



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

Case Reference : **BIR/OOCN/ECR/2024/0602, 0631, 0632 and 0635**

**Properties
(Abbreviated
Site Name)** : **Lupton Road, Plunders Price Papers,
Roman Garage and South Cave**

Claimant : **On Tower UK Limited**

Representative : **Kester Lees KC and Imogen Dodds
instructed by Pinsent Masons LLP**

Respondent : **AP Wireless II (UK) Limited**

Representatives : **Toby Watkin KC, Tom Morris and
Matthew Henderson instructed by Freeths LLP**

Application : **Electronic Communications Code
Paragraph 34 (renewal)**

Date of Hearing : **21st – 24th April 2026
Birmingham Civil Justice Centre and
Centre City Tower, Birmingham**

Tribunal : **Judge D Jackson
Mrs Julie Rossiter MRICS
Mr Neil Atherton MRICS**

Date of Decision : **20th May 2026**

DECISION

1. This is the Decision of the Tribunal in respect of the consideration payable by the Claimant to the Respondent under new agreements to be entered into by the parties by Order of the Tribunal under Paragraph 34 of the Code in respect of 4 telecommunications sites occupied by the Claimant and in respect of which the Respondent is the site provider.
2. The hearing took place in Birmingham between 21st and 24th April 2024. The Claimants were represented by Kester Lees KC and Imogen Dodds (Skeleton Argument dated 16th April 2026 [SB3-13]). The Respondents were represented by Toby Watkin KC and Tom Morris (Skeleton Argument dated 16th April 2026 [SB 14-31]) and for part of the hearing by Matthew Henderson in respect of planning matters.
3. The evidence of witnesses of fact was agreed between the parties. Accordingly, we have considered the written evidence of Timothy Holloway (Senior Regional Surveyor -On Tower. Witness Statement 23rd January 2026 [1177-1280]), Shoaib Patel (Head of Strategy and Regulation - On Tower. Witness Statement 23rd January 2026 [1281-1287]) and David Powell (Regional Asset Manager – AP Wireless. Witness Statement 23rd January 2026 [1288-1573]).
4. On 27th September 2025 the Tribunal gave Directions for trial [798-803]. The parties were given permission to rely on expert planning evidence but under FTT Rule 19.3 permission was not given for oral evidence of the planning experts at trial. On 9th April 2026 the Respondent's applications to rely on supplemental expert planning report and for permission to call the planning experts to give oral evidence at trial was refused [804-806]. Accordingly, we have read the Expert Reports of Sarah Cox on behalf of the Respondent dated 12th February 2026 [1574-1646] and Richard Morison on behalf of the Claimant dated 20th March 2026 [1647-1745]. The planning experts have prepared Joint Statement dated 17th April 2026 [SB103-120].
5. The only oral evidence given at the hearing was from the Respondent's valuation expert Paul Williams MRICS (report dated 25th February 2026 [1746-2178]) and the Claimant's valuation expert Stephen Sladdin MRICS (report dated 19th March 2026 [2179-2326]). The valuation experts have prepared Joint Statement dated 17th April 2026 [SB121-144]
6. We have considered Bundle [1-2326], Supplemental Bundle [SB 1-144] and Planning Bundle [PB1-253].

Terms Agreed

7. The parties have agreed the terms of the new agreements. The new agreements are leases. The Draft Master Site Agreement and Schedules of agreed site-specific Terms are at [SB 32-102]. The main terms of the agreements are:
 - A term of 10 years
 - Landlord redevelopment break clause exercisable on any date after the fifth anniversary of the term on 18 months' notice

- Tenant's break clause exercisable on any anniversary of the term commencement date
- Rent review: 3 year RPI
- The Tenant has the benefit of rights over adjacent land, edged blue on the plans, for the purposes of carrying out works, laying conduits and tree lopping.

Consideration – Paragraph 24

8. Paragraph 34(11) of the Code provides that the following provisions of Paragraph 24 apply to determination of consideration payable under the new agreements:

“(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.”

Position of the Parties

9. The Claimant's case is that consideration for all four sites is £1850 p.a.

10. The Respondent's case is:

- Lupton Road - £6,000 p.a. (alternative use – storage)
- Price Plunders Papers - £6,200 (alternative use – storage)
- Roman Garage - £6,950 p.a. (alternative use – storage)
- South Cave - £4,800 p.a. (hope value – residential development)

Lupton Road

11. The site sits between two light industrial units (trade counters) on the edge of an industrial estate in the south of the town of Thame in South Oxfordshire. The site is 11m x 6m (66 sq.m.). Access is from Wenman Road over a short area of hardstanding shared with the adjacent industrial unit. The site comprises a 17.5m lattice tower. The Respondent is the freeholder of the site. There were 14 access requests in the period October 2024 to November 2025.



Plunders Price Papers

12. Plunders Price Papers lies within an industrial yard in Darwen, Lancashire. The site is 11m x 7m (77 sq. m). Access is from Cotton Hall Street through a metal gate serving the surrounding industrial units and through a further metal gate into the yard. The site comprises a 15m monopole. The Respondent has a leasehold interest in respect of 4 separate compounds within the yard. There have been 7 access requests between October 2024 and November 2025.

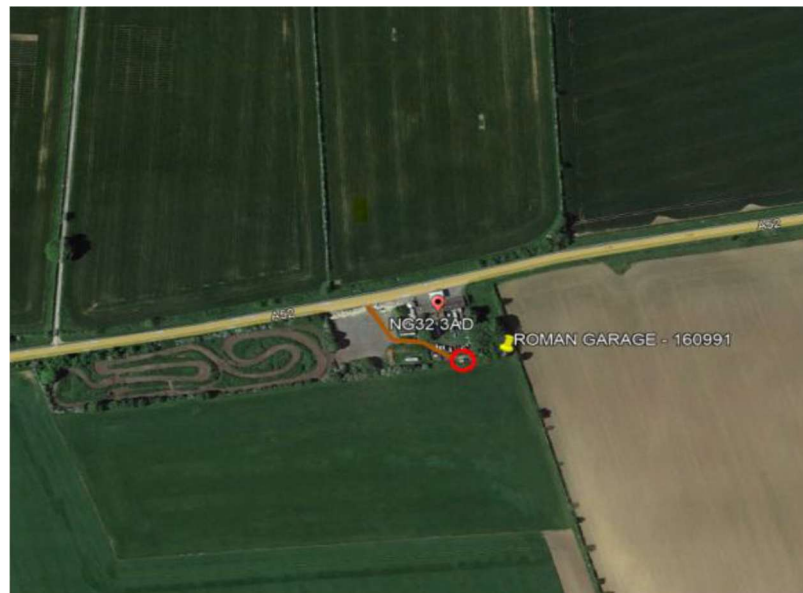


13. The Respondent's leasehold interest is contained in a Lease dated 18th November 2016 and made between David Bryan Newton (1) and the Respondent (2). Clause 14.1 provides that the Respondent shall not use the property for any use other than the Permitted Use [1030]. The Permitted Use is defined at [1022]:

“any telecommunications use to which the Property may be put and in respect of which planning permission has (if necessary) been granted.”

Roman Garage

14. The site is in remote rural location approximately 7 miles from Grantham and lies adjacent to a petrol station, café and motocross track. The site is 14m x 7m (77 sq. m.). It is described by Mr Williams as a typical “greenfield” telecoms’ installation.



15. Mr Powell, Mr Williams and Mr Holloway all describe vehicular access to the site being blocked by parked vehicles. It would appear that visitors use an informal access route along a public footpath and a farm track which has been reinforced with stone. However, Mr Powell indicates that he has contacted the adjacent owner who has confirmed that vehicular access will be made available when required and that

contractors have had no issues using the informal access route (see David Powell, paragraphs 66 and 67 [1302-1303]).



16. The site comprises a 15m monopole. The Respondent has a freehold interest in the site. There have been 6 access requests September 2023 to September 2025.

South Cave

17. The site is in the corner of an agricultural field just beyond the southwestern settlement boundary of the village of South Cave. The site lies to the north of the main A63 dual carriageway [see David Powell, paragraph 103 [1310]]. The site is 12m x 8m (96 sq. m.). Access is along a 450m road leading to the Hull Animal Welfare Trust and then a further 112m along the side of the field.



18. The site comprises a 15.5m monopole which Mr Powell indicates has recently been swapped causing damage to the adjacent field. This may explain, in part, why there have been 27 access requests between November 2024 and November 2025. The Respondent owns the freehold of the site.

Alternative Use Value

19. The parties have both adopted the practical definition of alternative use value set out by this Tribunal in *On Tower UK Ltd v AP Wireless II (UK) Ltd* (Ref LC – 2023 – 000321 and 13 others) (**Ewefields Farm**) at paragraph 145. An alternative use must be both realistic and financially viable.
20. The Respondent's case is that the sites at Lupton Road, Plunders Price Papers and Roman Garage have alternative use as micro yards. In respect of Lupton Road and Plunders Price Papers the Respondent argues, as its secondary position, that Roman Garage and Plunders Price Papers have alternative use as container storage.
21. There is clearly a strong and growing market for self-storage. Mr Sladdin has produced (Appendix 4 to his report at [2242-2322]) Self Storage Association (SSA) "Annual Report 2025" prepared by Cushman and Wakeman.

"There were 2,915 self-storage stores in the UK, of which 1,135 were predominately container based storage"

The industry turned over just under £1.2 billion in 2024. Of the 1,780 internal storage stores, 1,127 were deemed to be significant, that being over 100 units in size and being compliant with the British Standard for self storage which defines minimum levels of security and access. The number of small container based storage sites continues to grow, particularly in rural areas." [2250]

22. Mr Williams has produced an article from the September 2025 edition of the "The Mover" which summarises the Container Self storage Traders Association (CSTA) Census from June 2025 [1847-1848]:

"According to the CSTA Container Self- Storage Census 2025, at mid-year, the industry counted 652 operators running 1,212 sites and housing a total of 111,500 containers – all serving a customer base that is staying longer, demanding more, and driving steady year-on-year growth."

"Bigger sites – but small still viable"

Site sizes vary widely, but the overall trend is towards larger facilities. Over 56% of operators now run sites over one acre, while only 8% operate below half an acre. Large operators with capital resources favour multi-acre sites to maximise economies of scale. That said, smaller sites remain an attractive entry point for new entrepreneurs. The availability of sophisticated remote management and automation tools means that even unmanned half-acre plots can operate profitably."

Micro Yards

23. Micro yards are a sub product of container storage. A micro yard is a 20-foot shipping container with an adjoining area of hardstanding enclosed with a secure fence (using the container itself as part of the perimeter) to create a yard. Often micro yards are created by container operators removing an existing container(s) to create micro yards

within a larger container storage site. Micro yards are aimed at small tradespersons who may wish to store, securely, plant or machinery that is too large to fit into a container.



24. Micro yards are a new and emerging product. There is considerably less transactional evidence for micro yards than for container sites. Existing container sites contain a number of containers; most are over half an acre or more. Both valuers agree that there is no transactional evidence in respect of a single isolated micro yard. Accordingly, there is no comparable market evidence for the Respondent's proposed alternative use.

