



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

**Case Reference** : **BIR/00CN/EIA/2025/0616**

**Property** : **Prospect Industrial Estate, Platt Lane,  
Hindley, Wigan, WN2 3PA**

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

**Representative** : **James Tipler of counsel, instructed by  
Osborne Clarke LLP**

**Respondent  
(Site Provider)** : **(1) United Space Limited  
(2) Philip Lamb t/a A&P Windows  
(3) Aspire Fencing Group Limited  
(4) Hartley Cars North West Limited**

**Representative** : **n/a**

**Application** : **Electronic Communications Code  
Paragraph 26 (MSV)**

**Date of Order** : **18/07/2025**

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**DECISION and ORDER**

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## Introduction

1. Cornerstone Telecommunications Infrastructure Limited ('the Claimant') is a telecommunications infrastructure provider and operator, pursuant to a direction under section 106 of the Communications Act 2003. United Space Limited ('the First Respondent') is the freeholder of the land known as Prospect Industrial Estate, Platt Lane, Hindley, Wigan, WN2 3PA ('the Land'). Philip Lamb t/a A&P Windows ('the Second Respondent'), Aspire Fencing Group Limited ('the Third Respondent') and Hartley Cars North West Limited ('the Fourth Respondent') are all lessees of commercial units on the Land, namely Units 2, 3, and 9 respectively.
2. The Claimant seeks an Order, pursuant to paragraph 26 of the Electronic Communications Code (introduced by the Digital Economy Act 2017 which inserted Schedule 3A to the Communications Act 2003) ('the Code'), imposing upon all four respondents ('the Respondents') an agreement for interim code rights to enable it to carry out a multi- skilled visit (known as an 'MSV') on part of the Land.
3. A Notice of Reference was received by the Tribunal on 4 March 2025. Directions were issued on 19 March 2025 ('the Directions Order') and the reference was listed for a case management hearing on 13 May 2025.
4. The First Respondent filed a statement of case with the Tribunal on 8 April 2025, in which it asserted that the Second Respondent, Third Respondent and Fourth Respondent all had leases over the proposed site area, which was a concrete service yard to the rear of the Land. The Claimant, therefore, served fresh paragraph 26 notices on 29 April 2025 on all of the Respondents to seek an agreement binding on them all.
5. The case management hearing ('the CMH') was relisted and took place remotely on 26 June 2025. The Claimant was represented by Mr James Tipler (counsel from Falcon Chambers) and the First Respondent was represented by Mr Costas Michael (the sole director of the First Respondent company), who was accompanied by the First Respondent's Estate Manager, Andrew Ktori. None of the other respondents attended the hearing and they were not represented. (Although Mr Michael had stated that he was representing them, neither the Claimant nor the Tribunal had received any formal notice of appointment from the other respondents confirming this).
6. The reference under consideration was the Claimant's application for the imposition of interim rights under paragraph 26 of the Code, to enable it to carry out an MSV on a hard-standing area on the Land. The Directions Order confirmed that the Tribunal would consider and (if possible) determine the application for interim rights at the CMH. As explained by the Deputy Chamber President in ***EE Limited and Hutchison 3G UK Limited v London Underground*** [2021] UKUT 0128 (LC) At paragraph 2:

*"... at paragraph 14.12 of the Tribunal's Practice Directions, and in its directions for the hearing, the Tribunal seeks to determine claims for interim rights by a summary procedure at the first hearing, if that can be done fairly"*
7. The Tribunal considered the Hearing Bundle (pages 1-348) submitted by the Claimant, which contained the documents submitted by all parties, together with the skeleton argument filed by Mr Tipler.

