



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

**Case Reference** : **BIR/00CN/ERO/2025/0637**

**Property** : **Crowne Plaza, 1 Kings Cross Road,  
London WC1X 9HX**

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

**Representative** : **Oliver Radley-Gardner KC  
instructed by Osborne Clarke LLP**

**Respondent  
(Site Provider)** : **Firoka (Kings Cross) Limited**

**Representative** : **Jon Wills instructed by Freeths LLP**

**Application** : **Electronic Communications Code**

**Hearing** : **23<sup>rd</sup> and 24<sup>th</sup> October 2025  
Centre City Tower, Birmingham**

**Tribunal** : **Judge D Jackson  
Mr RP Cammidge FRICS**

**Date of Decision** : **17<sup>th</sup> November 2025**

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**DECISION**

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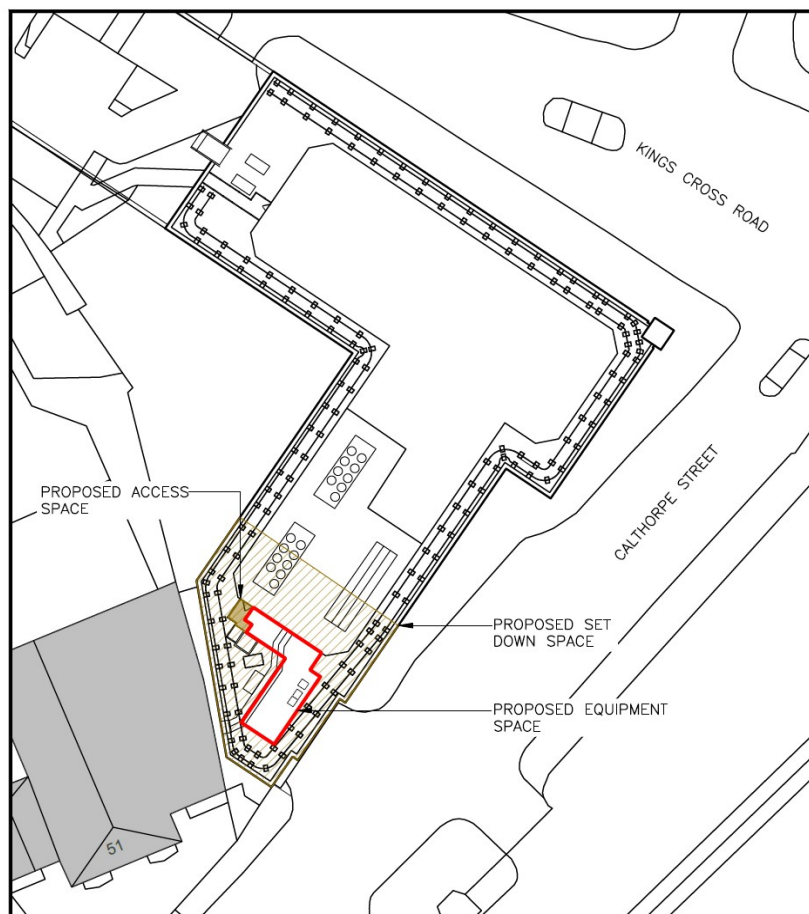
1. This reference concerns a proposed rooftop telecommunications site at an hotel located on Kings Cross Road in central London. The hotel opened in 1992. After a substantial investment in 2017 the hotel was rebranded from Holiday Inn to become a Crowne Plaza Hotel. The hotel has 10 floors and 430 bedrooms. The hotel is high occupancy with capacity for 1,364 guests and employs 90 staff. The hotel has 10 floors. A penthouse was added to the northern end of the roof just over 20 years ago.
2. The Claimant (“CTIL”) is an operator pursuant to an OFCOM direction. In July 2021 CTIL carried out a site survey (“MSV”). On 16<sup>th</sup> May 2023 CTIL submitted a Regulation 5 notification under the Electronic Communications Code (Conditions and Restrictions) Regulations 2023 to London Borough of Camden as Local Planning Authority (“LPA”) that CTIL intended to utilise permitted development rights to install electronic communications apparatus on the rooftop of the site.
3. Heads of Terms (“HOTs”) were sent to the Respondent (“Firoka”) on 17<sup>th</sup> October 2023. A Notice under Paragraph 20 of the Code requiring Firoka to agree to confer code rights in respect of the rooftop Site was served by CTIL on Firoka on 25<sup>th</sup> July 2024.
4. On 7<sup>th</sup> April 2025 Firoka made application to the LPA for planning permission to extend the plant room on the rooftop of the site. That application was granted on 20<sup>th</sup> May 2025.
5. A reference under Schedule 3A of the Communications Act 2003 was received by the Tribunal on 4<sup>th</sup> June 2025 including an application for an order imposing an agreement for rights under paragraph 20 of the Electronic Communications Code requiring the parties to enter into a new agreement for the occupation by CTIL of the rooftop Site.
6. The Reference is one to which regulation 3(2), Electronic Communications and Wireless Telegraphy Regulations 2011 applies and must be determined by 3<sup>rd</sup> December 2025. We express our thanks to both parties for the assistance they have provided to ensure that this reference can be determined within the 6 month time limit. The main issue between the parties is the Respondent’s redevelopment intention under Paragraph 21(5) of the Code. Usually that would be determined as a Preliminary Issue. However, because the 6 months’ time limit applies, it has also been necessary for the Tribunal to determine terms in dispute and consideration. To accommodate all three areas of dispute, the 2 days allocated for the hearing were utilised to allow time for opening speeches from both sides and oral evidence from the two witnesses of fact and the parties respective chartered structural engineers. Closing submissions were made in writing shortly after the hearing.
7. The hearing took place in Birmingham on 23<sup>rd</sup> and 24<sup>th</sup> October 2025. We are grateful to Oliver Radley Gardner for his Skeleton Argument on behalf of the Claimant dated 21<sup>st</sup> October 2025 and Closing Submissions dated 28<sup>th</sup> October 2025. We are also grateful to Jon Wills for his Skeleton Argument on behalf of the Respondent dated 21<sup>st</sup> October 2025 and Closing Submissions dated 28<sup>th</sup> October 2025.
8. The Tribunal received oral evidence from Helen Main (Head of Delivery and Demand at CTIL – Witness Statement dated 3<sup>rd</sup> October 2025 [135-158) and Anne Lowry

(Operations Director at Firoka – Witness Statement dated 3<sup>rd</sup> October 2025). We also heard from Mark Way (Chartered Structural Engineer – Expert Report dated 6<sup>th</sup> October 2025) on behalf of CTIL and David Smith (Chartered Structural Engineer – Expert Report dated 3<sup>rd</sup> October 2025) on behalf of Firoka. The Structural Engineering Experts have prepared a Joint Statement.

9. Under FTT Rule 19(3) expert evidence from the parties' valuation experts was given by written report only. We have also considered Expert Report of Stephen Sladdin MRICS (Report dated 2<sup>nd</sup> October 2025) on behalf of CTIL and Karen Callahan MRICS (Report dated 6<sup>th</sup> October 2025) on behalf of Firoka. We have also considered Joint Statement of Valuation Experts.
10. References to page numbers in this Decision are references to the Bundle [1-1707] and Supplemental Bundle [SB1-270]

### **CTIL's Electronic Communications Apparatus**

11. CTIL seeks rights over a roughly L-shaped space within a triangular area of the roof, in which it would install its ECA (red line area at [99]). The scheme that CTIL intends is shown in the design drawings prepared by Clarke Telecom dated 5<sup>th</sup> September 2023 [98-128]. Clarke Telecom Design Calculations dated 31<sup>st</sup> August 2023 are at [1219-1253].



12. CTIL intends to install steel grillage to support 3No. TEF equipment cabinets and a proposed 7.5m high Swann Engineering CS5S stub mast. The stub mast is to support 9No. antennas, 9No. RRU's, 6No. RFM's, 9No. combiners and 2No. dishes.
13. Helen Main is Head of Delivery and Demand at CTIL. Her Witness Statement dated 3<sup>rd</sup> October 2025 is at [135-158]. Ms Main explained that the driver behind CTIL seeking a new site was degradation of service in the area of Farringdon Road. The degradation of service has caused both capacity and coverage issues. MNO radio planners have confirmed service issues. Degradation has been caused by redevelopment in the area resulting in blocked signals causing problems for customers taking calls or streaming. This is not an NTQ (notice to quit) situation. Ms Main did not give details of coverage and capacity issues as such information is commercially sensitive and confidential to the MNOs.
14. CTIL seek set down area hatched brown on the Plan for positioning plant and machinery during construction and thereafter on an ad hoc basis to maintain, upgrade or add sharers. During construction CTIL would need access from 9-5 i.e. normal working hours. Ms Main did not consider CTIL's installation would be any noisier to hotel guests than the other building works going on in a particularly busy part of central London.
15. Ms Main explained that an intrusive MSV had not been carried out as the MSV was conducted during the pandemic. She accepted that further surveys would be necessary to assess the structure of the roof before CTIL would commence building. CTIL's most recent turn of the draft agreement makes provision for further surveys once Firoka has completed its redevelopment. If Firoka do not redevelop then CTIL would be entitled to build. Even if Firoka do redevelop CTIL would look at a surrender and regrant whereby ECA could be installed on top of the new plant room or alternatively H frames or pole mounts could be deployed. CTIL would be prepared to lift and shift its equipment to another area of the rooftop proposed by Firoka. CTIL would consider temporary scaffolding to accommodate its ECA whilst Firoka carried out its redevelopment.
16. Ms Main resisted any involvement by Firoka in design. CTIL are competent professionals, and their agent Clarke Telecoms is the Principal Designer under CDM Regulations. As hoteliers Firoka have no experience of telecoms design. As Ms Main said, "*we are competent professionals – we don't need a hotel group to tell us*". CTIL are well used to accessing roofspace and do not need to comply with Firoka's Protocols. CTIL work on many thousands of sites. There is no reason why Firoka should approve RAMS. Firoka does not have the necessary professional understanding of telecoms design and working methods to comment on RAMS. Similarly, Firoka should only be provided with occupational zones under ICNRP. The only persons who should be on the rooftop are those with rooftop training. No members of the public are allowed nor should be on the rooftop. Accordingly, only occupational and not public exclusion zones should be supplied to Firoka. In addition, Ms Main expressed concern about disclosure of public exclusion zones to persons who may not be competent to interpret such information. CTIL are specialists in respect of ICNRP and would not wish others without that level of expertise to seek to comment on exclusion zones which they may not fully

understand. The suggestion by Firoka that antennas may be directed into hotel rooms suggests a lack of understanding about the working of antennas. Any such activity by CTIL would be a breach of its OFCOM licence. As a WIP CTIL require unlimited sharing and upgrade rights in line with previous decisions of the Upper Tribunal and Government Policy. CTIL seek a 10 year term with a 5 year break clause. CTIL needs that length of term to justify its investment.

17. Ms Main said that negotiations had proceeded “*ridiculously slowly*” during the period that Paul Williams of Carter Jones was acting for Firoka. Ms Main was very clear that no mention of redevelopment had been made by Paul Williams. Ms Main said that the making of a planning application was not unique once solicitors become involved. In her opinion such behaviour was particularly prevalent in central London. Ms Main said: “*solicitors get instructed and lo and behold an application to redevelop*” and “*Not unusual for planning permission suddenly to appear as soon as a solicitor involved. Landowners do not want ECA and go to great lengths. Happens on a regular basis.*”

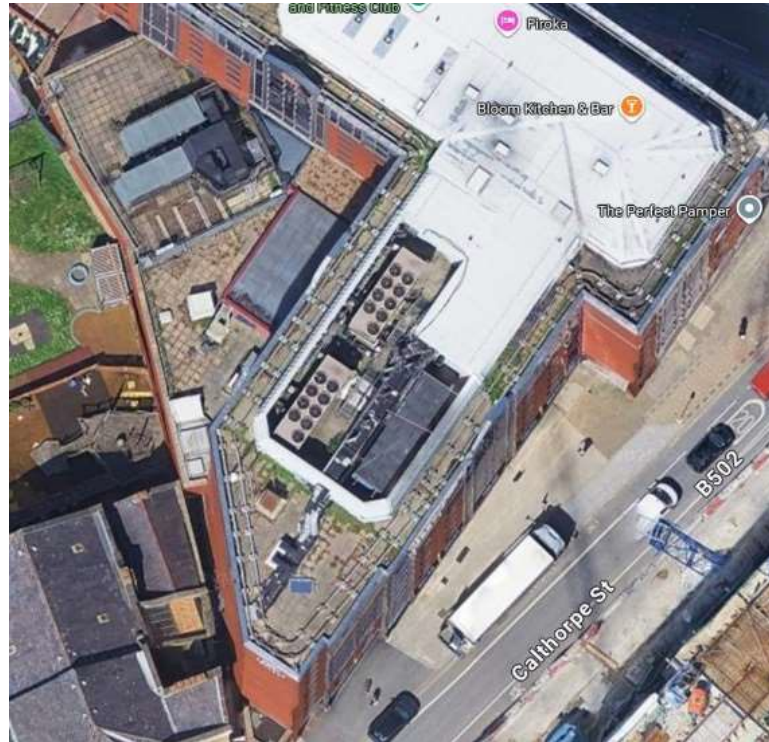
### **Firoka’s Redevelopment Intention**

18. Anne Lowry is Group Operations Director at Firoka. She has worked for Firoka for 37 years. Her Witness Statement dated 3<sup>rd</sup> October 2025 is at [219-1012].
19. Heating and cooling the 430 bedrooms at the hotel is supplied by a “4 pipe system”. The fan coil unit in each of the bedrooms has 2 pipes for cooling and 2 pipes for heating. Cooling is provided by way of chilled water distribution from the roof top chiller unit. Heating is provided by way of gas fired boilers which were replaced in 2019.
20. The existing roof top main chiller plant, the fan coil units and the pipework were installed circa 1992. The chillers were replaced 20 years ago. The fan coil units and the pipework is 35 years old. All now need replacing.
21. The hotel started receiving complaints from guests in 2022. Examples of complaints, for the period 2022-2025, can be found at [1344-1349] including complaints made on-line and on Trip Advisor [1393-1414]. The hotel’s own log of complaints is at [1350-1392].
22. The hotel operates under IHG’s\* Crowne Plaza franchise. IHG’s Technical Handbook for Brand Safety, Engineering and Acoustics sets out IHG’s objectives, standards and specifications for heating, ventilation and air conditioning. At paragraph 50 of her Witness Statement Ms Lowry sets out Firoka’s concerns should it be prevented from replacing its air conditioning system [231]:

*“If we are prevented from replacing the System, we will be in breach of the Crowne Plaza Brand Standards as the Crowne Plaza brand must provide air conditioning, and we would be at risk of our franchise agreement being removed.”*

\*Intercontinental Hotels Group

23. The rooftop is very congested. The rooftop houses existing air-conditioning plant and equipment, emergency generator, air handling units, ducting, boilers, pumps, lift plant room and electrical equipment. There are also access hatches and ventilation ducts. Firoka therefore only have a very small area available to improve heating, fit solar panels or retrofit air conditioning to future proof the hotel. The available area is 57.8 sq.m. In addition, a window cleaning and maintenance rail system (“BMU”) runs round the entire building.



24. Firoka initially decided to try to repair the two main rooftop chillers using Johnson Controls who hold the service contract for the hotel [1481-1483]. Total costs incurred were £31,711 plus VAT. In 2023 Firoka approached its M&E contractors Ridge and Partners LLP (“Ridge”) to install hot and cold water main isolation valves in each corridor to enable local repairs to be carried out. Installation of the isolation valves was carried out by MSW Technical Services at a cost of £23,625 [1417-1425]. In January 2024 a water filtration system was installed by Fox HVAC to improve pipework condition at a further cost of £18,082 [1415-1416].
25. Following installation of main isolation valves Firoka commenced local repairs. However, Firoka soon became aware of problems with actuators in the bedroom fan coil units as well as corrosion in the isolation valves supplying the units in the individual bedrooms. At that stage air conditioning engineers were unwilling to proceed further due to the age and corrosion of valves and pipework and risk of flooding.
26. Ridge prepared a “Bedroom Heating and Cooling Review” on 19<sup>th</sup> December 2024 [1426-1440]. Ridge identified 3 options [1437-1439]:

*Option 1 – Repair of Existing System; Replace existing four port control valves, actuators, controller, and individual isolation valves throughout bedrooms.*

*Option 2 – Replacement of Fan Coil Units and Associated System Components; Replace fan coil units, control systems, control valves, actuators, local pipework from main distribution in corridor, and room isolation valves. Retain existing central plant.*

*Option 3 – Full Replacement of Heating and Cooling Systems serving Bedrooms;*

27. Under “Recommendations and Next Steps” [1440] Ridge recommended Option 2:

*“To limit operational disruption, and capital expenditure, as well as utilise the existing central heating and chilled water plant, whilst eliminating the current issues within the bedrooms, our recommendation is to proceed with option 2 - Replacement of Fan Coil Units and Associated System Components.”*

*Suggested next steps prior to Undertaking works:*

- 1. Undertake further water sampling as outlined above.*
- 2. Undertake testing on pipework by removing sections of the existing system and sending to a lab for metallurgical testing to determine internal condition.*
- 3. Once a decision has been made on how to proceed, a RIBA stage 2 feasibility study, or RIBA stage 3 design should be undertaken (depending on option selected).*

28. Firoka accepted Ridge’s recommendation and proceeded with Option (2) starting with laboratory testing of a sample of the pipework. In May 2025 Adcock Refrigeration carried out the removal of pipework for testing [1441-1442]. AMS Limited carried out testing and reported on 2<sup>nd</sup> June 2024 [1446-1476]. AMS concluded [1454]:

*The metallurgical evidence indicates that the existing iron pipework in both the heating and chilled water systems has undergone significant localized internal corrosion.*

29. Firoka also considered Ridge’s Option (3) - Replacement of all heating and cooling systems serving bedrooms with a full or hybrid VRF system. Ridge had advised that one of the limitations was “Requires suitable external plant space to be provided for the siting of new external VRF units” [1439]. Firoka were therefore aware when Ridge reported in December 2024 that it would need to find suitable roof space. Accordingly, Denner Ellis Boddington (“DEB”), Chartered Architects, were engaged and a planning application was made on 7th April 2025 [481- 510]. Full planning permission was granted by the LPA on 20<sup>th</sup> May 2025 [1139-1343]:

*Proposal: Extension to plant room on roof level.*

*Informative: Reasons for granting permission.*

*Planning permission is sought for an extension to the existing plant room at roof level. The proposal seeks to accommodate additional plant equipment required to support the hotel’s operational and energy efficiency needs. The extension will be*

*modest in scale, measuring approximately 3 metres in height above the flat roof level and 4.3 metres in depth, and will sit in line with the existing built form on the roof, utilising high-quality materials to integrate sensitively with the host building.*

30. Following planning approval Firoka obtained a quotation, dated 14<sup>th</sup> June 2025, to build the plant room extension from Gravetex in the sum of £72,850 [1477-1480] and a structural engineer was appointed to confirm plant room extension, design and loadings.
31. At paragraphs 38 and 39 of her witness statement [228] Ms Lowry explains that Firoka took further advice from Ian Mann (IHG's Chief Engineer), who was dealing with a similar problem at another IHG hotel, during an email exchange and Teams meeting in late May 2025 [470-471]. Ian Mann recommended that Firoka speak to Beechfield Consulting Engineers ("Beechfield"). Beechfield provided VRF Fee Proposal dated 4<sup>th</sup> August 2025 [1561-1564], Airconditioning M&E Fee Proposal dated 18<sup>th</sup> August 2025 [1565-1570] and Engineers Narrative [1573-1570].

Beechfield made the following recommendations:

*"The existing chilled water/LPHW heating pipework and main chiller plant are at risk of imminent failure and major disruption to the hotel, so the phased replacement will be actioned as a matter of urgency"* [1573]

The "Proposed replacement works" suggested by Beechfield were:

*"To ensure the avoidance of catastrophic failure and closure of the hotel, the owner has (via a recommendation from IHG), appointed Beechfield Consulting Engineers to commence the design of replacement VRF heat pump systems to replace the failing chiller plant and infrastructure pipework. Initially the VRF heat pump systems shall replace the guestroom 4 pipe fan coil units. And then subsequently the main air handling unit heating and cooling coils, thus enabling the hotel to remain open and trading throughout the proposed works."* [1574]

*"Initial calculations detail a requirement for 36No. external condenser units for the guestroom heating and cooling system replacement only. Each proposed external condenser has a floor plate of 1200mm (L) x 800mm (W) x 1830mm (H), and each unit requires minimum access requirements prescribed by the manufacturer. The only feasible location for the proposed condenser units is the new corner plant extension area, and also the area housing the current redundant standby generator, which will need to be stripped out and removed to house the condenser units."* [479]

32. Ridge's Option (3) together with Beechfield's proposal was considered at a Board Meeting on 25<sup>th</sup> September 2025 [1622 -1624]. Item 3 on the agenda was "Proposal from Beechfield – Scope and Fees" [1623]:

*Proposed Scope of Work:*

*Stage One – Feasibility Study*

*Assessment of existing infrastructure phased planning strategy, and high-level options appraisal.*

Cost: £5,750

*Stage Two – Design Stage*

*Detailed design and specification phase, including mechanical and electrical drawings, equipment layouts, and preparation for tender.*

Cost: £102,900

*Stage Three – Construction Stage Support*

*Project support during physical works including phased floor-by-floor implementation, contractor liaison, and commissioning oversight.*

Cost: £28,375

*Total Proposed Fees (All Stages): £137,025*

33. The Board resolved [1624]:

*“It was resolved that Beechfields be appointed to undertake Stage 1 - the feasibility study, as per their quote at a cost of £5,750, and that Ms Lowry be authorised to instruct Beechfields accordingly. The Board also notes and accepts the further already negotiated projected fee costs for Stage Two (£102,900) and Stage Three (£28,375) and agrees in principle to proceed with these stages on receipt and review of the feasibility study.*

*It is acknowledged that despite all the efforts to repair the failed air conditioning equipment already, we have come to the end of the options available to us and now appreciate and have been advised that the only solution is for major investment, especially in view of the negative impact the failing air conditioning is having on guest satisfaction. To protect the business, the board have agreed and committed to carry out the work required and recommended by Beechfields, to resolve the issues by replacing the Airconditioning equipment and carry out the installation of the plant room extension granted under reference 2025/1535/P, after seeking the best possible advice, design, quotes and program, as well as taking the logistical operational challenges into consideration to keep the hotel open.”*

34. Beechfield produced “Hotel Bedroom VRF Feasibility Study” on 10<sup>th</sup> October 2025 [SB242-267]. The feasibility study looked at replacement of the existing 4 pipe chiller system with a new 3 pipe VRF heat recovery heat pump system. The benefits of the VRF system are that it’s flexibility to allow the hotel to systematically replace the existing chilled water infrastructure on a floor by floor basis to minimise disruption and reduce the hotel’s carbon footprint. The commitment of the hotel and IHG is to be free of gas [246]. Beechfield looked at both Toshiba and Daikin systems [247] and these both seem compatible with corridor ceiling voids, although in a worst case scenario ceilings may need to be dropped slightly. The number of systems required for 430 bedrooms is [248]:

- 39 smaller condensers at roof level (maximum 12 bedrooms per system)
- 31 larger condensers at roof level (maximum 15 bedrooms per system)



35. Beechfield sets out timelines and budget costs at [SB250]:

***Timelines for the Three Phases of works (estimated):***

*Phase One – The initial proposals are to replace the bedroom 4 pipe fan coil units on a system-by system basis with an average of 11-12 rooms per system. The total programme to replace the bedroom 4 pipe fan coils units is estimated at 98 weeks (24.5 months).*

*Phase Two – Phase Two design works will take an estimated 18 weeks to complete (4.5 months).*

*Phase 3 Works – Replacement of the existing gas fired hot water systems and replacement with new air to water heat pump systems these works will take an estimated total of 42 weeks to complete (10.5 months). [SB250]*

***Budget Costs***

*“The budget costs to install a 3-pipe, VRF heat pump system to all 430 bedrooms is estimated at circa £5,100 per bedroom (£2,193,900), plus builders works costs.” [SB250]*

36. Ms Lowry explained in her evidence that, as the feasibility study at phase 1 had now been received, Firoka were moving on to phase 2 design works. Ms Lowry explained that the VRF units had to go on the roof. Firoka would adopt a phased approach. It would not be possible to do 430 bedrooms at once and the plan was to take 11-15 bedrooms at a time. This would mean that the load on the existing chillers would be reduced gradually. Once all bedrooms had been done the existing chillers would serve just the public areas and meeting rooms. Overhaul of public areas would be a separate project as would the final piece of work – replacement of the boilers.

37. Ms Lowry was candid that if Firoka had time and resources it would like to carry out refurbishment at the same time as replacing the air conditioning system. However, as the air conditioning project is so far advanced Ms Lowry felt that there was little chance of any refurbishment project “catching up”. Generally, hotels carry out a major refurbishment every 7-10 years. The last refurbishment was in 2017, but the cycle has been delayed due to the two year closure of the hotel during the pandemic. For that reason, Firoka has not asked Beechfield to budget for refurbishment which will probably take place “*later on down the line.*”
38. Ms Lowry accepted that Firoka do not have experience of health and safety in respect of telecoms equipment. Firoka has general health and safety policies applicable to the hotels. Ms Lowry repeated that Firoka have no experience of how to adapt to having a mast on the roof of the hotel. Firoka is worried about exclusion zones and radiation.
39. Ms Lowry accepted that Paul Williams would not have been aware of Firoka’s redevelopment intentions. Paul Williams introduced Firoka to its present solicitors in 2024 which was about the point in time when Firoka realised that it would have to spend some money on its air conditioning system.
40. On 20th October 2025 Ms Lowry on behalf of Firoka gave the following written Undertaking to the FTT [SB268]:

*“Following its board resolution of 25 September 2025 in relation to the Crowne Plaza Hotel, Kings Cross Road, London, WC1X 9HX, FIROKA (KINGS CROSS) LIMITED hereby undertakes to the First-tier Tribunal that if case number: BIR/00CN/ERO/2025/0637 concludes with no Agreement being conferred on the Claimant under paragraph 20 of the Electronic Communications Code, it will undertake the development authorised by the planning permission with reference 2025/1535/P (granted by the London Borough of Camden), and will commence doing so within 9 months of the decision in case number: BIR/00CN/ERO/2025/0637 (or if the Claimant were to discontinue its Application within that case, Firoka (Kings Cross) Limited would commence within 9 months of such discontinuance).”*

41. At the outset of her evidence Ms Lowry was asked by Mr Wills about the Undertaking she had given on behalf of Firoka. Ms Lowry confirmed that she understood the powers of the Tribunal to transfer the reference to the Upper Tribunal for enforcement of the Undertaking and that the Upper Tribunal has all the powers of the High Court. Ms Lowry confirmed that she was content to give her Undertaking on behalf of Firoka on that basis.
42. Mr Radley-Gardner cross examined Ms Lowry on her Undertaking. The Undertaking does not refer to installing the VRF units on the roof. Ms Lowry explained that her Undertaking had been drafted on the basis of the planning permission that had been granted and she felt that was sufficient. In respect of commencement within 9 months Ms Lowry said that with the onset of winter she was concerned about contractors’ ability to work on the rooftop. The Undertaking contains no commitment to complete the redevelopment. Ms Lowry explained that she did not make such a commitment because she was concerned about availability of contractors, materials and also the weather.

## Structural Engineering Experts

43. Joint Statement [SB203-237] deals with four matters:

- (1) Building Records and Design.
- (2) Plant screen
- (3) VRF Units
- (4) Telecoms equipment

### *Building Records and Design*

44. Structural drawings and calculations for the original design are not available.
45. In the expert opinion of Mr Way (Stantec) for the Claimant, there is a continuous flat slab construction of the roof. Mr Way has taken that view because it is consistent with regular spacing of columns, at 5m-9m, as shown on drawings that have been made available to him. Mr Way explained in his evidence that a flat slab is likely to have been used because it is the most efficient method in terms of preparing moulds and pouring the concrete. It is also particularly popular in hotel construction. A flat soffit generally indicates a flat slab construction.
46. Mr Smith (DSA) for the Respondent has changed his opinion following his site visit at which he opened up the underside of the slab in rooms 848 and 850 allowing him to inspect the top side of the roof slab in the proposed area of the tower [SB204]. Following opening up works Mr Smith observed small downstand above the top floor windows and a parapet upstand around the perimeter of the roof slab in concrete. Internally Mr Smith observed a continuous beam. He did not see any cross beams that would indicate a two way spanning slab. Mr Smith's revised expert opinion is that *"this roof slab was designed to span between the perimeter edge beam and the central spine beams which run longitudinally through the hotel on to the columns"*.
47. Mr Way has carried out further calculation based on the DSA approach which incorporate a spreader beam which shows that the slab could support the proposed CTIL tower and Telecoms equipment. However, the proposal of a spreader beam is subject to surveys to confirm buildup, member thickness and quantity of rebar in all supporting members.
48. Mr Smith has refined his calculations to allow fixity of the roof slab between the perimeter edge beam and the central spine beams [SB205]. Those reworked calculations confirm, in Mr Smith's expert opinion, that the roof slab will support Firoka's proposed redevelopment without the need for further surveys.
49. We prefer Mr Smith's opinion. We do so because his opinion is based on site inspection following opening up works. It is also to Mr Smith's professional credit that he is prepared to change and refine his initial hypothesis when faced with further evidence. We therefore adopt Mr Smith's findings as to design. We further find that no further surveys are necessary in respect of Firoka's proposed redevelopment.

### *Plant screen*

50. The plant screen (acoustic louvre screens to hide air conditioning equipment which reduce noise and allow air flow) clashes with the BMU track (Building Maintenance Unit situated at roof level is mechanical equipment suspended from the roof to allow for cleaning and maintenance of windows and façade) and other items including pipes, cables and roof opening. However, we accept Mr Smith's expert opinion that alignment of the plant screen can be designed to avoid clashes.
51. CTIL's proposed tower and equipment clashes with the plant screen. Mr Way suggests that it is possible to design around those clashes. We agree. Mr Way impressed us with his problem solving and ability to work around difficulties to make sure that the site works. However, CTIL's suggestion that Firoka could modify its plans to accommodate ECA fails for the reason set out in **S Franses v Cavendish Hotel (London) Limited** [2018] UKSC 62 ("Franses") at [15]:

*"As Baroness Hale pointed out in Majorstake Ltd v Curtis [2008] AC 787, paras 34-35, it is clear that for the purposes of section 30(1)(f) of the Act of 1954 it is for the landlord to decide what works he wishes to carry out and where. It follows that if his intention is genuine, it cannot matter whether it is reasonable, or whether reasonable changes to the scheme would make it consistent with the tenant's continued possession of the demised premises: see Decca Navigator Co Ltd v Greater London Council [1974] 1 WLR 748; Blackburn v Hussain [1988] 1 EGLR 77, 79 (Taylor LJ)."*

Accordingly, whilst a work around is entirely possible Firoka cannot be compelled to cooperate by revising its design.

52. For the reasons given under (1) Design we accept Mr Smith's calculations that the slab will adequately support the plant screen loadings without strengthening.

### *VRF units*

53. It is agreed that VRF units (Variable Refrigerant Flow units – part of the air conditioning system) will clash with pipes cable and a PV panel (Photovoltaics – solar panel). However, we find that Firoka can easily remove, replace or adjust its design to remove these clashes.
54. The proposed VRF units cannot coexist with CTIL's proposed tower and equipment. Mr Way's practical suggestion that *"the designs could both be re-designed to be compatible and co-exist"* is not permissible for the reasons given in **Franses**.
55. Both experts have considered the adequacy of the slab to support the VRF unit forces. Mr Way suggests that the VRF units will add 4.8 tonnes of load. Mr Smith proposes the removal of gravel and paving slabs from the roof. His calculations "Roof Slab: without Tower" [SB225] show a dead weight of 12 kN/m. We accept Mr Smith's explanation that this equates to 6.72 tonnes. Accordingly, we find that the weight of the VRF units is less than the weight of the gravel and paving slabs to be removed from the roof. We accept Mr Smith's evidence that as there is therefore no increase in loading and no signs of distress in the slab there is no need for further surveys.

56. The experts are agreed that CTIL's proposed tower and telecoms equipment clashes with the proposed plant screen and VRF units. Mr Way's practical suggestion that "*both designs could be amended so that the equipment could co-exist*" is not permissible.

#### *Telecoms equipment*

57. Both experts are agreed that further intrusive surveys are required to confirm the adequacy of the slab to support the telecoms equipment. Mr Way helpfully indicates that once the results of such surveys are to hand CTIL could modify its design to spread the load and has exhibited revised calculations in support attached in Appendix 2 to the Joint Statement.

#### **Redevelopment – Paragraph 21(5)**

58. Paragraph 21(5) of the Code provides:

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

59. The Upper Tribunal considered Paragraph 21(5) in **EE Limited and Hutchinson 3G UK Limited v Sir James Chichester and others as Trustees of the 1968 Combined Trust of Meyrick Estate Management** [2019] UKUT 164 (LC) ("Meyrick").

The Upper Tribunal adopted a two stage test for redevelopment [40] (following **Cunliffe v Goodman** [1950] 2 KB 237):

*"Accordingly, whether the Respondents wish to build a mast or a housing estate, they can resist the Claimants' application only if they can demonstrate both that they have a reasonable prospect of being able to carry out their redevelopment project and that they have a firm, settled and unconditional intention to do so."*

60. The test of intention was formulated by Asquith LJ in **Cunliffe v Goodman** [253 and 254]:

*"An "intention" to my mind connotes a state of affairs which the party "intending"—I will call him X— does more than merely contemplate : it connotes a state of affairs which, on the contrary, he decides, so far as in him lies, to bring about, and which, in point of possibility, he has a reasonable prospect of being able to bring about, by his own act of volition." "X cannot, with any due regard to the English language, be said to "intend" a result which is wholly beyond the control of his will."*

*"This leads me to the second point bearing on the existence in this case of "intention" " as opposed to mere contemplation. Not merely is the term "intention "*

*unsatisfied if the person professing it has too many hurdles to overcome, or too little control of events: it is equally inappropriate if at the material date that person is in effect not deciding to proceed but feeling his way and reserving his decision until he shall be in possession of financial data sufficient to enable him to determine whether the project will be commercially worthwhile.*

*“A purpose so qualified and suspended does not in my view amount to an “intention” or “decision” within the principle. It is mere contemplation until the materials necessary to a decision on the commercial merits are available and have resulted in such a decision.”*

*“Neither project moved out of the zone of contemplation—out of the sphere of the tentative, the provisional and the exploratory—into the valley of decision.”*

61. Where intention has changed over time it is the intention at the date of the hearing that is relevant: **Betty’s Cafes Ltd v Phillips Furnishing Stores Ltd** [1959] AC 20 (see **Meyrick** at [38]).

### **(1) Subjective test – intention**

62. Mr Radley-Gardner for CTIL submits that Firoka only has an intention to begin limited works which does not go far enough to satisfy paragraph 21(5). Without specifically raising **Franses** arguments in respect of impermissible conditional intention Mr Radley-Gardner suggests that Firoka’s conduct can be characterised as “tactical”. No mention whatsoever was made of redevelopment by Firoka’s agent, Paul Williams, who conducted negotiations on its behalf until Freeths were instructed in around September 2024. Planning permission is limited to “*Extension to plant room on roof level*” and makes no reference to the 31/39 VRF units. Redevelopment was only formally raised by Firoka in its Response of 21<sup>st</sup> July 2025 [34-42]. The Ridge Report of 19<sup>th</sup> December 2024 suggests 3 options [424-437]. Firoka initially pursued Option (2) rather than redevelopment Option (3). Beechfield became involved in August 2025 but all that was produced was a fee proposal together with the suggestion of a Feasibility Study.
63. Mr Radley-Gardner is critical of the Board Resolution of 25<sup>th</sup> September 2025 [1624]. The resolution only extends to funding a Feasibility Study. The Board agrees carry out the installation of the plant room extension in accordance with the planning permission. No mention is made of installation of 31/39 VRF units. Significantly the Board did not commit to Option (3). The Feasibility Study produced very shortly before trial on 10<sup>th</sup> October 2025, is in Mr Radley-Gardner’s submission, a perfunctory document which does not move Firoka out of the “zone of contemplation”.
64. The Undertaking [SB268] is, in Mr Radley-Gardner’s submission, limited to commence the works set out in the planning permission. There is no Undertaking to complete and no reference at all to the 31/39 VRF units. Taken together the

Resolution and Undertaking fall short of a full commitment to Option (3) – Full Replacement of Heating and Cooling Systems serving Bedrooms.

