FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LC – 2023 – 000321 and 13 others**
Property	**:**	**Telecommunications site at Ewefields Farm, Chesterton, Warwick CV33 9LQ and 13 others**
Claimant	**:**	**On Tower UK Limited**
Representative	**:**	**Justin Kitson and Imogen Dodds instructed by Gowling WLG (UK) LLP**
Respondent	**:**	**AP Wireless II (UK) Limited and others**
Representative	**:**	**Toby Watkin KC and Wayne Clarke instructed by Eversheds Sutherlands (International) LLP and Freeths LLP**
Application	**:**	**Electronic Communications Code**
Date of Hearing	**:**	**1st – 12th July 2024 Centre City Tower, Birmingham**
Tribunal	**:**	**Judge D Jackson Mr N Wint FRICS Mr RP Cammidge FRICS**
Date of Decision	**:**	**05/08/2024**

DECISION

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1. This is the Decision of the Tribunal on 14 references brought by the Claimant, On Tower UK Limited ("OT"). Consequent on service of Notices under Paragraph 33 of the Electronic Communication Code the Claimant seeks an Order pursuant to Paragraph 34 terminating existing agreements and ordering the parties to enter into new agreements. The Respondent to all 14 references is AP Wireless II (UK) Limited ("APW").

2. The Second Respondents have taken no part in these proceedings. The Second Respondent in the Carshalton reference, Woodcote Grove Estate Limited has granted a lease to APW as have Robert and Jacalyn Parrish in respect of the Ampthill site. Neville and Joan Thornhill disposed of their freehold interest in the Sandbach site to APW in 2022.

3. Details of all 14 sites and case numbers are set out in the Appendix to this decision.

4. By Order dated 20th December 2023 all references were heard together (FTT Rule 6(3)(b)) over 10 days, 1st July to 12th July in Birmingham. The Claimant was represented by Justin Kitson and Imogen Dodds. The Respondent was represented by Toby Watkin KC and Wayne Clarke. On Day 4 of the hearing APW were also represented by Matthew Henderson of counsel in respect of planning matters.

5. We have had the benefit of hearing oral evidence of fact from Timothy Holloway and Mark Kite for OT and from Nick Ward and David Powell for APW. We also heard expert planning evidence from Richard Morison on behalf of OT and Sarah Cox for APW. Finally we also heard expert valuation evidence from Colin Cottage for OT and Robyn Peat for APW.

6. The written evidence in these references is contained in Bundles 1-4 together with a Supplemental Bundle (SB). References to page numbers in this decision are to those Bundles.

7. There is some inconsistency in the abbreviated site names used by the parties. In this decision we use the following shorthand. Alternative names used by the parties are in parenthesis:

    - Ewefields
    - Lubbards Lodge
    - Hexton
    - Newchurch (Lower Lynbrook Farm)
    - Higher Hawksland
    - Ampthill
    - Sandbach
    - Blackwell Grange
    - Moreton-in-Marsh
    - Ayot Green
    - Carn Entral (Camborne)
    - Hollow Farm (Chesterfield)
    - Mildenhall (Bury St. Edmunds)
    - Carshalton (Little Woodcote)

8. As the parties have been unable to agree terms to be imposed, we have found it convenient to record our determination on those issues in the Schedule attached to this Decision. The Schedule should be read by reference to the draft Lease (version as at c1530 on 10th July 2024). For the avoidance of doubt the decision of the Tribunal includes both this Decision and the Schedule.

Issues for determination

9. This Decision covers the three areas of dispute between the parties:

    (1) Terms of the new agreements
    (2) Consideration
    (3) Interim Arrangements

10. APW is also entitled to its reasonable legal and valuation expenses under Paragraphs 25 and 84. The parties having had the opportunity to consider this decision will, no doubt also wish to claim costs under Paragraph 96 and FTT Rule 13(1)(d). It will be convenient to consider all aspects of costs and compensation together at a later date.

APW, Radius and Icon

11. Before moving on to consider the issues in detail we take the opportunity to say some words about APW. APW is a subsidiary of Radius Global Infrastructure Inc. APW's sister company is Icon Tower Infrastructure Limited (previously known as Radius BTS Limited). Icon has the benefit of a direction under section 106(3) of the Communications Act 2003 (SB/ 907). That direction fosters competition in the wholesale infrastructure market. Increased competition fuels innovation and increases customer choice for the benefit of the public.

12. We adopt the dicta of Davis LJ in **Cornerstone Telecommunications Infrastructure Ltd v Ashloch Ltd** [2021] EWCA Civ90 at [110]:

"What was said was, in essence, that operators such as Cornerstone were operating to the public benefit in providing updated and efficient telecommunications services; whereas, so it was said, a body such as APW had inserted itself into the title arrangements with a view, in effect, to extracting for itself a handsome commercial ransom. But the actuality is that both parties are commercial concerns operating for profit. In truth, the underlying competing considerations reflect the fundamental dichotomy between the provision of communication services for the public benefit on the one hand and the need for acknowledgement of private property owners' rights on the other hand; and the delicate balance that needs to be stuck and maintained between the two."

13. It may not be necessary to labour the point but similar complaints to those levelled at APW were made in **Humber Oil Terminals Trustees Limited v Associated British Ports** [2011] EWHC 2043. Vos J, as he then was, observed at [143]:

"...Mr Dowding brings the policy of the 1954 Act into play, submitting that the legislation cannot have been intended to allow a landlord to expropriate a tenant's business and assets. This is a pejorative way of putting the point. The 1954 Act was indeed enacted, as Lord Hailsham put it, to "protect the business interests of the tenant ... in particular as regards his security of tenure", but section 30(1)(g) provides a significant exception to that protection. Tenants are to be allowed security of tenure if they have established themselves in business in leasehold premises so that they can continue to carry on their business there (to adapt Lord Wilberforce's words in O'May). But they are not allowed such protection at the termination of their lease if the landlord is able to establish his intention to re-occupy the holding for the purposes of his business. This exception is not a charter for expropriation. It is a function of another aspect of the policy of the legislation, to the effect that landlords should be entitled to their land back, notwithstanding the tenant's security of tenure, if they genuinely wish to use that land for their own business purposes (section 30(1)(g)) or for redevelopment (section 30(1)(f)). There is no objection to a supermarket chain buying up freehold interests in other supermarkets' shop premises (provided they do so more than 5 years before the termination of the lease – see section 30(2)), just because they wish to oppose the grant of a new tenancy so they can take over their competitor's site. I am sure that worldly-wise supermarkets are alive to this possibility, but if it were to happen, I cannot see how the target supermarket could cry foul, when the predator took over its building and operation and simply changed the name above the door."

14. We now turn to a brief survey of the 14 sites which are the subject of the references before us.

The sites

15. APW is the freeholder of Ewefields, Lubbards Lodge, Newchurch, Sandbach, Hollow Farm and Mildenhall. In the remaining references it holds an intermediate lease: Hexton (4/520), Higher Hawksland (4/593), Ampthill (4/676), Blackwell

Grange (4/753), Moreton-in-Marsh (4/856), Ayot Green (4/926), Carn Entral (4/1002) and Carshalton (4/1103).

Ewefields

16. The site is immediately adjacent to the M40. It is approximately 20m x 20m. The site was originally on farmland. The surrounding land is now in the process of being developed as the Upper Lighthorne development of over 1000 homes. The original unsealed accessway is no longer usable and the developer will provide a new access from the roads to be constructed at the development.

17. Photographic evidence shows that the site is separated from the development by the sound bund between the houses and the motorway.

18. ECA at the site comprises single 20m mast, operator cabin and meter box. No 5G upgrade has taken place.

Lubbards Lodge

19. The site is on outskirts of the village of Hullbridge approximately 5 miles from Southend. The site is adjacent to sports pitches/playing fields. To the north is a breakers yard and to the south is a paddock. The site is 15m x 15m and sits within a larger area of land owned by APW (approx. 665 sq. m.). A planning application has been ongoing since 2019 in respect of 120 dwellings on the breakers yard. Access is direct from the public highway.

20. ECA at the site is a 15m monopole with associated ground-based equipment.

Hexton

21. The site is in a remote rural setting within woodland in an area of outstanding natural beauty. It adjoins a sewage treatment plant. ECA is a 25m mast disguised as a tree with associated ground-based meters and cabinets. There appears to be no 5G. The site is 4.5 miles from Hitchin and is 82 sq. m. Access is via a 40m unsurfaced track.

22. APW own additional land (20m x 13.82m) around compound giving sufficient space for parking.

Newchurch

23. The site is in a remote rural setting surrounded by farmland. Tattenhill Airport and the FA National Training Centre are both approximately 500m away.

24. The site measures 12m x 12m. ECA is a 15m mast with associated ground-based cabinets and meters. It appears that 5G upgrade and Huawei removal may be required. Access is via an unsurfaced gravel track of approximately 230m in length.

Higher Hawksland

25. The site is in a remote rural setting and forms the boundary of the Cornwall Area of Outstanding Natural Beauty. It is situated on farmland overlooking a camp site. The site is 11.5m x 4.3m (APW have adjoining land of 86 sq. m.) The site adjoins several fields that have been developed as a solar farm.

26. ECA is a 15 m mast with associated ground based ancillary equipment, cabin and cabinets. Upgrade to 5G is likely to be required. Access is via the A389 and along an unregistered track and then along an unmade track around the edge of a field which can be problematic during wet weather.

Ampthill

27. The site is in a remote rural setting and measures 12m x 12m. It is within woodland but opposite the Lockheed Martin facility. APW own a larger area of 484 sq. m. at the site.

28. ECA is a 17.5m mast together with a cabin and ancillary equipment. Access is via short track along field edge.

Sandbach

29. The site is a remote rural site and situated within a working farm and is close to the M6. The site is roughly trapezoid – 9.1m x 7.1m x 6.2m. APW owns land to the front and rear of the compound. ECA is a 15 m mast with ground based ancillary equipment.

30. Access is via a private road and through an unmade track through a field where cattle graze. The track restricts access as it is long and frequently muddy.

Blackwell Grange

31. The site is on the edge of a former golf course which has been redeveloped into residential development. The site is 7.2m x 6.2m. To the north is a similar Vodafone mast.

32. ECA at the site is a 25m "fake tree" mast. There is a need for fibre, 5G upgrade and removal of Huawei kit.

33. Access has been blocked during the course of the development and is currently via a pedestrian gate from Carmel Road South and along a short track. It is understood that the developer will provide a new vehicular access from Carmel Road South at its own cost.

Moreton-in-Marsh

34. The site measures 7.9m x 4.6m. The site is a remote rural setting in woodland adjacent to a covered reservoir and arable field. Access to the site is via an unmade track directly off the A424. It would appear from evidence of APW Valuer at 2/1994 that APW's leasehold site extends to 114 sq. m.

35. ECA at the site is a 22.5m mast together with cabinets and associated equipment. It appears a 5G upgrade is required.

Ayot Green

36. The site is adjacent to the A1M approximately 1.5km from Welwyn Garden City. Surrounding land is pasture with some agricultural storage. The site is 376 sq.m. APW wish to reduce the demise as it is not fully utilised (see Witness Statement of David Powell at para. 85 [2/363]). There is a CTIL site within 500m or so. Access is via a single track road from Ayot St Peter Road onto a farm track in a field.

37. ECA at the site is a 25m mast together with cabin, cabinet and associated equipment. Upgrade to 5G appears to be required.

Carn Entral

38. The site is within the impact zone of a SSSI and situated in an Area of Great Landscape Value adjoining a public highway and close to a number of residential properties. The site is 12m x 8m. The surrounding land is grassland used for grazing. Access is via a driveway off a narrow lane. The site itself is on a steep elevated corner making vehicular access difficult.

39. ECA at the site is three 12m masts disguised as electricity poles. There is a Vodafone site with a similar arrangement nearby. There is no 5G. Access is via a surfaced single track off the adjoining public highway.

Hollow Farm

40. The site is a remote rural site adjacent to Brockley Wood. There appears to be a dispute as to the extent of the site. Mr Holloway at para. 10.12.1 of his Witness Statement suggests 376 sq. m [2/11]. Mr Powell suggests that OT has 130 sq. m.

and APW 421 sq. m. (para. 119 of his Witness Statement at [2/366]). APW's Valuer at 2/2057 suggests that the site is 384 sq. m. Access is via a (muddy) track from the main road.

41. ECA at the site is a 25m tower with associated ground based cabins and associated equipment. Upgrades are required.

42. The site is near the edge of Bolsover. A resolution by the Planning Committee to grant subject to section 106 resolution has been made in favour of a development for 161 dwellings (reduced from 163 see 2/1569) immediately to the south of the mast site. Once completed the mast site will be sandwiched between Brockley Wood to the north, and the new development to the south.

Mildenhall

43. The site is in the corner of a field adjacent to the village of Beck Row. RAF Mildenhall is 500m distant. The site is 8m x 12m. APW has land around the compound (approx. 558 sq. m.). Access is via a fenced strip of grass track from Beck Lane

44. ECA at the site is a 25m mast together with an associated ground based cabin, meter cabinet and ancillary equipment. 5G upgrade required.