## **Background to the reference**

8. The reference concerns the Land, which is currently used as a commercial industrial estate, with 9 commercial units, access and service yards. The proposed site is located on part of the service yard to the rear of the Land, which lies adjacent to Borsdane Brook.
9. The First Respondent is the registered proprietor of the freehold of the Land, which is registered under title number GM590434. The Second Respondent is the tenant of Unit 2 Prospect Industrial Estate, under a Lease dated 16 September 2024, for a term of 3 years commencing 1 October 2024. The Third Respondent is the tenant of Unit 3 Prospect Industrial Estate, under a Lease dated 20 May 2024, for a term of 3 years commencing 1 June 2024. The Fourth Respondent is the tenant of Unit 9 Prospect Industrial Estate, under a Lease dated 31 May 2022, for a term of 4 years commencing 1 June 2022.
10. On 13 December 2024, a notice was given to the First Respondent, pursuant to paragraph 26(3) of the Code, seeking access to the Land for rights under paragraph 3(d) of the Code, to undertake an MSV to verify whether the Land was suitable as a possible location for the installation and operation of electronic communications apparatus ('the Apparatus'). As the parties were unable to reach agreement, a notice of reference was made to the Tribunal on 4 March 2025.
11. A brief chronology of the reference up to the CMH can be summarised as follows:
  - The Claimant's agent, Dalcour Maclaren ('Dalcour') contacted the First Respondent on 23 November 2023 seeking access to the Land on a consensual basis, to undertake an MSV.
  - An initial MSV took place in February 2024 but a second MSV was required to further assess the suitability of the Land.
  - Dalcour contacted the First Respondent with a request for a second MSV in February, June and July 2024. No response was received.
  - Heads of Terms were issued in November 2024 and, on 20 November 2024, the First Respondent requested a higher site payment figure and for the Claimant to cover all surveyor and legal costs associated with any future installation of electronic communications apparatus on the Land. Dalcour responded that an uplift to the site payment figure could be potentially negotiated but that there was a finite limit to what the Claimant would be able to offer.
  - On 13 December 2024, the First Respondent refused to engage in further negotiations unless the Claimant agreed to their suggested increase in the site payment figure. On the same day, Osborne Clarke LLP ('Osborne Clarke'), on behalf of the Claimant, served a Notice on the Respondent, requesting access to the Land to conduct a second MSV. No response was received.
  - Osborne Clarke sent a formal Letter Before Action to the First Respondent on 21 January 2025.
  - On 27 January 2025, the First Respondent advised, again, that access to the Land would not be granted for a second MSV. On the same day, Osborne Clarke requested the First Respondent to engage consensually to discuss the proposed MSV.

- Osborne Clarke wrote to the First Respondent, again, on 7 and 17 February 2025, asking them to engage in discussions, without success. Osborne Clarke, then, placed the First Respondent on notice of their intention to issue proceedings.
- A notice of reference was made to the Tribunal on 4 March 2025.
- Following the issuing of the Directions Order, Osborne Clarke continued to engage, unsuccessfully, with the First Respondent on an informal basis to settle the matter. The First Respondent was advised that, should a case management hearing proceed, costs would be sought against them.
- The First Respondent filed a Response to the Notice of Reference and statement of case with the Tribunal on 8 April 2025, in which it asserted that the Second Respondent, Third Respondent and Fourth Respondent all had leases over the proposed site area.
- After becoming aware of the contents of the First Respondent’s statement of case (on 22 April 2025) and that the location of the proposed site was potentially occupied by the other respondents, the Claimant served fresh statutory notices on all the Respondents on 28 April 2025.
- On 28 April 2025, the Second Respondent confirmed (by email to Osborne Clarke) that they did not agree with the siting of any electronic equipment in or about their premises; on 30 April 2025, they stated that they were going to “*withdraw*” from the proceedings; however, on 16 June 2025, the Second Respondent confirmed (again by email to Osborne Clarke) that they had no objection to the MSV taking place.
- On 30 April 2025, the Fourth Respondent also objected (by email to Osborne Clarke) to the siting of the mast on the proposed site.
- No response was received from the Third Respondent.

**Paragraph 26 (Interim Code Rights) and Paragraph 21 (test to be applied)**

12. Paragraph 26(3) provides that in relation to interim code rights:

*“The court may make an order under this paragraph if (and only if) the operator has given the person mentioned in sub-paragraph (1) a notice which complies with paragraph 20(2) stating that an agreement is sought on an interim basis and—*

*(a) the operator and that person have agreed to the making of the order and the terms of the agreement imposed by it, or*

*(b) the court 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.”*

13. Paragraph 21 “*What is the test to be applied by the court?*” provides:

*“(1) Subject to sub-paragraph (5), the court may make an order under paragraph 20 if (and only if) the court thinks that both of the following conditions are met.*

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

*(3) The second condition is that the public benefit likely to result from the making of the order outweighs the prejudice to the relevant person.*

*(4) In deciding whether the second condition is met, the court must have regard to the public interest” in access to a choice of high quality electronic communications services.*

*(5) The court may not make an order under paragraph 20 if it thinks that the relevant person intends to redevelop all or part of the land to which the code right would relate, or any neighbouring land, and could not reasonably do so if the order were made.*

## **Issues for Determination**

14. The issues for determination by the Tribunal were as follows:
  - a) Was there was a good arguable case for determining that the paragraph 21 conditions had been met;
  - b) Are the terms of the proposed MSV agreement appropriate; and
  - c) Was it possible to determine the above issues at the CMH and exercise discretion to make an interim rights order, without the need for further evidence.
15. The First Respondent set out several objections to the reference in their statement of case and submitted copies of the three commercial leases (referred to in paragraph 9 above), objections taken from Wigan Council’s website to the Claimant’s application for planning permission for installation of a mast on the proposed site, a copy of Article 1 of the First Protocol taken from the EHRC website and photographs of the phone masts at Hindley Business Centre. The First Respondent also submitted, prior to the CMH, details of alternate sites they deemed suitable for the installation of the Apparatus, further photographs of the land at Hindley Business Centre and a quotation from Whis Steel Buildings for a budget warehouse proposed to be constructed on the position of the proposed site.
16. The objections are summarised as follows:
  - i) the proposed site was used by three of the First Respondent’s tenants and formed part of their lease agreements;
  - ii) the First Respondent had been considering adding additional units to the Land and the Claimant’s proposal would make their expansion plans unfeasible;
  - iii) alternative sites were available, and the Claimant already had infrastructure on a tower nearby;
  - iv) the Claimant’s actions were “*bullying*”, and an exercise of the rights could be considered a violation of Article 1 of the First Protocol of the European Convention on Human Rights;
  - v) the First Respondent’s tenants were unhappy about the proposed installation of a 25-metre tower on their doorstep and indicated that they would be forced to relocate should the installation proceed, which would lead to a negative impact on the local economy;
  - vi) the mast proposed was a huge structure, unsightly, and would be detrimental to the local area and community, the local environment, human health and wildlife, and property prices;

- vii) the mast would be extremely close to a designated statutory main river and could cause environmental problems and issues, especially with regards to flooding; and
  - viii) the original mast proposed was smaller and was to be located on a different part of the Land to that now proposed.
17. As previously stated, by the time of the CMH, the Second Respondent had confirmed that he had no objections to the MSV, the Third Respondent had not made any response and the Fourth Respondent's objections related to a "*mast*" as causing an obstruction for operating their business and concern with regard to any new construction being erected in a flood zone, 1 metre from the water side.

***Paragraph 21 – the test to be applied***

18. Paragraph 26(3) requires the Tribunal to focus on whether there is a good arguable case that the paragraph 21 test is satisfied. If it is the Tribunal must then decide whether to exercise its discretion to make an order for interim rights.
19. In its Statement of Case, the Claimant explained that it required a new site in the Hindley area as they were anticipating a loss of apparatus on land in the vicinity of Hindley Business Centre. The Claimant stated that the new site was required to prevent a potential coverage and capacity loss of network service in the area and that the Land had been identified as a replacement for the current site. The Claimant further stated that other Vodafone cell sites in the surrounding area would be unable to compensate for the lack of coverage and capacity.
20. The Claimant stated that customers of Vodafone would benefit from the making of the order sought, as if the Land was found to be suitable and the Apparatus installed, it would assist in avoiding the degradation of mobile connectivity.
21. At the hearing, Mr Tipler confirmed that the Claimant was looking at carrying out a modest borehole intrusive survey. He submitted that none of the objections raised by any of the Respondents prevented the satisfaction of the test posed in paragraph 21.
22. Mr Tipler referred to most of the objections raised as relating to the installation of the Apparatus, not the minimal disruption caused by an MSV. In relation to redevelopment, he noted that this issue had not raised by the First Respondent until April 2025, despite negotiations having been ongoing between the First Respondent and the Claimant for over 12 months. Mr Tipler also stated that no information regarding the redevelopment had been submitted to the Claimant other than a single quote and that conducting the intended surveys over the next six months would not hamper the First Respondent's ability to continue any proposed development, for which planning permission had not yet been sought.
23. In relation to the alleged rights in the leases, again, Mr Tipler noted that these had only been mentioned in April 2025, despite several months of negotiations. Mr Tipler also noted that the clauses in the three leases which purported to giving rights over the area of the proposed site appeared to be late additions to the leases (the font and page size being different to the other pages in the leases), that there was no indication that these insertions had been agreed to by the other respondents and that, if the rights were

genuine, the MSV agreement would only result in short-term interruptions to the use of that area.