65. We found Ms Lowry to be a credible and reliable witness. She had extensive personal knowledge of the matters about which she gave evidence. Her evidence was detailed and comprehensive. It was supported by the extensive documentation.
66. We find that Firoka received a significant number of complaints about air-conditioning from 2022 onwards. Firoka has taken an entirely business-like approach to the problem. As Ms Lowry told us “*we wanted to resolve with least disruption and most economical solution.*” Firoka started with its existing service contractor, Johnson Controls. It installed main isolator valves to try to effect a local solution (MSW Technical Services). It installed a water filtration system (Fox HVAC). It tried local repairs. It instructed Ridge to carry out a review and obtained a report dated 19<sup>th</sup> December 2025. It acted on Ridge’s recommendations and worked through Option (2). Adcock Refrigeration removed pipework for testing by AMS. Firoka sought further advice from Beechfield. It instructed DEB to apply for planning permission. In August 2025 Firoka instructed Beechfield to prepare a feasibility study, which was received on 10<sup>th</sup> October 2025. It has now moved to Beechfield’s phase 2 – the design stage. By the date of the hearing the only matters outstanding was order of works, as it may be preferable to crane in the new condensers before building work commences, and the chosen manufacturer of the condenser units. The next step will be phase 3 construction. Firoka has given an Undertaking that it will undertake the development authorised by the planning permission within 9 months of the date of this decision.
67. Lord Briggs considered Undertakings in **Franses** at [29]:

*“The courts have until now restricted the forensic examination of the Landlord’s purpose or motive to a test of the genuineness of that intention. By genuineness I have no doubt that the court meant honesty. In practice, that examination has, for very many years, largely been overtaken by the common use of the Undertaking to the court to carry out the works if a new tenancy is refused, as a reliable litmus test for genuine intention.”*

We agree with Mr Radley-Gardner that the Undertaking given is limited to commencing the works identified in the planning permission. It clearly does not amount to an Undertaking to complete Option (3). The Tribunal accepts Ms Lowry’s explanation that, given the solemn nature of an Undertaking, she was concerned to ensure that Firoka’s Undertaking was limited in light of her concerns about the availability of contractors and materials. We therefore accept Firoka’s Undertaking as evidence, but not conclusive evidence, of the genuineness of Firoka’s intention to carry out its proposed redevelopment.

68. We find that Firoka has acted exactly as Asquith LJ suggested. Firoka was initially feeling its way and reserving his decision until it had sufficient information to proceed to the next option/phase. We find that by the date of the hearing Firoka had moved out of the zone of contemplation and into the valley of decision.

## **(2) Objective test – reasonable prospects**

69. Firoka has all that is necessary to carry out its redevelopment. It has planning permission granted on 20<sup>th</sup> May 2025. Letter from Barclays [1443] confirms that Firoka has in excess of £5,000,000 on deposit with a maturity date of 1<sup>st</sup> December 2025. We have also considered Firoka’s Financial Statements for year ending 13<sup>th</sup> December 2024 [1484-1521]. We find that Firoka can finance its redevelopment plans from its own resources.
70. We have indicated that we prefer the expert structural engineering evidence of Mr Smith. Our findings are that no further surveys are necessary in respect of Firoka’s proposed redevelopment. We accept Mr Smith’s expert opinion that alignment of the plant screen can be designed to avoid clashes with BMU and other existing rooftop fixtures. We accept Mr Smith’s calculations that the roof slab will adequately support the plant screen loadings without strengthening. We have found that the weight of the VRF units is less than the weight of the gravel and paving slabs to be removed from the roof. We accept Mr Smith’s evidence that as there is therefore no increase in loading and no signs of distress in the slab there is no need for further surveys.
71. We find that Firoka has a reasonable prospect of being able to carry out its redevelopment project.

## **(4) Conditional intention – Franses**

72. In **Franses** at [19] Lord Sumption JSC set out the test to be applied:

*“...the landlord’s intention to demolish or reconstruct the premises must exist independently of the tenant’s statutory claim to a new tenancy, so that the tenant’s right of occupation under a new lease would serve to obstruct it. The landlord’s intention to carry out the works cannot therefore be conditional on whether the tenant chooses to assert his claim to a new tenancy and to persist in that claim. The acid test is whether the landlord would intend to do the same works if the tenant left voluntarily.”*

73. Mr Radley-Gardner has not chosen to run a **Franses** argument. We are in no doubt that Firoka intends to carry out the same works even if CTIL were not seeking code rights. We would add that we found Ms Main’s comments as to the conduct of solicitors, both generally and with specific reference to Freeths, to be unhelpful. Solicitors instructed by Firoka have behaved in an entirely professional manner.

## **(5) Reasonable time**

74. In **Vodafone Limited v Icon Tower Infrastructure Limited (1) and AP Wireless II (UK) Limited** [2025] UKUT 00058 (LC) (“Steppes Hill Farm”) at

[277] it was held that redevelopment must be commenced within a reasonable time of termination of the code agreement:

*“Any such reasonable time will have to take account of the time likely to be required to secure the removal of the ECA from the relevant land, but subject to that and any other such consideration, it seems to us that there is a requirement that the relevant work must be commenced within a reasonable time of the code agreement coming to an end. What that reasonable time is in any particular case is a fact sensitive question, but we do not consider that it is open to the site provider to allege an intention to carry out the relevant work at any point in the future, however distant from the termination of the code agreement. The time between the termination of the code agreement and the intended commencement date of the relevant work must be a reasonable one.”*

75. At paragraph 46 Ms Lowry indicates the project will start in Q2 2026 and finish by Q3 2028 [230]. Firoka has given an Undertaking to the Tribunal that it will undertake the development authorised by the planning permission within 9 months of the date of this decision. We find that the time proposed for the commencement of the redevelopment is reasonable.

#### **(6) Could not reasonably do so if the order were made**

76. Firoka’s plant room extension under its planning permission is fundamentally incompatible with the red line area of the rooftop where CTIL proposes to install ECA. The structural engineering experts are agreed that the proposed VRF units cannot coexist with CTIL’s proposed tower and equipment. Mr Way’s suggestion that Firoka could amend its scheme is not permissible for the reasons given in **Franses**.
77. Paragraph 21(5) refers to “the order”. We are not persuaded that the notional order is one which imposes the terms proposed in the draft agreement attached to the Paragraph 20 Notice dated 25<sup>th</sup> July 2024. Discrepancies between the draft agreement attached to a Notice and code rights sought at trial were considered by the Upper Tribunal in **Cornerstone Telecommunications Infrastructure Ltd v. Keast** [2019] UKUT 116 (LC):

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

78. Paragraph 23 of the Code sets out the terms that may be contained in an agreement imposed under paragraph 20:

*(1) An order under paragraph 20 may impose an agreement which gives effect to the code right sought by the operator with such modifications as the court thinks appropriate.*

*(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).*

79. Terms to be imposed are in the discretion of the Tribunal. Subject to the restriction identified in **Keast** the terms of “the order” contemplated in Paragraph 21(5) are those proposed as at the date of the hearing at which the site provider’s redevelopment intention falls to be determined. The Tribunal in exercising its discretion is not, subject to what was said in **Keast**, bound by the draft agreement attached to the statutory notice.

80. The final version of the Claimant’s “Lift and Shift” clause was introduced as an Appendix to the Schedule of Disputed Terms by Mr Radley-Gardner as part of his Written Closing. The Claimant’s proposed wording is as follows:

1. *If at any time the Grantor intends to carry out reasonable works of repair maintenance replacement or alteration or redevelopment refurbishment or improvement of any part of the Grantor’s Property which cannot reasonably be carried out with the Equipment and/or Cables in place or any part or parts of them the Grantor may provide 4 months’ notice (or such other time frame as agreed between the parties acting reasonably) to the Operator to relocate or reposition any or all of them within the Grantor’s Property (the “Relocation Notice”);*

2. *The Relocation Notice shall specify and provide:*

- a. those part or parts of the Equipment and/or Cables which the Grantor requires to be relocated or re-positioned (either on a permanent or temporary basis);*
- b. the nature of the proposed works and the reason why it is necessary for the Equipment and/or Cables to be relocated or re-positioned;*
- c. the time frame (having regard to the nature of the works and paragraph [x]) within which the Grantor wishes such relocation or repositioning to be carried out; and*
- d. where the Relocation Notice relates to Equipment (and any ancillary Cables), the Grantor’s drawings / plans (including but not limited to any detailed design drawings, planning permission, surveys) for its proposed works, and any related works documentation to assist the Operator in finding a suitable alternative location for the Equipment.*