Carshalton

45. The site is about 3 miles south of Croydon, within Greater London and the M25. However the site itself is within a pocket of pastureland and open grassland. There is an adjacent Virgin Media/O2/Vodafone mast. In addition, there is a Telefonica monopole in close proximity. The site measures 8m x 5m. Access is off Little Woodcote Lane via private gated driveway leading to a track and field.

46. ECA at the site is a 15m mast together with associated ground based cabin and ancillary equipment. 5G upgrade required and removal of Huawei equipment.

Terms

47. These are proceedings under Part 5 of the Code "Termination and Modification of Agreements". Paragraph 34(10) provides:

"If the operator and the site provider are unable to agree on the terms, the court must on an application by either party make an order specifying those terms."

48. Paragraph 34(11) applies paragraphs 23(2) – (8) to an order made under paragraph 34(10):

"(2) An order under paragraph 20 must require the agreement to contain such terms as the court thinks appropriate, subject to sub-paragraphs (3) to (8).
(2A) In determining the terms of the agreement the court may take into account, among other things, any breach by the operator of an agreement between the operator and the relevant person which was imposed by an order under Part 4A (whether or not in force).
(3) The terms of the agreement must include terms as to the payment of consideration by the operator to the relevant person for the relevant person's agreement to confer or be bound by the code right (as the case may be).
(4) Paragraph 24 makes provision about the determination of consideration under sub-paragraph (3).
(5) The terms of the agreement must include the terms the court thinks appropriate for ensuring that the least possible loss and damage is caused by the exercise of the code right to persons who—
(a) occupy the land in question,
(b) own interests in that land, or
(c) are from time to time on that land.
(6) Sub-paragraph (5) applies in relation to a person regardless of whether the person is a party to the agreement.

(7) The terms of the agreement must include terms specifying for how long the code right conferred by the agreement is exercisable.
(8) The court must determine whether the terms of the agreement should include a term—
(a) permitting termination of the agreement (and, if so, in what circumstances);
(b) enabling the relevant person to require the operator to reposition or temporarily to remove the electronic communications equipment to which the agreement relates (and, if so, in what circumstances)".

49. Paragraph 34(12) provides:

"In the case of an order under sub-paragraph (10) the court must also have regard to the terms of the existing code agreement".

50. Paragraph 34(13) provides:

"In determining which order to make under this paragraph, the court must have regard to all the
circumstances of the case, and in particular to—
(a) the operator's business and technical needs,
(b) the use that the site provider is making of the land to which the existing code agreement relates,
(c) any duties imposed on the site provider by an enactment, and
(d) the amount of consideration payable by the operator to the site provider under the existing code agreement."

The present version of the Code was introduced by the Digital Economy Act 2017. Transitional provisions provide that paragraph 34(13)(d) does not apply to a "subsisting agreement" i.e. an agreement that was in force on 28th December 2017. For present purposes it is agreed by the parties that paragraph 34(13)(d) only applies to Higher Hawksland and Carn Entral.

51. In reaching our decision on terms to be imposed we have kept firmly in mind Paragraph 23(5) and the need to ensure that "least possible loss and damage" is

caused by the exercise of code rights. We have followed the guidance given by the Upper Tribunal in **Dale Park** (On Tower UK Limited v JH & FW Green Limited [2020] UKUT 0348 (LC)) at paragraphs 62 -64:

"62. First, the Tribunal should consider the term the operator seeks and the reason why it needs the term in question in order to pursue the business for whose purposes it received its Ofcom direction and in light of the public interest in a choice of high quality telecommunications services.
63. Second, the Tribunal will consider the concerns or objections raised by the respondent and whether in order to minimise loss or damage in accordance with paragraph 23(5) the term should not be imposed, or should be imposed to a limited or qualified extent.
64. If those concerns do not prevent the imposition of the term and do not require its qualification, then the Tribunal will consider whether, in imposing that term, it should also impose further terms to minimise loss or damage."

52. We also have regard to the underlying purpose of the code as identified by Fancourt J in **EE v Stephenson** [2021] UKUT 167 (LC) at [53]:

"The purpose underlying the Code is to ensure that operators can use and exploit sites more flexibly, quickly and cheaply than had previously been the case, at lower than open market rents, in furtherance of the public interest of providing access to a choice of high quality electronic communications networks, while providing a degree of protection to site owners' legitimate interests."

53. The approach to be taken to existing terms in accordance with paragraph 34(12) has been clarified by the guidance of the Court of Appeal in Dale Park (**On Tower UK Limited v JH & FW Green Limited** [2021] EWCA Civ 1858) at [49]

"*The weight to be attached to the fact that a term was included in the existing code agreement will in part turn on its consistency with the aims of the Code. If the relevant term cannot be thought to be in conflict with those aims, the case for replicating it in the new agreement may be compelling. Plainly, the position will be different if the term is at variance with the objectives of the Code. In practice,*

the terms of a code agreement entered into since the introduction of the Code are more likely to accord with its purposes than those of an agreement which pre-dates the Code."

As noted above the agreements entered into since the introduction of the Code are Higher Hawksland and Carn Entral.

54. **CTIL v London and Quadrant Housing Trust** [2020] UKUT 0282 (LC) is authority for two important authorities on terms:

    (i) There is no presumption in favour of the operator's preferred terms [43]
    (ii) There is no onus on the site provider to justify a departure from the operator's standard form [45]

55. However we do no lose sight of the fact that we are dealing with multiple references. We are told that there are many more in the pipeline. The parties cannot realistically seek different terms in each reference. In **New Zealand Farm** (On Tower UK Limited v AP Wireless II UK Limited – Birmingham County Court H00BM926) the Deputy Chamber President sitting as a Judge of the County Court referred to "the benefit of standardisation" [30] and the "additional attraction of standardisation" [50]. We would put the parties on notice that in any future references the FTT is likely to exercise its case management powers robustly should parties seek to relitigate agreements and clauses that have already been the subject of judicial determination.

56. Finally before turning to our discussion of the terms in dispute we would remind those who negotiate Code agreements, and their representatives of the words of the Upper Tribunal in **Cornerstone Telecommunications Infrastructure Limited v University of The Arts London** [2020] UKUT 0248 (LC) at [70]:

"We regard it as important not to duplicate safeguards; not to generate requirements for the transmission of information where that would be of little or

no practical benefit to either party; and to give due respect to the professionalism of both parties."

We regret to say that those words appear not to have been heeded by either party. As a result The Tribunal is being asked to determine 140 points of dispute. Many concern drafting and boilerplate clauses. Most could and should have been agreed. As a result very considerable costs have been incurred by both sides that could easily have been avoided.

57. The draft Lease is to be read by reference to the Schedule of Disputed Terms which includes 14 schedules of site specific amendments. Where convenient we have recorded our determination on terms in the Schedule of Disputed Terms which is attached to this Decision. Where more detailed discussion is required, we set out our reasoning in the following paragraphs. Numbering refers to issue numbering in the Schedule of Disputed Terms. Where necessary we have made reference to the evidence given by witnesses as recorded in the transcript by reference to the day of the trial on which that evidence was given and page number.

Exclusive possession

58. It has been agreed by the parties that all new agreements will take effect as leases.

Sharing and Installation (Issues 2 and 7)

59. In **Audley House** (On Tower UK Limited v AP Wireless II (UK) Limited [2022] UKUT 152 (LC) at [135-139] the Upper Tribunal permitted sharing of the site as well as the equipment. Sharing was made subject to a proviso in respect of paragraph 10(4) of the Code which both parties have included as part of their drafting.

60. Mr Holloway in his evidence (Day 2 pp 111-114) explained the process that would be followed where customers (typically MNO's) wished to carry out work (for

example upgrades) at the site. Initially there would be involvement of the Project Management Team and discussions with the site provider. The customer's contractors would arrive with vehicles and a crane. Work undertaken by contractors would include: " *prepare the site, take down anything that needed to come down to replace it with*", "*they may need to put concrete down to put new cabinets on -- sorry, they may need to lay concrete in order to put new cabinets into the site*" and "*they could put in cables in*".

61. **Audley House** was decided before amendments to the Code introduced by the Product Security and Telecommunications Infrastructure Act 2022. Sharing is now a Code Right under paragraph 3(1):

(ca) to share with another operator the use of electronic communications apparatus which the first operator keeps installed on, under or over the land,

(ea) to carry out any works on the land for the purposes of, or in connection with, sharing with another operator the use of electronic communications apparatus which the first operator keeps installed on, under or over the land or elsewhere,

(fa) to enter the land for the purposes of, or in connection with, sharing with another operator the use of electronic communications apparatus which the first operator keeps installed on, under or over the land or elsewhere,

62. In **Audley House** [136] the Upper Tribunal expressed some concern about exactly the kind of work, to be undertaken by contractors, described by Mr Holloway:

"On Tower can permit those who share the equipment to access and enter the site as necessary. Mr Seitler QC responds that this right does not enable it to allow an operator to place a cabinet on the land within the site. There is clearly some room for argument about that, and accordingly we take the view that the additional right sought by On Tower should be granted, in view of the nature of its business needs, unless the respondent's concerns are justified."

We take the view that paragraphs 3(1)(ea) and (fa) now puts the matter beyond doubt and that the effect of the amendments introduced by the 2022 Act is that a

provision requiring the sharing of the site as well as the equipment is no longer required.

63. **Audley House** at [163] also decided that sharing should not be limited to Code operators. The position is unchanged by the 2022 Act. However the agreed wording, in these references, limits sharing to "providers of electronic communications networks for the purposes of the provision by them of their networks".

Objections to Planning Applications (Issue 8)

64. Mr Morison, OT's planning expert, was cross examined by Mr Henderson (counsel appointed by APW in respect of planning issues) in respect of a letter dated 15th January 2024 sent by Cellnex UK (OT's parent company) to Planning Control at North Hertfordshire District Council objecting to a planning application made by Icon Tower Infrastructure Limited (APW's parent company) in respect of the site at Hexton (SB/59-63).

65. The Application by Icon was for GPDO Prior Approval for of a replacement mast. Cellnex's position was that if prior approval was granted to Icon for a replacement mast at the site Cellnex will itself erect another mast at an offsite location. The thrust of Mr Henderson's cross examination (Day 4 pp 34-53) is that OT has erroneously represented its position under planning law. For example, erection of a new mast by OT would, contrary to the contents of the letter of 15th January 2024, require prior approval under the General Permitted Development Order. As OT does not have control of, nor identified, another site near Hexton its proposed alternative development would not be a material planning consideration as it is vague and inchoate. The suggestion that the Local Authority lacks powers requiring removal of the existing mast is also erroneous as such a condition could be imposed in circumstances where the 3 tests for a lawful condition are met. Further, the suggestion that replacement of the existing mast with another is inconsistent with paragraph 115 (now 119) of the National Planning Policy Framework (SB/633) is also erroneous. Finally, the suggestion that Icon's proposal is inconsistent with

paragraph 25 of the Code of Practice for Wireless Network Development (SB/732) is also erroneous.

66. Mr Henderson also identified the same four erroneous assertions in an objection letter of 5th January 2024 sent by Cellnex to Herefordshire Council in respect of a site at Courts Farm [SB/468]. Mr Henderson argues that the delegated decision of the Planning Officer in both cases was materially influenced by the erroneous representations as to the planning position made by Cellnex.

67. We find that OT's parent company have made planning objections containing erroneous statements as to planning law and policy. However OT has a legitimate interest in planning applications at the Hexton site. OT has an existing mast at that site which is operational and which it proposes to upgrade in due course. The objection in respect of Hexton cannot be described as a "spoiler" application. We also have regard to the integrity and robustness of the planning process involving public consultation and the opportunity for an applicant to respond to objections (see example response to objection at SB/64-66 in relation to Hexton). Planning Officers are qualified to establish if an objection raises material planning considerations that should be taken into account in the decision-making process. In addition objections of the kind made by OT may not be the decisive factor. For example the application for prior approval at Courts Farm was refused, amongst other reasons, because of "visual impact"[SB/480].

68. Both planning experts, Ms Cox and Mr Morison are Chartered Town Planners. We asked if the making of "spoiler" applications was prohibited by the Royal Town Planning Institute. We were told that there is no such prohibition, and no professional obligations were engaged in such circumstances, beyond overarching requirements of acting with integrity and not to mislead.

69. Mr Watkin argues that clauses prohibiting the making of objections to planning applications are not unusual and not contrary to public policy. However, we have to consider whether such an obligation should be included to ensure least possible loss and damage is caused by the exercise of code rights. In our judgement the clause sought by APW does not touch or concern the exercise of code rights. It is sought by APW to regulate competition. We are not satisfied that the prohibition

sought by APW relates in any way to the sites which are the subject of these references, or the code rights sought by OT. The exercise of code rights does not in any way concern the making of or objections to planning applications. Accordingly we find that there is no basis for imposing the term sought by APW.

