is a lease to which Part 2 of the Landlord and Tenant Act 1954 applies, and

    (b) there is no agreement under section 38A of that Act (agreements to exclude provisions of Part 2) in relation the tenancy."

24. This creates a problem. The reference to section 38A (post 2003) without additional reference to section 38(4) (pre 2003) has the effect that, although the tenancy at Manor Farm was effectively contracted out of 1954 Act protection, the Claimant cannot renew that tenancy under Part 5 of the Code.

25. This is obviously a case where the drafting is defective, an oversight by the draftsman perhaps. However, the statutory wording is clear and as Lord Neuberger said: "*context and mischief do not represent a licence to Judges to ignore the plain meaning of the words that Parliament has used.*" (**Williams v Central Bank of Nigeria** [2014] AC 1189). I am therefore unable to solve the problem at a stroke as Mr Radley-Gardner suggests by way of necessary implication.

26. Mr Radley-Garner's other solution is section 17(2)(b) of the Interpretation Act 1978:

Where an Act repeals and re-enacts, with or without modification, a previous enactment then, unless the contrary intention appears, —

(b) in so far as any subordinate legislation made or other thing done under the enactment so repealed, or having effect as if so made or done, could have been made or done under the provision re-enacted, it shall have effect as if made or done under that provision."

Mr Radley-Gardner submits that contracting out pre 2003 (the thing done under the enactment so repealed) is to be read as if done under section 38A (the provision re-enacted).

27. The 2003 Order is a delegated piece of legislation made under the Regulatory Reform Act 2001. Paragraph 21(2) of the 2003 Order headed "Amendments to section 38" omitted section 38(4). Paragraph 22 inserted section 38A. Transitional provisions in Paragraph 29(2) provide that: "*Nothing in this Order has effect in relation—(a) to an agreement—(ii) which was authorised by the court under section 38(4) of the Act before this Order came into force*". Finally, Schedule 6 lists section 38(4) as an enactment repealed.

28. The 2003 Order repealed section 38(4). However, that previous enactment was re-enacted with modification. Section 38(4) dealt with authorisation of "*an agreement excluding in relation to that tenancy the provisions of sections 24-28 of the Act*" whereas Section 38A(1) provides that the parties "*may agree that the provisions of sections 24-28 of this Act shall be excluded in relation to that tenancy*". In essence section 38A is, to use Mr Radley-Garner's phrase, "the functional equivalent" of section 38(4). What was repealed has been re-enacted with modification. The practical effect is the same – the protections of the 1954 Act are excluded. Accordingly, the exclusion of protection under section 38(4) "*shall have effect*" as if done "*under the provision re-enacted*" i.e. section 38A.

29. Mr Watkin submits that the "*contrary intention appears*" in Paragraph 29(2) which provides that existing agreements authorised by the court before the 2003 Order came into force are still effective. I do not agree with Mr Watkin on this point. In my judgement, the fact that pre 2003 agreements authorised by the Court continue to be effective supports the conclusion that Parliament intended section 17(2)(b) to apply and thus ensure the continued effectiveness of pre 2003 authorised agreements.

30. Mr Watkin's final objection to Mr Radley-Gardner's proposed solution is that section 38(4) was repealed by the 2003 Order and not by an Act of Parliament. I prefer Mr Radley-Gardner's argument that the repeal by the 2003 Order should not be divorced from the Regulatory Reform Act 2001 which is "its source of legislative authority". In addition, section 23 of the 1978 Act provides that provisions of the 1978 Act also apply to subordinate legislation.

31. Accordingly, section 17(2)(b) of the 1978 Act provides that exclusion 1954 Act protection under section 38(4) has the effect as if it was done under section 38A. Paragraph 6(2)(b) of Schedule 2 to the Digital Economy Act 2017 must be read as if contracting out under section 38(4) were done under section 38A. The Claimant is therefore able to access Part 5 in respect of the agreement at Manor Farm.

Chase Farm, Bradley Wood Estate Farm and Mumsford Farm– post 2003

32. The agreement under section 38A(1) at Chase Farm is contained at clause 12 of the Agreement of 8th November 2004 [355]:

"12. Exclusion Order

The Owner and H3G:

(a) Agree for the purposes of Section 38(A)(1) of the Landlord and Tenant Act 1954 (the "1954 Act") (as amended by the Regulatory Reform (Business Tenancy) (England and Wales) Order 2003 (the "2003 Order") that the provisions of Sections 24-28 (inclusive) of the 1954 Act shall be excluded in relation to the tenancy created by this Agreement;

(b) Record (as required by Schedule 2 of the 2003 Order) that H3G has received the notice prescribed by Schedule 1 of the 2003 Order in relation to the Agreement contained in Sub-Clause (a) above at least 14 days before entering into this Agreement and has made the declaration required by Paragraph 3 of Schedule 2 to the 2003 Order before entering into this Agreement."

33. The agreement under section 38A(1) at Bradley Wood Estate Farm is contained at clause 10 of the Agreement of 27th August 2004 [646]:

Landlord and Tenant Act 1954

The Owner has served on H3G a notice in the form set out in Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 ("the Order") and H3G has made a declaration in the form set out in paragraph 7 in Schedule 2 to the Order and the parties agree that the provisions of Sections 24-28 (inclusive) of the Landlord Tenant Act 1954 shall not apply to this Agreement.

34. The Agreement at Mumsford Farm was made on 16th August 2002. The Respondent accepts that it was correctly contracted out under the pre 2003 regime [see clause 7.7 at [437]).

35. However, a Deed of Variation dated 14th February 2006 [476] operated as a surrender and regrant. Clause 3.4 of the Deed of Variation varies clause 7.7 of the Agreement as follows [480]:

Clause 7.7 of the Agreement shall be deleted and replaced with the following clause:

"The Landlord has served on the Tenant a notice in the form set out in Schedule I to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 ("the Order") and the Tenant has made a declaration in the form set out in paragraph 7 in Schedule 2 to the Order and the parties agree that the provisions of Sections 24-28 (inclusive) of the Landlord Tenant Act 1954 shall not apply to this Lease."

36. In respect of Chase Farm, Bradley Wood Estate Farm and Mumsford Farm the Respondent seeks to put the Claimants to proof that the notices and declarations were properly carried out. The Respondent acquired its interest in each of the sites many years after the service of the notices and making of the declarations. Mr Powell told me in his evidence that its acquisitions team and lawyers headed by Andrew Rodgers would have carried out due diligence when the sites were acquired. Mr Powell further told me that title would have been investigated and that he "assumed" the Respondent would have a file of relevant documents. However, Mr Watkin confirmed that the Respondent does

not have any relevant documents to disclose. The Claimants has also been unable to locate copies of the notices and declarations. I therefore find on the balance of probabilities that those documents have been lost and cannot be found.

37. One of the functions of an endorsement (or in the case of these three sites the relevant clause) is to ensure that important information is recorded in the principal document i.e. the tenancy. Inevitably documents will be lost or misplaced amidst the gallimaufry of deeds, searches and the other ephemera of a conveyancing file. The endorsement, or the clause, preserves the evidence in the place one would expect it to be found. There is no requirement for Notices and Declarations to be kept. Their function has been fulfilled and their existence noted in the clause/endorsement.

38. In **Loveluck-Edwards v Ideal Developments Limited** [2012] EWHC 716 (Ch) Morgan J at paragraphs 62-64 warned against speculation:

"In my judgment, it is a matter of speculation only… I do not think that I am able to decide on the balance of probabilities whether it was so enjoyed or whether it was not.

The burden of proof of the necessary facts is on the Claimants. … Accordingly, I find that the Claimants have not established on the balance of probabilities that the right which they claim was enjoyed at the date of the 1920 conveyance.

If one were to speculate, it might be possible to suggest that one possibility was somewhat more likely than another possibility. But even if I felt able to speculate (which I do not) that it was slightly more likely that the right claimed was enjoyed at the date of the conveyance, that would not in my judgment enable me to find that that was so on the balance of probabilities. The matter remains one of speculation and not proof on the balance of probabilities. This point is illustrated by the decision in Rhesa Shipping SA v Edmunds [1985] 1 WLR 948 (in particular at 951C-D) applied in Sienkiewicz v Greif [2011] 2 AC 229 at [193] per Lord Mance. I should also pay attention to the warning given by Mummery LJ in Wilkinson v Farmer [2010] EWCA Civ 1148 at [35] about the dangers of speculating about historic facts which existed at the date of a conveyance many years earlier."

No speculation is required in the present references. I have before me three clauses in three formal legal documents all executed as deeds. All three clauses refer to Notices in the form prescribed by Schedule 1 to the 2003 Order. All three clauses refer to ordinary declarations under Paragraph 3 of Schedule 2 to the 2003 Order in the form set out at paragraph 7 rather than statutory declarations under Paragraphs 4 and 8. The endorsement satisfies the evidential burden that on the balance of probabilities the landlords served notices and the tenants made declarations in the prescribed form.

I find that the Agreements at Chase Farm, Bradley Wood Estate Farm and Mumsford Farm have been successfully contracted out of ss. 24-28 of the Act.

(2) Service of Paragraph 33 Notice

39. By letter dated 9th June 2025 the Respondent withdrew Preliminary Issue (2).

(3) Mumsford Farm

40. This site was demised by an Agreement dated 16th August 2002 and made between Mr and Mrs HW Try (1) and the Second Claimant, Hutchison 3G UK Limited [428]. Deeds of Variation and Licences to Share were entered into in 2006 and 2010. However, the Second Claimant has remained the operator at this site. The Second Claimant is therefore "a party to the code agreement" for the purposes of the Paragraph 33.

41. The Paragraph 33 Notice dated 25th May 2023 was given by the Second Claimant [1278] however the Annexe to the Notice [1282] contains a draft agreement in the names of both Claimants. Notice of Reference RPEC3 dated 2nd December 2024 [41] was made jointly by both First and Second Claimants.

42. On the morning of the second day of the hearing, 2nd July 2025, application was made by email by the Claimants solicitors to proceed solely in the name of the Second Claimant. I granted that application under FTT Rule 10(1) which provides:

"The Tribunal may give a direction adding, substituting or removing a person as an applicant or a respondent."

Clearly only the Second Claimant is a party to the code agreement for the purposes of Part 5. The Notice has been served in the sole name of the Second Claimant and the Tribunal cannot therefore make an order in favour of the First Claimant. I therefore removed the First Claimant in respect of the Mumford Farm reference.

I also made an Order that the First Claimant should pay the Respondent's costs of and incidental to its removal. In addition, I record Mr Watkin's position that the Respondent may also seek to have the removal reflected in any determination that the Tribunal makes in respect of interim rent.

43. Having deal with Preliminary Issue 3(i) by way an Order under FTT Rule 10 I now deal shortly with Preliminary Issue 3 (ii). The effect of a discrepancy between the notice and the claim in the Tribunal was considered by the Upper Tribunal in **Cornerstone Telecommunications Infrastructure Ltd v. Keast** [2019] UKUT 116

"29. That being the case, the point argued here is probably academic, but at any rate it is best left for decision if it actually arises. Obviously the Tribunal cannot impose upon the occupier of land any Code right that has not been sought in the paragraph 20 notice; that is perfectly clear from the terms of paragraph 20. On the other hand, where the reference to the Tribunal seeks fewer rights than were sought in the paragraph 20 notice, and the Respondent was in fact misled or pressurised or inconvenienced by the notice, then that is a matter that may weigh with the Tribunal in the exercise of its discretion as to what are the appropriate terms to be imposed upon the occupier of the land. But my provisional view is that it is unlikely that that sort of discrepancy will invalidate the paragraph 20 notice."

A similar conclusion was reached by the Lands Tribunal (Scotland) in **EE Ltd & H3G Ltd v Patricia Anne Shearlaw** [2025] LTS 12:

36. As explained by Cooke J in Cornerstone Telecommunications Infrastructure Limited v Keast at paragraphs 27 – 29 where the applicant seeks fewer rights than were sought in the (paragraph 20) notice, and the respondent was in fact misled or pressurised or inconvenienced by the notice, then that is a matter which may weigh with the Tribunal in the exercise of its discretion as to what are the appropriate terms to be imposed. As the applicants accept, there may be implications in expenses. But her provisional view was that it is unlikely that that sort of discrepancy will invalidate the notice.

37. We agree, and we were not pointed to any reason why the position might be different in a paragraph 33 notice. We do not think it likely that the recipient would be prejudiced in a real sense. The proffered terms opening the negotiation are bound to be looked at critically. The extent of the area of land to be let may be subject to negotiation downwards. Current practice requires operators to offer to fund professional advice for the site provider for the negotiations. Landlords and occupiers can reasonably be expected to know the extent of land which they own and occupy and, in the context of a notice under paragraph 33, the extent of the existing let site. If there was some impediment to the letting of additional land, it would be reasonable to expect this to be ascertained in the negotiation process. We did not find the respondent's arguments as to prejudice to be convincing.

44. The inclusion of the First Claimant in the draft agreement and RPEC3 does not cause any real prejudice to the Respondent. It has already been compensated in costs and may seek to argue that any order for interim rent should also reflect the discrepancy. However, the discrepancy does not invalidate the Notice and the defect in the reference has already been cured under FTT Rule 10.

(4) Validity of Notices

45. Mr Watkin helpfully confirmed that Preliminary Issues 4(i) and (ii) fall away and I am left to consider validity of Notices under Paragraphs 33(3A) and 88(2) of the Code.

46. As the parties are aware I have dealt with this issue on two previous occasions (**Patricroft** - On Tower (UK) Limited and another v APW Wireless II (UK) Limited (LC – 2023 – 000852 and **Equipoint** – EE Limited and Hutchison 3G UK Limited v APW Wireless II (UK) Limited LC – 2024 – 000563). I am not bound by my previous decisions. Indeed, I have given the Respondent permission to appeal this point in **Equipoint**. However, despite Mr Watkins careful and patient submissions I remain of the same view. I therefore repeat much of what I have said previously on this issue.

