



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

Case Reference : **BIR/00CN/ERO/2026/0011**

Subject Premises : **Land at Lyndhurst
Hampshire**

**Claimant
(Operator)** : **Wessex Internet Limited**

Representative : **Temple Bright LLP**

**Respondents
(Site Provider)** : **(1) Camilla Masters
(2) Georgia Arrusi**

Representative : **(2) Clarke Willmott LLP**

Application : **Electronic Communications Code
Paragraph 20 (new site)**

Tribunal Member : **Deputy Regional Judge N Gravells**

Date of Decision : **27 July 2026**

DECISION

Introduction

- 1 A reference under Schedule 3A to the Communications Act 2003 (the Electronic Communications Code ('the Code')) was received by the Tribunal on 4 February 2026 including (1) an application for an order imposing an agreement for rights under paragraph 20 of the Code requiring the parties to enter into a new agreement for the occupation by the Claimant of a new site belonging to the Respondents and (2) an application for an order imposing an agreement for rights over the new site on an interim basis under paragraph 26.
- 2 Regulation 3(2) of the Electronic Communications and Wireless Telegraphy Regulations 2011 applies to both applications, which must therefore be determined by 3 August 2026.
- 3 The Claimant is an 'operator' within the meaning of paragraph 2 of the Code by virtue of a direction by OFCOM. The Claimant has been appointed by central and local government to deliver gigabit full fibre broadband connectivity to under-served rural communities. More specifically, the Claimant seeks Code rights to enable the installation and maintenance of underground ducting and fibre optic cabling for the Lyndhurst Project in accordance with its contract with Building Digital UK.
- 4 The Respondents are registered at the Land Registry as the freehold proprietors of the subject premises (save for a small parcel of land, title to which appears to be unregistered).
- 5 In relation to the application under paragraph 26, on 27 April 2026 the Tribunal made an Order imposing on the parties an agreement for interim rights over the subject premises. On 1 May 2026 the Tribunal issued the underlying Decision to which the Order gave effect.
- 6 This is the Decision of the Tribunal on the applications for rights under paragraph 20.

The legal background

- 7 The Electronic Communications Code regulates the legal relationship between mobile telephone operators (whether providing a phone signal or physical infrastructure) and the landowners on whose land electronic communications equipment is to be located. The Code provides protection for landowners while seeking to promote 'the public interest in access to a choice of high quality electronic communications services': see paragraph 21 of the Code.
- 8 Code rights are conferred upon operators by agreement with the occupier of land (paragraph 9), and an agreement may be imposed by an order of the Tribunal (paragraph 20). (Paragraph 26 makes provision for interim Code rights, which can only be created by the Tribunal imposing an agreement upon the parties.)
- 9 The test that an operator must satisfy in order for the Tribunal to impose an agreement conferring Code rights under paragraph 20 is set out in paragraph 21 of the Code –
 - (1) ... the court may make an order under paragraph 20 if (and only if) the court thinks that both of the following conditions are met.
 - (2) The first condition is that the prejudice caused to the relevant person by the order is capable of being adequately compensated by money.

- (3) The second condition is that the public benefit likely to result from the making of the order outweighs the prejudice to the relevant person.
- (4) In deciding whether the second condition is met, the court must have regard to the public interest in access to a choice of high quality electronic communications services.
- (5) The court may not make an order under paragraph 20 if it thinks that the relevant person intends to redevelop all or part of the land to which the code right would relate, or any neighbouring land, and could not reasonably do so if the order were made.
- 10 Where Code rights are sought under paragraph 20, the terms on which they are conferred are determined by the Tribunal in light of the provisions of the Code. Paragraph 23 provides (so far as relevant) –
- (1) An order under paragraph 20 may impose an agreement which gives effect to the code right sought by the operator with such modifications as the court thinks appropriate.
- (2) An order under paragraph 20 must require the agreement to contain such terms as the court thinks appropriate, subject to sub-paragraphs (3) to (8).
- (3) The terms of the agreement must include terms as to the payment of consideration by the operator to the relevant person for the relevant person's agreement to confer or be bound by the code right (as the case may be).
- (4) Paragraph 24 makes provision about the determination of consideration under sub-paragraph (3).
- (5) The terms of the agreement must include the terms the court thinks appropriate for ensuring that the least possible loss and damage is caused by the exercise of the code right to persons who—
- (a) occupy the land in question,
- (b) own interests in that land, or
- (c) are from time to time on that land.

