



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

Case Reference : **BIR/00CN/EIA/2025/0751**

Property : **Waverley House, Noel Street, London W1F 8GQ**

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

Representative : **Osborne Clarke LLP**

**Respondent
(Site Provider)** : **Adeline Properties Limited**

Representative : **Concorde Solicitors Limited**

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

Date of Order : **10th February 2026**

DECISION

1. A Reference under Schedule 3A of the Communications Act 2003 was received by the Tribunal on 18th November 2025 including an application for an order imposing an agreement for rights under the Electronic Communications Code (“the Code”) on an interim basis.
2. The reference is one to which regulation 3(2), Electronic Communications and Wireless Telegraphy Regulations 2011 applies and must be determined by 17th May 2026.
3. On 20th November 2025 I issued Directions for determination of the application for interim rights at the case management hearing to take place on 3rd February 2026. By Order dated 20th January 2026 I vacated the CMH listed for 3rd February 2026 and directed that the hearing of the application for interim rights shall take place on 9th February 2026 at 10:00 a.m. by way of remote video platform with a time estimate of three hours
4. At the hearing on 9th February 2026 the Claimant was represented by James Andrews-Tipler and the Respondent by Michael Watson.

The Paragraph 21 Test

5. The Tribunal may grant Interim Code Rights under Paragraph 26 where it “*thinks that there is a good arguable case that the test in paragraph 21 for the making of an order under paragraph 20 is met.*”
6. The Tribunal may make an order if (and only if) the Tribunal thinks that both of the following conditions are met:

21(2) The first condition is that the prejudice caused to the relevant person by the order is capable of being adequately compensated by money.

21(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.

21(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.

7. In **EE Limited and Hutchison 3G UK Limited v London Underground Limited** [2021] UKUT 0128 (LC) the Deputy Chamber President, at paragraph 7, set out how a Claimant may demonstrate a good arguable case:

“For a claimant to demonstrate a good arguable case does require that it make out its case to the normal civil standard of proof on the balance of probability; as the Court of Appeal confirmed in University of London, at [77], a good arguable case is a lower test than is laid down by paragraph 21 itself. Instead it means that the

claimant must show that it has a plausible evidential basis for its claim that the paragraph 21 conditions are satisfied. The test is flexible and fact specific.”

The Claimant’s Case

8. The Claimant relies on the witness statement of Michael Brookes dated 4th February 2026. Mr Brooks is a NTQ surveyor employed by the Claimant.
9. The Claimant has identified Waverley House as a replacement for a rooftop site located in Carlisle Street W1D 3BS which has been decommissioned.
10. The parties entered into a previous MSV on 30th January 2024. The MSV was completed on 10th June 2024.
11. The works to be carried out are detailed in RAMS (risk assessment and method statement) exhibited by Mr Brooks at MAB1. The draft agreement provides at clause 6.2 for the Respondent to make representations on RAMS.
12. Annex 3 to the draft agreement sets out the proposed works:
 - a) *Conducting line scans on the top of the main roof and the undersides of the plant room roof using a Proceq GPR Live to determine the construction type and thickness in particular to determine whether the concrete is reinforced and whether there is metal rebar contained in the structure;*
 - b) *If non-intrusive methods have established clear readings, finish works. If not, attempt to establish feasibility for investigation of areas beneath the roof where finishes can be easily displaced and repaired (such as plasterboard ceilings in communal corridors) – this would be completed on the same day as the MSV if the scans have not provided the full information required;*
 - c) *If feasible, temporarily removing roof finishes to perform survey scanning on the underside of the roof and superstructure;*
 - d) *Repair like for like any areas where finishes are displaced;*
 - e) *If above methodology not possible, attempt to locate roof, material brand and warranty to establish feasibility for intrusive investigation. This will also have been requested prior to the survey date;*
 - f) *If displacement of waterproofing is feasible, the investigative roof areas will be cut carefully with hand tools to displace the membrane and insulation, whilst keeping surrounding areas intact, to expose the top of the roof structure. These will comprise of basic hand tools initially, such as knife, crow bar escalating to battery powered saws only. Carefully pull back roof finishes in a 1m square area and observe make up, photograph and document. These areas of investigation will be as close to the red line area marked on the plan contained within MAB1, , adjacent to the proposed new equipment locations, but there will be flexibility on location based on site conditions on the day (for example if water is pooled due to prior rainfall, but conditions are dry an investigation may go ahead, but would not be near pooled water;*

- g) *Using Topseal adhesive products to restore areas where the roof has been intrusively investigated carrying a suppliers warranty of 10 years insurance backed; and*
- h) *Such other works as agreed between the Parties in writing.*

To be carried out in accordance with RAMS or updated RAMS (as applicable)

13. Paragraph 29 of Mr Brook's witness statement deals with impact on capacity and coverage arising from the loss of the Carlisle Street site:

“As a consequence, I understand that from Vodafone's Radio Planning Team that the loss of the Remove Site, has resulted in a reduction in mobile coverage and capacity in this part of central London. Although a partial replacement site is now live in the area, that site provides an inferior service and has not been able to replicate the coverage previously delivered by the Remove Site, particularly to the north of the Remove Site. As a result, the Claimant urgently requires a new location capable of restoring service to the busy area south of Oxford Street, between Charing Cross Road and Regent Street, and relieving pressure on neighbouring sites. Waverley House has been identified as a potentially suitable replacement site, in particular as a result of its height (31m) in comparison to the surrounding buildings.”