47. I consider Paragraph 88 first:

(1) A notice given under this code by an operator must—

(a) explain the effect of the notice,

(b) explain which provisions of this code are relevant to the notice, and

(c) explain the steps that may be taken by the recipient in respect of the notice.

(2) If OFCOM have prescribed the form of a notice which may or must be given by an operator under a provision of this code, a notice given by an operator under that provision must be in that form.

(3) A notice which does not comply with this paragraph is not a valid notice for the purposes of this code.

(4) Sub-paragraph (3) does not prevent the person to whom the notice is given from relying on the notice if the person chooses to do so.

(5) In any proceedings under this code a certificate issued by OFCOM stating that a particular form of notice has been prescribed by them as mentioned in this paragraph is conclusive evidence of that fact.

48. Section 69 of the Product Security and Telecommunications Infrastructure Act 2022 ("the 2022 Act") came into force on 7th November 2023. OFCOM prescribed form of notice changed at that time to include information about ADR and the consequences of refusing to engage.

49. None of the Notices before me contain the prescribed information in respect of ADR that applied after 7th November 2023. However, the Notices for all the sites in the present reference were served prior to November 2023 on divers dates between 25th May 2023 and 2nd August 2023 [1180-1993]. The Notices were valid when served. They did not become invalid on 7th November 2023. There is no concept of retrospective invalidity. Accordingly, references could validly be made under Paragraph 33 after 7th November 2023 reliant on valid Notices served prior to that date.

50. These references were all made consequent on Notices given under Paragraph 33 of the Code. The 2022 Act also introduced changes to Paragraph 33 and in particular Paragraph 33 (3A):

Where the notice is given by an operator, it must also—

(a) contain information about the availability of alternative dispute resolution in the event that the operator and the site provider are unable to reach agreement, and

(b) explain the possible consequences of refusing to engage in alternative dispute resolution.

51. It is common ground that none of the notices contain the prescribed information about ADR. That is because they were all served prior to November 2023. The Respondents case is that the Claimants cannot apply to the Tribunal under Paragraph 33(5) reliant on such notices. The requirement under Paragraph 33(3A) is a precondition to the making of application under Paragraph 33(5) to the Tribunal for an order under paragraph 34.

52. The Respondent's case is predicated on the proposition that the effect of the 2002 Act is to make invalid all Notices served prior to 7th November 2023. That it seems to me is a striking proposition. Nowhere in the 2022 Act is it suggested that all pre-existing Notices are invalid. It is trite law that clear wording is required for a statute to have retrospective effect.

53. In **Lipton and another v BA Cityflyer Ltd** [2024] UKSC 24 Lord Lloyd-Jones said at [196]:

"My starting point is the general principle of the common law that conduct and events are normally governed by the law in force at the time at which they took place. As a result, subsequent legislative changes in the law are not generally given retrospective effect. Evidence of a clear contrary intention would be required before they could be given retrospective effect, for example by disturbing accrued rights. There is a general presumption at common law that legislation is not retrospective in the sense that it alters the legal consequences of things that happened before it came into force (Chitty on Contracts, 35th ed (2023), para 1-031A; Bennion, Bailey and Norbury on Statutory Interpretation, 8th ed (2020), sections 7.13, 7.14). This general rule reflects public expectations and notions of fairness and legal certainty."

54. Accordingly, the 2022 Act does not alter the legal consequences of Code Notices served before it came into force. I therefore find that the Claimants are able to rely on Notices served prior to November 2023 when making application to the Tribunal after that date.

55. If I am wrong about that I now turn to the consequences of breach of statutory procedural requirements. Paragraph 33 of the Code differs from Paragraph 88 and also section 38A of the 1954 Act discussed above. In both the latter cases the statutory wording sets out that the consequence of breach of the requirement is that the Notice or the agreement is void. Paragraph 33 is drafted without expressly spelling out the consequences of non-compliance. There is no bright line.

56. The Supreme Court has recently considered the approach to be taken where there is no express statement of consequences. In **A1 Properties (Sunderland) Limited v Tudor Studios RTM Co. Limited** [2024] UKSC 27 Lord Briggs and Lord Sales set out the correct approach, at paragraph 61:

"to move away from a rigid category-based approach to evaluating the consequences of a failure to comply with a statutory procedural requirement and to focus instead on (a) the purpose served by the requirement as assessed in light of a detailed analysis of the particular statute and (b) the specific facts of the case, having regard to whether any (and what) prejudice might be caused or whether any injustice might arise if the validity of the statutory process is affirmed notwithstanding the breach of the procedural requirement"

57. The purpose of the requirement is to is to provide information about ADR and to explain the consequences of refusing to engage. As suggested at paragraph 68 of **A1 Properties** I look at "*what consequence of non-compliance best fits the structure as a whole*."