The factual background

- 11 On 29 March 2025 the Claimant contacted the Respondents to discuss a proposed agreement for Code rights over the subject premises. Neither Respondent responded. However, in response to a second letter sent on 12 April 2025, the second Respondent stated that all correspondence should be addressed to the Respondents' land agent, Mr Peter Baughen of Gasson Associates.
- 12 On 23 April 2025 the Claimant contacted Mr Baughen to explain the position and attached copies of the earlier correspondence, draft agreements and proposed plans. On 28 April 2025 Mr Baughen telephoned the Claimant and a meeting was arranged for the following day. A further meeting took place on 16 May 2025 when the proposed route of the ducting and cabling was surveyed.
- 13 A final agreement and plan were produced on 24 July 2025. During the following months the Claimant requested updates on the status of the agreement. The Claimant was led to believe that the second Respondent had signed the agreement and that the first Respondent would do so. However, the second Respondent instructed solicitors, who proposed amendments to the agreement, which the Claimant has accepted; and the second Respondent has consented to the imposition of the amended agreement.

- 14 However, the first Respondent failed to engage with the Claimant either directly or through Mr Baughen.
- 15 On 9 December 2025 the Claimant served notices pursuant to paragraphs 20 (and paragraph 26) of the Code, inviting the Respondents to confer Code rights on the terms set out in the revised proposed agreement.
- 16 On 4 February 2026 the Claimant made the present Reference to the Tribunal.
- 17 On 24 February 2026 the Tribunal issued Directions and scheduled a case management hearing for 21 April 2026 with an indication that the paragraph 26 applications for interim rights would be determined on that occasion if that proved to be possible. The hearing of the paragraph 20 application was scheduled for 11 June 2026.
- 18 As noted above, on 27 April 2026 the Tribunal made an Order imposing an agreement for interim rights over the subject premises. The first Respondent had failed to comply with the Tribunal's Directions and her first communications to the Claimant and to the Tribunal were a number of brief emails sent on 16 and 17 April 2026. In those emails, and at the case management conference, the first Respondent made a number of assertions which the Tribunal found to be incorrect or unsubstantiated and a number of arguments which the Tribunal found to be misconceived.
- 19 That pattern of conduct continued in the period leading up to and at the hearing of the paragraph 20 application on 11 June 2026. The first Respondent seemed unable to present a reasoned and coherent response to the Claimant's application. This was perhaps recognised by the first Respondent and she applied for an adjournment expressly in order to obtain legal advice. The Claimant initially opposed the application because from the beginning it had advised the first Respondent to instruct a solicitor familiar with the Code and the relevant legal issues but the first Respondent had failed to do so. The Claimant had even facilitated telephone calls between Nick Burch of Temple Bright LLP, acting for the Claimant, and the first Respondent to explain the legal process and the relevant tests to be met.
- 20 However, the Claimant conceded that both it and the Tribunal would benefit if the first Respondent were represented by a solicitor familiar with the Code, who could address the relevant issues. The Tribunal therefore agreed to adjourn the hearing, specifically to allow the first Respondent to obtain legal advice, and issued Directions for the timetable leading up to the reconvened hearing on 2 July 2026.
- 21 Again the first Respondent failed to comply with the Directions. She notified the Claimant that she had instructed a solicitor but that solicitor denied any instruction from the first Respondent. She continued to send numerous emails to the Claimant. On 25 June 2026 she served on the Claimant a document entitled 'outline submissions'. In that document, she claimed that the Claimant had not produced a 'properly constituted' bundle, although the bundle was still being finalised in accordance with the Tribunal's Directions; she revealed misunderstanding of a number of clauses in the proposed paragraph 20 agreement; she demanded clarification of technical issues that form no part of the Claimant's proposed works on the subject premises; she demanded detailed specifications of every item of equipment to be installed on the subject premises

and the installation and excavation methodology and digging techniques; she disputed the accuracy of maps and drawings provided by the Claimant; she demanded that the Claimant must prove ‘necessity’ to instal telecommunications equipment on the subject premises and demanded that the Claimant should disclose documents evidencing third-party telecommunications infrastructure.

- 22 That document was followed on 1 July 2026 by an application from the first Respondent for a further adjournment of the hearing. The application repeated assertions that the hearing bundle (copied to the first Respondent and lodged at the Tribunal on 29 June 2026 as required by the Tribunal’s Directions) was incomplete and did not comply with the format directed by the Tribunal. The Claimant produced documentary proof that the completed bundle had been downloaded by the first Respondent; and the Claimant challenged the second assertion. The first Respondent made allegations (some previously made and rejected by the Tribunal): that the Claimant had failed to define the subject premises accurately; that documents were omitted from the bundle; that documents were undated; that the proposed agreement was undated and therefore defective; that the Claimant failed to engage with the first Respondent and was excluded from discussions; and that the issue of the first Respondent’s intention to redevelop the subject premises should be addressed *before* the hearing.
- 23 The Claimant strongly opposed another adjournment on the ground that the first Respondent had wholly failed to respond to the previous adjournment and to comply with the terms of the adjournment. The Claimant also challenged each of the allegations in the first Respondent’s application.
- 24 The Tribunal had no hesitation in refusing the application for a further adjournment. The Tribunal had no reason to believe that the first Respondent would use the time to respond constructively and positively or to instruct a solicitor. Moreover, any further adjournment would potentially jeopardise compliance with the requirement that the reference must be determined within six months.
- 25 The Tribunal set out the relevant issues to be addressed, namely (i) the test set out in paragraph 21 of the Code (with the elements of prejudice and public benefit), (ii) the first Respondent’s intention to redevelop the subject premises and (iii) the appropriate terms of any agreement to be imposed on the parties.
- 26 The Tribunal invited the first Respondent to indicate whether she wished to address the Tribunal on those issues but she continued to demand an adjournment and to express her views on the various matters raised in her application for adjournment, even in the face of repeated cautions from the Tribunal.
- 27 The Tribunal had no reason to believe that the first Respondent would not continue such disruptive conduct. The Claimant clearly shared that view and invited the Tribunal to determine the case on the papers.
- 28 After due consideration, the Tribunal determined to exercise its power under rule 33(5) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to exclude the first Respondent from the remainder of the hearing on the ground that the Tribunal considered the conduct of the first Respondent was disrupting and was likely to continue to disrupt the hearing.

- 29 Given the application from the Claimant, the Tribunal further determined that it could and should determine the case on the papers.
- 30 In reaching those determinations the Tribunal was satisfied that the case documentation included clear evidence of the respective positions of the Claimant and the first Respondent on the issues identified in paragraph 25 above.
- 31 The Tribunal proceeded to determine the application on the papers.
- 32 The first Respondent failed to provide a formal witness statement as required by the Tribunal's Directions dated 11 June 2026. The position of the first Respondent is therefore largely distilled from three documents – (1) the 'First Respondent's Outline Submissions', dated 25 June 2026, (2) an email (with attachments) dated 29 June 2026 sent by the first Respondent to the Upper Tribunal (Lands Chamber) and copied to the Claimant and (3) the first Respondent's 'Application to Adjourn the Hearing on 2 July 2026', dated 30 June 2026.

Procedural issues

- 33 In those documents the first Respondent raised a number of procedural and substantive issues. Looking first at those issues that can broadly be described as 'procedural', the first Respondent asserted –
 - (i) that the Claimant had failed to produce a properly constituted bundle of documents;
 - (ii) that the Claimant had failed to include in the bundle the first Respondent's planning and redevelopment material;
 - (iii) that the Claimant had failed to include in the bundle the first Respondent's medical evidence;
 - (iv) that the Claimant had failed to address every issue raised by the first Respondent;
 - (v) that the Claimant has failed to provide '(i) a full equipment schedule, identifying each item of apparatus by its accurate name, type and size – including every chamber, node and item of fixed apparatus, and in particular the core backbone node; (ii) the precise location of each item upon [the subject premises], shown upon a dimensional plan; (iii) the route of the cables, the depth at which they and any apparatus are to be laid, and the position of every chamber and access point; and (iv) the installation and excavation methodology – the digging techniques, equipment and working method to be used';
 - (vi) that the Claimant's application for 'permanent' rights under paragraph 20 of the Code must be considered independently of the Claimant's existing interim rights under the paragraph 26 agreement imposed by the Tribunal's Order dated 27 April 2026;
 - (vii) that the issue of the first Respondent's intention to redevelop the subject premises should be determined before the hearing.
- 34 The responses of the Tribunal to those assertions (taking into account the representations of the Claimant where appropriate) are as follows –

- (i) The Claimant provided evidence that the hearing bundle was emailed to, and received by, both the first Respondent and the Tribunal. The Tribunal is satisfied that the bundle included all relevant documents. The first Respondent's complaint that some documents were undated ignores the information in the bundle index; and her complaint that the proposed agreement was undated fails to understand that the effective date of any imposed agreement is determined by the Tribunal.
- (ii) The hearing bundle included the first Respondent's planning and redevelopment material.
- (iii) The Claimant did not include in the hearing bundle the first Respondent's medical evidence. However, this evidence has been seen by the Tribunal; and, in so far as it was intended to demonstrate that the first Respondent was excluded from, and/or prevented from participating fully in, negotiations with the Claimant and the subsequent Tribunal proceedings, the Tribunal has previously considered and rejected that assertion.
- (iv) The Claimant could not be expected to answer *before the hearing* every issue raised by the first Respondent.
- (v) In the view of the Tribunal, much of the detailed technical information demanded by the first Respondent is irrelevant to the issues that the Tribunal has to determine. The Tribunal accepts the assertions of the Claimant that its cables, ducts and drilling fluids are all industry-standard and that its materials and working methods have been subject to extensive review by the local planning authority and, since installation takes place in nearby protected sites, by Natural England.
- (vi) The Tribunal accepts (and the Claimant does not dispute) that the paragraph 20 application requires the Claimant to meet a higher standard of proof in meeting the paragraph 21 test.
- (vii) The issue of the first Respondent's intention to redevelop the subject premises is clearly not a preliminary issue but a matter for determination as part of the Tribunal's substantive decision.

Substantive issues: (1) the paragraph 21 test

Representations of the first Respondent

35 Turning to the substantive issues, the first Respondent made the following arguments that appear to address the paragraph 21 test –

- (i) that the proposed installation of ducting and cabling risks environmental harm in that –
 - (a) the subject premises contain numerous natural springs and there is a real risk of disturbing the water table and of channelling or collecting water, with consequent risk of soil pollution and harm to the natural drainage;
 - (b) the subject premises lie within an area of recognised landscape and heritage significance, including landscape of acknowledged historic significance;

- (ii) that the Claimant has failed to demonstrate that the rights sought are necessary because -
 - (a) the first Respondent has declined to have a connection to her property;
 - (b) that the Claimant has failed to demonstrate that no existing telecommunication infrastructure already serves the properties in question;
 - (c) that the proposed apparatus serves the global headquarters of a substantial commercial enterprise neighbouring the subject premises;
 - (d) that there is inconsistency as to the number of properties to be served;
 - (e) that descoping by Digital Britain UK undermines the necessity for the proposed agreement;
- (iii) that the fact that the proposed apparatus serves the global headquarters of a substantial commercial enterprise and does so by burdening the subject premises undermines any claim that the public benefit of the proposal outweighs the prejudice to the Respondents.

Representations of the Claimant

- 36 The Claimant's representations in relation to the paragraph 21 test are rather more structured.

First condition: the prejudice to the Respondents is capable of being adequately compensated by money

- 37 Ms Davies, on behalf of the Claimant, referred to the Upper Tribunal decision in *EE Limited and Hutchison 3G UK Limited v Islington LBC* [2018] UKUT 0361 (LC), where the Tribunal stated (at paragraphs 34-35) –

What matters is whether the type of prejudice that will be suffered is such that money will not provide adequate compensation ...; whether it is incapable of being compensated in money in principle.

- 38 Ms Davies submitted that there was no prospect that the proposed installation on the terms proposed by the Claimant would result in *uncompensable* (in money) prejudice to the Respondents; and that the Respondents had provided no evidence that it would.
- 39 In the absence of such evidence, the Claimant submitted that the first condition is clearly met.
- 40 In so far as the first Respondent's arguments relating to environment harm (see paragraph 35(1)) are relevant to the issue of prejudice, the Claimant further argued –
- (i) that the first Respondent had provided no evidence of potential harm to water tables or soil pollution;
 - (ii) that the Claimant has installed more than 8,000 kilometres of cabling with no evidence of environmental harm;

- (iii) that the first Respondent had provided no evidence to support her assertions as to harm to the landscape;
- (iv) that, in any event, it is difficult to see how underground ducting and cabling, inserted using a minimally invasive technique, would have any (lasting) impact on the local landscape;
- (v) that it is not clear how the first Respondent's position on this matter can be reconciled with her undoubted wish to redevelop the subject premises.

Second condition: the public benefit outweighs any prejudice to the Respondents

41 Ms Davies referred to paragraph 21(3) and (4) of the Code (see paragraph 8 above).

42 She referred to the decision of the Upper Tribunal in *Cornerstone Telecommunications Infrastructure Limited v University of the Arts London* [2020] UKUT 0248 (LC), where the Tribunal stated (at paragraph 51) –

It is clear that Parliament in enacting the Code intended private landowners to participate in the provision of telecommunications sites for the public good by suffering the use of their land for that purpose, being compensated for any damage caused but for consideration calculated on a basis that prevents them from making a profit out of the deal as they could under the Code's statutory predecessor. The test for the imposition of such rights is quite a stiff one; for the respondent to escape this public duty, unless it is itself going to redevelop the site, it must show either that it will suffer loss that cannot be compensated in money, or that the prejudice it will suffer is so great that it outweighs the public benefit derived from the use of the site. The level of prejudice must be very high indeed to outweigh the public benefit, in the light of the public demand for, and dependence upon, the availability of electronic communications. The benefit is perhaps even higher today than it was when the Code was enacted and certainly in the current circumstances we are all keenly aware of it.

43 In the same decision, the Tribunal stated (at paragraph 27) –

It is now well-established (see *Cornerstone Telecommunications Infrastructure Limited v University of London* [2018] UKUT 356 (LC), paragraphs 131–133) that it is no part of the Tribunal's task to consider whether alternative sites would do just as well. ... We have to weigh the public benefit arising from the imposition of a paragraph 20 agreement as if the alternative were that the claimant does not operate from [the subject premises]; that benefit is not diminished by the fact that the same benefit might be achieved by the use of an alternative site or of a sharing deal [in the vicinity].

44 Ms Davies submitted that that principle addresses objections by the first Respondent that the proposed installation is unnecessary and that alternative solutions should be adopted (see paragraph 35(ii) above).

45 Ms Davies submitted that the public benefit likely to result from the order sought comprises –

- (i) delivery of gigabit full fibre broadband connectivity to under-served rural communities;
- (ii) access for properties in Lyndhurst to a choice of high-quality electronic communications networks;
- (iii) addressing the problems with 'not spots';

- (iv) provision of links into and out of the existing infrastructure owned by Openreach which in turn will provide a large number of further connections.
- 46 Ms Davies questioned whether the first Respondent's challenge to the public benefit was based on objective evidence. She argued that the first Respondent's suggestion that the true aim of the proposed agreement is to provide connection for a commercial enterprise (Ineos) is refuted by the route plan.
- 47 Ms Davies submitted that the public benefit would outweigh any very limited prejudice to the Respondents; and that the terms of the proposed agreement for interim rights would satisfy the requirements of paragraph 23(5) of the Code –
- (i) Protective terms in the agreement seek to minimise loss and damage to the Respondents and have been revised to take account of concerns raised on behalf of the second Respondent.
 - (ii) It is in the Claimant's own interest to ensure that the ducting and cabling is installed safely and with appropriate materials, having regard to the nature and condition of the proposed site and the duties that the Claimant owes to its employees and contractors.
 - (iii) Once the ducting and cabling is installed there will be limited ongoing impact on the proposed site, save for occasional access to maintain, inspect and make adjustments as and when required.

Substantive issues: (2) intention to redevelop

- 48 Paragraph 21(5) of the Code provides –

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

Representations of the first Respondent

- 49 The first Respondent insists that she intends to redevelop the subject premises (and intention that is 'long-standing and concrete') and that paragraph 21(5) of the Code therefore precludes the Tribunal from making an order under paragraph 20 of the Code.
- 50 The first Respondent submitted various documents which she claims provides clear evidence of her intention to redevelop.

Representations of the Claimant

- 51 Ms Davies noted that the second Respondent did not raise the issue of redevelopment and that the issue was first raised in the emails of the first Respondent dated 16 and 17 April 2026.
- 52 However, in response to the first Respondent's declared intention to redevelop the proposed site, