



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

Case Reference : **LC – 2024-537**

Property : **Charles Burrell Centre, Staniforth Road,
Thetford, Norfolk IP24 3LH**

**Claimant
(Operator)** : **EE LIMITED and HUTCHISON 3G UK LIMITED**

Representative : **Winckworth Sherwood LLP**

**Respondent
(Site Provider)** : **CHARLES BURRELL CENTRE LIMITED**

Representative : **Rudlings LLP**

Application : **Electronic Communications Code
Paragraph 20**

Tribunal : **Judge D Barlow
Regional Surveyor Mr Vernon Ward**

Date of Hearing : **19 November 2024**

***Corrected* DECISION**

The Tribunal has corrected clause 15 of this decision where italicised in red to show the correct commencement date in of the lease within the Order.

1. The Charles Burrell Centre (CBC) is a large site on the edge of Thetford town. It is occupied by some 50 organisations as a community and business hub. The proposed communication site is an area of land at the rear of the site accessed through the CBC car park from Staniforth Road.
2. The Respondent occupies CBC under a lease dated 1 September 2015 granted by Thetford Town Council (TTC) for a term expiring on 15 February 2044 (the underlease). TTC holds the CBC site under a headlease from the freeholder Norfolk County Council (NCC). The headlease dated 16 May 2014 expires on the 15 May 2044.
3. On 30 July 2021 the Claimant served notice on the Respondent (as the occupier in possession of the land) that it had identified an area within the site as being suitable for the installation of electronic communications equipment.
4. On 24 July 2024 a reference under Schedule 3A of the Communications Act 2003 was received by the Upper Tribunal including an application for an order imposing an agreement for rights under paragraph 20 of the Electronic Communications Code requiring the parties to enter into a new agreement for the occupation by the Claimant of part of the site.
5. The reference was transferred to the First-tier Tribunal (Property Chamber) by Order of the Upper Tribunal made on 29 July 2024.
6. The reference is one to which regulation 3(2), Electronic Communications and Wireless Telegraphy Regulations 2011 applies and must be determined by 24 January 2025.
7. A final hearing of the reference took place by way of remote video platform on 19 November 2024. James Tipler (counsel) appeared for the Claimant and the Respondent was represented by Ms Karen Stone, the manager of the Charles Burrell Centre (CBC).
8. We were invited by Mr Tipler to impose an agreement in the form appearing in the agreed Bundle at pages 141-182 varied as follows:
 - a. Omitting the Respondent's suggested clause 7.5.7 and the landlord's redevelopment break clause at clause 9.2(c).
 - b. Including the following alternative form of landlord's rolling break as a new clause 9.2.2:

“9.2.2 The Landlord may terminate this Lease on or after 16 May 2029 by giving to the Tenant not less than 18 months' prior written notice.”

- c. Completing the particulars of the Site Payment to show agreed Consideration of £2,250.00 per annum and an agreed one-off payment of £1,500.00 Compensation in respect of additional burdens during the initial build phase.
9. Shortly before the hearing the Respondents representative Rudlings LLP wrote to the Tribunal to explain that they would not attend the hearing due to limited funds but invited the Tribunal to impose the lease on the agreed terms. The only term not agreed concerned Clause 7.5.7 which the parties were hoping to agree. If the wording could not be agreed the Respondent was content for the Tribunal to determine the issue.
10. The parties did not manage to get over the final hurdle, consequently the only point that remained in issue at the hearing was whether to include the Respondent's preferred clause 7.5.7 alongside the redevelopment break at clause 9.2(c) or delete both and substitute with the Claimant's preferred rolling break clause 9.2.2.
11. Ms Stone explained that she was not a lawyer. The Respondent is a charity that has already incurred considerable legal costs on this matter and could not justify the expense of instructing counsel to represent it at the hearing. Ms Stone has been involved with the matter for the Respondent and was able to provide information but was not in a position to put forward legal argument. She explained that the Respondent's concern about clause 9.2.2 was the 18 months' notice period. She said that if the charity wanted to reconfigure the site in conjunction with TTC and NCC, or if it ran out of funding, it would need the ability to break the lease on shorter notice. The Respondent has the benefit of contractual breaks in the underlease that are operable in 2029, 2034 and 2039 on service of 4 months' notice, provided vacant possession of the site can be offered. These mirror identical provisions within the headlease.
12. Ms Stone also confirmed that the Respondent had no plans to terminate the current occupational leases, just a concern about funding and its ability to continue to manage the site.
13. The Tribunal explained that the 18 month notice period was consistent with the statutory period of notice under paragraph 31 that the Respondent would have to give to terminate the Code rights. Therefore, it served no useful purpose (and might cause confusion) to include a contractual break on 4 months' notice given that the Respondent would still have to serve the paragraph 31 notice 18 months prior to the break date to bring the Code rights to an end.
14. The Tribunal also concluded that the wording of clause 7.5.7 was vague and uncertain as to how the operator could take steps short of agreeing to surrender its lease, that would assist in what was a contractual issue between the Respondent and the two councils. Any agreement to surrender is unlikely to be effective without service of a notice to terminate in accordance with paragraph 31 (i.e. involving 18 months' notice). The clause opens up a significant potential for dispute without conferring any advantage over that provided by the Claimant's offer of a rolling break in the terms of clause 9.2.2.
15. The Tribunal therefore determined that it would impose an agreement in the following terms:

IT IS ORDERED THAT:-

The lease agreement appearing in the agreed Bundle at pages 141-182 (varied as set out below) is imposed on the parties with effect from **19** November 2024, pursuant to paragraph 20 of the Communications Code (contained in Schedule 3A to the Electronic Communications Act 2003)

Variations to be incorporated in the lease agreement:

- Omit the Respondent's suggested clause 7.5.7 and the landlord's redevelopment break clause at clause 9.2(c).
- Include the following alternative form of landlord's rolling break as a new clause 9.2.2:
 - 9.2.2 The Landlord may terminate this Lease on or after 16 May 2029 by giving to the Tenant not less than 18 months' prior written notice.
- Complete the particulars of the 'Site Payment' to show agreed Consideration of £2,250.00 per annum and an agreed one-off payment of £1,500.00 Compensation in respect of additional burdens during the initial build phase.

Transaction and Litigation costs directions

The Tribunal will if requested by either party make an order for both transactional and litigation costs on paper, where the following directions will apply:

- a. The parties are to exchange schedules of any schedules of transactional and/or litigation costs they seek no later than **6 December 2024**;
- b. The parties to exchange written submissions in relation to costs by **9 January 2025**;
and
- c. The parties to exchange replies to written submissions in relation to costs by **23 January 2025**.

D Barlow
Deputy Regional Judge

19 November 2024