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	**:**	**Oliver Radley-Gardner KC instructed by Osborne Clarke LLP**
Respondent (Site Provider)	**:**	**Adeline Properties Limited**
Representative	**:**	**Nathaniel Duckworth KC instructed by Concorde Solicitors Limited**
Application	**:**	**Electronic Communications Code**
Hearing	**:**	**7th and 8th May 2026 Centre City Tower, Birmingham**
Tribunal	**:**	**Judge D Jackson Mr V Ward FRICS Mrs J Rossiter MRICS**
Date of Order	**:**	**15th May 2026**

DECISION

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1. By Order dated 10th February 2026 the Tribunal imposed on the parties, pursuant to Paragraph 26 of the Code, an interim agreement in the form annexed to the Order for the period of 6 months from and including the date of the Order [73-76]. The agreement annexed to the Order provided for consideration "to be determined by the First-tier Tribunal at a hearing on 7 and 8 May 2026".

2. At the hearing on 7th and 8th May 2026 the Claimant was represented by Oliver Radley-Gardner KC (Skeleton Argument 1st May 2026). The Respondent was represented by Nathaniel Duckworth KC (Skeleton Argument 30th April 2026). The Tribunal received expert valuation evidence on behalf of the Claimant from Jonathan Stott MRICS (Report dated 20th April 2026 [419 -450] and from James Marland FRICS (Report dated 12th March 2026 [124 -149] and Supplemental Statement dated 29th April 2026 [SB 813-833]). The Experts have prepared a Joint Statement [SB 834-840]. The Tribunal has considered a Bundle of documents [1-770] and a Supplemental Bundle [SB 771-858].

3. Accordingly, this decision is concerned with a single issue, namely the consideration payable under the MSV agreement. The expert opinion of Mr Stott for the Claimant is that consideration is nominal. In the expert opinion of Mr Marland for the Respondent consideration is £7,500.

Alder Castle

4. The Upper Tribunal has never been required to determine the issue of consideration payable under an MSV agreement. In **Covent Garden IP Limited v Cornerstone Telecommunications Infrastructure Limited** [2025] UKUT 136 (LC) the Deputy Chamber President said:

   32. As I have explained, paragraph 26(6)(b) of the Code makes the inclusion of a term for the payment of consideration a matter of discretion. But if there is a dispute, the FTT must decide how to exercise that discretion and in doing so it must take all relevant matters into account….

   33. As for consistency of practice, this Tribunal has never been required to determine a dispute over the consideration payable for interim rights to conduct an MSV…

   35. Tribunals are not party to the negotiations which lead litigants to reach agreements, but it is not difficult to think of reasons why nominal consideration should routinely be agreed for MSV rights. The rights themselves are insubstantial and permit a small number of vetted surveyors or other technical experts to have access to a rooftop or service areas of a building for a few hours at a time on what, in practice, are usually two or three occasions. Destructive investigations are not normally permitted (where provision is sometimes made for them it is on the basis that full reinstatement will be achieved). The rights are exercisable during a limited period, usually of six months. Building owners are entitled to compensation for any loss or damage caused by the exercise of the rights. Where a substantial building is involved, agreements will typically include the payment of fees to the building owner

to cover the cost of approving risk assessments and the credentials of contractors, attendance during the surveys, providing an escort round the building, and providing plans or other documents or information required. When it is additionally remembered that the no-network assumption removes the commercial value of the rights to the operator as a relevant factor in the assessment of consideration, it is unsurprising that a nominal sum is routinely agreed. The alternative would be an expensive piece of litigation the costs of which would be likely to dwarf any sum awarded. Taking this case as an example, the Building Owner is said to have incurred costs of more than £50,000, excluding VAT, in the FTT proceedings in pursuit of consideration which its own advisers now put no higher than £10,000.

5. The MSV at Waverley House took place on 21st April 2026. An intrusive survey was not required (see letter from Osborne Clarke to Concorde dated 28th April 2028 [4-5]). Of course, the Tribunal does not determine consideration payable for the agreement imposed on 10th February 2026 by reference to events that took place after that date. We therefore record the outcome for completeness only, noting that this was an entirely routine site survey to assess the suitability of Waverley House for the installation of electronic communications apparatus.