Micro Yards – planning

25. The planning experts are agreed that there are good prospects of success for new Class B8 (storage) at Lupton Road [SB107] and at Price Plunders Papers [SB111].
26. The experts disagree in respect of storage use at Roman Garage [SB113]. Mr Morison for the Claimant considers that there is a poor prospect of securing permission as such development would be contrary to Local Plan policies relating to economic development of the countryside. We prefer the opinion of Sarah Cox that there is a medium likelihood of obtaining planning permission for standalone small scale storage. We reach our decision because such development is supported by Policy E7 (South Kesteven District Council Local Plan 2011-2036 (January 2020) [PB227]):

“E7: Rural Economy

Proposals for [rural enterprise] of small business schemes will be supported, provided that it is demonstrated that the business will help to support, or regenerate the rural economy.”

Of course, as Sarah Cox points out, any development must demonstrate that it meets all of the criteria E7 (a) –(d).

27. Roadside signage is acknowledged as being important in attracting customers to new storage facilities. In respect of the planning position in respect of signage, we prefer the opinion of Sarah Cox as set out in the Joint Statement [SB 108-109]. There is deemed planning consent in respect of advertisements displayed on business premises wholly with reference to the business being carried on (see Part 1, Schedule 3, Class 4B

Town and Country Planning (Control of Advertisements) (England) Regulations 2007 [PB30]). In any event under Regulation 3(1) a local planning authority may only exercise its powers under the 2007 Regulations in the interests of amenity and public safety [PB 12]. We therefore find that there is no planning obstacle to the installation of signage in respect of the Respondent's proposed alternative use.

Mr Williams' evidence – micro yards

28. Mr Williams is an acknowledged expert in the telecoms field. However, he accepts that he does not have expertise in relation to storage. His opinion in respect of micro yards is based on the article in "The Mover" and conversations with those operating storage yard businesses.
29. In the absence of market evidence Mr Williams has spoken to Benjamin Ainscough of Mega Yards Ltd, a venture formed in 2024. Mr Ainscough was confident of demand. However his preference was for large sites where a number of micro yards could be set up "*due to cost synergies*" [1779]. Typically Mega Yards would let out micro yards at £7 psf. Mr Ainscough told Mr Williams that if he were to bid for small telecoms sites he would be looking at £3 psf for "*bare land*" which "*might deliver a return on investment*" [1780].
30. Mr Williams also relies on a conversation with Brett Darke (Brett's Storage Limited) who has run container storage and micro yards in the southwest for 20 years [1781].
31. Following those conversations Mr Williams has prepared a table of 10 "quoted" and "asking" rents for micro yards [1982]. Smaller yards between 480-835 sq.ft. are let in the region of £6.83 - £10.15 psf. Larger yards of over 1000 sq. ft. range between £2.67-£7.20 psf. Assuming 90% occupancy Mr Williams income calculations are:

PPP – 829 sq.ft. @£8 psf = £6632. Adjusted for 90% occupancy =£5972
LR – 744 sq.ft. @ £8.50 psf = £6324. Adjusted for 90% occupancy =£5692
RG – 1093 sq.ft. @£7.20 psf =£7870. Adjusted for 90% occupancy = £7085

32. Capital costs allowed for by Mr Williams are:

- 20-foot shipping container
- Fencing and gates
- CCTV

Total capital costs are:

PPP £9126
LR £5563
RG £9898

Mr Williams has annualised those costs over 20 years [2101]:

PPP £496 p.a.
LR £318 p.a.

RG £535 p.a.

33. Mr Williams annual operating costs are:

- Public liability insurance
- Management costs
- Maintenance and repair

Annual operating costs are £509 at each site.

34. Mr Williams having calculated net income based on the above figures has applied a discount of 20% to reflect planning uncertainty and general level of demand for micro yards to produce a net annual rent for the 3 sites configured as micro yards (see Mr Williams conclusions at paragraph 196 of his expert report [1793]):

PPP £5972 - £496 - £509 = £4886. Discount 20% = **£3900**

LR £5692 - £318 - £509 = £4783. Discount 20% = **£3850**

RG £5960 - £535 - £509 = £4916. Discount 20% = **£3933**

35. Mr Sladdin disagrees with Mr Williams' calculations. Mr Sladdin estimates net income for Lupton Road at £1500 p.a and for Price Plunders Papers £1910 p.a. [2213]. Mr Sladdin has not prepared a calculation for Roman Garage.

Deliberation – micro yards

Roman Garage

36. We deal first with Roman Garage. Mr Williams describes the site as “remote” (see paragraph 59 at [1765]). It is clear that vehicular access is blocked. In the Joint Statement Mr Williams describes the site surroundings as “untidy” [SB135]. The Tribunal has not inspected the site. However, Mr Williams' impression is confirmed by the various photographs produced by the parties – for example:



37. Security and ease of access are of paramount importance to business customers seeking to secure valuable plant and machinery. Similarly domestic users will want to ensure that their personal possessions are safe. Vehicular access to the site is currently

blocked. Alternative access is either by public footpath or a reinforced farm track. We are not persuaded by Mr Williams' suggestion that the site does not need to be fenced on one side because trees/bushes provide a sufficient barrier. We find that neither domestic or business customers are likely to have sufficient confidence in this remote site and its "untidy" surroundings to make an isolated micro yard either a realistic or profitable alternative use. We find that there is no alternative use value of the site at Roman Garage

Lupton Road and Price Plunders Papers

38. Turning to Lupton Road and Price Plunders Papers we have considered both Mr Williams' conclusions [1793] and Mr Sladdin's valuation [2213]. We find that Mr Williams' rental figures of £8.50 psf and £8 psf are too high. Mr Williams quoted/asking rents for small sites [1982] range from £6.83 - £10:15. Mr Ainscough's figure is £7 psf. We make an adjustment to reflect the fact that both sites are single isolated micro yards and not part of a larger storage facility. We also take into account the difference in land values between South Oxfordshire (Lupton Road) and Darwen, Lancashire (Price Plunders Papers) and determine rental figure of £7.50 psf for Lupton Road and £6 psf for Price Plunders Papers

39. Mr Sladdin adopts a figure of 40% in respect of operator costs [2213]. We consider that figure is too high. However, Mr Williams' capital and annual operating costs are too low and in particular fail to include the following items of expenditure/provision of services which we consider necessary in order to achieve the rental figures we have determined in the preceding paragraph:

- monitored security
- staff to monitor and to act as point of contact
- website
- signage
- advertising/marketing
- legal expenses
- budget for planning advice/applications
- costs of electricity. This will be required as a minimum for CCTV. Customers may also expect power to be provided on site.