Jervis v Harris (Issue 10)

70. This clause was considered in **New Zealand Farm** (On Tower UK Limited v AP Wireless II UK Limited – Birmingham County Court H00BM926) at [45]:

"There is no evidence of any history of disrepair at this site, and (through its solicitors rather than its witness, Mr Talbot) APW gave only the flimsiest explanation why it sought the inclusion of this clause. It suggested that "any modern lease" should allow the landlord the ability to remedy breaches of repairing covenant "to ensure that damage is not caused to their land or adjoining land". Despite this plea no such clause is referred to in the Upper Tribunal's decision in Audley House and I assume either none was proposed by APW, or any proposal was dropped. APW has no interest in adjoining land and its suggested clause would not allow it the right to carry out work to any of the structures on the site. Mr Clark's only submission in support of the clause was that it was not onerous, which was not enough to get it airborne. Its incorporation in the new agreement would be pointless and I refuse to include it."

71. Mr Watkin relies on the Witness Statement of Mr Ward at paragraphs 58-61 [2/836]. Of the examples given only those at sub-paragraphs 58.3, 58.6 and 58.8.2 relate to OT (as opposed to other operators). 58.3 relates to a site at Fairfield Farm where a cherry picker damaged a gate and fence. 58.6 relates to a rooftop site. 58.8.2 relates to a site at Rowell Lane where a cow died having got stuck between two fences. Paragraphs 60 and 61 relate to rooftop sites.

72. None of the incidents referred to by Mr Ward relate to sites which are the subject of these references. In any event neither OT nor APW have any presence at any of

the sites. APW is in effect an "absentee landlord". We decline to impose this term for the trenchant reasons given in **New Zealand Farm**.

Wayleaves and Conduits (Issues 12-18, 22, 25 and 26)

73. Mr Holloway, who is OT's Senior Regional Surveyor, told us that OT need to get power and fibre to the sites. OT needs rights over a large area to take advantage of any existing power points. It is not possible to say what rights might be needed in the future.

74. Paragraph 5(1)(c) of the Code provides that "*electronic communications apparatus*" includes "*lines*". Paragraph 5(3) defines "*line*" as:

"*any wire, cable, tube, pipe or similar thing (including its casing or coating) which is designed or adapted for use in connection with the provision of any electronic communications network or electronic communications service*".

The most elementary of code rights are *"to install electronic communications apparatus on, under or over the land*" ((paragraph 3(a) and "*to connect to a power supply*" (paragraph 3(g)).

Mr Powell in his Witness Statement on behalf of APW [2/353-399] indicates in his review of sites at paragraphs 17-149 that a number of the sites do not presently have a fibre connection.

We are therefore entirely satisfied that OT have established a business need for connection to fibre and power.

75. APW's amended wording relies heavily the wording "such parts of the Property shown edged blue on the Plan". Mr Powell himself drew the "blue line plans" which can be found at SB/911-926*. Mr Powell told the Tribunal that he drew "blue lines" around each site to allow for OT's reasonable requirements to access a working area

outside of each site for the purposes of upgrade and maintenance and the movement of heavy plant and machinery.

[* In respect of Ewefields the blue line is the same as the red line demarcating the site. This is because at this site OT does not need any rights outside of the site as it already has necessary rights of access, use of services, tree lopping etc contained in an Agreement for the Release and Grant of Easements dated 17th April 2024 and made between Homes and Communities Agency (1), APW(2) and OT (3) – see 4/47]

76. Mr Powell further told us that OT had not made any requests for rights to install fibre or power. In his experience such matters were dealt with by statutory undertakers under Wayleave Agreements. This was consistent with the evidence of Mr Holloway who confirmed that the statutory undertaker would negotiate with the landowner at OT's request (Day 2 page 87 and 90-91). Usually the utility company would provide a connection to the meter cabinet – upstream is OT; downstream is the utility company. Mr Holloway agreed with Mr Watkin's when asked *"Realistically, beyond the boundaries of your sites, it is utility companies, isn't it?"* (Day 2 page 100). The position advanced by Mr Holloway is conceded by Mr Kitson at paragraph 59.2 of his Skeleton Argument: *"Conduits outside of a demise … They will be installed by the relevant statutory undertaker and installed with wayleave agreements between the undertaker and landowner…"*

77. Our finding in connection with Wayleaves and Conduits is that both parties' positions are misconceived. OT needs the right to connect to fibre and power. However on Mr Holloway's evidence that will only be done by the statutory undertakers. The applicable provision in the draft lease is 4.2 "Grant of Wayleaves" (Issue 12). However statutory undertakers will need access to adjoining property to effectively connect the site to the existing connection. APW's wording at issue 12, seeking to limit statutory undertakers to the land edged blue is therefore misconceived.

78. In respect of clause 5.1 of Part 1, Schedule 1 "Rights Granted" (issue 22) OT only needs to have rights to lay conduits itself in respect of such parts of the Property

shown edged blue on the Plan. However it also needs the right to grant rights to statutory undertakers to lay conduits in or upon adjoining property. The Tribunal has therefore substituted its own wording reflecting its findings in respect of issue 22.

79. For completeness we would add that for many of the sites it is not said by APW that it does not have it within its gift the ability to grant rights over adjoining superior landlord/third party land. As Mr Watkin puts it at paragraph 32 of his Skeleton Argument: "*APW may have the ability to grant such rights because of the deals made with its superior landlord or adjacent freeholders…"*. By way of example the Lease at Hexton made on 23rd March 2020 and made between the Honourable Hugo Guy Sylvester Grimston and another (1) and APW (2) contains the following provisions [4/530]:

"3.1.4 – the right to use and to connect into any Service Media belonging to the Landlord at the Estate
3.1.8 – any other rights in under or over the Estate which are at the date hereof needed or may after the date hereof be needed to enable the Tenant to grant the Future Leases and to renew the Existing Agreement…"

Landlord Break (Issue 19) and Term (Issues 28, 34, 42, 47, 52, 57, 63, 70, 77, 81, 88, 98, 106 and 112)

80. In **Pendown Farm** (EE Limited and Hutchison 3G UK Limited v Stephenson [2022] UKUT 180 (LC) the parties agreed a 10 year term [18]. At [49] the Upper Tribunal imposed a redevelopment break clause exercisable on or after the fifth year of the term. At [47] the Deputy Chamber President said:

"As EE/H3G themselves point out, in the context of upgrading and sharing, the telecommunications sector is fast moving both technologically and commercially and, seen in that light, the proposed term is relatively long. If in principle the Site were to be capable of being developed for a more profitable use by APW, then it is not the policy of the Code to stand in the way of such a redevelopment…. In circumstances where the site provider is not entitled to share in the economic

benefits realised by the use of its land for telecommunications purposes, it would be unfair and inappropriate for it to be prevented from making an alternative use of its land by the imposition of long-term Code rights which cannot be terminated. The fact that the inclusion of a redevelopment break clause may introduce a degree of uncertainty in the investment decisions made by an operator does not seem to me to be a reason for refusing such a clause."

81. In **Audley House** the parties agreed a term of 15 years. APW in that case sought a right to break the lease on or after the seven year break date that had been agreed in respect of the tenant's break clause. The Upper Tribunal said at [210]:

"However, there is no indication in the Code that site providers are to be prevented from developing their land, or from exercising contractual rights to terminate agreements where they want to redevelop; and there is nothing to prevent them having such contractual rights….The break clause sought by APW is to be included, because the combination of the contractual right to break and the provisions of paragraph 31(4)(c) ensures that both parties' interests are protected."

82. We have dealt with term and landlord's break as both are inextricably linked. As the Upper Tribunal said in the passage from **Audley House** quoted in the previous paragraph both party's interests are to be protected. Following the structured approach of the Upper Tribunal in **Dale Park** [62-64] we have to consider OT's needs for certainty of term to pursue its business. Balanced against that we have to minimise loss and damage to APW.

83. We have not found the position of either party to be realistic. OT ask for a 10 year term and only concede break after 5 years for residential development at three sites: Ewefields, Blackwell Grange and Hollow Farm. That position is inconsistent with what was said in **Audley House** and **Pendown Farm** concerning landlord's redevelopment break clause.

84. APW's position is that it is not concerned about the length of the term. APW's concern is to get its property back within its best assessment of the redevelopment horizon. APW seeks break clauses as follows:

- 18 months: Ewefields, Hollow Farm and Hexton
- 3 years: Lubbards Lodge, Sandbach, Mildenhall Drove, Higher Hawksland, Ampthill, Blackwell Grange, Ayot Green, Carn Entral and Carshalton
- 5 years: Newchurch and Moreton-in-Marsh.

85. We find that a break clause after 18 months is wholly unrealistic. Given that the minimum notice period under paragraph 31 is 18 months APW's proposal would render the renewal process entirely pointless. APW's position is inconsistent with its decision not to oppose renewal on any of these sites.

86. We will have more to say on planning and redevelopment when we look at consideration in due course. However to explain our decision on term and break it may be helpful to briefly discuss planning issues. Sarah Cox, APW's planning expert, considers timescales at paragraph 2.24 of her Report [2/1171]. She considers timescales involved in realising alternative use. She uses three timescales: short term (within the next 5 years), medium term (allowing between 5 to 10 years) and longer term prospects.

87. In respect of Ewefields there is an ongoing development with a new access road to be constructed to the site. However the site is on the wrong side of the sound bund very close to the M40 and to use Mr Watkin's expression we are "chary" about any realistic prospects of redevelopment either residential or commercial/employment. At Hexton, again adopting Mr Watkin's submissions planning has been "spiked". At Hollow Farm a resolution by the Planning Committee to grant subject to section 106 resolution has been made in favour of a development. However at this early stage realising any alternative use is unlikely within Ms Cox's short term timescale. Although not part of APW's 18 month cohort Blackwell Grange is referred to by OT as a potential break site. The situation at Blackwell Grange is that the developer is installing vehicular access and again we find any redevelopment is unlikely to be realised with the short term.

88. In respect of those properties where APW seek a break after 3 years Mr Watkin submits that there are opportunities soon, primarily by APW, or its sister company Icon taking over the site and redeveloping. We have to balance APW's ambitions against degree of certainty for OT. Mr Holloway's evidence at paragraphs 14- 17 of his Witness Statement is that upgrading to 5G is required at 9 sites [2/12]. This will require upgrading existing infrastructure and apparatus to support additional weight and antennas. Certainty of term is therefore important for OT. Mr Holloway's expectation is works will be carried out "within the next few years and certainly within the proposed 10-15 year term". Mr Holloway was cross examined on OT's future plans (Day 1 pp 97-99). Upgrades are ultimately a matter for the MNO's who use the sites and dictate what happens. OT has no control over upgrades. Mr Holloway was unable to say who paid for upgrades as that was a matter outside his purview. The Tribunal did not find Mr Holloway's evidence on upgrading to be of assistance. It was not helpful to the Tribunal that high level information on forward planning discussions between OT and the MNO's around sharing was not produced at the hearing.

89. In reaching our decision on term and break we have had regard to what Ms Cox says about realising alternative use within the short term (within the next 5 years), we have considered Mr Holloway's evidence on the need for upgrades and investment certainty. We also take into account our assessment of the extent to which APW's alternative uses are viable and realistic within the short term. Balancing OT's business needs against the requirement to ensure the least possible loss and damage to APW we impose a term of 10 years with a redevelopment break clause after 5 years.

Following the hearing the Upper Tribunal issued its decision in **Vache Farm** (EE Limited and Hutchison 3G UK Limited v AP Wireless II (UK) Limited [2024] UKUT 216 (LC)). The Upper Tribunal saw no good reason to limit redevelopment for some purpose other than for telecommunications use [25]. The dispute over "intention or desire" is resolved in OT's favour by the Upper Tribunal at [26]. APW's argument for a break on ground that the Paragraph 21 test is no longer met was rejected at [27] The Upper Tribunal allowed for termination after 5 years on 18 months notice [28].

Tree Lopping (Issues 23, 33, 40, 46, 50, 56, 62, 68, 75, 80, 86, 97, 105, 110, 125 and 139)

90. Mr Watkin takes a preliminary jurisdictional point which can be neatly summarised by reference to **Cornerstone Telecommunications Infrastructure Limited v Keast** [2019] UKUT 116 (LC) at [29]:

"*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.*"

91. It appears that Mr Watkin may have been hampered in his submission in that the Paragraph 33 Notices do not appear to have been included within the Bundles. However upon consideration of the Tribunal files we are satisfied that all paragraph 33 Notices were served together with Heads of Terms. Those served by Gowlings have "Arboreal Works" at 19.2 of Heads of Terms and those served by Pinsent Masons have a similar provision at paragraph 26 of Heads of Terms. The rights sought relate to trees "within the landlord's control or ownership". Accordingly whilst we reject Mr Watkin's jurisdictional challenge, we accept that any rights must be limited to "landlord's control or ownership". It is Mr Watkin's case that this is best done by limiting rights to "the land edged blue".