In this respect subparagraphs 33(6) and (7) are relevant:

(6) Before applying under sub-paragraph (5) for an order under paragraph 34 the operator or the site provider (as the case may be) must, if it is reasonably practicable to do so, consider the use of one or more alternative dispute resolution procedures to reach agreement with the other party.

(7) The operator or the site provider may at any time give the other party to the agreement a notice in writing stating that the operator or the site provider (as the case maybe) wishes to engage in alternative dispute resolution with the other party to the agreement in relation to the notice mentioned in sub-paragraph (1)

58. In my judgement the requirement to consider ADR at the point of application and the option for the other party to serve a notice if it wishes to engage in ADR both point firmly to the conclusion that the consequence of a non-compliant Notice is not invalidity. The presence of safeguards within Paragraph 33 itself leads me to the conclusion that failure to comply with Paragraph 33(3A) does not preclude application to the Tribunal under Paragraph 33 (5).

59. Further I am not persuaded on the specific facts of these references that the Respondent has suffered any prejudice whatsoever. Both parties before me are sophisticated litigators with deep pockets and access to the very best legal advice. The parties will be aware of the provisions concerning ADR in FTT Rule 4. The most recent version of the OFCOM Code of Practice published 15th April 2024 specifically deals with resolving disputes and the role of ADR (see paragraphs 1.81 – 1.88). The Respondent is well aware of ADR and the costs consequences of failing to engage.

60. Finally, I deal with the argument that it is easy for the Claimants to start again and serve new Notices. That suggestion, giving rise to "*unwarranted opportunities for obstruction*", did not find favour with Supreme Court (see paragraphs 97 and 98).

(5) Abuse of Process

61. The doctrine of abuse of process exists "*to protect the process of the court from abuse and the defendant from oppression*" **Johnson v Gore Wood & Co. (a firm)** [2002] 2 AC 1.

62. Paragraph 33 Notices were served in May 2023 in respect of "Batch 1" (Crownland Hall Farm, Chase Farm, Mumsford Farm, Manor Farm, Model Farm and Bradley Wood). Paragraph 33 Notices were served in July/August 2023 in respect of "Batch 2" (Saddleworth Golf Club, Kingsthorpe Golf Club, Edgemead Close, Greenmount Golf Club and Rotherwas). The Claimants had served earlier notices at Chase Farm (January 2020) and Rotherwas (April 2021). However, those two earlier Notices are not relied upon by the Claimants in the present references.

63. When considering delay, I have to consider the provisions of Paragraph 33 which builds in a minimum period of 6 months before an application to the Tribunal may be made.

(4) Sub-paragraph (5) applies if, after the end of the period of 6 months beginning with the day on which the notice is given, the operator and the site provider have not reached agreement on the proposals in the notice.

(5) Where this paragraph applies, the operator or the site provider may apply to the court for the court to make an order under paragraph 34.

64. Accordingly, the earliest a reference could have been made in respect of Batch 1 is November 2023 and February 2024 in respect of Batch 2. References in Batch 1 were in fact made in December 2024 and in Batch 2 at the end of January 2025.

65. It would appear that the practice of the Claimants is to follow up Notices with "letter before action" ("LBA") at a later date. Letters before action were issued by the Claimants solicitors in respect of Batch 1 on 6th September 2024 [4] and in respect of Batch 2 on 26th November 2024 [55].

66. A summary of the position is as follows:

Batch 1 Notices – 25th May 2023

LBA – 6th September 2024

Reference to Tribunal – 2nd December 2024

Batch 2 Notices – 28th July/ 2nd August 2023

LBA – 26th November 2024

Reference to Tribunal – 31st January 2025

67. There are two lines of authority. The first relates to striking out an action for want of prosecution. The leading authority on abuse of process in the context of delay is **Icebird Ltd v Winegardner** [2009] UKPC 24

8. Birkett v James [1978] AC 297 remains, in their Lordships' opinion, the leading authority for the approach to be taken to an application to strike-out an action for want of prosecution. The House of Lords endorsed the principles set out in the then current Supreme Court Practice, namely, that the power to strike-out should be exercised only where the court was satisfied -

"... either (1) that the default has been intentional and contumelious e.g. disobedience to a peremptory order of the court or conduct amounting to an abuse of the court, or (2)(a) that there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or

to have caused serious prejudice to the defendants either as between themselves and the plaintiff or between them and a third party" (per Lord Diplock at 318).

68. To succeed the Respondent would have to show both inordinate and inexcusable delay giving rise to a substantial risk that it is not possible to have a fair trial, or that delay is likely to cause or has caused serious prejudice to the Respondent. Mere delay is insufficient. I have no hesitation in finding that any delay between the expiry of the 6 month period specified in Paragraph 33 and the issue of these references cannot properly be described as inordinate or inexcusable.