3. *If the Relocation Notice relates to Cables only:*

- a. As soon as reasonably possible upon receipt of a valid Relocation Notice and with all due diligence and expedition, the Operator shall relocate the Cables to an alternative location (such location to be at the Operator’s sole discretion); and*
- b. At the Operator’s cost, the Operator shall make good all damage caused by the relocation of the Cables to the reasonable satisfaction of the Grantor.*

4. *If the Relocation relates to Equipment (and any ancillary Cables):*

a. *Within 4 months of receipt of a valid Relocation Notice appending the documents listed at [2(a)-(d)] above, the Operator may carry out further surveys to establish whether there is a suitable alternative location for the Equipment (the "Relocation Search Period"). During the Relocation Search Period, the Grantor shall:*

*i. Provide the Operator with full and free access to the Grantor's Property to enable the Operator to carry out its surveys;*

*ii. Use best endeavours to assist the Operator with its search for an alternative location, including providing further documents reasonably requested by the Operator which relate to the Grantor's works; and*

*iii. Use best endeavours to cooperate with the Operator to investigate whether there is a temporary solution which will enable the Operator to move its Equipment (and any ancillary Cables) on a temporary basis whilst the Grantor undertakes its works, before reinstating the Equipment in accordance with paragraph [5] below.*

*For the avoidance of doubt, the Relocation Search Period will not commence until a valid Relocation Notice has been served, appending the documentation listed at [2(a)-(d)] above.*

b. *On or before expiry of the Relocation Search Period, the Operator shall inform the Grantor that:*

*i. It has found a suitable alternative location to relocate the Equipment (and any ancillary Cables); or*

*ii. The Operator cannot relocate the Equipment (and any ancillary Cables) and gives notice to terminate this Agreement under paragraph 9.1.2 of this Agreement, save that the notice period be reduced to 1 month.*

c. *If the Operator (in its sole discretion) has identified a suitable alternative location to relocate the Equipment (and any ancillary Cables), as soon as reasonably possible and with all due diligence and expedition, the Operator shall relocate the Equipment (and any ancillary Cables) and shall at the Operator's cost make good all damage caused by the relocation of the Equipment (and any ancillary Cables) to the reasonable satisfaction of the Grantor.*

d. *The Operator and Grantor shall use reasonable endeavours to cooperate to agree to a suitable programme of works for the relocation of the Operator's Equipment (and any ancillary Cables) and the Grantor's works.*

5. *The Grantor shall within 5 days of completion of its works notify the Operator that they have been completed so that, where the Equipment and/or Cables has been temporarily relocated or repositioned, the Operator may reinstall and thereafter operate the Equipment in accordance with the terms of this Agreement.*

6. *In the event that the Operator permanently relocates its Equipment under this paragraph, the Plans appended to this agreement shall be substituted with new plans showing the updated location of the Equipment on the Grantor's Property.*

7. *The Grantor may only exercise its rights under this paragraph [x] twice during the Term in respect of a Relocation Notice which requires the Operator to relocate or reposition any Equipment (and ancillary Cables) (a "Substantial Relocation Notice"). For the avoidance of doubt there is no limitation on the number of Relocation Notices that the Grantor can serve which only require the Operator to relocate or reposition Cables.*

8. *If the Grantor exercises its rights under this paragraph [x] more than twice during the Term to serve a Substantial Relocation Notice, in respect of any subsequent Substantial Relocation Notice the Grantor shall pay to the Operator within 28 days of a written demand the Operator's reasonable and proper costs (including professional costs) incurred in complying with such a Substantial Relocation Notice.*

9. *If and to the extent that the matters in this paragraph [x] are not agreed, both parties shall use reasonable endeavours to reach agreement. If agreement is not reached within 20 working days of a dispute arising, either party may refer the matter to ADR in accordance with paragraph [10.3] below.*
81. Mr Radley-Gardner’s proposed “lift and shift” clause provides for the Respondent to give 4 months’ notice if it intends to carry out reasonable works of repair, maintenance or redevelopment (a “Relocation Notice”). If the Relocation Notice is given solely in respect of cables the Claimant shall relocate with all due diligence and expedition. However, if the Relocation Notice relates to Equipment the Claimant is allowed a 4 month Relocation Search Period. The Respondent shall use best endeavours to assist. If a suitable alternative location is identified the Claimant will relocate its Equipment as soon as reasonably practicable. If the Claimant is unable to relocate it will give 1 months’ notice to terminate the Agreement. The Respondent may only require relocation of Equipment (a “Substantial Relocation Notice”) twice during the term. Disputes are to be referred to ADR.
82. We have given Mr Wills the opportunity to comment on CTIL’s last minute “lift and shift” proposal. We find Mr Will’s “Respondent’s Submissions in Response to C’s new case on lift and shift” dated 14<sup>th</sup> November 2025 to be compelling:
- **Franses** at [15] said that:  
*“it is for the landlord to decide what works he wishes to carry out and where. It follows that if his intention is genuine, it cannot matter whether it is reasonable, or whether reasonable changes to the scheme would make it consistent with the tenant’s continued possession of the demised premises...”* (para. 13(i))
  - The proposed clause requires R to wait until the relevant Equipment is installed before a Relocation Notice may be served. R has no control over when C commences any installation let alone completes it (para. 13(ii))
  - Periods of delay under the proposed contractual mechanism is inconsistent with R being able to reasonably carry out its redevelopment (para. 13(iv))
  - New location of ECA is to be in Operator’s sole discretion (para. 13(viii))
  - There is nothing in the proposed provision that requires the Operator to choose a new location which allows R’s intended development to be completed and to remain in situ (para. 13(xi))
  - The proposal fails to appreciate that once the agreement is imposed the Operator will benefit from the protections of Part 5 including continuation of code rights under paragraph 30 (para. 13(xii))
83. The rooftop area the subject of this reference is very small. There is no alternative location. There is room for the 31/39 condenser units or ECA but not both. From a purely practical point of view Firoka could not reasonably carry out its redevelopment if the order (i.e. an order including the final version of the lift and shift clause) were made.
84. There are also larger matters of principle. Once a site provider has made out its firm, settled and unconditional intention it should be free from further interference with its plans. As was said in **Franses**: *“it is for the landlord to decide what works he wishes to carry out and where”*. The CTIL lift and shift proposal is a kind of

conditional order. The shadow of CTIL's proposed order hangs over Firoka's redevelopment. A conditional order is inconsistent with the mandatory drafting of Paragraph 21(5): "*The court may not make an order under paragraph 20...*". CTIL's proposed order is inconsistent with Firoka being able to reasonably carry out its redevelopment. The proposed order provides no certainty to Firoka as to how or in what circumstances it can and cannot proceed with its redevelopment.

85. The Code is an expropriatory regime. In **Keast** Judge Cooke said at paragraph 13:

*"The courts take a particularly strict approach to the construction of statutes that expropriate private property: R (Sainsbury's) v Wolverhampton City Council [2011] 1 AC 437. Where there is any ambiguity, the construction chosen will be the one that interferes least with private property rights. It seems to me that that principle is relevant both to the construction of the Code and to the exercise of the Tribunal's discretion under the Code, for example in its judgment as to what are the "appropriate" terms to be imposed alongside Code rights"*

The lift and shift clause proposed interferes with the private property rights of Firoka in circumstances where it has made out, on the balance of probabilities, a firm, settled and unconditional intention to redevelop.

86. We find that, as at the date of the hearing, Firoka intends to redevelop the rooftop site to which the code rights would relate and could not reasonably do so if the order were made.

### **Public Benefit and Prejudice – the Paragraph 21 test**

87. The test to be applied by the Tribunal is set out in Paragraph 21:

*(1) Subject to sub-paragraph (5) and paragraph 27ZA, the court may make an order under paragraph 20 if (and only if) the court thinks that both of the following conditions are met.*

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

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

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

88. The reason why redevelopment intention is usually tried as a preliminary issue is that if the site owner succeeds the Tribunal may not make an order under paragraph 20. Consideration of the first and second condition is subject to paragraph 21(5).