92. The drafting of the parties encompassing 16 separate issues is unnecessarily complicated. The right to lop or cut back is a code right (paragraph 3(i)). It is essential and necessary for the effective operation of telecommunications apparatus. Clearly APW cannot grant rights outside either its control or ownership or the land edged blue. The qualified proviso requiring APW approval is helpful in that it will identify any trees not within APW control or ownership or within the land edged blue. If the trees in question fall outside the terms of the clause as approved by the Tribunal, then OT will have to seek third party consent. For completeness no clause is included for Ewefields as tree lopping rights are already contained in the Agreement for the Release and Grant of Easements made with Homes and Communities Agency.

Lubbards Lodge: Lift and Shift (Issue 36)

93. APW seek a lift and shift clause in respect of the installation and apparatus at Lubbards Lodge to make use of undemised parcels of land either side and to the south of the demise which constitutes, Mr Watkin submits, a blight on redevelopment. The clause as drafted by APW at Issue 36 adopts the wording at clause 5 of the draft lease as it applies to conduits. We find that such a clause is inconsistent with the grant of exclusive possession. There is a lift and shift clause in the existing agreement (clauses 2.3, 2.4 and 2.5 at 4/142). However the grant of exclusive possession is a material difference between the existing agreement and the draft lease. In its Decision – Preliminary issue dated 30th October 2023 (3/5) the Tribunal found that, inter alia, the lift and shift provision to be inconsistent with the grant of exclusive possession.

94. The site is approximately 15m x 15m. APW's surrounding land is 665 sq. m (roughly 26m x 26m). It would appear therefore that any lift and shift will be a very small distance, possibly only a few metres. The disruption and costs involved in such a small move are likely to be disproportionate. We find proposal to be unreasonable.

95. Finally we consider the relationship between lift and shift and landlord's break. We have determined a 5 year redevelopment break. APW's proposes commercial use or housing for the site. As the adjoining development of the breakers yard has been stalled in planning since 2019, we do not consider that any development will realistically take place within 5 years.

96. We therefore decline to impose the term sought. The redevelopment break after 5 years ensures least possible loss and damage.

Interference (Issues 37, 71, 90 and 118)

97. APW seeks an Interference clause requiring OT to switch off where APW reasonably considers interference is being caused to other equipment. The sites are

Lubbards Lodge, Carn Entral, Carshalton and Blackwell Grange. There are pre-existing non interference provisions in the existing leases at Lubbards Lodge (clause 8.2-8.4 [4/145]) and Carn Entral (clause 8.2-8.4 [4/1051]). Carshalton is the subject of a third party lease to Vodafone (4/1081) as is Blackwell Grange (2/813)

98. We have been very considerably assisted by the evidence of Mark Kite who is Principal Radio Frequency Engineer for OT's parent company Cellnex. Mr Kite is not an expert witness. However he has very considerable technical knowledge in this area and we found the evidence contained in his Witness Statement and his oral evidence under cross examination by Mr Clarke to be detailed and helpful.

99. Mr Kite told us that interference was a very rare event and is not a concern from a practical point of view. We were told at the hearing that the interference tends to occur at the margins of the bandwidths allocated to users. Mr. Kite described this as akin to low level background noise that one might experience in a busy social setting, but it is rarely significant. Mr Kite explained how separation is achieved by UK cellular operators. Radio waves are a finite resource and are divided into a spectrum. The spectrum used by MNOs has been divided between the operators at an auction process. MNOs all operate at a different bandwidth which avoids any significant overlap in usage. Equipment manufacturers design within that "ecosystem". The Radio Equipment Directive 2017 ensures that equipment is sufficiently resilient. MNOs ensure interreference mitigation by following guidance contained in "Antenna Spacings between Cellular and Tetra Operators" [SB/693]. This document is commonly known as "Spec261". It has been prepared by Mobile UK formerly the Mobile Operators Association which comprises EE, O2, Vodafone, and H3G.

100. In addition to Spec261 MNO's hold spectrum licences to transmit radio waves issued by OFCOM. The radio spectrum is managed by OFCOM under section 3 of the Communications Act 2003 and the Wireless Telegraphy Act 2006. Whilst OFCOM seek to resolve interference without taking formal action it has the power to fine, revoke licences, demand a transmitter ceases operation or pursue a criminal prosecution.

101. In respect of users of the sites who are not MNOs, for example broadband providers and radio transmissions, section 8(1) of the Wireless Telegraphy Act 2006 provides:

"It is unlawful—
(a)to establish or use a wireless telegraphy station, or
(b)to instal or use wireless telegraphy apparatus,
except under and in accordance with a licence (a "wireless telegraphy licence") granted under this section by OFCOM."

Accordingly non MNOs are also subject to licensing and OFCOM supervision. The licensing exemption under section 8(5)(a) applies where stations or apparatus of are *"not likely to involve undue interference with wireless telegraphy*".

102. We find that the clause sought by APW is simply not necessary. Interference is a rare occurrence which is managed by the MNO's themselves through Spec261 and more widely by OFCOM.

Power Down (Issues 37, 90, 102, 107 and 118)

103. We have dealt with power down separately from interference switch off although both appear under the same Issues in the Schedule of Disputed Terms. We have done so because it is important not to confuse interference with health and safety issues under the International Commission for Non-Ionising Radiation Protection (ICNIRP) and Control of Electromagnetic Fields at Work Regulations 2016 (CENFAW)

104. APW seek power down provisions at Carn Entral and Carshalton which are dual mast sites and at Lubbards Lodge and Hollow Farm because of potential redevelopment. APW also seeks a power down provision at Mildenhall Drove

105. The parties have addressed provision of information under ICNIRP at Issue 9, the terms of which have been agreed between the parties. To assist in

understanding our decision on power down we set out the operative part of the wording at issue 9:

"where the Landlord has notified the Tenant that it or a third party is proposing to work at a height and within the vicinity of the Property where it is reasonably considered by the Landlord and/or the third party that anyone working in that location could be encroaching into an ICNIRP exclusion zone, the Tenant shall within a reasonable period of receipt of written request by the Landlord provide such information relating to ICNIRP exclusion zones"

106. We found the evidence of Mr Kite to be compelling. ICNIRP provides occupational reference levels to ensure that those who are at work are not exposed to harmful levels of EMF (electromagnetic fields). Occupational reference levels are used as the basis for CEMFAW safe working limits. In addition, ICNIRP contains significantly more stringent public reference levels to protect the general public.

107. Mr Kite explained the either OTs in house team or contractors to whom the work is outsourced prepare ICNIRP drawings. These are complicated 3D models showing both horizontal and vertical planes. These drawings show both "occupational exclusion zone" and "public exclusion zone".

108. The drawings are used by OT customers and third parties in a variety of ways. CEMFAW places a duty of care on employers. OT provides ICNIRP drawings to enable others to discharge their employers' duties. In addition, OT is itself an employer and complies with ICNIRP and CEMFAW in respect of those it employs on its various sites. In addition, OT provides drawings to its customers to discharge their duty to the general public under ICNIRP.

109. If a developer is undertaking works at a site, it is OTs responsibility to ensure that those works can proceed safely. Mr Kite at paragraph 31 of his Witness Statement is very clear: "*it is not the developer's responsibility to avoid our exclusion zones*". The process to be followed is that OT will obtain construction plans from the developer and create a 3D model of both occupational and public exclusion zones. OT will then consider what mitigation may be necessary to ensure

compliance. This could include modifying the height and bearing of antenna(s), reduce output of the antenna(s) or shut down.

110. In his oral evidence (Day 3 pp165-166) Mr Powell told us that his experience working with OT, with regards to ICNIRP has been positive. He has not had any problems with OT in relation to exclusion zones. Mr Powell expressed his concerns as follows:

"*My main concern with that would be if Icon began to develop towers and then the two areas of business were in competition, but needing to work together with regard to ICNIRP on areas very close to each other. As an example, if Icon need to build a tower on land adjacent to the On Tower, and require the site to be switched off for a period of time, or power down, or some of the sectors to be powered down so some of the antennae pointing in a certain direction are powered down, concern is how we would make sure that was done effectively and the partners are working together when there is the competition element in the background.*"

111. We preferred the evidence of Mr Kite to the evidence of Mr Powell. Mr Powell has received some training but has no formal qualifications and does not profess to any expertise in this area. There has been no history of problems between the parties over exclusion zones. The clause agreed between the parties at issue 9 will ensure the appropriate exchange of information as to works proposed and exclusion zones. This will ensure that OT is able to discharge its ICNIRP obligations both occupational and public and that APW will be able to effectively discharge its duties as an employer under CEMFAW.

112. We agree with Mr Kite's observation at paragraph 35 of his Witness Statement that APW is neither the best party nor qualified to police ICNIRP/CEMFAW nor to substitute its own contractual regime. Although the context is slightly different the Upper Tribunal considered ICNIRP (but not CEMFAW) in **Audley House** at [110-112]. The following observations are equally apposite to the clause sought by APW in the present references:

"*We accept, of course, that the ICNRP exclusion zones are of potential concern to the superior landlord and to any other neighbours whose buildings or activities may in the future fall within them (none do at present). But that is On Tower's responsibility. It is unnecessary to make it also the responsibility of the site provider.*" [111]

"*We take the view that On Tower's responsibilities in the agreed clause to abide by legislation and regulations, including the requirements of ICNRP, are sufficient. For the reasons already given there is no reason why APW should be obliged or entitled to check or manage that compliance or to take on responsibility for ensuring compliance. That would simply be a duplication of On Tower's own work and responsibility. APW is not under any duties to the public or to the superior landlord that require it to do this, and is not at risk of criminal liability unless the Tribunal's order puts it in a position to control what On Tower does.*" [112]

113. Safety is paramount. These parties, business rivals who resort all too often to litigation and confrontation, should not be distracted from the safety of the public and workers by the imposition of a contractual regime. The parties must comply with ICNIRP and CEMFAW which together provide a complete and detailed regime to ensure public and occupational safety.

Parking (Issues 59, 64, 99 and 116)

114. APW's concern here relates to restrictions in the superior lease preventing parking on the access route at Ampthill, Sandbach, Hollow Farm and Carshalton.

115. The Upper Tribunal considered parking on the access to the sites in **Audley House** at [142-149]. It is surprising that APW have sought to relitigate this point in light of the clear determination reached on this issue by the Upper Tribunal. The starting point is [145]:

"What is perfectly obvious is that On Tower and its customers need to have the right not only to drive up to the sites but also to stop their vehicles, to get out and enter the site, and on some occasions to load or unload. APW has no presence on the site and cannot possibly be caused any loss or damage by the grant of the rights to do so."

116. Paragraphs 1 and 1.1 of Part 1 of Schedule 1 to the draft lease mirror **Audley House** [146]:

"Accordingly we take the view that the leases should give On Tower the right to park on the "Access" (as defined in the leases) to the sites insofar as APW is able to grant that right. On Tower's wording in paragraph 1.1 of Schedule 1 Part 1 ("together with the right to park load unload and turn vehicles thereon") shall stand. Obviously in the event that any of the superior landlords takes the view that APW is not able to grant that right, On Tower will have to negotiate with, and if necessary issue a reference against, the superior landlord."

The proviso at the end of paragraph 1.1 of Part 1 of Schedule 1 incorporates the covenant not to obstruct approved in **Audley House** [147]. In addition clause 3.5.4 of the Lease contains a further covenant not to obstruct the Access. Paragraph 3 of Part 1 of Schedule 1 addresses the section 62 LPA 1925 point addressed in **Audley House** [149].

Consideration

117. Paragraph 34(11) applies the consideration provisions of paragraph 24 to renewal cases:

"(1) The amount of consideration payable by an operator to a relevant person under an agreement imposed by an order under paragraph 20 must be an amount or amounts representing the market value of the relevant person's agreement to confer or be bound by the code right (as the case may be).

(2) For this purpose the market value of a person's agreement to confer or be bound by a code right is, subject to sub-paragraph (3), the amount that, at the date the market value is assessed, a willing buyer would pay a willing seller for the agreement—

(a) in a transaction at arm's length,

(b) on the basis that the buyer and seller were acting prudently and with full knowledge of the transaction, and

(c) on the basis that the transaction was subject to the other provisions of the agreement imposed by the order under paragraph 20.

(3) The market value must be assessed on these assumptions—

(a) that the right that the transaction relates to does not relate to the provision or use of an electronic communications network;

(b) that paragraphs 16 and 17 (assignment, and upgrading and sharing) do not apply to the right or any apparatus to which it could apply;

(c) that the right in all other respects corresponds to the code right;

(d) that there is more than one site which the buyer could use for the purpose for which the buyer seeks the right."