69. The second line of cases relates to delay in pursuing claims under statutory notices ("stale notices"). **Collin v Duke of Westminster** [1985] QB 581 concerned a notice under the Leasehold Reform Act 1967. There is a special feature of such notices, absent from Code notices, in that service of a 1967 Act notice gives rise to a statutory contract. Nevertheless, the position is clear; there must be either abandonment or estoppel.

70. The better view is that **Icebird** is concerned with delay once proceedings have been commenced as are the "warehousing" of claims cases (see **Asturion Foundation v Alibrahim** [2020] 1 WLR 1627). The Respondents submissions in respect of "stale notices" fall under **Collin v Duke of Westminster** principles. There is no suggestion that the notices served in May 2023, and July/August 2023 have been abandoned. For the reasons set out below the Respondent is unable to make out any significant prejudice to found an estoppel.

    However, Mr Watkin's submissions on abuse of process are more nuanced than mere delay and I now turn to consider the evidence of Mr Powell and Mr Watkin's submissions in further detail.

71. Mr Powell in his evidence explained the large number of Notices have been served by the Claimants, sometimes more than one in respect of the same site. Mr Powell said that the majority of Notices served on the Respondent were not further acted upon by the Claimants. In the table at paragraph 30 of his Witness Statement Mr Powell demonstrates that there have been 138 Notices served in respect of 124 sites occupied by the Claimants. Proceedings have been issued at only 67 of those sites. However, at 28 sites proceedings have not been issued despite Notices being served over three years ago. At 39 sites Notices have been outstanding for two years without proceedings being issued. Mr Powell told me how "in the earlier days" the Respondent took steps on receipt of Notices to familiarise itself with sites, prepare reports for external lawyers and pull information together. However about 18 months ago the Respondent decided not to take Notices as "a matter of intent". Its current practice is only to take more than basic steps once a letter before action is received.

72. In addition, Mr Powell explains that following service of Notices there follows "radio silence" on the part of the Claimants. The Respondent has no idea whether or not proceedings will ever be issued. The first indication the Respondent has that proceedings are to be commenced is a letter before action giving 14 days' notice of issue. This puts the Respondent in an impossible position. Either it wastes resources on investigating notices which may never be proceeded with, or it finds itself in a position of not having sufficient time to react when faced with a letter threatening to issue of proceedings within 14 days.

73. The Respondents argument in respect of abuse of process is twofold. Firstly, the Claimants are effectively circumventing the 6 month period in Paragraph 33. That period should be used for negotiation and preparation. Instead, there is "radio silence". By failing to follow up service of the Notice the Claimants put the Respondent in the impossible position of not knowing if a Notice is to be acted upon. The Respondent has no way of knowing when a letter before action will be issued nor sufficient time to react when faced with a letter threatening the imminent issue of proceedings. This, Mr Watkin, argues subverts the statutory scheme allowing the Respondent only 14 days to react following LBA rather than the 6 month period set out in Paragraph 33. The second argument relates to the wider practice issuing a large number of notices in respect of a large number of sites without any intention of commencing proceedings. At some sites nothing has happened for two or even three years. No explanation has ever been provided by the Claimants. In the present references no reason has been put forward to explain why neither the 10th January 2020 Notice at Chase Farm nor the 20th April 2021 Notice at Rotherwas did not proceed. The practice of issuing large volumes of Notices without proceeding, Mr Watkin argues, is in itself an abuse of process. The Respondent is prejudiced in terms of committing time and resources which may eventually prove to be wasted if no proceedings are issued.

74. In the present references Notices were issued in May 2023 and August/July 2023. There was no further correspondence or action by the Claimants for over a year until letters before action in September and November 2024. The bundle of documents prepared by the parties following disclosure does not contain a single item of correspondence during the periods May 2023 – September 2024 (Batch 1) and August 2023 – November 2024 (Batch 2). That may not be quite correct because there is reference to at least one email from the Respondent indicating that a substantive response would follow. However, it is clear that no substantive response was ever forthcoming.

75. That is not how the Code was meant to work. In the passage in **Keast** quoted above Upper Tribunal Judge Cooke explains what should happen, albeit in a Paragraph 20 context:

"Negotiations with the occupier of the land will, almost invariably, have begun long before the paragraph 20 notice is drafted and there may well be changes of position on both sides in the course of negotiations. The paragraph 20 notice is likely to be drafted only when a Tribunal reference is obviously going to be necessary …"

76. The Claimants should have followed up on the notices; "radio silence" is not acceptable. The Claimants should have taken positive steps to engage with the Respondent. They should have notified the Respondent if they no longer intended to proceed at a particular site. Issuing 14 day LBA's after long periods of inactivity is wholly inappropriate.

