FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00CN/ECR/2025/0704**
Property	**:**	**(1) Bolsover Fire Station, High Street Bolsover, Derbyshire** **(2) Kingsway Fire Station, Kingsway, Derby** **(3) Ascot Drive Fire Station, Ascot Drive, Osmaston, Derby** **(4) Nottingham Road Fire Station, Chaddesden, Derby**
Claimants (Operators)	**:**	**EE Limited and Hutchison 3G UK Limited**
Representative	**:**	**Winckworth Sherwood LLP**
Respondent	**:**	**Michael Aubrey Partnership Limited**
(Site Provider)		
Application	**:**	**Electronic Communications Code** **Paragraph 34 (renewal)**
Date of Order	**:**	**12th January 2026**

DECISION

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1. This is my Decision on Preliminary Issues arising out of references brought by the Claimants by way of renewal under Part 5 of the Electronic Communications Code following the expiry of subsisting code agreements.

2. All four sites are located at fire stations operated by Derbyshire Fire and Rescue Service ("DFRS"). The Claimants electronic communications apparatus ("ECA") is mounted to the drill towers at all sites.

3. The Claimants occupy each of the sites under the following code agreements:

   (a) Bolsover: an agreement dated 2 January 1996 and made between (1) The Derbyshire County Council and (2) Orange Personal Communications Services Limited for a contractual term of 12 years and then until determined on 12 months' written notice.

   (b) Kingsway: a site sharing licence dated 31 August 2010 and made between (1) DFRS, and (2) the Claimants for a contractual term of ten years.

   (c) Ascot Drive: a site sharing licence dated 21 September 2010 and made between (1) DFRS, and (2) the Claimants for a contractual term of ten years.

   (d) Nottingham Road: a site sharing licence dated 31 August 2010 and made between (1) DFRS, and (2) the Claimants for a contractual term of ten years.

4. The Respondent is itself an operator pursuant to an OFCOM direction. It is managing agent for DFRS at all sites. For the purposes of the present reference the Respondent is the site provider having been granted concurrent leases of all four sites by DFRS:

   (a) By a concurrent lease dated 30 November 2021, Kingsway, Ascot Drive, and Nottingham Road were demised to the Respondent expiring in or around 30 June 2042.

   (b) By a concurrent lease dated 2 July 2021, the Bolsover was demised to the Respondent for a term of years expiring on 30 June 2042.

5. The Claimants have served notices on the Respondent pursuant to Paragraph 33 of the Code:

   (a) Bolsover: dated 16 December 2021.

   (b) Kingsway: dated 13 December 2021.

   (c) Ascot Drive: dated 13 December 2021.

   (d) Nottingham Road: dated 13 December 2021.

6. At a CMH held on 22nd October 2025 I directed that the following be determined as Preliminary Issues:

(a) Are the drill towers at each of the four sites "Land" for the purposes of the Code?

(b) Where a Notice is given under Paragraph 33 of the Code in circumstances where "the other party to the agreement" is also an operator does the Tribunal have jurisdiction to order the parties to enter into a new agreement conferring code rights under Paragraph 34?

7. The parties have agreed that the Tribunal shall issue a written determination on the Preliminary Issues without an oral hearing. In reaching my decision I have considered Claimants Submissions dated 27th November 2025, Respondents Submissions received on 8th December 2025, and Respondent's Response dated 22nd December 2025.

Are the drill towers at each of the four sites "Land" for the purposes of the Code?

8. The legal principles are set out in the judgement of the Upper Tribunal in **On Tower UK Limited v British Telecommunications PLC** [2024] UKUT 51 (LC) ("Kenton Road") at paragraphs [16-22] and [28-52].

9. Paragraph 108 of the Code provides that:

""land" does not include electronic communications apparatus".

10. Paragraph 5 provides that:

"(1) In this code "electronic communications apparatus" means—

(a) apparatus designed or adapted for use in connection with the provision of an electronic communications network,
(b) apparatus designed or adapted for a use which consists of or includes the sending or receiving of communications or other signals that are transmitted by means of an electronic communications network,
(c) lines, and
(d) other structures or things designed or adapted for use in connection with the provision of an electronic communications network.

(2) References to the installation of electronic communications apparatus are to be construed accordingly.

(3) In this code—

… "structure" includes a building only if the sole purpose of that building is to enclose other electronic communications apparatus."

11. The Respondent's case is that the drill towers are *"structures or things designed or adapted for use in connection with the provision of an electronic communications network"* within the meaning of paragraph 5(1)(d). If the Respondent is correct the

Claimants are unable to seek renewal of the existing agreements under Part 5 of the Code as those agreements are not code agreements *"because the operator's right is to install apparatus on other apparatus and not on land."* (see **Kenton Road** at [20]).

12. The policy underlying the exclusion of ECA from the definition of land is set out in Explanatory Note 403 to the Digital Economy Act 2017:

Paragraph 5 defines electronic communications apparatus i.e. the apparatus which can be installed on, under or over land. This definition is important for two reasons. Firstly, it defines the scope of what can be installed and kept on land under the provisions of the code. Secondly, because paragraph 108(1) specifically provides that land does not include electronic communications apparatus, anything that falls within the definition of 'electronic communications apparatus' (as it is set out in paragraph 5) cannot have code rights imposed against it. This has the practical effect of ensuring that one code operator cannot seek to exercise code rights against the apparatus of another (or indeed against the apparatus of a person who is not a code operator). Paragraph 5 defines electronic communications apparatus in broad terms, which reflect its diversity. Whether a particular structure or thing has been adapted to a point at which it can properly be considered as electronic communications apparatus is a question of fact, which will depend on the specific circumstances, including what the parties have agreed, the nature of the installation and the extent of the adaptation.

13. The Claimants' case relies on Paragraph 5(3), the "sole purpose" test, considered in **Kenton Road** at [46,47 and 52]:

46. We agree with Mr Lees on this point. Whether "purpose" is subjective or objective will depend upon the context; and we agree that cases that have construed the word "purpose" may not be on all fours with the position where the statute says "sole purpose". In the present case it is not and has never been the sole purpose of this building to enclose electronic communications apparatus. We take the view that that is the outcome both of a literal and of a purposive construction of the statute.

47. Taking first the literal words, we would read "purpose" in an objective sense here. Nothing in the wording of the Code or in the context requires us to look at the purpose of any person whether in acquiring or retaining or maintaining a building, and to broaden the enquiry in that way is to add a gloss to the statutory wording. We are to look simply at the purpose of the building, and therefore to ask what it is for or what is its function. And its function is the accommodation of telecommunications apparatus and the provision of office, storage and welfare facilities. That is what the Kenton Road exchange is for. Certainly its main purpose has been to house apparatus and that was why it was built the way it was, and that is why it is still owned by the respondent. But it is a long way from being a building that has no other purpose. The purpose of the building is wider than just the containing of electronic communications equipment.

52. The Kenton Road exchange does not have as its sole purpose the enclosure of electronic communications equipment and accordingly the Site Lease confers Code rights and is a Code agreement.

Bolsover

14. The existing Code agreement was made on 2nd January 1996. The Respondent in its Response helpfully provides a photograph of the original precast concrete tower. ECA was never installed on the concrete tower as it was structurally inadequate. Clause C of the agreement provides:

    "Orange has agreed to demolish the existing drill tower and replace it with an equivalent tower in exchange for a rent free agreement. The new drill tower shall become the sole property of the owner on completion of the new drill tower to the owners satisfaction".

    Clause 5.2 provides Orange's Undertaking:

    "to demolish the existing drill tower on the site"

    Clause 5.2.1 further provides:

    "to construct a new drill tower on the site in the location and in accordance with the plans, specification and drawings previously agreed by the Owner, such drill tower to be constructed to the entire satisfaction in all respects of the Owner."

15. Cabinets are remote from the tower in an operator compound.

16. Clearly the Respondent is correct to submit that the new drill tower was designed specifically for ECA. On that basis the Respondent submits that Paragraph 5(1)(d) is satisfied. However, the Respondent has overlooked Paragraph 5(3) which provides:

    "structure" includes a building only if the sole purpose of that building is to enclose other electronic communications apparatus"

17. I apply the "*sole purpose*" test as set out in **Kenton Road**. Firstly, the structure is described by the original contracting parties as "a new drill tower". That wording strongly supports a finding that the structure is in fact a drill tower. Second the Claimants' site visit and inspection concludes: "*still used for climbing practice from time to time*" (para. 6 of Claimant's Submissions). Third the Respondent in its Response (para. 4) responds to the Claimant's view that Drill Towers are Buildings in the following terms:

    "The Claimant makes the case that these sites are akin to the Kenton Road BT Exchange case (their submission item 15). The Respondent maintains that drill towers are training structures or things and do not provide the usable/habitable spaces which this particular case turns on."