40. We therefore make the following deductions from rental income:

- Voids. Mr Williams figure of 90% occupancy is over optimistic for a new venture. We adopt 20%
- Capital and annual operating costs – 30%
- Risk – 20% (agreed by both expert valuers)
- Costs to be annualised over the 10 years of the agreement rather than 20 years as adopted by Mr Williams

Determination of alternative use value – micro yards

41. There is no alternative use value at Roman Garage.

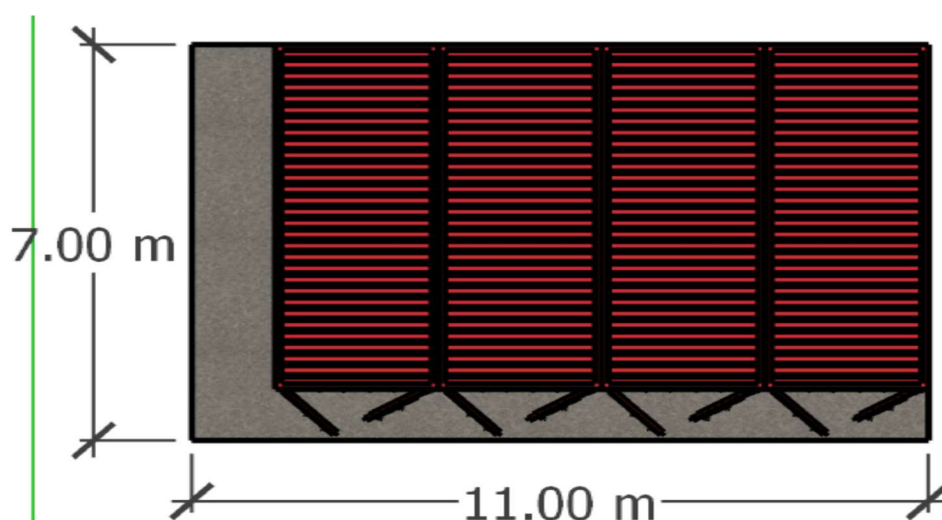
42. The expert valuers have worked on Mr Williams figures of Plunders Price papers 829 sq. ft and Lupton Road 744 sq. ft. Following the hearing we have checked those figures against paragraph 2.1.2 of the Joint Statement. Plunders Price Papers is correct. However, Lupton Road at 66 sq.m. is actually 710 sq.ft. However, Mr Williams sq.ft. figures were not disputed by Mr Sladdin. We have adopted Mr Wiliams' figures for consistency.

43.	Lupton Road	Price Plunders Papers
Rent	$\pounds 7.50 \times 744 = \pounds 5580$	$\pounds 6 \times 829 = \pounds 4974$
Voids (20%)	$(\pounds 1116) = \pounds 4464$	$(\pounds 995) = \pounds 3979$
Costs (30%)	$(\pounds 1339) = \pounds 3125$	$(\pounds 1194) = \pounds 2785$
Risk (20%)	$(\pounds 625) = \pounds 2500$	$(\pounds 557) = \pounds 2228$, say $\pounds 2250$
Tribunal Valuation	$\pounds 2500$ p.a.	$\pounds 2250$ p.a.

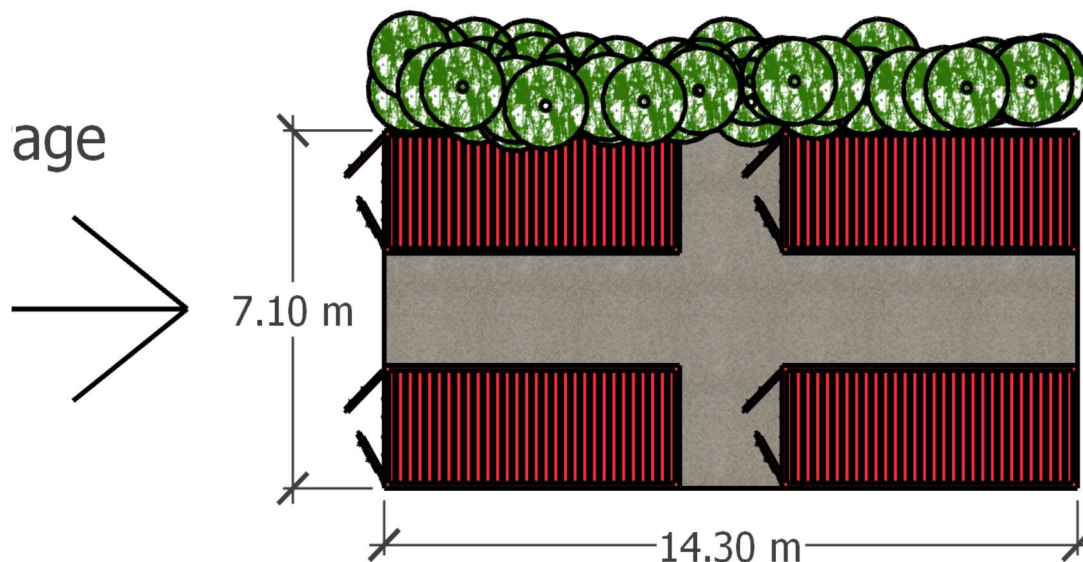
Alternative Use Value – container storage

44. The Respondent's fall-back position on alternative use is container storage. The Respondent seeks to argue for container storage at Price Plunders Papers and Roman Garage only. The parties are agreed that as only two shipping containers can be accommodated at Lupton Road container storage is not a viable alternative use at that site.

45. In the Joint Statement both expert valuers agree that four 20-foot shipping containers can be accommodated at Price Plunders Papers and Roman Garage. Mr Williams lay-out for Price Plunders Papers is at [2030]:



And for Roman Garage at [SB144]:



46. During the course of the hearing the Tribunal became increasingly concerned as to the viability of 4 containers at either site. A 20-foot shipping container is very slightly less than 6.1m in length. Each of the containers two doors are approximately 1.2m wide. The depth of the site at Plunders Price Papers is 7 metres. A container with its doors open at 90 degrees is approximately 7.3 metres. Similarly at Roman Garage the length of two shipping containers together with two doors open at 90 degrees is 14.6m whereas the site length is only 14.3m.
47. It would appear that the Respondent relies on rights over the land edged blue in the Master Site Agreement which the Respondent submits gives it the right to “swing open the doors”. The Respondent further submits that for practical purposes doors are only going to be open for a short period and that it is unlikely that there will be more than one user on site at any given time. We disagree. Customers will expect to be able to open the containers doors fully and to be able to have sufficient surrounding space to unload and manoeuvre larger objects within the site. There is also the question of safety, particularly in the yard at Plunders Price Papers, should customers be expected to utilise space outside of the demised area.
48. We find that the sites at Plunders Price Papers and Roman Garage are simply too cramped to accommodate four 20-foot shipping containers. We find that only 2 containers could be accommodated at either site in a manner that would be acceptable for customer use.
49. Dealing firstly with Roman Garage we repeat our findings at paragraphs 36 and 37 above. We find that neither domestic or business customers are likely to have sufficient confidence in this remote site and its “untidy” surroundings to make container storage either a realistic or profitable alternative use. In respect of Price Plunders Papers Mr Williams’ net annual income for 4 containers is £4139 p.a (see paragraph 185 [1791]). On the basis of only 2 containers a net annual rental of £2070 is less than the Tribunal’s valuation for a micro yard at Price Plunders Papers
50. Accordingly, container storage is not a viable alternative use at Roman Garage and is less attractive than a micro yard at Price Plunders Papers.

Price Plunders Papers – Permitted Use

51. The Permitted Use contained in the Respondent's head lease at Price Plunders Papers [1022] is:

“any telecommunications use to which the Property may be put and in respect of which planning permission has (if necessary) been granted.”

Accordingly, the site cannot be let for storage. In reality the restrict exists and, in the submission of Ms Dodds for the Claimant, should not be disregarded.

52. In *On Tower UK Ltd v AP Wireless II (UK) Ltd* [2022] UKUT 152 (LC) (**Audley House**) the Upper Tribunal considered a permitted use *“for the transmission and reception of any and all wireless communication signals”* at [230-233]:

“231. Paragraph 24 of the Code requires the assumption “that the transaction ... does not relate to the provision or use of an electronic communications network”; but on that assumption and in light of the restriction on use in APW’s headlease the site has no alternative use value.

232. Should consideration be assessed on that basis? The Tribunal should make only those assumptions, in departure from reality, that are set out in the Code; but sometimes it is inevitable that we have to go further. Lewison LJ said in Harbinger Capital Partners v Caldwell [2013] EWCA Civ 492, at [26]:

“A departure from reality must either be expressly required or must be inevitable consequence of what has been expressly required.”

233. It is not the policy of the Code that site providers should get no value at all for their land, and paragraph 24 operates on the premise that the site provider really could let the site for some use other than for telecommunications. No express provision is made in paragraph 24 for a restriction on the site provider’s use such as that in the Audley House intermediate lease; and while we would have had no difficulty in dealing with a restriction that prevented some but not all other uses, we think that it is an inevitable consequence of the exercise prescribed by paragraph 24 that the complete prohibition of sub-letting by APW for uses other than as a telecommunications site should be ignored for the purposes of determining consideration. Absent that prohibition the site could be let for parking, and the valuers reached agreement on that basis.”

53. A different view was taken by the Upper Tribunal in *EE Ltd v Stephenson* [2022] UKUT 180 (LC) (**Pendown Farm**) when considering a clause restricting the use of the land demised to the Respondent to *“communications uses”*. The Deputy Chamber President decided that it was not *“necessary to ignore the effect of the contractual restriction on use which exists in reality”* for two reasons [68]:

“First, as Mr Radley-Gardner submitted, a communications use is potentially a wider use than use solely for the purpose of providing an electronic communications network; he referred to communications sites used by police forces or the coast guard as examples of permissible uses which were not related to the provision of a network

regulated by the Code. The application of the no-network assumption will not necessarily exclude the whole of the value of the Site for a communications use. Secondly, paragraph 24 requires the assumption of a letting of the Site and it is irrelevant that, in practice, there might be nobody prepared to take the site on the assumed terms (including a bar on network use). It does not follow that because a site has only a very limited use, a person who wants to take it for that use will be prepared to pay only a nominal sum for it. There is therefore no reason in principle why the Site cannot be valued having regard both to the contractual restriction on its use and to the no-network assumption. The position might be different if the intermediate lease limited the use of the Site to use in connection with the provision of an electronic communications network, but it does not, and it is not necessary to decide that issue.”

54. The permitted use at Plunders Price Papers is “*any telecommunications use.*” As Mr Morris helpfully points out the meaning of “electronic communications networks and services” in section 32 of the Communications Act 2003 is extremely wide and includes “any telecommunication use”. Telecommunications use is clearly entirely different to “communications use” and accordingly we follow the decision of the Upper Tribunal in **Audley House**. Indeed, the Deputy Chamber President in **Pendown Farm** indicates that position might be different where the restriction relates to an electronic communications network.

55. In Ms Dodds’ submission the decision of the Upper Tribunal in **Vache Farm** (EE Ltd v AP Wireless II (UK) Ltd [2024] UKUT 216 (LC)) establishes a floor or minimum value below which a site provider will not be prepared to enter into an agreement. Following **Vache Farm** there is no need to depart from reality. **Vache Farm** resolves the issue because site providers will, following that decision, receive value for their land. Ms Dodds’ solution also avoids the Respondent receiving value for its interest which it does not have in reality. Use for storage is not a proper part of the Respondent’s interest in the land at Price Plunders Papers.

56. We return to what was said in **Harbinger Capital**:

“Giving effect to the hypothesis may require a legal impediment to the implementation of the hypothesis to be ignored or treated as overridden; but only to the extent necessary to enable the hypothesis to be effective.”

The difficulty with Ms Dodds’ submission is that although it solves the problem of the willing seller under Paragraph 24(2) it does not address the position of the willing buyer. Under Paragraph 24(2)(b) the parties are assumed to be acting prudently and with full knowledge. The willing buyer in such circumstances would not pay anything for an agreement where storage is not permitted.

We therefore find that the restriction must be overridden to enable the Paragraph 24(3)(a) no network assumption to be effective.

57. Finally, deal with the pragmatic suggestion made by Mr Williams. Following the compulsory purchase decision of **Stokes v Cambridge Corporation** (1961) 13 P&C R 77 (and see also **Tameres (Vincent Square) Ltd v Fairpoint Properties (Vincent Square) Ltd** [2007] EWHC 212 (Ch)) Mr Williams argues, at paragraph 24 of the Joint Statement [SB133]:

“If the restriction prevents alternative use, it is expected that a hypothetical landlord and tenant will negotiate to relax the restriction, having regard for the benefits to each party.

In taking the greater risk and burden, I would expect the beneficiary of the restriction to accept a lower share of any income derived from the alternative use, perhaps at a level of 30% of the net income.”

58. In light of our legal analysis, we do not need to make a determination as to whether the beneficiary of the restriction would be prepared to negotiate. Mr Williams’ figure of 30% figure could even be as much as 40% or even 50% (as suggested in **Tamares**). A site provider who wishes to rely on a similar argument in a future case will most likely need to produce some evidence of negotiations with the beneficiary of the restriction.

Hope Value – South Cave

59. The site lies outside the settlement boundary of South Cave on the edge of a larger agricultural field to the east shown in red below:



60. The planning experts agree that [SB116]:

“The parties agree that, if the site is considered in isolation (in other words, without the larger field to the east) and without allocation in the Local Plan it would have a poor prospect of residential development.”

61. The Local Planning Authority (“LPA”) for the site is East Riding of Yorkshire Council. It is agreed that the site, in combination with the large field in which it sits, was promoted in the previous Local Plan consultation process but was not allocated in the latest Local Plan (adopted April 2025). The LPA’s assessment conclusion and summary [PB239] was:

“Would extend built form of settlement out into open countryside. However, the existing development to east and north together with the A63 to the south provides some mitigation. Other, more suitable, sites have been identified to meet the current housing requirements.”

62. The LPA is required to start plan making for the new Local Plan by 30th June 2026 [PB78]. The Local Plan must be adopted within 30 months i.e. no later than 31st April 2029. Both experts agree that a “twin track” approach is appropriate with a planning application to be made by April 2029. Call for sites commenced in Autumn 2025 and remains open.

63. The experts disagree as to prospects. Mr Morison for the Claimant considers that prospects are moderate potentially increasing to good:

“Mr Morison considers that there is at least a moderate prospect of the site, in combination with the wider site to the east, being allocated for residential development in future Local Plan review. Mr Morison considers that prospects for residential allocation should be considered moderate until such time as the LPA has undertaken their staged assessment of all sites promoted surrounding South Cave. At this point, a reassessment of the prospects for residential allocation of the site may increase to good if the site is allocated.” [SB116]

Ms Cox for the Respondent considers that prospects are good:

“Overall, Ms Cox considers that there are good prospects of the site being allocated through the forthcoming Local Plan review. Following allocation, or potentially once the plan reaches an advanced draft stage, she considers there to be good prospects of planning permission for residential development, particularly if the site is brought forward comprehensively alongside the neighbouring land.”

64. There is a significant uplift in housing need in the East Riding of Yorkshire: *“Housing requirements for East Riding have increased markedly, from 817 dwellings per annum under the previous method to 2,088 dwellings per annum under the revised 2025 standard method”* [SB118]. South Cave sits within Policy S3 Focussing Development at A1v. It is the largest of the primary villages in Table 3: Housing requirement in Rural Service Centres and Primary Villages [PB164]. The site sits on a key link to Hull and is near to the enterprise zone and Goole and Humber freeport [PB141]. The site does not have any of the disadvantages identified in respect of other potential allocations in South Cave:

“The allocations have been directed to areas that are within or closely related to the main body of South Cave. This will minimise the impact of new development on the built and landscape character of the village and will not result in any intrusion into the Yorkshire Wolds. It also avoids areas that would have an adverse impact on the two Conservation Areas, or areas at high flood risk”

65. We prefer the opinion of Ms Cox and find that the site (in conjunction with the adjoining land) has good prospects of allocation in the Local Plan review. We also adopt Ms Cox’s opinion on timing *“I consider there to be a short to medium term opportunity for the site to come forward for residential development as part of a wider strategic extension to South Cave”* – [short term being within 5 years and medium term being within 10 years]. Accordingly, any residential development is most likely to occur in the second half of the 10 year term agreed between the parties by which time the Respondent will have the option of exercising its break clause on redevelopment grounds.
66. The site would be attractive to any developer of the adjoining land firstly because it would increase net developable area but also because *“removal of the telecoms site enhance the site’s appeal to both developers and future residents”* [1624].
67. The call for sites commenced in Autumn 2025 and remains open. Whilst the LPA has a duty to proactively identify sites the experts are agreed that *“the large field to the immediate east of the site has not yet been promoted”* in the call for sites [SB116]. It is accepted by the Respondent that it has not made any enquiries of or approach to the owner of the adjoining land.

Hope Value

68. Mr Williams bases his assessment of Hope Value on two sites forming part of this Tribunal’s decision in **Ewefields Farm**. The site at Blackwell Grange (see **Ewefields Farm** at [174-176]) is amenity land leftover following a completed development. The site at Hollow Farm (see **Ewefields Farm** at [177-179]) lies adjacent to a site with planning permission. Mr Williams accepts that both those sites were *“more advanced stage of residential development (completed and awaiting consent)”* (see paragraph 216 at [1797]). The Tribunal in **Ewefields Farm** determined consideration of £2,000 p.a. for Blackwell Grange and £2,500 p.a. for Hollow Farm, in both cases inclusive of benefits and burdens. Mr Williams has taken that the Hollow Farm figure and added benefits and burdens of to arrive at £4,800 p.a. for South Cave. Mr Williams accepted during cross examination that his valuation of £4,800 p.a. is therefore wrong.
69. In **EE Limited v Service** LTS/ECC/2022/0006 the Lands Tribunal for Scotland considered *“the general issue of potential development land value, or “hope value” as it is sometimes called”*. At paragraph 134 Lands Tribunal for Scotland observed:
- “The respondent appears to believe that the mere existence of potential, however speculative, must translate into a higher land value than for the existing, or uncontested use. We respectfully disagree.”*
70. The site at South Cave only has potential in conjunction with the larger field. That larger field was not allocated in the existing Local Plan. It has not yet been promoted

in the call for sites for the new Local Plan. No evidence has been produced as to the intentions of the owner of the adjoining field. However good the prospects of planning being granted the fact remains that at this time the adjoining field does not have planning permission and is not being actively promoted. Under those circumstances the potential of the telecoms site in isolation is speculative. We do not attribute any hope value to the site at South Cave

Hanover Capital – Roman Garage and South Cave

71. In respect of the two sites, where we have not found either alternative use value or hope value, Mr Williams invites the Tribunal to increase values determined by the Upper Tribunal in **Vache Farm**.

Stage 1

72. The stage 1 figure adopted in **Vache Farm** was £1000 p.a. (£1050 when adjusted for inflation). Both expert valuers before us accepted that is the minimum “floor” below which a site provider would not willingly transact for an unexceptional rural site. For valuation purposes both Roman Garage and South Cave are unexceptional rural sites. Roman Garage is 7 miles east of Grantham. Mr Williams himself describes the site as “remote”. South Cave sits close to a dual carriageway in a large field outside the current settlement boundary of the village.
73. The difference between the parties is minimal. Mr Sladdin accepts that the stage 1 figure in **Vache Farm** should be increased by inflation to £1050. Mr Williams has analysed the comparable transactions for small “passive” sites in his Appendix R9 to support his figure of £1200. Mr Williams considers that transactions at Knowle Farm, Three Burrows are of limited use. Gairloch and Carnoustie are Scottish properties from 2019/20 [1800].
74. Mr Williams is “*particularly attracted*” to Wigton. This is a lease of 25 years granted to Network Rail. The site at Wigton is five times larger than a typical telecoms site. The site at Wigton is also adjacent to the railway and clearly has special value to Network Rail. Wigton was let at £4,000 p.a. in August 2025 [1802]. Mr Williams discounts for size by 40 % = £2,400 and for a further 50% for special value = £1200.
75. Mr Williams’ adjustments for size and special value are both substantial and subjective. As Mr Sladdin points out an increased adjustment for size of 50% would result in an adjusted transactional value of £1000.
76. We are not persuaded that Mr Williams’ analysis of the Wigton site is compelling. We adopt the “floor” value in **Vache Farm**, adjusted for inflation, of £1050 p.a.

Stages 2 and 3

77. In **Vache Farm** the Upper Tribunal adopted a stage 2 and stage 3 combined figure of £750 p.a. (say, £800 adjusted for inflation). Mr Williams considers stages 2 and 3 in detail at paragraphs 243 – 308 of his report. His combined stage 2 and 3 value for Roman Garage is £1550 and for South Cave £1850 [1817-1818].

78. Mr Williams' evidence is unsupported by any transactional evidence. Mr Williams very fairly says at paragraphs 250 and 253 of his report [1804]:

"In over 20 years of negotiating in the telecoms market, I do not recall burdens or benefits having had a specific value attributed to them as part of a wider negotiation for an agreement."

"I explained in my evidence at Vache Farm, that it is difficult to attribute a specific value to the presence or absence of each individual burden or benefit arising from the grant of a Code agreement. The Hanover framework stages are high level, and the "benefits" and "burdens" are rarely negotiated in granular detail..."

In **Audley House** at [226] the Upper Tribunal warned against micro-analysis:

"The Tribunal is unlikely to be assisted by analysis of comparables, save for the value of alternative uses where that is in dispute. The Hanover approach may be useful as a cross-check in negotiations, but the Tribunal will not be assisted by micro-analysis of the cost of benefits and burdens measured in tens of pounds which (as was also pointed out in Affinity Water at [41]) is not how negotiations work in practice."