24. In relation to any alternative sites, Mr Tipler referred to the Upper Tribunal decision in *CTIL v University of the Arts London* [2020] UKUT 0248 (LC) (referencing *CTIL v University of London* [2018] UKUT 356 (LC)) and observed that it is now “*well-established*” that in assessing the public benefit condition under paragraph 21, the Tribunal need not consider whether alternative sites would provide the same public benefit. It must weigh the public benefit arising from the imposition of a paragraph 20 agreement “*as if the alternative were that the claimant does not operate from the [proposed site]; that benefit is not diminished by the fact that the same benefit might be achieved by the use of an alternative site or of a sharing deal [in the vicinity]*” [27].
25. As such, Mr Tipler stated that the arguments and evidence purportedly showing alternative sites was simply irrelevant to the exercise the Tribunal must undertake in this application.
26. In relation to any violation of human rights, Mr Tipler stated that the rights sought were minimal and would cause transient disruption and that the order sought would, in any event, be a proportionate means of furthering the public interest in access to communications services that the Code sought to promote.
27. Mr Tipler emphasised that under paragraph 26, a lower threshold applied, in that the Tribunal may impose an agreement if it thought that there was a “*good arguable*” case that the test in paragraph 21 was met and that the Claimant only had to show “*a plausible evidential basis for its claim that the paragraph 21 conditions are satisfied*”, which was a “*flexible and fact specific*” test (*EE Ltd & H3G UK Ltd v London Underground Ltd* [2021] UKUT 0128 (LC) at [7]).
28. Mr Michael, at the hearing, accepted that many of the arguments raised in the First Respondent’s statement of case (in particular points (v) to (viii) above) related to the installation of the Apparatus rather than being objections to the MSV sought.
29. In relation to the rights contained within the three commercial leases relating to the proposed site, Mr Michael confirmed that the relevant clauses in each of the leases were later additions to the leases. He stated that the other three respondents each leased commercial units and that the rights they each had over the proposed site were rights of usage. He confirmed that the area was currently used for several purposes, such as storage of items and for the location of skips.
30. The Tribunal notes that the Claimant is seeking rights over the Land on a few occasions over a six-month period to carry out certain works, including some intrusive investigations include digging holes to determine the soil composition and structure of the soil, and carrying out trial boreholes.
31. In relation to the objections raised by the Respondents, items (v) to (viii) of the First Respondent’s objections and the Fourth Respondent’s concerns, all centred around the installation of the Apparatus and, as Mr Michael conceded at the hearing, were premature.

32. In relation to the potential future redevelopment of the proposed site by the First Respondent, again, the Tribunal considers that any objection is premature. Although paragraph 21(5) confirms that an order cannot be made if the court thinks that a relevant person intends to redevelop, this is subject to such redevelopment not being reasonably capable of being carried out should an order be made. In this matter, the order is for an MSV and the test for whether an agreement can be imposed is if there is a “*good arguable*” case. The First Respondent had provided minimal evidence relating to the redevelopment (a single quote), had not applied for planning permission at the time of the CMH and had provided no evidence that any of the works proposed in the MSV agreement sought (which, in any event, was only for a term of six months) would disrupt any future redevelopment plans.
33. In relation to the rights of use over the proposed site contained within the three commercial leases, the prejudice raised appeared to be that the inspection visits would cause disruption to the use of the proposed site area by the Respondents. The Tribunal noted that much of the land over which rights had been granted overlapped. As such, there would, conceivably, be times when one of the respondents was unable to use part of the area over which the purported rights were granted, as that area was already being used by another respondent. The Tribunal also noted that the First Respondent’s proposed redevelopment, if completed, would cause the other respondents to entirely lose the use of this area.
34. The Tribunal, having taken into account the current use of the area, as reported by the Respondents, and noting that the proposed agreement was for a term of six months entailing minimal disruption with proposals to make good the ground after any investigation, found that the Respondents had failed to show that:
- “... either that it will suffer loss that cannot be compensated in money, or that the prejudice it will suffer is so great that it outweighs the public benefit derived from the use of the site. The level of prejudice must be very high indeed to outweigh the public benefit, in the light of the public demand for, and dependence upon, the availability of electronic communications.”*
- (see Cornerstone Telecommunications Infrastructure Limited v University of Arts London [2020] UKUT 248 (LC) at [51]).*
35. In relation to alternative sites, the Tribunal accepted that when assessing the public benefit condition, it need not consider whether alternative sites, or the possibility of sharing another site, would do just as much public benefit. The Tribunal must, instead, weigh the public benefit arising from the imposition of the agreement sought as if the alternative were that the claimant did not operate from that site. (See *CTIL v University of the Arts London* [2020] UKUT 0248 (LC) [27] as referred to above). As such, the First Respondent’s submissions in this regard were not relevant to the test applied.
36. In relation to any human rights argument, the Tribunal also accepted Mr Tipler’s argument, that the imposition of the rights sought by the MSV agreement were minimal and a proportionate means of furthering the public interest in access to communication services that the Code sought to promote.