18. My finding of fact is that although the new drill tower was specifically designed for ECA by Orange its sole purpose is not to enclose other ECA. It is a drill tower, used for training purposes and climbing practice by DFRS.

19. The new drill tower at Bolsover does not satisfy the "sole purpose" test. It is "land" for the purposes of Paragraph 108 and not ECA under Paragraph 5. Accordingly, the agreement made on 2nd January 1996 confers code rights and is a code agreement. The Tribunal therefore has jurisdiction under Part 5 of the Code.

Kingsway

20. The Claimant accepts (para. 6(2) of Claimants' Submissions) that the site is a purpose built fire training tower that is "*no longer used*". Photograph K2 attached to Respondent's submissions shows "*current training tower on right subject tower on left*". It would therefore appear that the training tower has been replaced. However, as was set out in **Kenton Road** at [39] I have to look at the situation as at the date of the existing Code Agreement which was made on 31st August 2010." Clause 5.3.1 of the Agreement states:

    5.3.1 The Licensor has a settled intent at the date of notification to the Licensee to develop the Station, however at the date of notification a valid planning permission for the development does not have to be obtained.

    Accordingly, I find that as at the date of the agreement the training tower was in operational use by DFRS as the current training tower had not yet been built.

21. I also have regard to clause 8.1 to the agreement headed "*Control Clause*" which allows flexibility to DFRS to terminate the agreement at any time and gives priority to its functions, duties or obligations as fire authority over the rights granted to the Claimants:

    "The requirements of the Licensor in the Performance and exercise of its functions or duties or obligations or duties imposed on the Licensor by reason of the Fire Service Act 1947 and 1959 or other relevant legislation, guidance, direction or otherwise shall have priority over any Rights hereby granted with the Licence…"

    Accordingly, DFRS retained control over the site. Its duties as a fire authority were to be accorded priority. Accordingly, I find that DFRS could have terminated the agreement at any time and used the drill tower for its own purposes.

22. The demise includes not only the "*Aerial Support structure*" but also "*Base Station Container*". The Respondent explains (paras 25-26 of Respondent's Submission) that the Base Station sits on plinths on the flat roof of a single storey building. The plinths support the grillage on which the equipment cabin sits.

23. The Claimants previously shared the site with O2 (who have now vacated – see photograph K8 attached to Respondent's Submissions). There is an infrastructure system at the site comprising grillage, antenna pole mounts and other steelwork. Ownership of grillage, antenna pole mounts and other infrastructure does not change merely because it is installed on land.

Paragraph 27(4) of the Old Code provided:

"The ownership of any property shall not be affected by the fact that it is installed on or under, or affixed to, any land by any person in the exercise of a right conferred by or in accordance with this code."

Paragraph 101 of the Code provides:

"The ownership of property does not change merely because the property is installed on or under, or affixed to, any land by any person in exercise of a right conferred by or in accordance with this code."

24. The infrastructure system sits within the demise to from DFRS to the Respondent pursuant to the lease dated 30th November 2021. However, the demise under the lease is of the "*Communications Site*" only. The existing code agreement provides for the Claimants to remove their Equipment on termination "*and to make good any damage cause thereby*" (clause 4.3). The Claimant in its Submissions at para. 6(2) following site visit and inspection is clear that steelwork was "*installed by the operator*". Further the Claimants indicate that the cabin on the single-storey roof is "*accessible by operator-installed ladder*". I find as fact that the infrastructure system installed at Kingsway Fire Station is the property of the Claimants.

25. The single-storey roof has been adapted by way of the plinths which sit below the weatherproof membrane of the roof (see photographs K7 and K9 to Respondent's Submissions). The tower roof has been adapted by way of a roof access hatch with "*structural trimming to support the cut edges of the roof slab*" (see photograph k5)

26. I have to look at the "sole purpose" as at the date of the 2010 agreement to determine whether I have jurisdiction under Part 5. However, there is a prospective element to the "sole purpose" test as well. The Claimant seeks an order under Paragraph 34(6):

(6) The court may order the termination of the code agreement relating to the existing code right and order the operator and the site provider to enter into a new agreement which—
(a) confers a code right on the operator, …

Accordingly, as at the date of the final order the Tribunal will need to be satisfied that the new agreement confers rights on the operator to install apparatus on land and not on other apparatus.