118. The Tribunal must determine consideration on the basis of market value (as defined in paragraph 24(2)) subject to the "no network" assumption set out in paragraph 24(3)(a). One evidential consequence of the assumption is that code rents agreed in the marketplace are of no assistance. In **Pendown Farm** (EE limited and Hutchison 3G UK Limited v Stephenson [2022] UKUT 180 (LC)) the Deputy Chamber President said at [61]:

"In future, therefore, parties should avoid the expense of preparing evidence of real-world telecommunications transactions and analysis on the comparative method where the relevant assessment is being undertaken under paragraph 24 of the Code. Where it is said that a particular site has an alternative use value which is more than nominal then a comparable assessment based on transactions for that alternative use will of course be valuable. Thus, for example, where a Code agreement is sought in respect of land which is currently used as a commercial carpark, comparative evidence about the value of parking spaces will

be highly relevant but evidence of what other parties have agreed for sites with no alternative use value for lettings on Code terms are of no assistance."

119. To arrive at a market rent subject to the "no network" assumption the Upper Tribunal initially adopted a "**Hanover Capital**" approach applying, in part, the approach taken by the County Court when considering renewals of business tenancies under the Landlord and Tenant Act 1954. That approach was considered in **Maple House** (Cornerstone Telecommunications Infrastructure Ltd v London and Quadrant Housing Trust [2020] UKUT 282 (LC)) at [93 and 94]:

93. In Hanover the Court was required to determine the rent on the renewal of a lease of a telecommunications site under the Landlord and Tenant Act 1954. The rent was to be at the open market level, but disregarding the improvements carried out by the operator and its previous occupation of the site. The parties agreed that, in the open market, any negotiation over the terms on which a new site would be let would be influenced by the consideration which would be imposed by the Tribunal on a reference under paragraph 20of the Code. The Court therefore considered how the Tribunal would approach the assessment of consideration under paragraph 24 of the Code, having regard to the no network assumption. At [89], the Court was assisted by an analytical framework suggested in argument. It was proposed that the factors which would influence the hypothetical parties negotiating a new letting in the open market against the background of the Code would comprise six stages:

(a) The first stage was to assess the alternative use value of the site, which would be the rental value of its current use or of the most valuable non-network use. This would be a matter of evidence and would depend entirely on the location of the property and land values in that location. Parking spaces next to a sports ground or an airport would have a higher value than on an industrial estate.

(b) Secondly, if additional benefits would be conferred on the tenant by the letting an allowance should be made to reflect it. Transactional evidence in Hanover provided one example, the letting of part of a secure car park at the Gillingham Vehicle Testing Centre in which the tenant had been prepared to pay an additional £1,000 a year for the benefit of a manned security gate.

(c) Thirdly, if the letting would have a greater adverse effect on the willing lessor

than the alternative use on which the existing use value was based, this should also be reflected by an adjustment.

(d) …

94. We consider the first three stages of this framework are likely to be necessary components of most valuations by the Tribunal under paragraph 24. There may be cases in which the first stage provides a complete answer, because the site has some substantial alternative use value, but even then the exercise of working through each stage is likely to be a useful check."

120. In **Dale Park** the Upper Tribunal applied the Hanover Capital approach to a rural site. Its conclusions are at paragraphs 140 -142

"140. Our cumulative figure for consideration is therefore £1,200 per annum, being £100 for alternative use, £600 for benefits to the claimant and £500 for burdens upon the respondent.

141. We can test this figure firstly against the evidence of a consensual rent of £2,500 agreed for the Pack Saddle site, let on similar terms and with similar attributes to the Dale Park site, being in woodland, on a rural estate, and having an access shared with other users. We stated earlier that the level of consensual rent agreed by the claimant might feasibly be double that of a strictly no-network consideration, and our figure would fit that hypothesis.

142. Our second test is to consider how well the figure of £1,200 per annum sits alongside the suggested no-network rent of £750, derived from the evidence of numerous renewal agreements entered into by the claimant. We have explained the special circumstances of this site, being a rural site but with dwellings in close proximity, which give rise to burdens valued at £500 in the third stage of the London and Quadrant framework. Without those special circumstances the value of burdens might well be no more than a nominal £100, and a figure of £750 reflecting a nominal site value, general additional benefits and nominal burdens would be appropriate."

121. In **Pendown Farm** the Deputy Chamber President considered an unexceptional rural site [71]:

"71. There is nothing particularly unusual about this example of a rural mast site. Looked at in the round, there is no reason to depart from the figure which the Tribunal identified in On Tower v Green as the letting value, on the paragraph 24 assumptions, of an unexceptional rural site remote from any housing. I therefore determine that the rent under the new lease will be £750 a year."

122. In **Affinity Water** (EE Limited v Affinity Water Limited [2022] UKUT 8 (LC) the Upper Tribunal found that a "tone" of the market was emerging and said at [83]

" We would suggest that the pattern, or tone, is now becoming clear enough that it should rarely be necessary when presenting evidence to the Tribunal in future for parties to adopt the much more detailed Hanover Capital approach to valuation."

123. The table of figures in **Affinity Water** reached its apogee in **Audley House** (On Tower UK Limited v AP Wireless II (UK) Limited [2022] UKUT 152 (LC)) with the following updated table at [223}

Decision	**Type of property/location**	**Annual consideration**
CTIL v London and Quadrant Housing Trust	City, residential rooftop	£5,000
CTIL v Marks & Spencer plc (Lands Tribunal for Scotland)	City, department store/offices	£3,850
Affinity Water Limited	Suburban residential, water tower	£3,300
Dale Park	Rural, adjacent to housing	£1,200
CTIL v Fothringham (Lands Tribunal for Scotland)	Rural, no nearby housing	£600 (£1,500 in year of installation)

124. At paragraph 226 the Tribunal gave the following forceful guidance:

"... Absent special features (such as a valuable alternative use), it is unlikely that the Tribunal will assess consideration at a level that is not consistent with the range of values seen in the table above. The Tribunal is unlikely to be assisted by analysis of comparables, save for the value of alternative uses where that is in dispute. The Hanover approach may be useful as a cross-check in negotiations,

but the Tribunal will not be assisted by micro-analysis of the cost of benefits and burdens measured in tens of pounds which (as was also pointed out in Affinity Water at [41]) is not how negotiations work in practice."

125. In **Vache Farm** (EE Limited and Hutchison 3G UK Limited v AP Wireless II (UK) Limited [2024] UKUT 216 (LC)) the Upper Tribunal considered the evidence of APW's expert in that case, Mr Paul Williams MRICS, Head of Telecoms at Carter Jonas LLP. Mr Williams relied on "CAAV's schedule of open market agreements for small sites" to establish "a tonal value for small rural sites in non-telecommunications use which may then be used to arrive at a no-network value" [74]. The Upper Tribunal's conclusions are at [84]:

"We nevertheless give weight to Mr Williams' opinion because of his extensive and relevant experience in the rural market, and we use our own experience of that market in making this determination. We are persuaded that the Tribunal's earlier figure of £750 was too low and should be reconsidered, not only because of inflation but in the light of the evidence of non-telecommunications transactions for unexceptional rural sites. That material, heavily adjusted though it necessarily is having regard to the artificial paragraph 24 hypothesis under which the valuation must be carried out, enables us to conclude that the appropriate annual consideration for a rural mast site is £1,750."

We have followed **Vache Farm** and have adopted as our starting point consideration of £1750 p.a. for an unexceptional rural site.

The parties' valuations

126. Mr Cottage for OT adopts a figure of £955 p.a. in all 14 references. His valuation is based on the £750 Affinity Water figure for a rural site adjusted for inflation.

127. Mr Peat's valuations are as follows:

- £1500 p.a. – Newchurch, Sandbach, Hexton and Carn Entral

- £2000 p.a. – Moreton-in-Marsh
- £2,400p.a. – Mildenhall and Ayot Green
- £3,500 p.a. – Ewefields, Hollow Farm, Ampthill, Blackwell Grange and Carshalton
- £4000 p.a. – Lubbards Lodge
- £8000 p.a. – Higher Hawksland (revised at trial to £3000)

The evidence of Robyn Peat FRICS

128. We have considered Mr Peat's written report of 10th June 2024. We have also had the advantage of receiving his oral evidence at the hearing. Mr Peat has considered how Affinity Water might be updated. He agrees with Mr Cottage that it must be subject to index linked updating to reflect inflation.

129. Mr Peat's approach has been to consider four factors: (i) the "tone" of the market for small plots of land in rural or urban fringe locations (ii) existing use (iii) alternative use and (iv) hope value. All four factors intersect as overlapping circles in his valuation Venn diagram.

Tone of the market

130. Tone is a matter that has been referred to in previous cases and is very much a helpful valuation tool. Mr. Peat's characterisation of tone being one of a number of factors in his Venn diagram is not something with which the Tribunal entirely agrees. Tone can be a very useful tool in the valuation, but it is based upon transactional evidence. It is something that develops over a period of time utilising established and quality comparable evidence to build an in depth picture of values which would then fall between certain parameters in a classic the bell shaped graph. By analysing the tone and where the bulk of values lie for particular asset types this can give a strong indication of value of the asset under consideration.

131. Mr Peat proposes the following additional lines be added to Affinity Water:

- **A –Remote Rural** – Farmland, located on the edge of a field away from any other building or other developed area
- **B – Remote rural close to buildings** – Farmland close to other buildings/ house but otherwise away from developed areas.
- **C – Urban Fringe** – Farmland close to edge of a town or large village
- **D – Commercial and Industrial** – located on or at the edge of a Trading Estate or Car Park.

132. In **CTIL v Compton Beauchamp Estates Limited** [2019] UKUT 107 (LC) the Upper Tribunal at [115-116] considered comparables:

"115…transactions in respect of similar rights granted for non-telecommunications purposes – weather stations, air traffic control stations and the like. This sort of evidence has the advantage that it does not require adjustment to reflect the no-network assumption. It might therefore also be useful. Its value is likely to increase if it can be shown that the reference land may realistically be of interest to those types of user. The prospect of planning permission being forthcoming may also be a relevant consideration.
116. …We have indicated the main weaknesses we have found in the approaches taken by both valuers and we hope that the evidence presented in future references involving rural property will focus more closely on specific transactions in relevant comparable situations."

Comparables untainted by telecoms use are therefore potentially useful. At Appendix E to his report Mr Peat has produced a large number of comparables. Those comparables include, for example, "5 cheapest commercial lettings within a 3 mile radius of each site as advertised on Rightmove". Following a question from the Tribunal Mr. Peat confirmed that his comparables schedule was based on Rightmove listings and as such a number of the comparables would be merely asking prices and not transacted prices. The Tribunal is of the view that such information is of limited use in establishing an accurate market value.

Wisely Mr Peat has not attempted to micro-analyse the comparables he has relied upon. He has been candid about their usefulness. RICS Hierarchy of Evidence suggests that a valuer should use professional judgement to assess the relative importance of evidence in accordance with the following three categories:

- Category A – direct comparables
- Category B – general market data
- Category C – other sources

Mr Peat concedes that much of the information contained in his Appendix E falls squarely within Category C.

133. Mr Peat's expert valuation for each of his new "lines" is as follows:

- **A –Remote Rural** – £1500
- **B – Remote rural close to buildings** – £2400
- **C – Urban Fringe** – £3,500
- **D – Commercial and Industrial** – £4000

134. Mr Peat justifies his figure for B – £2,400 by reference to a site at Mells Green, Mells, Frome BA11 3QP [2/1897 and 2086]. This is a site for a shepherd's hut with parking in nearby yard (30 sq. m. site) let for a 6 year term at £3500 p.a. Mr Peat has reduced the figure for "line" B as there are additional burdens at Mells Green, in particular security concerns of access through a farmyard.

135. In relation to "line" C Mr Peat relies on an email from Armistead-Barnett LLP concerning negotiations with Cadent for a 90 sq. m. gas governor on the edge of a village where clients have refused to negotiate a 99 year lease for less than £25,000 [2/1896]. Mr Peat also refers to Berwick Farm Lodge, Bristol BS10 7TD [2/2086] which is a former cell site let for storage of tree surgery equipment and carpentry/furniture restoration (105 sq. m.) let for 1 year at £3000. He also relies on EV charging sites averaging £2,000 p.a. per charger.

[Although Mr Peat would not have been aware when giving his evidence the Upper Tribunal in **Vache Farm** [72] has subsequently found Berwick Farm Lodge not to be helpful.]

136. Line D is based on **Audley House** (£1,300 plus £2,200 for 4 carparking spaces =£3500). In that case £2050 was agreed for the Port Talbot (site next to a factory in an industrial area accessed through a gated yard) and £2,100 for Huntingdon (site at rear of haulage and storage yard). Mr Peat also relies on 80 St Mary's Road, Market Harborough LE16 7DX (£4,500 p.a. for a cabin in a small compound housing a signal booster station in a car park (20 sq.m.) - 15 year term) and Longfirth Road Wellington TA21 8RQ (£3000p.a. for parking area opposite petrol station adjacent to supermarket (277 sq.m.) - 6 year term) [2/2086].