37. Accordingly, the Tribunal finds that the Claimant has established a good arguable case that the test in paragraph 21 is satisfied.

### ***The MSV agreement***

38. Despite all parties having been provided a copy of the proposed MSV Agreement, and the Claimant having repeatedly asked for engagement on the terms as evidenced by the correspondence, none of the Respondents had provided any particular objection to the same in any of the written submissions or at the hearing.

### ***Tribunal's Discretion***

39. As the Tribunal finds that the Claimant has established a good arguable case and that the test in paragraph 21 is satisfied, and that no specific objections had been raised regarding the terms of the MSV agreement proposed, the Tribunal is satisfied that it should exercise discretion to impose an agreement on the Respondent.

### **Costs**

40. No negotiation of the agreement had taken place and neither party sought to claim transactional costs.
41. In relation to the costs of the reference, Mr Tipler stated that, despite extensive informal correspondence with the Respondents prior to the CMH, the only costs the Claimant sought were the costs of instructing counsel for that hearing, being £3,500 plus VAT.
42. In terms of who should be liable to pay, Mr Tipler submitted that, given that the Second Respondent had (albeit belatedly) consented to the application, costs were not sought against him. As the First Respondent had been the ringleader in opposing the Claimant's application, but that the Fourth Respondent had aligned itself with the First Respondent and the Third Respondent had unreasonably failed to engage at all with the proceedings, it sought an order for payment of its costs of the hearing against the First Respondent, Third Respondent and Fourth Respondent or, in the alternative, against the First Respondent alone.
43. Mr Michael submitted that no order for costs was appropriate.
44. Paragraph 96 of the Code provides:

#### ***Award of costs by tribunal***

*96(1) Where in any proceedings a tribunal exercises functions by virtue of regulations under paragraph 95(1), it may make such order as it thinks fit as to costs, or, in Scotland, expenses.*

*(2) The matters a tribunal must have regard to in making such an order include in particular the extent to which any party is successful in the proceedings.*

45. In this matter, the Tribunal notes that the Claimant has been wholly successful in obtaining the imposition of an agreement for code rights on an interim basis, on the terms it had proposed to the Respondents.
46. The Tribunal also notes that, although the other three respondents had been made parties to this matter recently, the Claimant had been in negotiations with the First Respondent for over a year. Despite this, the objections raised in the First Respondent's statement of case were only brought to the Claimant's attention in April of this year and that, up until November 2024, the First Respondent had been negotiating an increase in the site payment price and had made no mention of other tenants' rights over the proposed site area or potential redevelopment of the same.
47. The First Respondent had also, since the instruction of Osborne Clarke in December 2024, been strongly advised to obtain legal advice and was also so advised by the Tribunal. Had specialist advice been taken, the First Respondent would no doubt have been made aware that many of its objections were irrelevant to the order sought or premature. The First Respondent had also been made aware, in April 2025, that costs would be sought against it should the CMH proceed.
48. The Tribunal finds that the number of objections raised by the First Respondent meant that the use of counsel in this case was reasonable and entirely appropriate, as the reference deals with a relatively new and expanding area of law requiring specialist knowledge.
49. Based on the First Respondent's conduct in this matter, which the Tribunal finds to have been unreasonable, the Tribunal accepts that the Claimant has had to incur the additional costs of a hearing to deal with the paragraph 21 tests and, as the Claimant has been wholly successful, the Tribunal determines those costs should be paid by the First Respondent.
50. The Tribunal summarily assesses the Claimant's costs, which comprise solely counsel's fees of £3,500.00 plus VAT, to be both reasonable and reasonably incurred and payable by the First Respondent alone.

**IT IS ORDERED THAT:**

1. Pursuant to Paragraph 26(2) of the Electronic Communications Code (Schedule 3A to the Communications Act 2003) the Tribunal imposes an agreement on the Claimant and the Respondents, on an interim basis. The Claimant and the Respondents are bound by an agreement in the following terms:
  - a) As contained in the Agreement at pages 224-247 of the Hearing Bundle commencing from the date of this Order; and
  - b) The Plans to be annexed to the Agreement (Grantor's Property) are the plans at pages 245 to 247 of the Hearing Bundle.
2. Pursuant to paragraph 96 of the Electronic Communications Code:

The First Respondent shall, on production of a copy of counsel's fee note, pay the Claimant's costs summarily assessed in the sum of £3,500 (plus VAT unless the Claimant is able to recover it).

**Judge M K Gandham**  
Judge of the First-tier Tribunal

**17 July 2025**

### Rights of Appeal

A 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 this written Decision to the party seeking permission.