Paragraph 24

6. Paragraph 26(4) of the Code provides that the provisions of Paragraph 24 apply to the determination of consideration payable on the imposition of an agreement for interim rights under Paragraph 26. Paragraph 24 provides:

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

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

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

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

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

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

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

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

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

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

7. The experts have distilled Paragraph 24 into an agreed "Basis of Valuation" at paragraph 4.1 of the Joint Statement [SB835-836]:

4.1 The Experts agree that:

4.1.1 Consideration is to be assessed in accordance with paragraph 24 of the Code.

4.1.2 The consideration is to represent the Market Value of the Agreement

4.1.3 The valuation assumes a willing buyer and willing seller.

4.1.4 The hypothetical transaction does not relate to the provision or use of an electronic communications network.

4.1.5 The valuation assumes that other sites are available, a "no scarcity" assumption.

Terms of the Agreement

8. The Agreement imposed is at [84-95]. The Experts have agreed the relevant terms of the agreement at paragraph 4.5 of the Joint Statement [SB 836]:

4.5 The Experts agree that:

4.5.1 The Agreement permits access for MSVs over a period of 6 months.

4.5.2 The rights granted in the Agreement are not constrained in number or in the duration of visits.

4.5.3 The Agreement includes rights to access the roof, communal areas and service areas including electrical intake room and risers (excluding areas in the possession/occupation of any tenant).

4.5.4 The Agreement permits intrusive works, which may include cutting and exposing unlimited areas of roof, each such area being limited to a size of 1m² (with reinstatement obligations).

4.5.5 The Agreement includes provisions for payment of fixed contributions towards the costs involved.

9. The Experts have also agreed "Compensation and Indemnity Provisions" at paragraph 4.6 of the Joint Statement [SB836]:

   4.6 The Experts agree that the Agreement provides for payments including:

   4.6.1 Attendance fees (£220–£440 per day) where the Operator requires an electrical clerk of the works in attendance.

   4.6.2 Administrative payments (£500, £150, £250) for the costs involved in providing documents, risk assessment and attendance.

   The Experts agree that the Operator will indemnify the Grantor against all third-party liabilities, claims, costs, expenses, proceedings, damaged and losses, arising out of any breach of the Operator's obligations under the Agreement, the negligent or unlawful exercise of the rights, and the enforcement of the Agreement by the Grantor.

Waverley House

10. The Experts are agreed that "the Property is a multi-let office building in Central London of approximately 57,500 sq. ft" (see Joint Statement at 4.3 [SB836]). It is also agreed that Waverley House is a "valuable investment asset" (Joint Statement 4.4).

11. Waverley House is an 8 storey building. At the present time there are 10 tenancies and total annual rental is approximately £4,000,000. The Respondent values the building at £67,900,000.

Respondent's Expert – James Marland FRICS

12. At paragraph 2.7 of his Expert Report Mr Marland starts from the position that "*the nature of the Agreement in these hypothetical circumstances is unusual and without direct comparison in the market*" [129]. At paragraph 8.1 Mr Marland confirms that he is not aware of any similar open market transactions [139].

Comparable evidence

13. In the absence of direct comparables Mr Marland has considered consideration paid for agreements granting survey rights (see paragraphs 8.3 – 8.30 of Mr Marland's Report [139-145]:

    (1) East West Rail Project - £600 Annual Access Fee and £250 per borehole
    (2) Peak Cluster Project - £1,200 payment and £375 per borehole
    (3) City of Westminster 6 month licence to oversail public highway - £534
    (4) Crane oversailing licence - £500 per week
    (5) Central London scaffolding on adjacent property - £1500 per week
    (6) Filming and entertainment - £3000-£5000 per day

14. Mr Marland helpfully summarises his comparables at [148]:

Oversailing highways (Westminster)	£534	per 6 months
Oversailing over building (London)	£500	per week
Fixing and maintaining a mast (London)	£2,500	per 6 months
Filming rights (London)	£1,000-£3,000	per day
Scaffolding (London)	£1,500	per 6 weeks
Annual licence and 2x boreholes (East West Rail)	£2,100	for 1 year
Licence fee and 2x boreholes (Peak Cluster Project)	£1,950	for 18 months

Affinity Water Table

15. Mr Marland has also considered **Affinity Water**, uprated for inflation, which in his expert opinion produces a figure of £5000 p.a. for a rooftop site (Paragraphs 8.32 – 8.41 [145-147]. However, Mr Marland considers *"an agreement providing for the installation of long term apparatus would place much less of a burden and would expose the Property to less risk than the Agreement*." Accordingly whilst a figure of £2,500 for a 6 month agreement might be taken as a starting point a willing seller will regard an agreement for the installation of apparatus in a specifically defined location on part of a roof as "*much less impactful*" than "*an agreement that endures for 6 months, provides for rights to be exercised 24/7, and which includes rights to repeatedly damage the property*" (see paragraph 8.39 at [146]).

Risk

16. Mr Marland's position on "Assessment of Risk and Impact on the Property" is set out at paragraphs 5.8 and 5.9 of the Joint Statement [838]:

    5.8 Risk to the Property is material and significant

    5.9 Reasons:

    5.9.1 Continuous access rights over 6 months create operational burden

    5.9.2 Potential tenant disruption could affect rental income and tenant relationships

    5.9.3 The seller does not know the intended purpose of the buyer, which is further risk

    5.9.4 Intrusive works introduce damage risk

    5.9.5 Unknown future works create uncertainty

    5.9.6 Risk to capital value must be considered

Conclusions

17. Mr Marland's conclusions are at paragraphs 8.50 -8.52 of his Expert Report [148-149]:

    8.50 Without directly comparable transactions, it is not possible to be definitive as to the appropriate rate for the Agreement in this case.

