



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

Case Reference : **BIR/00CN/ERO/2025/0633**

Property : **Orchard Business Centre, Bonehurst Road,
Salfords, Redhill**

**Claimant
(Operator)** : **Cellnex Connectivity Solutions Limited**

Representative : **Gowling WLG (UK) LLP**

**Respondent
(Site Provider)** : **Corebox Archer 1 Limited (1)
Vines Limited (2)**

Representative : **Birketts LLP (1)
Blandy & Blandy (2)**

Application : **Electronic Communications Code

Paragraph 20 (new site)
Paragraph 26 (interim rights)**

Date of Order : **21st July 2025**

DECISION

1. The Claimant is a provider of an electronic communications network and an infrastructure system pursuant to a direction given by OFCOM. The Claimant is an "operator" within the meaning of the Code.
2. The First Respondent is the freeholder of Units 2-7, Orchard Business Centre, Bonehurst Road, Redhill RH1 5EL. The Second Respondent is the tenant of Unit 7.
3. On 15th December 2024 the Claimant served notices under Paragraphs 20 and 26 of the Code dated 13th December 2024 on the First and Second Respondent. An MSV took place on 1st May 2025. Shortly thereafter on 9th May 2025 the Claimant made a reference to the Tribunal seeking an Order for interim rights in the form of an Early Access Agreement under Paragraph 26 and the imposition of an agreement under Paragraph 20. On 6th June 2025 I issued Directions listing the interim rights application for determination at a remote CMH on 21st July 2025 and a final hearing of the Paragraph 20 application on 28th October 2025.
4. The CMH on 21st July 2025 was heard by way of remote video platform. Imogen Dodds appeared for the Claimant. Tim Callard appeared on behalf of both First and Second Respondents. I am grateful to both counsel for their helpful Skeleton Arguments.
5. In reaching my decision I have considered Claimant's Statement of Case dated 9th May 2025 and Respondents' Statement of Case dated 2nd July 2025. I have considered Witness Statement of Lorna Broadbent (Chartered Surveyor employed by Cellnex as Special Project Manager) dated 16th July 2025. The First Respondent relies on an Expert Witness Report prepared by JS Ansell FRICS dated 14th July 2025. I have also considered Witness Statement dated 14th July 2025 made by Sean Kelly, a Director of the Second Respondent.

The Paragraph 21 Test

6. 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.*"
7. 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.

8. 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

9. The Claimant wishes to construct a 25m lattice tower with headframe and antenna array together with ground level equipment cabinets all within a self contained compound. The compound will be at the rear of Unit 6 which is occupied by Direct On-Line Services who supply kitchens. The occupier of Unit 6 is not a party to these proceedings.
10. The Claimant’s position in respect of public benefit is set out at paragraph’s 29 and 30 of the Witness Statement of Lorna Broadbent:

“29. CCSL has been appointed by Network Rail to build a state-of-the-art communications system along the route of the Brighton Mainline trainline (which is the overground line running from Brighton to London Bridge and London Victoria). The goal of this programme is to provide uninterrupted cellular internet and mobile reception to passengers every day, which will also benefit the surrounding residents and businesses in the local areas. I understand from colleagues within Cellnex's technical operations teams that, currently, mobile internet and connectivity between London and Brighton varies from a strong signal to no connectivity at all because of the topography and the many tunnels and cuttings along the route.

30. The programme is a connected solution which involves a complex deployment of ECA over approximately 19 new locations along the Brighton Mainline route. As CCSL is building connected infrastructure along the Brighton Mainline route, I understand that the sequence of site infrastructure deployment is crucial to delivery of the programme as a whole: if a key milestone is missed in relation to the installation of ECA at one location in the programme, this will negatively impact the project management and delivery of the remainder of the programme. Timing is therefore critical to the successful delivery of the programme.”

The First Respondent’s Case

11. The First Respondent’s Expert JS Ansell describes the structure of the Units at Orchard Business Centre at paragraph 5.3 of his Report:

“Each building appears identical and therefore specification is assumed to be the same, comprising a steel portal framework with metal sheet cladded elevations fixed back to an integral cladding framing system with insulation. Roofs are dual shallow pitched and covered with metal cladding panels and rectangular plastic rooflights,

incorporating a raised perimeter parapet external wall with box gutters at boundary. Metals valley gutters separate individual units. Internal floor slabs are solid concrete.”