Alternative Use – BNG, wind turbines, and glamping

137. In addition to updating and revising Affinity Water Mr Peat has explored realistic and viable alternative uses for each site. Mr Peat attributes an alternative use value where that use is immediately available or very quickly available within the short term. Alternative value must be viable and deliverable. Hope value to Mr Peat is an expectation of alternative use value at some time in the future. Mr Peat also contrasts alternative use with existing use. For most of the sites existing use value will, in Mr Peat's opinion, be a nominal figure based on apportioned part of agricultural land value.

138. At paragraphs 7.33 and 7.3.4 of his report Mr Peat does not attribute any particular value to BNG:

"*7.3.3 I would note that the opportunity for Biodiversity Net Gain (BNG) projects is noted in respect of 10 of the 14 sites; however, this is not something that I would attribute particular value to at the date of writing. The market for BNG sites and credits is in its infancy further to the provisions coming into effect in February*

2024, and my experience of the market at present is that Developers are for the most part managing to accommodate BNG requirements within their development sites. I am aware of larger scale agreements for thirty year schemes at effective rates in the region of £50,000 per acre (£12.35/m2), but I am not sure that they translate to the present scenario.
7.3.4 How the BNG market matures, and if a demand for individual small sites establishes itself remains to be seen, and whilst I would not be comfortable placing a value on it at present, it is an example of the potential alternative uses and hope value that the parties must consider when assessing the sites."

139. In his report Mr Peat identifies a wind turbine as a potential alternative use at Higher Hawksland and values the site at £8,000 p.a. on that basis. However Mr Peat's alternative use is inconsistent with Mr Ward's witness statement at paragraph 40 [2/831]:

"At Higher Hawksland, one of the sites in these References, we obtained both planning advice and a wind speed analysis. This is a considerable investment, and it is only justified in cases where there is an active renewal process. The desktop 'wind' profile confirmed the potential was good, the pre- application feedback from Cornwall Council (2/10/23) suggested a turbine of 18-25m might receive support, we commissioned Infinite Renewables Ltd to produce a Feasibility Study for a 22m and a 15m turbine but it turns out for this particular site, after all that time and money had been spent, it is not viable."

Mr Ward also indicates that wind turbine was put forward as an alternative use before the Upper Tribunal in **Pendown Farm**. However *"the proposal was thwarted by proposed highway development on the A34. Following the intended road works, the A34 dual carriageway would have passed much more closely to the proposed wind turbine site. The proposed turbine site would no longer have been in the middle of a field, but would have been so close to the new road that the 'topple distance' for the turbine structure would not have been sufficient, and this meant that the wind proposal on which we had been working was no longer practical or viable."* (see para. 41 of Mr Ward's witness statement.)

140. Accordingly Mr Peat revised his opinion at trial and instead suggests that glamping is the most realistic and valuable alternative use at Higher Hawksland:

" *Based upon rental figures such as those from Unplugged for a serviced glamping location at £3,500 per annum, and nightly rates in the area ranging from £20-£30 for a basic pitch up to £50 - £115/night for Glamping I believe that £3,000 per annum would be a reasonable estimate of the value as a camping/glamping site with the information available at the date of writing*" [2/1989]

141. Mr Peat identifies glamping as an alternative use at a number of sites. Ms Cox has confirmed that General Permitted Development rights are available for 60 days within any calendar year in addition to potential planning rights for a permanent site.

142. Mr Ward was asked about glamping. APW have not acquired a site for glamping and it is not part of its strategy to acquire sites for such use. It appears that there have been discussions within APW by Mr Ward's colleagues who have had some discussions with providers. It would appear that APW would approach a glamping company to run the site rather than APW doing it itself. Mr Ward was unable to produce any documentation in connection with the exploration of glamping as a realistic and viable alternative use. Mr Ward accepted that APW was in the early stages of looking at glamping as an alternative use and that it was lower down APW's list than renewable energy sources.

143. Mr Peat was also asked about glamping. Mr Peat discussed the business model of a company called Unplugged who rent sites from landowners. Unplugged bear costs e.g. of planning before paying a rent to the landowner. There may be significant capital costs involved for example in the provision of fresh water/mains water and disposal of waste. Some sites operate completely off grid where water is provided by bowser and waste by way of composting toilets. Telecoms sites have the advantage that electricity supply will already be present. There are also the costs of cleaning the site and dealing with users to be considered as well as marketing and accounting costs which could be substantial. Sites are very often remote and access/ parking is important in the absence of reasonably convenient

railway connection. Mr Peat suggested that a site provider could add panache by laying on its own taxi.

144. Use for a high-end glamping site was considered by Lands Tribunal for Scotland in **EE Ltd v Service** LTS/ECC/2022/0006 at [139]

"Again there is no supporting evidence of either demand or as to the planning position, except that Mr Sladdin thought the planners would regard a glamping pod as a house by another name and refuse consent on that basis. Moreover, the expense of creating a new road and running in services would be considerable. Over and above that there is the fact that any development would have to be a small one, probably comprising a single unit and that itself, we would have thought, makes this an unattractive proposition for a developer."

145. We are not persuaded that glamping is a realistic or viable alternative use. APW clearly has no business interest in running glamping itself. No business plan has been produced and no consideration given to capital and running costs. APW has failed to demonstrate any degree of viability. Neither has it produced any evidence of demand at any of the sites either from those in the market who may want to acquire such sites or from end users.

Hope Value

146. Mr Peat has considered what "hope value" may be attributed to any of the sites. We have been referred to RICS Professional Standard 1st ed. 2019 which provides in the Glossary:

Hope Value: *An element of market value in excess of the existing use value, reflecting the prospect of some more valuable use.*

147. Hope value was considered by the Lands Tribunal for Scotland in **EE Ltd v Service** LTS/ECC/2022/0006 at [130-134]

"…before we consider each of the suggested alternative uses, we comment on the general issue of potential development land value, or "hope value" as it is sometimes called.

131. Land which has detailed planning consent for a particular use may enjoy the full market value for that use, assuming all other due diligence for that use has been satisfactorily completed. Where there is uncertainty over securing full planning permission the value of the land is usually discounted to reflect the risk that development as envisaged may not be possible, or that it may be subject to conditions which incur abnormal development expenditure.

132. Where the risks are minor they will have limited impact on land value; where they are more significant the value is likely to be anchored more closely to existing use value. For these reasons unconsented development land more usually transacts on a conditional basis where the purchaser limits risk via a modest initial sum and a top-up when planning permission is achieved which in turn achieves the development land value for the seller. In practice, this means that land with development potential will not see that value realised until it has largely been de-risked and there is strong confidence in the development as anticipated by the purchaser. But here we have to assume an unconditional deal between willing parties, be it a letting or a sale, acting prudently, at the relevant date.

133. The other critical valuation factor is demand for the proposed use. A planning consent without demand for that use may well have as little value as demand without consent.

134. The respondent appears to believe that the mere existence of potential, however speculative, must translate into a higher land value than for the existing, or unconsented use. We respectfully disagree. In this case we have not been provided with detailed evidence to enable a proper assessment of the likelihood of planning permission being granted, nor have we received any evidence of demand other than from the respondent himself."

148. Mr Peat indicated that the test for hope value is whether or not it is significant enough to affect value – is it strong enough? Is it present enough and is it foreseeable? Hope value is essentially a subjective valuation exercise. It is heavily dependent on the expertise of the valuer. The future prospect must be reasonably foreseeable and must also be financially viable.

The Tribunal agrees with Mr. Peat that in a theoretical sense all land has a degree of hope of value for some type of future development. However, the timescale over which any potential development could be realized is key to enabling any value to be attached. Over a period of time it is inevitable that circumstances will change and potentials may arise but if these are two distant or fanciful it is not possible to attribute value. It is the Tribunal's view that considerable care needs to be taken in attaching any hope of value to a piece of land unless that can be well anchored in terms of feasibility and timescale. The Tribunal agrees with Mr. Peat that hope value can fluctuate depending upon the circumstances. For example, there may be a government policy that encourages a certain type of development which could underpin a hope value but should that policy change that hope value would diminish. As such if hope value exists and can be reasonably attached to a piece of land the value attributable to the same can increase or reduce. This adds to the nebulous nature of hope of value and the difficulty in quantification.

Benefits and Burdens

149. At paragraph 8.7 [2/1902] of his report Mr Peat indicates that in respect of benefits and burdens "*Therefore, where I have identified additional benefits or burdens, as in Dale Park, the allowances for these are by necessity nominal sums*". Both benefits and burdens are, of course, steps 2 and 3 in the **Hanover Capital** approach. They are also essential to the approach in **Dale Park** where absent special circumstances a figure of £750 reflecting a nominal site value would have been appropriate. **Dale Park** features as "rural adjacent to housing" as a line in Affinity Water . We find that in the absence of any identifiable burdens Mr Peat has not persuaded us that his line B – Remote rural close to buildings is an appropriate basis on which to value the sites before us.

Paragraph 34(13)(d) – consideration under existing code agreement

150. Higher Hawksland and Carn Entral are the two sites to which paragraph 34(13)(d) of the Code applies as they are both agreements which came into force after 28th December 2017. Accordingly we are required to have regard to "*the amount of consideration payable by the operator to the site provider under the existing code agreement*."

151. Higher Hawksland is an existing code agreement contained in a Lease by Reference dated 6th July 2018 and made between Philip Barber (1) and Arqiva Services Limited (2) for a term ending on 1st February 2020 at a rent of £5,200 p.a. [4/621]. This Lease contains recitals G and H [4/624]:

"(G) It is acknowledged that the Landlord and the Tenant negotiated and agreed its terms prior to the Code (and as may be amended supplemented or replaced from time to time) coming into force.
(H) Notwithstanding that the Code presents a new valuation mechanism for determining consideration under Part 4 of the legislation the parties have agreed in good faith to complete this lease on the basis of the rents and terms of this lease negotiated and agreed prior to the Code coming into force."

152. Carn Entral is a Lease by Reference and made between APW(1) and Arqiva Limited (2) dated 26th November 2018 reserving a rent of £4702.71 during the 5 year term [4/1027]. Recital G states:

"Notwithstanding that the Code presents a new valuation mechanism for determining consideration under Part 4 of that legislation the parties have agreed in good faith to complete this Lease …" [4/1032]

153. Mr Peat has not taken the existing rent into account in respect for either site as those rents were agreed without prejudice to the changes introduced by the new Code and merely preserved the existing position. It was not suggested by Mr

Watkin on behalf of APW that the Tribunal should have regard to the existing rent at either Carn Entral or Higher Hawksland.

Conclusions - Newchurch, Sandbach, Hexton and Carn Entral

154. Mr Peat attributes a value of £1,500 p.a. for these sites under his category A – remote rural. Following the decision of the Upper Tribunal in **Vache Farm** we adopt a figure of £1750 for all 4 sites. That is a piece of unlooked for good fortune for Mr Peat and APW. All parties were aware of **Vache Farm** at the hearing and consideration was given as to the need for further submissions, revised reports or even the possibility of a further hearing. We have decided that it would be disproportionate to seek further submissions having regard to the overriding objective in FTT Rule 3. The difference between Mr Peat's figure and **Vache Farm** is modest. The guidance given by the Upper Tribunal is clear and unequivocal. Further submissions/ hearing would serve no useful purpose.

Conclusions – Moreton-in-Marsh and Higher Hawksland

155. Moreton-in-March is a small site situated in woodland. Mr Peat's starting point is A – remote rural - £1500 [2/1991-2001]. Mr Peat discounts any alternative use for temporary buildings/use or BNG. However he values the site at £2000 p.a. based on 60 days temporary use for a "bell tent". Mr Peat has been cautious as to his valuation as this is an "off grid site". Mr Peat also notes that such use would not be permitted under APW's existing lease.

156. As discussed under "Glamping" above we are not persuaded that APW has established any realistic viability for a "bell tent" in this "off grid" location. The site is very small (114 sq. m.). No evidence of demand has been adduced beyond the general statement that the site is "in an area popular with tourists". We do not therefore attribute any alternative use value to this site and following **Vache Farm** determine consideration at £1750 p.a.

157. Higher Hawksland is an even smaller site (86 sq.m.). It is also in an area very popular with tourists and there is a campsite nearby. Mr Peat discounts BNG and

temporary buildings/use. For the reasons given above a wind turbine is not viable. Mr Peat's starting point is A – remote rural [2/1981-1990]. Mr Peat's revised valuation at trial was £3,000 - £3,500 based on glamping. Mr Peat argues that there is demand as evidenced by the nearby campsite and the proximity of the Padstow. We are not satisfied that APW have established a realistic or viable alternative use. The site is very small and no market research (even on a rudimentary basis) has been produced in evidence. No evidence as to capital costs or viability has been produced. Mr Peat himself concedes in his report that "*some road noise, and the nature of the access would limit the market*" [2/1987]. We are not satisfied as to realistic or viable alternative use and adopt **Vache Farm** figure for rural site of £1750 p.a.