    8.51 From my career-long experience advising both landlords and tenants of office buildings in Central London, I am of the opinion that the open market value of the Agreement having regard to the particular requirements of the Code is in the range £5,000 to £10,000.

    8.52 As it is not possible to be more precise than this, it is my opinion that a reasonable price for the Agreement as negotiated between a Willing Buyer and Willing Seller is £7,500.

18. At paragraphs 5.4 and 5.5 of the Joint Statement [837] Mr Marland confirms his position:

    5.4 Consideration should be ***£7,500***

    5.5 Reasons:

    5.5.1 The Agreement introduces material risk to a high-value investment asset

    5.5.2 There is potential for disruption to tenants and income stream

    5.5.3 Intrusive works introduce physical and long-term risk

    5.5.4 The extent of rights (24/7 access over 6 months) is onerous

    5.5.5 The hypothetical seller requires compensation for risk and inconvenience

Claimant's expert – Jonathan Stott MRICS

19. At paragraphs 5.4 and 5.5 of his Expert Report Mr Stott sets out what a typical MSV involves and why agreements are usually sought for a 6 month period [429]:

    5.4 In my experience of attending MSVs on behalf of On Tower (on behalf of whom I undertook site finding at my previous firm, and attended around five MSVs around 2021) they are usually completed within two to six hours. They usually involve around four to eight qualified professionals with various expertise meeting to undertake surveys and assessments, to consider the potential for erecting a telecoms mast and/or install telecoms apparatus, and identify any potential risks, constraints or other issues. In my experience, and based on my knowledge of the telecoms sector, it is typical for one or two MSVs to take place as part of the process of assessing the suitability of a site.

5.5 Usually, the six-month window of the Agreement is ordered to reduce the risk that not all MSVs required will be able to be completed, and therefore the possibility of the Agreement period needing to be extended.

20. Mr Stott disputes that the agreement allows the Claimant constant use of the premises for a 6 month period (see paragraph 5.6):

    In making that assertion Mr Marland has made reference to the Agreement providing the Claimant with 24/7 access to the Site for a continuous six-month period, and providing for use of common areas including toilets, stairs and the lift. The Agreement does not allow the operator six months' constant use of the Property, as seems to be suggested by Mr Marland.

Agreements of licences to undertake site investigations

21. Mr Stott's firm has advised the promotors of both East West Rail and Peak Cluster projects (paragraph 7.5 [432). At paragraph 7.6 of his report Mr Stott explains:

    The reality, in those cases, is that the project promoter has a requirement to undertake surveys of specific land and property (i.e. there is scarcity, as only that land will do) and promoters are generally willing to pay a premium to achieve a consensual deal, rather than having to fall back on the statutory powers available to them, which are expensive to implement and can delay projects due to the extensive lead in times.

Oversailing licences and scaffolding licences

22. Mr Stott has only limited experience of oversailing and scaffolding licences. His opinion in respect of oversailing licenses is set out at paragraph 7.15 [435]:

    ….the landowner from whom permission is being sought generally has a ransom position, and an ability to lever that position to negotiate a higher price. This is because there is no statutory backdrop to compel anything in these cases. The person seeking the rights has to get authorisation for what would otherwise be a trespass.

    In Mr Stott's opinion the same "ransom" considerations apply to scaffolding. In addition, the presence of scaffolding give rise to an additional risk of use by potential intruders (paragraph 7.20)

23. Mr Scott does not find City of Westminster's oversailing highway licence fee to be of assistance. It is an administrative fee relating to adopted highways for which the Westminster is responsible (paragraph 7.15 [435]).

24. Mr Stott's opinion is set out at 5.10 and 5.11 of the Joint Statement [838]:

    5.10 Agreements and licences relating to surveys for infrastructure projects, oversailing and scaffolding are not relevant.

    5.11 Reasons:

5.11.1 They do not reflect the "no network" and "no scarcity" assumptions because the project promoters and developers seeking to oversail or erect scaffolding need to use specific land / property for that purpose.

5.11.2 Payments in those cases include premiums for consent, and in almost all the party seeking the rights does not have the ability to fall back on statutory provisions to force entry (or where they do, the process is lengthy and potentially costly)

25. Mr Stott's robust conclusion is set out at paragraph 7.22 [436] of his Report:

In my opinion, to compare crane oversail agreements or licences for scaffolding with the Agreement, is akin to comparing chalk with cheese.

Filming Rights

26. Mr Stott has no experience in this area but points out that rights of access to survey would not prevent filming taking place. In any event there is no evidence of any demand from filmmakers or photographers for use of the rooftop of Waverley House.

Attachment of overhead line equipment

27. Mr Stott has considerable experience in negotiating agreements for attaching brackets to buildings to support overhead line equipment in relation to tramways. These are public infrastructure projects e.g. West Yorkshire Passenger Transport Executive and Transport for Greater Manchester. Under such OLE agreements consideration is £1 nominal.

28. Mr Stott has spoken to an in-house solicitor at TFGM in respect of agreements entered into at 29 properties. No consideration was paid other than legal fees. Mr Stott concludes at paragraph 7.41 of his report [440]:

"*In my opinion, this is very clear evidence that the owners of those 29 properties did not perceive the benefit of the agreements to TfGM, or the disadvantages that they might provide for them, to hold any value. In my opinion those agreements provided greater advantage to TfGM than the Agreement provides for Cornerstone, and greater disadvantage to the property owners than the Agreement provides for Respondent.*"

Marks and Spencer

29. Mr Stott gave evidence before the Lands Tribunal for Scotland in (**Cornerstone Telecommunications Infrastructure Ltd v Marks & Spencer plc** LTS/ECC/2019/34 (6 July 2021)). Consideration for a 10 year telecoms agreement of the rooftop site above a branch of Marks and Spencer was determined at £3,850 p.a. (£5,100 p.a. adjusted for inflation). Mr Stott's expert opinion is that "*there is no way*"

a 6 month MSV agreement can be described as more burdensome (see paragraph 7.67 at [445]).

Risk

30. Mr Stott's position on "Assessment of Risk and Impact on the Property" is set out at paragraphs 5.6 and 5.7 of the Joint Statement [837]:

5.6 Risk to the Property and tenants is minimal and controlled

5.7 Reasons:

5.7.1 Visits are likely to be limited (typically 1–2 visits)

5.7.2 Advance notice and RAMS control access

5.7.3 Works are short duration and undertaken by professionals

5.7.4 Access is via common parts and not demised areas

5.7.5 Compensation and indemnities mitigate risk

Conclusions

31. Mr Stott's conclusions are at paragraphs 8.1 -8.6 of his Expert Report [448]:

8.1 In my opinion the rights in the Agreement are of nominal value to the hypothetical willing buyer, and cause minimal impact for the hypothetical willing seller, beyond the points for which the Agreement already provides compensation.

8.2 I see no analogy between the Agreement and agreements or licences that have been negotiated in the absence of a 'no network' (or 'no scheme') assumption, and a 'no scarcity' assumption, such as those for bore holes, trial pits, crane oversailing, scaffolding and filming etc.

...

8.6 In conclusion, in my opinion only a nominal sum should be awarded as consideration for the Agreement.

32. At paragraphs 5.2 and 5.3 of the Joint Statement [837] Mr Stott confirms his position:

5.2 Consideration should be nominal

5.3 Reasons:

5.3.1 The rights granted are limited in duration and scope, and unlikely to cause interference or disruption for the Respondent's tenants

5.3.2 MSVs for Telecoms purposes are typically few in number and short in duration

5.3.3 There is no reason to anticipate that the exercise of the rights will introduce risk to the rental income, and therefore there is no risk of impact to the property's value

5.3.4 The Agreement includes compensation and indemnity provisions covering costs and risk

5.3.5 The Agreement includes a provision to make good any damage caused

5.3.6 The "no network" and "no scarcity" assumptions remove any premium

5.3.7 Tribunal authority supports nominal consideration for MSV rights

Deliberation

Comparable evidence

33. Mr Marland confirms at paragraphs 8.1 and 8.5 of his Expert Report that he is not aware of any open market comparable transactions. Under cross examination Mr Marland confirmed that his comparables did not inform his valuation of £7,500 but rather "*gave a background*". In respect of East West Rail Mr Marland told us that this project was "*not a comparable"* but *"put forward as an underlying context of money paid under a degree of compulsion*". In respect of the Peak Cluster Project Mr Marland said *"absolutely not a direct comparable – demonstrating money paid. A general overall picture, money for things. Not an ideal comparable*." We agree. Both East West and Peak Cluster projects involve the drilling of boreholes at greenfield sites predetermined by the location of the planned railway and CO2 pipeline.

34. Mr Marland considered the Westminster City Council oversailing licence at £534 per 6 months to be a good comparable. The licence consists of the imposition of a fixed cost and excludes any special value. In the Tribunal's view the licence is a payment akin to a permit and the sum of £534 primarily covers the Council's administrative costs.

35. Mr Marland took the view that the private oversailing licences were "*quite different for comparable purposes. Very often special arrangements between the two parties*." For that reason, Mr Marland preferred the Westminster City Council figure as it excludes any special value.

36. In respect of scaffolding Mr Marland, in his oral evidence, took the view that these arrangements were "*quite different for comparison purposes. They provide an impression but there are bound to be special circumstances we don't know."* We agree and do not find costs paid for scaffolding of adjacent property to be of assistance.

37. In respect of filming rights Mr Marland told us that he was *"trying to give overall background of the sort of thing happening on roofs for which people pay*." However, he attributes "*no specific value*" to filming rights. We do not find filming rights to be in any way helpful.

38. Mr Marland specifically considers the Marks and Spencer case in his Supplemental Statement [SB 819-820]. Mr Marland does not consider the Marks and Spencer case as being "*particularly relevant*". He refers to only "*in its generality*". At paragraph 2.8 of his Supplemental Statement Mr Marland confirms "*I am not in a position to undertake a detailed Marks and Spencer type of analysis*."

39. Mr Marland indicates in his Supplemental Report that service charges for 2025 were £1,013,118 (2024 - £745,175). Insurance charges for April 2025 to March 2026 were £75,026.97. Mr Marland calculates that service charges and insurance for a 6 month period was £544,072.49. However, neither in his Supplemental Statement nor at the invitation of the Tribunal was Mr Marland prepared to carry out any analysis as to how his figure of £544,072.49 should be apportioned in respect of the rights granted by the 6 month MSV agreement. Mr Marland told us that service charges were "*not a way I would feel very comfortable with – so many unknowns and difficulties. I would have to give serious thought to how much of any item is appropriate*." In response to a question from the Tribunal Mr Marland said that apportionment of service charges was not an exercise he had carried out and would involve "*a lot of analysis and guesswork*". In the absence of any willingness by Mr Marland to provide an analysis we do not find 2024/2025 service charges to be of any assistance.

40. In summary Mr Marland did not find any of his own comparables, with the exception of the Westminster City Council figure, to be of any assistance beyond an "i*ndication that people pay for roofs and to make holes*." He was unattracted to granular analysis and said that in practice people "*made a deal over a cup of coffee*". As Mr Duckworth succinctly summarised his client's expert evidence, Mr Marland relies on "*gut feeling*."

41. Based on Mr Marland's evidence at the hearing we are unable to rely on his comparables (other than Westminster City Council), nor are we able to rely on apportionment of service charges or analysis of the **Marks and Spencer** decision.

42. Mr Stott relies on overhead line agreements of which he has considerable practical experience. We do not find the West Yorkshire or Manchester tramway/trolleybus evidence to be of any assistance. We were not shown any statutory basis for the West Yorkshire project but have been assisted by seeing a copy of the Transport of Greater Manchester (Light Rapid Transit System) (Second City Crossing) Order 2013. It is clear that the scheme contains an element of compulsion in that it makes provision for application to the Magistrates Court to allow apparatus to be affixed where consent is unreasonably withheld. In any event there is considerable element of civic pride involved in both the West Yorkshire and Manchester projects. Most building owners would consider that they would benefit from having the tram pass by their building and would regard it as a positive benefit.

Burdens

43. Mr Duckworth has prepared "Agreement extent of coverage table" which analysis in detail the administrative and management time and professional costs likely to be incurred by the willing seller under the agreement. Mr Duckworth sought to demonstrate that there would likely be a considerable shortfall. However, Mr Marland was not being prepared to be drawn into consideration of Mr Duckworth's table – "*not*

an exercise I undertook. No granular analysis". Accordingly, despite Mr Duckworth's best endeavours we do not find his "Agreement extent of coverage table" to be of assistance as it was not adopted by the Respondent's own expert witness.

44. The first burden identified by Mr Marland is risk arising from the fact that the ultimate purpose of the agreement is unknown and potentially open ended (see "*such other works as agreed*" at Annex 3 paragraph (h) of the agreement). Mr Marland's concern is that a willing seller would want to know who was accessing the roof and for what purpose. In addition, Mr Duckworth rightly pointed out that although Mr Stott has accurately described the limited number of visits involved in a typical MSV because the willing buyer's purpose is not known there could potentially be a large number of visits. We find Mr Duckworth's suggestion that there could be as many as 50 visits to be fanciful. The answer to the Respondent's concerns is to be found in the payment of the Grantor's fees under clause 1.2 of the agreement. In a telling passage during cross examination Mr Radley-Gardner asked Mr Marland if money would "*make the risk go away*." Mr Marland's response was "*I guess so*."

45. The second burden identified by Mr Marland relates to tenants of the property:

> *"If tenants become dissatisfied, then they become more aggressive on property management issues, and are less likely to be willing to stay as tenants in future. Moreover, news travels and a history of bad tenant experience can deter new tenants"* (paragraph 5.4 [135])
>
> *"Disturbance from noise and use of common facilities during the tenant's daily use of the building. This could affect the tenant's quiet enjoyment of their space and cause friction in the management thereof"* (paragraph 5.6 [135])
>
> *"This may lead to dissatisfaction on the part of the Tenants who may not relish paying service charges when the landlord is granting the use of services to unknown numbers of third parties. This could lead to a souring of landlord and tenant relations and could result in the landlord having to address complaints from unhappy tenants.*" (paragraph 8.21 (m) [143])

46. We find both Mr Marland's first (unknown user) and second (tenant discontent) concerns to be overstated. The terms of the agreement are circumscribed by its purpose. There is no unknown risk. A willing seller will know that under clause 2.1.2 of the Agreement that a willing buyer will not access or use the site "*for any purpose other than to exercise the Rights*". The willing buyer agrees to cause "*as little inconvenience*" as is reasonably practical to tenants and occupiers (see clause 2.1.1). The survey is to be carried out with "*such skill, care and diligence as is reasonably expected of skilled and properly qualified professionals undertaking surveys*" (see clause 2.1.12). Under such circumstances a willing buyer will cause no more risk or disturbance to tenants than lift engineers, heating engineers, electrical contractors and maintenance operatives who already regularly visit this busy 8 storey central London building. The Respondent's case on unknown purpose and tenant disquiet is simply exaggerated.

47. Mr Marland's third concern is damage to the roof in the exercise of the rights. The Tribunal made findings as to the present state of the roof in the Decision of 10th February 2026 at paragraph 15 [80]:

"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."

48. We note that there are currently 10 tenants at Waverley House and that the current rent roll if £4,000,000 p.a. We are quite sure that the state of the roof at Waverley House is not such as to give any concerns to tenants paying an average rent of £400,000 p.a. In any event the agreement ameliorates any concerns. Works must be carried out with reasonable skill, care and diligence and in accordance with RAMS provided in advance. Finally, under clause 2.1.5 the Operator must "*make good any physical damage*". We find that concerns in respect of wear and tear and damage to the roof are overstated. The suggestion that the roof may fail within 6 months and require urgent renewal during the currency of the agreement is in our judgement quite fanciful. As Mr Marland admitted during cross examination, he was exploring "*what the extreme might be*."

49. Mr Marland's final concern was that Waverley House is "*accessible 24 hours per day, 7 days a week at all times during the 6 months term of the Agreement*" (paragraph 1.14 [127]) and *"the Claimant is granted unrestricted rights to access the roof together with the stair/lift core and toilets leading thereto at any time of day or night*" (paragraph 2.3 [129]). During cross examination Mr Marland softened his position and accepted that the Claimant would "*have to fit in with how the building is managed*" and that these things are always "*subject to discussion*."

50. Again, access is circumscribed by the agreement. Clause 2.1.8 requires the Claimant to "*comply with the Grantor's reasonable requirements concerning access …. necessary for the safe and effective management of the Grantor's Property*."

51. The exercise of the rights is subject to the following terms of the agreement:

- Cause as little inconvenience as possible (clause 2.1.1)
- Access only for purpose of exercising rights (clause 2.1.2)
- Make good any damage (clause 2.1.5)
- Comply with grantors reasonable access requirements (clause 2.1.8)
- To give 7 days' notice before exercising the rights (clause 4.3)
- To be accompanied at all times when exercising the rights by Grantors access contact or site management team (clause 4.4)
- To undertake works in accordance with RAMS (Clause 6)
- Operator's insurance £10,000,000 (clause 2.2)
- Operator to indemnify Grantor (clause 2.3)

52. When considered in light of the terms of the agreement as set out in the preceding paragraph Mr Marland's risks and burdens are unrealistic and overstated. In any event when asked by Mr Radley-Gardner how those matters affected his valuation Mr Marland said that he had "*not put a price tag on those things and approached in that way. A potential inconvenience …. many of which are quite small – all of which add up. I don't know the extent to which required but will require some recompense*."

Mr Marland's Evidence

53. Mr Marland is an acknowledged specialist in the valuation of commercial property. He has a long and distinguished career in central London especially City of London, Docklands and the West End. However, Mr Marland accepts that he has no experience of valuation under the Electronic Communications Code.

54. Mr Marland accepts that his figure of £7,500 is unsupported by his own comparables. His figure of £7,500 for a 6 month survey agreement equates to £15,000 p.a for a 12 month agreement. Mr Marland's figure is well over twice the annual consideration payable under a 10 year telecoms rooftop lease which typically involves the demise of an area of the rooftop and installation of a mast and other telecoms equipment. We cannot accept that an agreement for survey is more burdensome than an agreement to install and operate electronic communications apparatus. Using a permanent rooftop installation as a sense check Mr Marland's figure of £7,500 for a 6 month interim rights agreement is clearly and obviously wrong.

55. Finally, Mr Marland's conclusions at paragraphs 8.50 -8.52 of his Expert Report [148-149] that consideration "*is in the range £5,000 to £10,000*" and that "*it is not possible to be more precise*" fall short of definitive expert opinion on which the Tribunal can safely rely.