27. The present situation at Kingsway is in many ways similar to **Kenton Road**. It is an empty building apart from occasional visits by telecoms engineers and the Respondent as DFRS's managing agent. It is in effect a redundant structure and decommissioned as a training tower. I remind myself of what was said by the Upper Tribunal at [47]:

"…we would read "purpose" in an objective sense here. Nothing in the wording of the Code or in the context requires us to look at the purpose of any person whether

in acquiring or retaining or maintaining a building, and to broaden the enquiry in that way is to add a gloss to the statutory wording".

28. I find that the site at Kingsway comprises the rooftop of a single storey building together with the purpose built fire training tower which houses ECA. I have to look at "purpose" objectively rather than looking at the "purpose of any person". Although the training tower is redundant its purpose, looked at objectively, remains a training tower. In addition, DFRS retain control, according priority to its obligations as a fire authority. I therefore find that I have jurisdiction to order the parties to enter into a new agreement conferring code rights under new Paragraph 34(6).

29. Kingsway does not satisfy the "sole purpose" test. It is "land" for the purposes of Paragraph 108 and not ECA under Paragraph 5. Accordingly, the agreement made on 31st August 2010 confers code rights and is a code agreement. The Tribunal therefore has jurisdiction under Part 5 of the Code

Ascot Drive

30. The Site Sharing Licence was made on 21st September 2010 comprises two elements, "*Aerial Support Structure*" and "*Base Station Container'.*

31. At the time the Licence was entered into Ascot Drive Fire Station was undergoing redevelopment. The plan attached to the Licence shows "*existing tower to be renovated*" and the adjoining "*single storey outbuildings to be demolished*". The "Redevelopment Works" are defined at clause 1.15:

"The tower ...will be refurbished and incorporated within a new cold smoke training facility and cycle store"

32. The Licence includes a Control Clause at 8.1:

"The requirements of the Licensor in the Performance and exercise of its functions or duties or obligations or duties imposed on the Licensor by reason of the Fire Service Act 1947 and 1959 or other relevant legislation, guidance, direction or otherwise shall have priority over any Rights hereby granted with the Licence."

33. There have been considerable adaptions. Ladders were added inside the hose drying shaft to provide access. Feeder cables run internally. An opening was cut in the roof to allow access and handrails installed. Plinths were added as strongpoints for the stub tower. Rooftop ECA is mounted on operator installed steel grillage.

34. The equipment cabin sits on the roof of the single storey building at the base of the tower (see photograph AD4 to Respondent's Submissions). The equipment cabin sits on operator installed grillage and is accessed by way of operator installed ladder.

35. Both the tower and the single storey building are "*structures designed or adapted for use in connection with the provision of an electronic communications network"* for the purposes of Paragraph 5(1)(d). However, for the purposes of Paragraph 5(3) neither the tower nor the adjoining single storey building has the sole purpose of

enclosing ECA. The tower and single storey building are still operational and used as a training facility and cycle store.

36. The refurbished tower at Ascot Drive and the adjacent single storey building do not satisfy the "sole purpose" test. They are "land" for the purposes of Paragraph 108 and not ECA under Paragraph 5. Accordingly, the agreement made on 21st September 2010 confers code rights and is a code agreement. The Tribunal therefore has jurisdiction under Part 5 of the Code.

Nottingham Road

37. Nottingham Road is a demise of the drill tower only. The tower has been adopted for ECA. The hose drying shaft has been floored over at the fifth floor to create an equipment room. An access hole has been formed in the roof and structural support beams installed. A ladder has been installed to allow roof access. A handrail has been added to the roof. Antenna pole mounts are attached to the handrail.

38. Although the tower has clearly been adapted it does not satisfy the "sole purpose" test. It is still operational as a training tower up to mid height. The Claimant's inspection reveals the presence of solar panels and a rooftop wind turbine. To the extent that the Respondent seeks to argue that the handrail is its property and is ECA independent of the drill tower that argument must fail as the handrail will necessarily be used not just by the telecoms operator but by those accessing and maintaining the solar panels and wind turbine.

39. The drill tower at Nottingham Road is "land" for the purposes of Paragraph 108 and not ECA under Paragraph 5. Accordingly, the agreement made on 31st August 2010 confers code rights and is a code agreement. The Tribunal therefore has jurisdiction under Part 5 of the Code.