89. In the event that we are wrong in our paragraph 21(5) determination we go on to consider the paragraph 21 test. However, in doing we must proceed on the factual basis that Firoka has not made out a firm settled and unconditional intention to redevelop. We must assume that Firoka contemplates replacing its air conditioning system but does not yet intend to do so. The following paragraphs under this heading should be read strictly on the basis that we are wrong about paragraph 21(5).
90. Firoka has run its case, at least in part, on the basis that installation of ECA may cause the roof of the hotel to collapse. However, both Mr Smith and Mr Way are agreed that further intrusive surveys are required to confirm the adequacy of the slab to support the telecoms equipment. The spectre of catastrophic roof failure can be discounted on the basis that intrusive surveys will be take place before installation and, if necessary, design can be amended prior to the commencement of construction. CTIL are well used to rooftop sites and any number of intelligent and practical design solutions can be found.
91. Firoka also relies on inability to upgrade its air conditioning system resulting in potential financial loss in the region of £30,800,000 according to its Valuer Expert Ms Callahan. In addition to financial loss Firoka would suffer reputational damage and also be at risk of losing its IHG franchise. If we are wrong in respect of paragraph 21(5), we must assume that Firoka does not intend to immediately redevelop and that any future plans it contemplates can be adequately met by landlord redevelopment break clause and/or a lift and shift provision.
92. We are not persuaded by the “terrifying prospect” of structural collapse nor the extraordinary potential losses advanced by Firoka. Any prejudice to Firoka is capable of being adequately compensated by money.
93. We accept the evidence of Ms Main that CTIL needs a new site because of degradation of service in the area of Farringdon Road. The degradation of service has caused both capacity and coverage issues. Ms Main did not give details of coverage issues. In her evidence she said she did not do so because to do so would be “*anti-competitive*”. Questioning from the Tribunal elicited clarification that Ms Main was, in fact, referring to commercially sensitive information, confidential to the MNOs.
94. The prejudice to Firoka relates to inability to upgrade its air conditioning system. However, for the reasons explained above we have to assume that Firoka has not yet entered the “valley of decision” and that terms can be imposed to cause “the least possible loss and damage”.
95. Having regard to the public interest in access to a choice of high quality electronic communications services, we find that the public benefit, as identified by Ms Main, likely to result from the making of the order outweighs the prejudice to Firoka.

## **Consideration**

96. Stephen Sladdin MRICS on behalf of CTIL concludes at paragraph 77 of his Expert Report [1013-1029] that the payment of consideration by CTIL to Firoka (Paragraphs 23(3) and 24 of the Code) is £6950 p.a.

97. Mr Sladdin explains how he reached his conclusion at paragraph 76 of his Expert Report [1023]:

1. *The pattern or tone for consideration has been set by a number of decisions by the Tribunal.*
2. *In the Vache Farm case, the Upper Tribunal determined that the appropriate annual consideration for an unexceptional rural mast site is £1,750pa. The majority of this was to recognise the landowners resistance to lower end rents which are close to a floor below which no letting would take place.*
3. *The Affinity/ Audley House framework remains appropriate, and a hotel building can be placed alongside Maple House and M&S determinations.*
4. *There are no special characteristics to justify adjustment to the determination in Maple House other than for inflation and to identify additional design work may be required.*
5. *The Maple House determination in Oct 2022 should be adjusted for inflation. Following Verte I have assumed the date of valuation is either the Tribunal decision date or when the parties consensually agree. I have therefore applied the RPI index from Oct 20 to Aug 25 (39%) This adjusts the Maple House £5,000pa set in October 2020 to £6,950pa as at Aug 2025.*

98. Ms Callahan MRICS on behalf of Firoka has also prepared an Expert Report [1060-119]. Her conclusion under the heading “Compensation/Consideration” is as follows [1087]:

*I consider that the financial impact on Firoka at the grant of the agreement is represented by the assessed diminution in value of the subject property, between my opinion of ‘market value on the basis that the proposed agreement is imposed’ and my opinion of ‘market value on the basis that the no agreement is imposed leaving Firoka (Kings Cross) Limited able to upgrade the air conditioning in accordance with the proposals that were already in process at the date notice was served’.*

*This amount represents the sum of*

**£30,800,000 (Thirty million eight hundred thousand pounds).**

*I alternatively considered that the assessment of the compensable amount could be equal to the annual sum by which the Net Operating Profit will be diminished by the conferring of the Terms of the Lease.*

*This amount represents the sum of:*

**£6,393,000 (Six million three hundred and ninety three thousand pounds)**

99. We are not assisted by Ms Callahan’s report. Ms Callahan has qualified her Report:

*“As the requirements of the Code are outside our area of expertise, we will be guided by Freeths as to how to consider this in the context of our expertise and knowledge of valuing hotels.” [1118]*

Ms Callahan also accepts that she has no knowledge of either **London & Quadrant** or **Hanover Capital**.

Under those circumstances we do not attach any weight to Ms Callahan's opinion in respect of the consideration payable under Paragraph 24 of the Code.

100. Mr Wills at paragraphs 153- 172 of his Skeleton Argument [SB47-50] puts forward an alternative 3 stage **Hanover** valuation. At stage one Mr Wills accepts that there is no alternative use value. However, as was said in **London & Quadrant** any assessment "*must begin with the value to the site provider of the land over which rights will be exercised and which will no longer be available for its current use*". Mr Wills invites the Tribunal to give effect, at stage 1, to Ms Callahan's conclusion that Firoka would suffer a diminution of net operating profit of £6,393,000 over 10 years. At stages 2 and 3 Mr Wills adopts a similar approach to Mr Sladdin and following **Verte Development** and the impact of **Vache Farm** puts forward a figure of £8,000 p.a.
101. There are two difficulties with Mr Wills approach. The first is that his erudite submissions are not expert valuation evidence. Indeed, Firoka's own expert strongly disagrees with the submissions made by Mr Wills, and states with some force at point 11 of Valuation Expert's Joint Statement [SB192]:

*"SS is simply adopting a previous rooftop decision which used the Hanover "staged" approach without questioning whether that is appropriate, which it isn't, ..."*

102. Secondly, as we have said above, we have to assume that Firoka has not satisfied the paragraph 21(5) test. On that basis we assume Firoka is contemplating upgrading its air conditioning system but is not yet in the valley of decision. Under those circumstances a lift and shift clause and/or a landlord's redevelopment clause is appropriate. Accordingly, the imposition of code rights would not prevent Firoka from upgrading its air conditioning system.
103. We prefer the Expert Opinion of Mr Sladdin and determine consideration at £6950 p.a.

## **Terms**

104. The parties have helpfully prepared a Schedule of Disputed Terms running to 49 items in dispute [SB 137-172]. We have recorded our determination on terms in the Schedule which should be read as part of this Decision.
105. Paragraph 23(5) of the Code provides:

*"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 ..."*

106. Guidance was 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.”*

107. We repeat the observations made by 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.”*

108. We regret to say that those words appear not to have been heeded. As a result, the Tribunal has been asked to determine 49 points of dispute. Most could and should have been agreed without attempting to relitigate points previously determined by both the Upper Tribunal and by this Tribunal. As a result, very considerable costs have been incurred by both sides that could easily have been avoided.

## **Decision**

109. The Respondent has established that it has an intention to redevelop within the meaning of Paragraph 21(5) of the Electronic Communications Code (Schedule 3A to the Communications Act 2003).
110. The Respondent could not reasonably redevelop all or part of the land to which the code right would relate if the order were made.
111. The reference under Paragraph 20 of the Code received on 4<sup>th</sup> June 2025 is dismissed.

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.