Hanover Capital

56. Neither party has adopted a Hanover Capital type analysis. Mr Stott said that the Hanover Capital approach was not typically adopted for an MSV agreement. In addition, he felt that following **Affinity Water** and **Audley House** the use of a Hanover Capital approach had been discouraged by the Upper Tribunal. Mr Marland said a that Hanover Capital approach was "*not a normal way of doing an open market valuation*."

57. In the absence of any assistance from the experts for either party we start our Hanover Capital valuation at stage 1 by looking at the market value a willing buyer would pay a willing seller for the agreement.

Stage 1

58. The agreement grants Rights to the Claimant for the purposes of carrying out an MSV. An MSV is defined as a visit or visits to undertake the Works. Annex 3 to the agreement sets out the 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)

59. Mr Duckworth invited the Tribunal to reflect the Paragraph 24(3)(a) hypothesis by making a notional adjustment to the definition of MSV in the agreement which in the original reads:

a visit or visits to the MSV Site to undertake the Works for the purposes of determining whether the MSV Site is suitable for the installation and operation of electronic communications apparatus

and changing it to:

a visit or visits to the Site to undertake the Works for the purposes of determining whether the Site is suitable for the grantee's (unspecified) purposes

60. Who, other than a telecoms operator, would pay money for the privilege of accessing the roof of Waverley House to conduct line scans using a Proceq GPR Live? Neither of

the distinguished counsel before us nor either of the expert witnesses were able to make any suggestions whatsoever as to who would want to do such a thing. Certainly, the number of willing buyers for such rights in the market is vanishingly small. Who, other than a telecoms operator, would want to go onto the roof of Waverley House to displace the membrane with hand tools, thereafter restore with Topseal adhesive and provide a 10 year warranty? That patent absurdity shows that there is no market for such rights. The market value of a person's agreement to confer or be bound by such rights is nil.

61. Mr Radley-Gardner goes a step further. He does not accept Mr Duckworth's notional adjustment. In his submission the willing buyer is to be taken to undertake visits to determine suitability for the installation and operation of electronic communications apparatus but that the willing buyer's purpose "*does not relate to the provision or use of an electronic communications network"*. In Mr Radley-Gardner's submission the willing buyer will be carrying out a survey for a network that the willing buyer will never provide or use. We do not need to decide the point. The result on either Mr Duckwoth's or Mr Radley- Gardener's case is so divorced from reality as to be absurd. The value at stage 1 is nil.

Stages 2 and 3

62. Both Mr Duckworth in his submissions and Mr Marland in his evidence suggested that the agreement was a very bad one for the willing seller. Mr Duckworth pointed out the potential shortfall in management time and professional costs. In addition, the indemnity does not extend to the Respondent's tenants and only covers breach/negligence and not losses resulting from lawful acts. In his closing submissions Mr Duckworth reminded the Tribunal that an indemnity "*is only as good as the indemnifier's pockets are deep.*"

63. The terms of the agreement were negotiated between Osborne Clarke and Mr Michael Watson of Concorde solicitors who is a noted expert in the telecoms field. By the time the application for interim rights came before the Tribunal on 10th February 2026 the parties had sensibly reached agreement on all terms except consideration, the amount of the payment to the grantor's electrical services consultant and the precise wording of the covenant to make good (see paragraph 32 of the Tribunal's Decision at [82]). We are unpersuaded that the Respondent has negotiated a "bad deal." The parties agreed almost all terms and it is jarring, to say the least, that the Respondent now seeks to disavow that which it had previously agreed. We are quite satisfied that the terms imposed reflect the operator's reasonable business needs whilst *"ensuring that the least possible loss and damage is caused*" to the site provider.

64. The agreement is in entirely standard form and reflects terms commonly agreed between site providers and operators. The terms of the agreement do not give rise to any additional burdens.

65. In **Vache Farm** (EE Ltd v AP Wireless II (UK) Ltd [2024] UKUT 216 (LC)) the Upper Tribunal determined the consideration to paid for an unexceptional rural site. The Tribunal's figure of £1750 (now £1850 adjusted for inflation) was made up of a base land value of £1000 (now £1050) plus £750 (now £800) for benefits and burdens.

Clearly there is a world of difference between a 10 year agreement of a rural site and a 6 month survey of a London rooftop. However, after stripping out the base land value of £1050 p.a., we are left with £800 p.a. or £400 for a 6 month period. Imperfect though the analogy of **Vache Farm** may be the sum of £400 is not far away from Mr Marland's preferred comparator of £534 for the 6 month City of Westminster oversailing highway licence. This would suggest an irreducible minimum figure at stages 2 and 3 of £500 for a 6 month agreement.