77. The LBA for Batch 1 was sent on 6th September 2024 [CB 1-34]. That letter is couched in peremptory terms:

"*…if by no later than 20 September 2024 terms for a renewal of the P33 Greenfield Sites are not agreed, we are instructed by our clients to commence proceedings …"*

The explanation given by the Claimants is:

"*We are instructed that there has been only a very limited dialogue and no significant progress has been made in agreeing terms for the P33 Greenfield Sites.*

We note that you also indicated to us, in previous email correspondence, that you would reply substantively in respect of the P33 Greenfield Notices, but no such substantive reply has ever been received.

Accordingly, in our clients' reasonable opinion, there has been insufficient progress to suggest a prospect of terms being agreed (and new agreements completed) within a reasonable period of time and it has been ***over 12 months*** *since the P33 Greenfield Notices were initially served.*

We have considered if mediation is appropriate and in view of the circumstances, most notably your lack of engagement in any substantive negotiations during the past 12 to 18 months, we do not consider that mediation/ADR will be appropriate or beneficial but will of course continue to keep this under review."

The Claimants subsequently had a change of heart in respect of ADR and on 31st October 2024 [CB44] made a perfunctory 7 day offer to mediate:

"This offer of mediation will be available for a period of ***7 days, i.e. until close of business on Thursday 7 November 2024****."*

78. The LBA for batch 2 was sent on 26th November 2024 [CB 52-95]. The Claimants position is set out as follows:

"We are instructed that there has been very limited dialogue and no significant progress made in agreeing terms for the P33 Sites.

Accordingly, in our client's reasonable opinion, there has been insufficient progress to suggest a prospect of terms being agreed (and new agreements completed) within a reasonable period of time and it has been over 12 months since the P33 Notices were initially served. Our client's position continues to be prejudiced the longer this lack of engagement continues and leaves our client unable to renew these agreements in line with new-Code terms.

As you will be aware, our client made an offer of mediation in relation to a batch of greenfield sites under cover of our letter dated 31 October 2024. In the context of your failure to adequately engage with this offer or provide your availability to mediate within the dates proposed, our client does not consider that any further offers of mediation/ADR would be appropriate or beneficial at this stage, but will of course continue to keep this under review."

79. The Claimants stance in respect of ADR is particularly concerning in light of the amendments to the Code brought about by the Product Security and

Telecommunications Infrastructure Act 2022 requiring the provision of information about ADR and the consequences of refusing to engage.

80. Turning now to the Respondent, whilst one can appreciate Mr Powell's frustration the problem it faces is one unique to the Respondent's business model. The Respondent has acquired approximately 3000 telecom sites. It is recognised as a significant player in the market. The Respondent's business model means that it will inevitably receive a large number of notices. As Mr Radley-Gardner points out Paragraph 33 applies equally to operators and site owners and there is nothing to prevent the Respondent from taking the initiative. That suggestion exposes a flaw in the Respondent's argument. As Mr Watkin asked rhetorically; why would the Respondent want to take the initiative when it is quite happy with the market rent it is receiving? The reality is that delay causes the Respondent very little prejudice because it continues to receive a market rent. Delay in progressing Notices and issuing proceedings has a far greater effect on the Claimants as it delays the date from which they can benefit from what will in most cases be a significantly reduced Code rent.

81. The Respondent should have provided a substantive response and counter proposals in respect of all Notices. Mr Powell told me that the Respondent has a database of sites with a column for "1954 Act contracted out" prepared by "someone in Aimee Thomas' team". I find that it would not be unduly onerous for the Respondent to have responded to the Notices not only with a substantive response but also alerting the Claimants at an early stage that the Respondent believed that certain of the sites were 54 Act protected. The Respondent could also be reasonably expected to respond with proposals as to rent including any alternative use value. The Respondent could have taken the initiative and itself proposed ADR. I set out again the provisions of Paragraph 33(7):

"The operator or the site provider may at any time give the other party to the agreement a notice in writing stating that the operator or the site provider (as the case maybe) wishes to engage in alternative dispute resolution with the other party to the agreement in relation to the notice mentioned in sub-paragraph (1)"

82. Both parties should have entered into timely and constructive discussion following service of the Paragraph 33 Notices. Both parties are, on the evidence before me, equally at fault. In those circumstances abuse of process does not arise. That does not, however, excuse the conduct of either party.

83. Mr Watkin also relied on his submissions concerning the failure of the notices to offer ADR as a separate ground under abuse of process. That submission can be dealt with a yet further reference to Paragraph 33(7) which provides that a site owner may "at any time" give a notice in writing that it wishes to engage in ADR. Under those circumstances the Respondent has available to it a remedy and cannot argue abuse of process in such circumstances.