79. In **Vache Farm** the Upper Tribunal determined benefits and burdens at £750 p.a. In considering Mr Williams evidence in that case the Upper Tribunal observed at [83]:

"We agree with Mr Williams that a landlord would take a high level view of them, rather than make a detailed assessment. However, we consider that he has been over generous in his assessment of a high level adjustment of £1,350, on top of £500 for size, especially having accepted that his base level of rent would already account for some benefits and burdens."

80. Whilst we accord the greatest respect to Mr Williams' expertise we are not persuaded that his subjective opinion, unsupported by real world comparable transactional evidence, is sufficient to "move the dial" from the Vache Farm figure of £750 p.a. at stages 2 and 3. There is nothing in the remote and "untidy" site at Roman Garage or the site lying between the dual carriageway and large field at South Cave that justifies a departure from the figure the Upper Tribunal found appropriate for an unexceptional rural site.

81. Accordingly, our determination of the consideration payable under the new agreements at South Cave and Roman Garage is £1050 + £800 = £1850 p.a.

Hanover Capital – Lupton Road and Price Plunders Papers.

Stage 1 – alternative use value

82. At stage 1 we have determined alternative use value of £2500 p.a. for Lupton Road and £2250 p.a. for Price Plunders Papers.

Stages 2 and 3 – benefits and burdens

83. Mr Williams' valuation for Lupton Road is £500 at stage 2 and £1,100 at stage 3 giving a total of £1,600. At Price Plunders Papers Mr Williams adopts £450 at stage 2 and £1300 at stage 3 giving a total of £1750. Both figures are substantially in excess of the figure of £750 (say, £800 when adjusted for inflation) determined by the Upper Tribunal in **Vache Farm**. We reject Mr Williams' approach for the reasons given above in respect of stages 2 and 3 at Roman Garage and South Cave. However, that is not the end of the matter. We find that there is a significant difference at stages 2 and 3 between a greenfield site let for telecoms use and alternative storage use at an existing commercial location.
84. The benefit of a tenant's rolling break applies equally to both telecoms use and alternative use for storage. The burden in relation to security of tenure will be the same for these sites as for the unexceptional rural site in **Vache Farm**. The benefit and burden of access will be different. In particular the burden of access at rural sites can be significant often involving the unlocking of remote farm gates and damage caused by telecoms machinery to agricultural land and fencing. By contrast at both Lupton Road and Price Plunders Papers access to these commercial sites is in regular use by others. The burden of access for storage is less than access for telecoms use involving regular access by multiple operators and potential significant activity involved with future upgrade work. Rights granted over adjacent land (the "blue line" plans) are important for telecoms use. Those rights include use of set down areas during installation and upgrading, rights to lay cables and tree lopping. None of those rights are required for alternative storage use. Accordingly, both the benefits and burden of rights over adjacent land are significantly less for storage use than for telecoms user.
85. Quantification of benefits and burdens are, as Mr Williams concedes, highly subjective. However, we are satisfied that benefits and burdens as a whole will be significantly less for storage use at an established commercial site than for telecoms use at a remote rural site. Doing the best we can, and also taking into account the benefit to the occupier of annual tenant break clause, we find that value benefits and burdens at Lupton Road and Proce Plunders Papers, based on alternative storage use, is £500 p.a.
86. Applying our stage 2 and 3 figure to alternative use value we determine consideration at Lupton Road as $£2500 + £500 = £3000$ p.a and at Price Plunders Papers $£2250 + £500 = £2750$ p.a.

Audley House

87. Mr Watkin, during his erudite submissions, invited the Tribunal to look at the approach of the Upper Tribunal to similar commercial sites in **Audley House**. Although not relied upon in evidence by Mr Williams we find Mr Watkin's invitation to be a helpful one.
88. The consideration agreed between the parties for the three sites in **Audley House** was: Audley House - £3,500, Port Talbot £2,050 and for Huntingdon £2,100. At Audley House there was alternative use value for parking. Port Talbot and Huntingdon

were valued on the basis of open storage. The final figures include benefits and burdens as well as tenants' rolling break clause.

89. As the Upper Tribunal observed in its "*Further observations*" at [256-257] these figures were agreed rather than determined by the Tribunal. However, they were arrived at by way of a Hanover approach and "*may therefore be helpful to parties in future negotiations.*" We take into account the general uprating of consideration that has taken place since **Audley House** was decided in 2022 and in particular the uprating of greenfield sites in **Vache Farm** which necessitates a reconsideration of "*the relativity between consideration for rural sites and those in other situations*" (see Vache Farm at [85]).

90. We have used the figures in **Audley House** as a check on the consideration we have determined for Lupton Road and Plunders Price Papers. As the Upper Tribunal said at [257] of **Audley House**:

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.

We are satisfied that our determination follows that blunt advice.

Decision

- 91. The consideration payable under the new agreement for Lupton Road is £3000 p.a.
- 92. The consideration payable under the new agreement for Plunders Price Papers is £2750 p.a.
- 93. The consideration payable under the new agreement for Roman Garage is £1850 p.a.
- 94. The consideration payable under the new agreement for South Cave is £1850 p.a.

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.

Schedule of Sites

Lupton Road – BIR/00CN/ECR/2024/0602

An electronic communications site at land adjoining Unit 2A Lupton Road, Thame, OX9 3SE.

Plunders Price Papers –BIR/00CN/ECR/2024/0631

Plunders Price Papers Transmitting Station, Cotton Hall Industrial Estate, Cotton Hall Street, Darwen BB3 0DW

Roman Garage – BIR/00CN/ECR/2024/0632

Roman Garage, Bridge End Road near Grantham Lincolnshire NG32 3AD

South Cave –BIR/00CN/ECR/2024/0635

Electronic communications site lying to the north of A63, South Cave, Brough