66. In **Audley House** (On Tower UK Ltd v AP Wireless II (UK) Ltd [2022] UKUT 152 (LC)) the Upper Tribunal gave some very pragmatic advice at [257]:

To be blunt, it should be obvious that a ground level site in a car park or a haulage yard is going to command a higher rent than a rural site but less than a rooftop site or the top of a water tower.

Our provisional figure of £500 for a 6 month MSV fits in very well with £1850p.a. for a 10 year agreement at a rural site and £2500-£3000 for carparking/storage at commercial sites.

67. We are grateful to Mr Radley-Garner for referring us to what was said by the Deputy Chamber President and Mrs D Martin MRICS FAAV in **Maple House** (Cornerstone Telecommunications Infrastructure Limited v London & Quadrant Housing Trust [2020] UKUT 0282 (LC)) at paragraph 98:

"Paragraph 24(2)(c) directs that consideration be determined on the basis that the transaction is subject to the provisions of the agreement to be imposed. In a real negotiation the rent which the parties agreed would reflect any adverse financial consequences for the landlord which were not separately accounted for. If the proposed use was expected to create an administrative burden for the landlord, or to have an impact on other property belonging to the landlord, those would be part of the package of advantages and disadvantages to which the parties would attribute a single composite price."

68. At paragraphs 10 and 11 of his Closing Note Mr Radley-Gardner analyses how the agreement prices in the adverse financial consequences for the landlord:

10. In that connection, the MSV Agreement already contains the requirement to pay a number of sums to the Grantor:

a. Grantor Fees of £220 or £440 per day for an electrical clerk of works (Clause 1.2.1);

b. Grantor's internal and administrative time in providing the documents listed in Clause 3.2, being £500 (Clause 1.2.2.1);

c. Grantor's costs of attendance at each MSV charged at £150 plus VAT for each MSV (Clause 1.2.2.2); and

d. Grantor's internal and administrative time to review and comment on the RAMS under Section 6, at £250 for each MSV (Clause 1.2.2.3).

11. Those sums total to:

a. For the first MSV: £900 (with no electrical clerk of works attendance), £1,120 (for an electrical clerk of works attending for 2 hours) and £1,340 (for an electrical clerk of works attending for 4 hours);

b. For any subsequent MSV (where no further documentation is required) £400 (with no electrical clerk of works attendance), £620 (for an electrical clerk of works attending for 2 hours) and £840 (for an electrical clerk of works attending for 4 hours);

69. It can therefore be seen that our provisional figure of £500 is already priced into the agreement and that in fact payments, even for a single visit, exceed that sum. Accordingly, when determining a single composite price, we take into account that the administrative burden for the landlord is already included. We therefore determine that the amount payable under stages 2 and 3 is nil.

70. In summary the rights granted by the agreement have no value in the open market. There are no benefits and burdens over and above those already provided for by payments under the agreement. We therefore determine that no consideration is payable.

Paragraph 26(6)(b)

71. Paragraph 26(6)(b) provides:

"the duty in paragraph 23 to include terms as to the payment of consideration to that person in an agreement were a power to do so."

As the Deputy Chamber President said, at paragraph 22, in **Alder Castle** the inclusion of a term for the payment of consideration is a matter of discretion:

"Where the FTT imposes an agreement under paragraph 26 providing only for interim rights, paragraph 23 applies in a modified form. In particular, the duty to provide for the payment of consideration becomes a power to do so. Whereas every code agreement under paragraph 20 must provide for payment of consideration, an agreement for interim rights may do so (paragraph 26(6)(b)). Paragraph 23 applies subject to that modification, so the discretionary decision whether to provide for consideration is governed by paragraph 23(2) and the agreement will include a term for payment of consideration if the FTT thinks it "appropriate" that it should."

72. Both counsel are agreed that the primary purpose of paragraph 26(6)(b) is to avoid delay in the imposition of interim rights "*where the only issue not agreed between [the parties] is the consideration to be paid*" (see explanatory note 422 to the Digital Economy Act 2017).

73. However, we also take the view that it is not appropriate to include a term as to consideration where:

- The agreement relates to an unexceptional site without any special characteristics or sensitivities;

- The agreement makes proper provision for the site provider's administrative costs; and

- Following a 3 stage Hanover Capital analysis the Tribunal has determined that any consideration would be nominal.

74. We find that such an approach reflects what was said in **Alder Castle**. There is no general rule of law or practice that only nominal consideration is payable for an MSV agreement. However, in very many cases there are good reasons why a nominal sum or no term as to consideration is appropriate.

75. In conclusion we return to what was said in **Alder Castle** in respect of costs. We have not seen Respondent's Schedule of Costs. However, Claimant's costs come in at just under £85,000 inclusive of VAT. We would anticipate that the parties' joint costs will therefore comfortably exceed £100,000 in pursuit of consideration no higher than £7,500.

Decision

76. No term as to the payment of consideration is to be included in the agreement imposed upon the parties by Order of the Tribunal dated 10th February 2026.

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.