Adapted

40. Before leaving the first Preliminary Issue I deal with Mr Andrews-Tipler's submission based on the following passage from "The Electronic Communications Code and Property Law: Practice and Procedure":

    "The parties may be safe in concluding that the Tribunal which has first to rule on this question will not accept that a structure erected originally for a different purpose (the redundant water tower or fire drill tower being cases in point), and which was clearly not "designed" for use (etc) will not become a structure merely because electronic communications apparatus is subsequently bolted on. Such work would be unlikely to count in normal parlance as "adaptation": much of the structure in each case remains exactly the same. The structure is no more adapted for use (etc) than is a building rooftop which has apparatus stationed upon it."

41. My understanding is that passage was written in 2018, prior to **Kenton Road** where this particular argument was not run. Clearly "bolting on" of infrastructure is not an adaptation. However, in my judgement minor works (for example creation of a roof

hatch) are sufficient to amount to an adaptation. The better view is that adopted in **Kenton Road**. Minor works, whether adaptations or not, will not be sufficient, in most cases, to satisfy a Tribunal that "*the sole purpose of that building is to enclose other electronic communications apparatus*".

Where a Notice is given under Paragraph 33 of the Code in circumstances where "the other party to the agreement" is also an operator does the Tribunal have jurisdiction to order the parties to enter into a new agreement conferring code rights under Paragraph 34?

42. The Respondent's argument is set out at para's 34-35 and 41(c) of the Respondent's Submissions:

"34 DFRS have made the Respondent their Operator of choice by entering into Code Agreements with the Respondent. The expectation being that the Respondent would manage use and sharing of their sites with other Operators. An outline of the envisaged structure is contained in Appendix E.

35 This is considered analogous to a Site Provider letting their building to a tenant such as Regus who then sub-let/licence sections of the building to other users whilst taking on management responsibility for day-to-day operations of the whole. Owner→Head Tenant→Sub-tenant/licensee as equivalent to Owner→Head Operator→Sharers.

36 As Head Operator on the sites, the Code provides rights for the Respondent to share sites with other Operators."

"41(c) The Para33 notices dated December 2021 all post-date expiry of the subsisting agreements. As the basis of the Claimant's occupation is Para 30, the correct route for a new agreement would be under Part 4."

43. Paragraph 33(1) provides (with my emphasis):

"How may a party to a code agreement require a change to the terms of an agreement which has expired?

(1) An operator or site provider who is a party to a code agreement by which a code right is conferred by or otherwise binds the site provider may, by notice in accordance with this paragraph, require ***the other party to the agreement*** *to agree that—*
(a)…"

44. The plain reading of paragraph 33(1) is that a notice is to be served on "*the other party to the agreement*". I have already found that the Claimant has a code agreement at each of the four sites. The Respondent is "*the other party to the agreement*". It matters not whether the Respondent is a site owner, an operator or a WIP.

45. Similarly, the expiry of the existing agreements is the basis, as the heading confirms, on which a notice may be served. As pleaded at paragraph 11 of the Claimant's

Statement of Case the Claimant has at all sites a "subsisting agreement" (within the meaning of the transitional provisions contained in Schedule 2 Digital Economy Act 2017) to which Part 5 of the Code applies.

46. By contrast the Respondent does not have a code agreement with DFRS. This is because a code right may only be conferred by a code agreement (Paragraph 9). A code right is a right for the statutory purposes (Paragraph 3). Accordingly, a code agreement is an agreement that grants code rights for the statutory purposes. Paragraph 4(1) provides:

"In this code "the statutory purposes", in relation to an operator, means—

(a) in relation to sharing rights, the purposes of enabling the provision by other operators of their networks, and

(b) in relation to rights other than sharing rights—

(i) the purposes of providing the operator's network, or
(ii) the purposes of providing an infrastructure system."

The Respondent, although an operator, is not a network provider nor does it provide a system of infrastructure. Instead, the Respondent is managing agent for DFRS. The Respondent manages access and carries out routine inspections. As set out above the infrastructure system at all four sites is owned by the Claimants.

47. The Tribunal has jurisdiction to order the parties to enter into a new agreement conferring code rights under Paragraph 34.

Decision

48. The existing agreements at all four sites confer code rights in relation to "land" for the purposes of Paragraph 108 and not ECA under Paragraph 5. Accordingly, all four existing agreements are code agreements. The Tribunal therefore has jurisdiction under Part 5 of the Code.

49. The Tribunal has jurisdiction to order the parties to enter into a new agreement conferring code rights under Paragraph 34.

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.