Conclusions – Ayot Green and Mildenhall

158. At Ayot Green [2/2013-2023] Mr Peat discounts agricultural related structures, BNG, agricultural related dwelling, renewable energy, agricultural land or forestry, temporary buildings and uses. Mr Peat therefore rules out any of the alternative uses identified by Ms Cox.

159. At Mildenhall [2/2065-2074] Mr Peat discounts BNG, housing, golf course and agricultural/equestrian use put froward by Ms Cox. The site is 500m from RAF Mildenhall and glamping is not a realistic option for all but the aviation enthusiast. There is therefore no alternative use for Mildenhall.

160. Mr Peat has also considered additional benefits and burdens at both sites. His conclusion is : "*Taking into account the extent of the demise, and AP Wireless' interest I do not believe that there are any additional benefits or burdens that need to be factored into my valuation.*"

161. Mr Peat's expert opinion for both sites is that both sit within his B - remote rural close to buildings - £2400 p.a. Mr Peat supports his opinion by reference to the comparables annexed at E to his report and, in particular, for Ayot Green the sites

at Luxborough Land and Graveley Yard. Luxborough Lane, Chigwell is 1486 sq.m. let at £49,750 and is described as "self contained open site storage yard comprising of approximately 16,000 sq. ft. (1487 sq. m.) on an FRI basis" [2/2088]. Graveley Yard near Stevenage SG4 7LE is 900 sq. m. let at £45,000 and is described as "rectangular area of land from shared circulation area with electrically powered gates. Hard core surface with perimeter galvanised palisade fence benefiting from a power supply and drainage" [2/2088].

162. We do not find the comparables relied upon by Mr Peat to be of any assistance whatsoever. The large storage yards relied upon and let for £49750 and £45000 respectively are not of any assistance and do not relate to small sites in rural areas which are close to buildings.

163. Mr Peat's B – "remote rural close to buildings" appears to relate to the existing **Dale Park** "rural adjacent to housing". However there were special circumstances in **Dale Park** with dwellings in close proximity, which give rise to burdens valued at £500 in the third stage of **Hanover Capital**. However, Mr Peat has been unable to identify special circumstances or any burdens at either Ayot Green or Mildenhall. Under those circumstances both sites fall to be valued as unexceptional rural sites. We are far from persuaded that the mere fact of being "close to buildings" as posited by Mr Peat is of any significance in any of the sites before us. Following **Vache Farm** we value both at £1750 p.a.

Conclusions – Ampthill and Carshalton

164. Mr Peat places both these properties in his band C – Urban Fringe (farmland close to the edge of a town or large village) and values both at £3500 p.a. Mr Peat's valuation for Ampthill is at [2/2002-2012] and for Carshalton at [2/2075-2084].

165. The following photograph of the Ampthill site is taken from Mr Peat's report [2/2002]

166. The site is situated in farmland on the opposite side if the road to the Lockheed Martin factory. Mr Peat does not identify any burdens. The site is small and access difficult due to a ditch between the site and the road. Mr Peat is unable to identify any alternative uses and rules out agricultural related structures, small scale commercial or employment use, BNG, renewables, agricultural land and forestry, temporary uses and buildings. We are unconvinced as to Mr Peats reliance on Luxborough Land and Graveley Yard as comparables for the reasons given above.

167. In relation to planning issues we are grateful to Mr Morison for his confirmation that planning policy in rural areas encourages sustainable business in rural areas through conversion of existing buildings and construction of new buildings which are beautiful. However we accept Mr Peat's evidence that there is no alternative use for this site however "beautiful" proposals may be e.g. farm shop.

168. The site at Ampthill is not close to the edge of a town or large village. In the absence of special circumstances giving rise to burdens or any alternative use this is an unexceptional rural site. We value it at £1750 p.a. in accordance with **Vache Farm.**

169. We attach site plan and map of neighbouring uses at the site Carshalton taken from Mr Peat's report [2/2077 and 2080]:

170. The property is within Greater London and equidistant from Carshalton and Croydon. The site itself sits on the edge of pastureland. Mr Peat does not identify any specific comparables. He does not identify any burdens attached to the site. He rules out the following alternative uses: BNG, renewables, golf course, temporary buildings and uses, agricultural land and forestry. Mr Peat suggests glamping would produce a rental value of £3000 p.a. For the reasons given above we do find APW's case on glamping to be persuasive.

171. Accordingly we determine consideration for what is a semi rural site adjacent to residential/ equine/golf course within Greater London at £2000 p.a.

Conclusions – Ewefields

172. Ewefields is situated next the M40 adjacent to what will be a substantial residential development at Lighthorne Heath. Mr Peat values Ewefields as urban

fringe - £3500 [2/1942-1951]. Due to the existing poor access no alternative use is put forward and no other uses are "sufficiently close to fruition". However Mr Peat, in his expert opinion, attributes "significant hope value" to the site. A new access road will be constructed as part of the residential development connecting the site to the public highway. Ms Cox under cross examination conceded that due to very close proximity to the M40 that residential development of the site was unlikely however she felt that there were "technical solutions" would enable commercial/employment development. We were told that the "Site wide phasing strategy and programme delivery" has been discharged and that Phase 3 will start in Q1 2024 and be completed by Q2 2027.

173. We disagree with Mr Peat. As demonstrated by the photograph below [2/1944] the site is so close to the M40 that we are unable to attribute any hope value whatsoever to the site. Accordingly in the absence of any alternative use or any identified burdens the site falls to be valued as an unexceptional telecoms site in accordance with **Vache Farm** at £1750 p.a.

Conclusions - Blackwell Grange, Hollow Farm and Lubbards Lodge

174. Blackwell Grange sits on the edge of a new residential development on the outskirts of Darlington. Mr Peat's valuation is £3500 p.a. based on his C - urban fringe category [2/2034-2043]. No specific comparables or burdens have been identified. The original access has been blocked by the development. The developer will, in due course, put in place vehicular access. The site is small (40 sq. m.) and is not big enough for a residential development. Mr Peat discounts alternative use for BNG, renewables and agricultural land/ forestry. However, there is potential for storage yard and EV once the development has bedded in. Mr Peat also expresses the opinion that there is a market for amenity or garden land. In addition Mr Peat rightly points out that extinguishing existing rights or agreeing to vary rights over adjacent land can also be a potentially valuable as has happened at this site.

175. We are not persuaded that Mr Peat has produced sufficiently useful comparables to justify his band C – rural fringe. Nor has he identified any burdens that would support a **Dale Park** or **Hanover Capital** approach. However we agree with him that some hope value should be attributed to this site. It is not an unexceptional rural site as shown in the photograph [2/2037]:

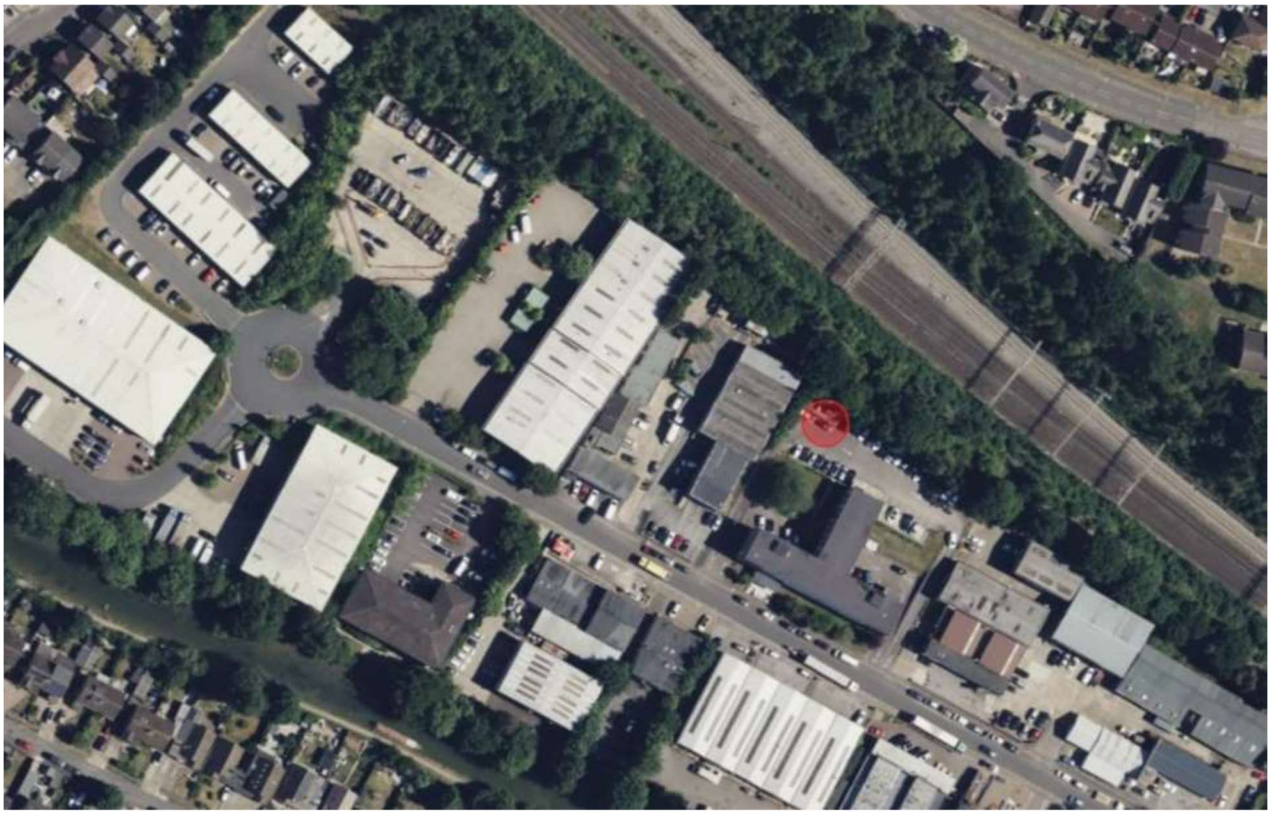
176. We find that although a very small site there is hope value to be attributed to this parcel of amenity land lying between Carmel Road South and the new residential development. A degree of site assembly will be necessary to allow the site to be used for storage/EV, amenity land or garden extension. There is an additional difficulty in that APW only has a leasehold interest and any development will require a deal to be done with the freeholder. Hope value is essentially a valuation judgement which an expert Tribunal consisting of two experienced Valuer Members is well placed to make. We therefore determine a value of £2000 p.a. for this site.

177. Mr Peat also places Hollow Farm within C – Urban fringe and values it at £3500 p.a. [2/2054-2064]. As noted above resolution by the Planning Committee to grant subject to section 106 resolution has been made in favour of a development for 161 dwellings . Once completed the mast site will be sandwiched between Brockley Wood to the north, and the new development to the south (see plan of proposed development [2/2061] – mast site to south of Brackley Wood).

178. Mr Peat discounts BNG, renewables and agricultural land and forestry. There are no burdens. Mr Peat has considered glamping but notes that this option will disappear as the development is built out. Accordingly there is no alternative use.

179. For the reasons we have just given in respect of Blackwell Grange we are not persuaded that Mr Peat has made out a sufficient case for C – urban fringe. However we agree with him that this is not an unexceptional rural site and that there is an element of hope value here. Mr Peat very fairly told us that there has not yet been any approach from a developer. However we find that once the development has bedded in there may well be parties interested in acquiring the site. Our valuation judgement is that allowing for an element of hope value that Hollow Farm should be valued at £2500 p.a.

180. Mr Peat values Lubbards Lodge at £4000 based on his D – commercial and industrial [2/1952-1961]. Mr Peat cites Audley House as an example [2/1892]



181. Lubbards Lodge is a site of an entirely different character. It is clearly not commercial or industrial as shown in the photograph below [2/1952]:

182. The mast site of 225 sq.m. sits within the larger APW site of 665 sq. m. [2/1955]

183. Mr Peat has not produced any specific comparables and has not identified any burdens. He is unable to identify any alternative use. Glamping is unlikely as the site is next to a breakers yard. Mr Peat accepts that the site is too small for a dwelling or extension to the adjacent equestrian facilities. Mr Peat rules out agricultural land and forestry, temporary buildings and use, gypsy or traveller site, renewables or BNG.

184. However we agree with Mr Peat that "*The property is in a relatively unusual position with quite different neighbouring land uses, but one which I believe would generate an expectation of a wide range of alternative uses*" [2/1958]. We interpret Mr Peat's reference to "an expectation" as meaning, in this context, hope value. There is a planning application for 120 houses on the adjoining breakers yard to the north (albeit stalled since 2019) and equestrian use to the south. The site is too small for development in isolation. However we find that this is not an unexceptional rural site. It is probably better described as "grey field" i.e. a semi rural site adjoining commercial uses. Our valuation judgement is that the rental value for this site is £2500 p.a.

Future Cases

185. We have departed from Affinity Water in respect of sites that cannot properly be categorised as unexceptional rural sites. However this Decision is not authority for additional "lines" to be added to Affinity Water. Any revision to Affinity Water is a matter for the Upper Tribunal.