84. Finally in respect of Mumsford Farm the issue of the reference in the joint name of both Claimants rather than the Second Claimant alone has not caused the Respondent any prejudice. No abuse of process arises. The issue that has arisen is readily curable under FTT Rule 10. The decisions in **Keast and Shearlaw** provide further protection for the

Respondent where there is a discrepancy between the notice and the claim in the Tribunal.

OFCOM Code of Practice

85. On 15th April 2004 OFCOM published revised "Electronic Communications Code: Code of Practice". The Code of Practice sets out set out expectations for the conduct of the parties to any agreement made or activities performed under the Code.

In light my findings in this case I draw the following to the attention of the parties:

Communication

1.15 Communication between parties is vital to facilitate effective working relationships. All communications should be kept clear, concise and carried out in a timely manner to ensure active, engaged dialogue. The Operator should also ensure it communicates and keeps the Site Provider informed of its plans and should do so in a timely manner.

Behaviours

1.20 Operators, Site Providers and professional advisors should act in a timely, respectful, fair and open manner when engaging with each other.

Renewal of existing sites and the Code

1.75 The intention of both parties should be to reach a consensual agreement. To progress these discussions the parties should respond in a timely manner.

Resolving disputes

1.81 The Code sets out formal dispute resolution procedures.

1.82 Nevertheless, where disputes arise, the parties should seek to resolve them informally (i.e. without recourse to litigation). The Code encourages the parties to engage in early, meaningful, and collaborative dialogue, with a view to resolving issues and mitigating disputes wherever possible including the use of Alternative Dispute Resolution Schemes if required.

1.84 Operators are required to consider ADR, if it is reasonably practicable to do so, before making an application to the courts and must make occupiers and Site Providers aware that ADR is available, if a consensual agreement cannot be reached. In turn, Site Providers should consider and respond to offers of ADR and can initiate ADR proceedings themselves.

1.85 Importantly, the courts may take into account any unreasonable refusal to engage in ADR when awarding costs in any dispute referred to them, once the dispute has been determined.

Decision

86. The existing code agreements at Saddleworth Golf Club, Manor Farm, Chase Farm, Bradley Wood Estate Farm and Mumsford Farm have been successfully contracted out of the provisions of sections 24-28 of the Landlord and Tenant Act 1954.

87. The agreement to exclude the provisions of sections 24-28 of the 1954 Act at Manor Farm, authorised under section 38(4), has effect as if it were made under section 38A. Part 5 of the Code therefore applies to the subsisting agreement at Manor Farm.

88. The Second Claimant is entitled to an order under Paragraph 34 in respect of Mumsford Farm.

89. The Notices served in all references are valid. The Tribunal has jurisdiction under Paragraph 33 of the Code

90. Reliance upon the Notices served in respect of all sites during 2023 does not constitute an abuse of process of the Tribunal.

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.

Schedule of Sites

Crownland Hall Farm – BIR/00CN/ECR/2024/0623
Crownland Hall Farm, Crownland Road, Walsham Le Willows
Bury St Edmonds IP31 3BU
Chase Farm – BIR/00CN/ECR/2024/0624
Chase Farm, Bramshott Chase, Hindhead, Surrey GU26 6DG
Mumsford Farm – BIR/00CN/ECR/2024/0625
Mumsford Farm, Mumsford Lane, Gerrards Cross SL9 8TQ
Manor Farm –BIR/00CN/ECR/2024/0626
Manor Farm, Bathpool, Taunton, Somerset, TA2 8DA
Model Farm – BIR/00CN/ECR/2024/0627
Model Farm, Langleybury Lane, Kings Langley, WD4 8RL
Bradley Wood – BIR/00CN/ECR/2024/0629
Bradley Wood Estate Farm, Newbury Road, Whitchurch RG28 7PW
Saddleworth Golf Club – BIR/00CN/ECR/2025/0612
Saddleworth Golf Club, Mountain Ash, Ladcastle Road, Uppermill, Oldham, Greater Manchester, OL3 6LT
Kingsthorpe Golf Club – BIR/00CN/ECR/2025/0613
End of First Fairway, Kingsthorpe Golf Club, Kingsley Road, Northampton, NN2 7BU
Edgemead Close – BIR/00CN/ECR/2025/0614
Unit 2 Edgemead Close, We Sell Tyres, Northampton, Northamptonshire, NN3 8RG
Greenmount Golf Club - BIR/00CN/ECR/2025/0615
Greenmount Golf Club, Greenhalgh Fold, Bury, Greater Manchester, BL8 4LH
Rotherwas – BIR/00CN/ECR/2025/0616
WBS Rotherwas 211893, Wyvern Business Systems, Netherwood, Road, Hereford, Herefordshire, HR2 6JJ