The Respondent's Case

14. The Respondent relies on the witness statement of Michael Collins dated 30th January 2026. Mr Collins is a Director of the Respondent.
15. Waverley House is an office building constructed in the early 1960's. Despite renovations and refurbishment in the early 1990's, 2018 and 2021/22 the building is now showing signs of general wear and tear externally and the façade and roofing are coming to the end of their life span. General leaks to the 8th floor parapet are being addressed with Gorilla tape.
16. The Respondent intends to redevelop the building. The Respondent has already obtained reports from Squire and Partners (Architect), MESH (quantity surveyors), Heyne Tillett Steel (structural engineers), Point 2 Surveyors (right to light), Max Q Consulting (3d modelling and feasibility), SPARK (project manager) and Cadplan Services Limited (3d survey).
17. Photographs of the site are at [163-165] of the Bundle. Mocks ups of the new building are at [195-198]. GIA of the new building will increase by 50% (80,601 sq.ft. to 120,062 sq. ft.) [194].
18. SPARK Feasibility and Strategy Roadmap indicates average expiry dates for all leases is 2029. Lease extensions will be possible to align with the 4 longest leases until 2031. All leases are outside 1954 Act protection. A tenancy schedule can be found at [367].

19. The Respondent intends to make progress in the next financial year and appoint consultants to ensure planning consent by 2029/30. The budget for the redevelopment is £111,489,000.
20. At the hearing Mr Watson confirmed that existing leases at Waverley House do not expire until August 2031. Demolition will start by end of 2031. Accordingly, this is a 5 year project, with planning by 2029/2030, lease termination August 2031 and demolition by end of 2031.

Deliberation

21. The first condition in Paragraph 20 requires me to consider prejudice caused to the Respondent. Notwithstanding that the façade and roofing are coming to the end of their life there is clearly a risk that further damage may be caused to the roof as a result of the intrusive works set out in Annex 3 to the agreement and in particular items (c) and (f). The prejudice in terms of damage that may be suffered by the Respondent is set out at paragraphs 34-40 of Respondent Statement of Case [47].
22. Clause 2.1.5 of the draft agreement provides for the Claimant to make good any physical damage as soon as reasonably practicable to the Respondent's reasonable satisfaction. In addition, the Respondent's right to claim compensation under paragraph 84 is preserved.
23. I find that any prejudice in terms of damage is capable of being adequately compensated by money.
24. The Respondent is committed to ensuring planning consent by 2029/30 with demolition to start at the end of 2031. Even if the MSV agreement is imposed for the 6 month period sought by the Claimant undertaking an MSV will not impact on the Respondent's plans for 2031.
25. The second condition requires me to consider the public benefit likely to result from the making of the order sought. I find on the basis of Mr Brookes' witness statement that the loss of the Carlisle Street site has reduced coverage and capacity for Vodafone customers and that a new site is needed to restore service in the area south of Oxford Street between Charing Cross Road and Regent Street.
26. An MSV is part of the process of addressing loss of coverage and capacity following the loss of the Carlisle Street site. The Claimant needs to mitigate the loss of Carlisle Street site and the impact this will have on network coverage for customers in the area (see Claimant's Statement of Case, paragraph 17 at [36]). The public will benefit in terms of the Claimant being able to quickly assess site suitability with a view to resolving coverage issues for Vodafone customers (see paragraph 27 at [37]).
27. I find that the public benefit likely to result from the making of the order outweighs the prejudice to the Respondent.
28. Finally, Paragraph 20(5) 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.”

29. The Respondent has set out its redevelopment intention culminating in the commencement of demolition of the existing building in late 2031. However, as the MSV sought is limited in duration to 6 months the making of an order will not in any way impede the Respondent’s redevelopment intention. The Respondent could reasonably carry out its intended redevelopment if the order were made.
30. Mr Watson argues that any order is futile in view of the Respondent’s redevelopment plans. It is common for new site Paragraph 20 agreements to be for a term of 10 years with a landlord’s redevelopment break after 5 years. It makes commercial sense for the Claimant to peruse this site (subject to a positive MSV) with a view to occupation for 5 years, vacating thereafter to allow the Respondent to proceed with its redevelopment unimpeded by the presence of telecoms apparatus.
31. The Claimant has satisfied me that there is a good arguable case that the test in paragraph 21 for the making of an order under paragraph 20 is met.

Terms

32. The parties have sensibly reached agreement on almost all terms. My determination in relation to those terms remaining in dispute is as follows:
 - 1.1 Consideration to be determined in accordance with Directions at a hearing to be held on 7th and 8th May 2026 in accordance with the power to include terms as to the payment of consideration to the Respondent in the agreement under Paragraph 26(6)(b) of the Code.
 - 1.2.1 The Claimant shall pay electrical services consultant from Work 7 fees on demand as follows:
 - 1.2.1.1 £220 (two hundred and twenty pounds) exclusive of VAT per MSV per day only where the MSV is for a period of four hours or less; and
 - 1.2.1.2 £440 (four hundred and forty pounds) exclusive of VAT per MSV per day only where the MSV is for a period of more than four hours.
 - 2.1.5 The operator agrees: to make good any physical damage caused by the exercise of the Rights as soon as reasonably practicable to the Grantor's reasonable satisfaction.

Transactional costs

33. The Claimant shall pay the Respondent’s eminently reasonable legal expenses of £1,749.50 (5.1 hours in total) under Paragraph 84(2).

Litigation Costs

34. The Claimant has been the successful party. The Claimant has established a good arguable case that the test in paragraph 21 for the making of an order under paragraph 20 is met. The Claimant has been successful in obtaining an order for the imposition, on an interim basis, of an agreement under Paragraph 26.
35. The Claimant's costs of £12,000 are entirely reasonable and proportionate for a 3 hour remote hearing before the FTT. Accordingly, I order the Respondent to pay the Claimant's costs under Paragraph 96 and FTT Rule 13(1)(d), summarily assessed, in the sum of £12,000.

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.