12. JS Ansell explains that the Units are adjacent to the London and Brighton trainline on the east side at the rear. Directly behind the units are small individual parcels of land configured as a triangular/rectangular format. He gives helpful details at paragraphs 7.1 and 7.2 of his Report:

“7.1 The parcel of land at the rear of Unit 6 measures approximately six metres (max) or 19ft at its widest point and fourteen and a half metres or 47ft to the longest dimension. The format of the land area is triangular with a tapered boundary adjoining the chain-link boundary fence, which separates land believed to be owned by Network Rail on the East side or some other railway operator.

7.2 The triangular land plot is essentially grassed and laid to lawn and generally flat. A concrete pathway connects the rear of Units 2 -7 as a dedicated and continuous fire escape route. The pathway serving Units 4-7 is a common evacuation route leading to a safe place of egress onto the BMW car park area adjacent Unit 7. Units 2 and 3 are expected to use the same common pathway leading out to a northly direction. The pathway width varies between 1,090mm and 1,135mm.

Maintenance

13. The site chosen by the Claimants is small and contained. JS Ansell raises two important concerns. The first relates to building maintenance and works. If an Order is made the First Respondent will be unable to access the warehouse units at the rear to undertake regular maintenance or repairs. Currently there is just about enough room to use a Mobile Elevating Work Platform. This would not be possible once the mast compound is built as there would be insufficient space remaining to manoeuvre or position a MEWP. Traditional “tube” scaffolding is not suitable for connecting to metal cladding panels. Currently outriggers or stabilisers can be used. However, following construction of the compound there will be insufficient space for such a solution.
14. The term of the Early Access Agreement is set out under “Definitions and Interpretations” at clause 1. The agreement, if granted, will last until the earlier of the date a new agreement is entered into, the date the Paragraph 20 application is determined or 18 months from commencement. Accordingly, this is likely to be a short term agreement. Bearing in mind the specification of the building the need for routine maintenance is likely to be relatively low. At the hearing I was told that the First Respondent may consider re-roofing all Units at Orchard Business Centre should the Second Respondent decide to move out. However, plans are at an early stage.
15. Any maintenance that has to be carried out during the term of the agreement will require careful planning. This is a small and difficult site. The Claimant may wish to consider alternative access solutions taking into account space to position and operate machinery. This will undoubtedly be more expensive than the First Respondent’s existing arrangements. However, clause 4.13.1 provides for the Claimant meet those additional costs:

“In the event that the Site Provider needs to access the Property to carry out any works to any building or buildings on the Site Provider’s Property, and the Site Provider incurs additional expenditure as a result which the Site Provider otherwise would not have incurred without this Agreement, the Operator shall reimburse the Site Provider for the additional expenditure on demand.”

16. At the hearing the parties agreed that an additional clause should be added at 4.13 to allow the First Respondent to temporarily position scaffolding within the mast compound. The parties will agree suitable wording. I make one proviso; scaffolding must not obstruct the fire escape route.

Fire Escape Route

17. JS Ansell’s second concern is that there is not a clear and safe fire escape route for fleeing occupiers in the event of fire evacuation from Units 5 and 6. The present fire escape route is set out at paragraph 10.1 and the first paragraph 10.2 of JS Ansell’s Report:

“10.1 A 1.1m wide continuous concrete pathway links the rear of Units 4, 5, 6 & 7, for use as a secondary fire escape route in the event of a fire evacuation situation.

10.2 Currently, if a fire were to occur in the units then evacuation through the rear exit escape doors and along the dedicated pathway could easily be achieved including use of grassed area at the rear of the unit 6. The pathway leads from the rear of Units 4, 5, 6, and 7, round to the side of Unit 7 and out to the car park which is considered an area of safe egress. Escape from Units 2 and 3 is achieved northwards.”

18. JS Ansell sets out particular concerns at the second paragraph 10.2 of his report. He is rightly concerned that a smoking shelter belonging to Unit 6 blocks the Claimant’s proposed revised escape path (10.2.ii). The rear door of Unit 5 opens outwards and obstructs means of escape (10.2.iii). Finally, the width of an escape pathway must be minimum of 1.0m (10.2.v)
19. To address fire escape route concerns the Claimant has commissioned Fire Safety Advice Notes from Tersus. The recommendations contained in the April 2025 Tersus Report are summarised by Lorna Broadbent at paragraph 38 of her Witness Statement:
- (a) to adjust the size of the Installation compound in order to allow an increased width for the escape path next to the exit door for Unit 5; and*
- (b) to install a pathway linking the existing escape route serving the south with the existing escape route serving the north, so as to facilitate escape in either direction from any of the units.*
20. As a result, the Claimant has revised its design as explained further by Lorna Broadbent at paragraphs 38 and 39 of her Witness Statement:

“38....Site design has been revised in order to accommodate a 2-metre-wide paved pathway between the perimeters of the Site and Unit 5 and a 1.5-metre-wide paved pathway between the perimeters of the Site and Unit 6 (both being well in excess of the minimum 1-metre width for escape routes, as noted in the April Tersus Report), allowing ample room for evacuation in the event of an emergency even where the Unit 5 fire door is open at a 90 degree angle. This addresses the first optional improvement suggested by Tersus.

39 Additionally, I understand that the Claimant is offering to install a paved pathway connecting the existing escape route to the south with the existing escape route to the north, and to pay the costs of doing so. This would assist in making it clear that escape is possible in either direction, as well as improving surface conditions in the event of evacuation across that part of the grassed area behind the units. This addresses the second optional improvement suggested by Tersus.”

21. In respect of the smoking shelter Lorna Broadbent explains, at paragraph 44, that:

“The Claimant is offering to relocate the smoking shelter to the rear of Unit 5 and to install an additional paved pathway around its new location (and will pay the costs of doing so) in order to ensure that the smoking shelter in no way impedes the fire escape route.”

22. A Site Plan showing the revised site design is at page 424 of the Bundle. The revised design shows three areas of new pathway. Firstly a 1.5m wide walkway at the rear of Unit 6 is to be created. Secondly a 2.0m wide walkway running “clear” of the fire exit door to Unit 5 is to be created by reducing the size of the mast compound. Thirdly a walkway allowing safe access to the north from Unit 5 will also be added. Finally, the revised design shows the smoking shelter is to be relocated to rear of Unit 5.

23. I am satisfied that the revisions shown at page 424 meet the First Respondent’s well founded fire safety concerns. I have indicated that the works in respect of fire escape routes and the smoking shelter I have set out above must be completed before work commences on the mast compound. The Claimant, through Ms Dodds has agreed that the agreement is to be redrafted to make completion of those works a condition precedent to commencement of works on the mast compound. For completeness the revised Site Plan at page 424 of the Bundle should be annexed to the agreement.

The Second Respondent’s Case

24. Sean Kelly, a Director of the Second Respondent, explains in his Witness Statement that Vines operates a BMW car dealership just a few hundred yards away from Unit 7. Unit 7 is used as a car storage unit with outside storage and parking in front and to the side of the building. Vines use the site to store new, used and trade vehicles. Vines holds a variety of models to demonstrate to customers, and it needs these to be stored close to the main dealership site. Sean Kelly explains the problems that loss of parking would cause in terms of:

- Lack of viable local public parking options
- Impact on customer experience and staff operations

- Insurance implications
- Loss of parking will undermine business viability
- Legal, practical and logistical complications of off-site storage.

25. At the hearing Ms Dodds told me that the Claimant is very close to completing an agreement with Day Group, owners of adjoining land, to allow the Claimant to use Day Group land for set down purposes. Works to construct the mast compound will take approximately 8-10 weeks. The proposed agreement with Day Group will last until 30th November 2025. Accordingly, the Claimant no longer seeks set down rights or vehicular access over the Second Respondents car parking area. At interim rights stage the Claimant seeks only rights on foot. Paragraph 1 of the Schedule to the agreement has been redrafted to grant rights on foot only.

Conclusions

26. Prejudice to the First Respondent in respect of fire escape route can be met by the new site design as shown at page 424 of the Bundle. Any prejudice to the First Respondent in respect of maintenance can be adequately compensated by money in accordance with clause 4.13.1.
27. Prejudice to the Second Respondent is unlikely to arise as only rights on foot are now sought. However, even wider business disruption of the various kinds identified by Mr Kelly can be adequately compensated by money. Had the Claimant sought set down and vehicular rights disruption could be mitigated by business planning by the Second Respondent and measures to reduce disruption in terms of notice and agreed hours by the Claimant.
28. The Claimant has been appointed by Network Rail to improve connectivity between London and Brighton as part of the Brighton Mainline project. Currently connectivity varies along the route. I find that the public benefit likely to result from the making of the order outweighs the prejudice to both the First and Second Respondent.
29. 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.

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.