Interim Arrangements

186. Section 68 of the Product Security and Telecommunications Infrastructure Act 2022 amended paragraph 35 of the Code by adding subparagraphs 2A, 2B and 4 which make provision in respect of interim arrangements:

68. Arrangements pending determination of certain applications under code

(1) Paragraph 35 of the electronic communications code (arrangements pending determination of an application under paragraph 32 or 33) is amended as follows.
(3)After sub-paragraph (2) insert—

"(2A) The operator or the site provider may apply to the court for—

(a) an order specifying the payments of consideration to be made by the operator to the site provider under the agreement relating to the existing code right until the application for an order under paragraph 32(1)(b) or 33(5) has been finally determined;
(b) an order otherwise modifying the terms of that agreement until that time.

(2B) An order under sub-paragraph (2A)(a) may provide for the order to have effect from the date of the application for the order."

(5)After sub-paragraph (3) insert—

"(4)In determining whether to make an order under sub-paragraph (2A)(b), the court must have regard to all the circumstances of the case, and in particular to—

(a)the terms of the agreement relating to the existing code right,
(b)the operator's business and technical needs,
(c)the use that the site provider is making of the land to which the agreement relates,
(d)any duties imposed on the site provider by an enactment, and
(e)the amount of consideration payable by the operator to the site provider under the agreement."

187. The Tribunal has received applications in respect of consideration (Para. 35(2A)(a)) in all 14 references. In addition applications for modification of terms

(Para, 35(2A)(b)) have been made in respect of three references – Ewefields, Ayot Green and Hollow Farm. The modification in effect amounts to removal of "payaway" provisions. The Claimant sought to file all applications by way of CE filing in the Upper Tribunal on the afternoon of 12th December 2023. However the applications were not filed by email with the FTT until 18:40. We therefore adopt 13th December 2023 as the date of application (which confusingly is OT's position, APW seemingly accepting 12th December).

Consideration

188. The Tribunal has power to backdate consideration under para. 35(2B). The Tribunal's powers are discretionary. There is no mandatory requirement to backdate consideration to the date of application or indeed at all. As helpfully conceded by Mr Watkin at trial, consideration payable under backdating (if any) will, for all references, be the same as that determined by the Tribunal under the new agreements. The period of time between date of application and trial (13th December 2023 – 1st July 2024) is relatively short and there is no need for payment to be stepped.

189. Mr Watkin's primary submission is that the Tribunal cannot make orders to "take effect" prior to the date of application. The Tribunal's jurisdiction to backdate cannot affect liability accrued prior to the date of application where, as for all these sites except Carn Entral, rent is payable in advance.

190. Mr Ward at paragraph 62 of his Witness Statement dated 16th May 2024 [1/1430] has prepared a helpful table:

- Ewefields £6991.68 annually in advance last paid 7/7/23
- Lubbards Lodge £8448.15 annually in advance last paid 9/1/24
- Hexton £8313.19 annually in advance last paid 8/8/23
- Newchurch £8317.19 quarterly in advance last paid 7/3/24
- Higher Hawksland £5200 annually in advance last paid 9/1/24
- Moreton-in-March £5138.65 annually in advance last paid 8/5/23
- Ampthill £5250 annually in advance last paid 9/4/24

- Ayot Green £36,917.17 annually in advance last paid 7/12/23
- Sandbach £11597.42 quarterly in advance last paid 7/3/24
- Blackwell Grange £10664.01 annually in advance last paid 7/6/23
- Carn Entral £4702.71 quarterly in arrears last paid 7/3/24
- Hollow Farm £5600 annually in advance last paid 7/2/24
- Mildenhall £3750 annually in advance last paid 9/10/23
- Carshalton £10439.70 annually in advance last paid 7/11/23

191. Mr Watkin referred the Tribunal to **Marks and Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd and another** [2015] UKSC 72. At [42-48] Lord Neuberger reviews the "The general law on apportionment of rent payable in advance". Notwithstanding what would appear to be the clear wording of section 2 of Apportionment Act 1870, that rents should "be considered as accruing from day to day, and shall be apportionable in respect of time accordingly" Lord Neuberger held that " *neither the common law nor statute apportions rent in advance on a time basis*" [46]

192. In response Mr Kitson relies on explanatory note 313 to section 68 of the 2002 Act:

"Such an application may seek interim changes to any of the terms of the agreement, including the financial terms. This is in contrast to the present position, which only permits such applications in relation to expired agreements (i) in respect of the consideration to be paid pending a full determination; and (ii) to be made by a site provider. The Section inserts a new sub-paragraph (4) into paragraph 35, which sets out the factors that the court will need to consider when making the order. These include the operator's business and technical needs and the site provider's use of the land."

193. We find that the wording of paragraph 35(2A)(a) to be clear and unambiguous. We must determine "payments of consideration to be made by the operator to the site provider under the agreement". There is no reference whatsoever to "liability" or "apportionment". We are not constrained by the fact that payments have already been made "in advance" or are due "in arrears". Such concepts do not appear in the

statutory wording. The draftsman does not refer to "rent". We are simply required to determine "the payments of consideration to be made". To that extent the common law position is overridden by the Code.

194. The consideration to be specified under paragraph 35(2A)(a) for all 14 sites is the consideration we have determined as payable under the new agreements. We exercise our judicial discretion under paragraph 35(2B) to provide that our order has effect from date of application – 13th December 2023

Payaway

195. The application for modification in respect of payaway relates to 3 sites. Mr Ward in his table [1/1430] provides the figures:

- Ewefields - £3284.10 payable annually in advance
- Ayot Green - £3825.49 payable annually in arrears
- Hollow Farm - £9256.69 payable within 28 days of receipt.

196. APW's case is that Paragraph 35(2B) provides for backdating to date of application only in respect of consideration under 2A(a) and not modification/payaway under 2A(b). We find the argument advanced in explanation of the drafting of paragraph 35(2B) as set out at paragraph 5 of Respondent's Reply dated 20th June 2024 to be persuasive : backdating of terms "*would be largely meaningless, since the agreement would have been performed in that period already*". We therefore agree entirely with Mr Watkin that modification/payaway under (2A)(b) cannot be backdated.

197. Mr Kitson at paragraph 142 of his Skeleton Argument dated 25th June 2024 seeks to argue that payaway falls be to deal with as consideration under 2A(a) and therefore the objection to backdating identified by Mr Watkin does not arise:

"…payaway forms part of the consideration paid for the site. Its removal therefore falls within the power under para. 35(2A)(a). Accordingly, everything said above about the interim rent applies equally to the removal of payaway."

198. The existing agreement at Ewefields is a Lease dated 30th June 2003 and made between Sarah Ann Warhurst (1) and Crown Castle UK Limited (2) [4/21]. "*Net Annual Income" means the gross annual income received by the Tenant from the Permitted Licensees for the previous year to the anniversary of the Term Commencement Date for their use or sharing of part of the Premises*". "*Supplementary Rent*" is defined as " *a sum equivalent to 30% of Net Annual income payable annually in advance on the Rent Payment Date*". Payaway at Ewefields is therefore Supplementary Rent and accordingly consideration for the purpose of paragraph 35(2A)(a).

199. The existing agreement at Hollow Farm is a Lease dated 26th January 2004 and made between Rita Margaret Wilson and Brian Stewart (1) and Crown Castle UK Limited (2) [4/387]. "*Licence Fee" means a sum equivalent to 30% of the gross fee (whether of an income or capital nature) payable to the Tenant by the relevant Permitted Licensee (which expression does not include T-Mobile) (excluding any VAT electricity fees or installation and capital costs or reimbursements payable by the relevant Permitted Licensee during that same period) payable within 28 days of receipt by the Tenant*". At clause 3.1 the Tenant covenants "*To pay the rent hereby reserved and any Licence Fees on the days and in the manner aforesaid without any deductions whatsoever and without exercising any right of setoff."* Payaway at Hollow Farm is therefore the Licence Fee, payable with the rent, and accordingly consideration for the purpose of paragraph 35(2A)(a).

200. The existing agreement at Ayot Green is a Lease dated 13th January 2003 and made between Trustees of the Will of the First Lord Brockett (1) and Crown Castle UK Limited (2) [4/948]. *"Licence fee" means a sum equivalent to 30% of the gross annual fee charged by the Tenant to the relevant Permitted Licensee (which expression does not include T Mobile) for the 12 months immediately preceding the Rent Payment Date excluding any VAT electricity fees or installation and capital costs or reimbursements payable by the relevant Permitted Licensee during that same period payable annually in arrears on the Rent Payment Date*". At clause 3.1 the Tenant covenants "*During the Term to pay the Rent on the Rent Payment Date*" and at clause 3.2 "*To notify the Landlord of and to pay any*

Licence Fee on the date and in the manner herein specified". Payaway at Ayot Green is therefore the Licence Fee and accordingly consideration for the purpose of paragraph 35(2A)(a).

201. There are no payaway provisions in any of the new agreements. Indeed paragraph 17(5) of the Code makes any condition requiring payment of money for sharing void. Accordingly no payment of consideration reflecting payaway is to be made. We exercise our judicial discretion under paragraph 35(2B) to provide that our order has effect from date of application – 13th December 2023.

202. We make no order on the application for modifying terms (paragraph 35(2A)(b)) as payaway has been removed under paragraph 35(2A)(a).

Decision

203. Pursuant to Paragraph 34(6) of the Electronic Communications Code the Tribunal orders termination of the existing code agreements for the 14 sites listed in the Appendix relating to the existing code rights and orders the Claimant and the Respondent, AP Wireless II (UK) Limited, to enter into new agreements which confer code rights on the Claimant.

204. Pursuant to Paragraph 34(10) the terms specified are those contained draft Lease as at c15:30 on 10th July 2024 and handed up to the Tribunal on 11th July 2024 as varied in accordance with FTT wording as set out in the Schedule of Disputed Terms which is annexed to this Decision.

205. Consideration payable by the Claimant to the Respondent is £1750 p.a. for all sites except for Carshalton - £2000 p.a., Blackwell Grange - £2000 p.a., Hollow Farm - £2500 p.a. and Lubbards Lodge - £2500 p.a.

206. Upon the application of the Claimant for an Order under Paragraph 35 (2A)(a) in respect of all sites the Tribunal orders that the consideration to be made by the Claimant to the Respondent under the agreements relating to the existing code rights for each of the sites from 13th December 2023 is £1750 p.a. except for

Carshalton - £2000 p.a., Blackwell Grange - £2000 p.a., Hollow Farm - £2500 p.a. and Lubbards Lodge - £2500 p.a.

207. Pursuant to Paragraph 35 (2A)(a) and for the avoidance of doubt no additional consideration shall be payable reflecting "payaway" for Ewefields, Hollow Farm or Ayot Green from 13th December 20023

208. Applications for costs under Paragraph 96 and FTT Rule 13(1)(d) and for reasonable legal and valuation expenses under Paragraphs 25 and 84 are adjourned. The Tribunal will issue Directions in due course.

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.

APPENDIX

LC – 2023 – 000321 Telecommunications site at Ewefields Farm, Chesterton, Warwick CV33 9LQ (**Ewefields**)

LC – 2023 – 000322 Land at Burlington Gardens, Hullbridge, Hockley SS5 6BD (**Lubbards Lodge**)

LC – 2023 – 000323 Land to south of Mill Lane, Hexton, Hitchin SG5 3JH (**Hexton**)

LC – 2023 – 000324 Land at Lower Lynbrook Farm, Newchurch, Hoar Cross, Burton-on-Trent DE13 8RL (**Newchurch**)

LC – 2023 – 000325 Higher Hawksland Farmhouse, St Issey, Wadebridge PL27 7RG (**Higher Hawksland**)

LC – 2023 – 000332 Manor Farm, Millbrook Road, Houghton Conquest, Bedford MK45 3JL (**Ampthill**)

LC – 2023 – 000348 Meadowley and Fields Farm, 150A and 150B Congleton Road, Sandbach CW11 4TE (**Sandbach**)

LC – 2023 – 000365 Telecommunications Site at Blackwell Grange Golf Club, Darlington DL3 8QL (**Blackwell Grange**)

LC – 2023 – 000642 Electronic Communications Station, Sezincote Woodland Plantation, Moreton-in-Marsh GL59 9AW (**Morton-in-Marsh**)

LC – 2023 – 000643 Telecommunications Mast Site, north of 4 Ayot Green, Ayot St Peter's, Welwyn AL6 9AB (**Ayot Green**)

LC – 2023 – 000697 Land at Carn Entral Farm, Brea, Camborne, Cornwall TR14 9AH (**Carn Entral**)

LC – 2023 – 000699 Land at Hollow Farm, Shuttlewood, Chesterfield S44 6NX (**Hollow Farm**)

LC – 2023 – 000700 Land to west of Mildenhall Drove, Kenny Hill, Bury St. Edmunds, Suffolk IP28 8YP (**Mildenhall**)

LC – 2023 – 000701 Land to south of Little Woodcote Lane, Carshalton, Surrey SM5 4BY (**Carshalton**)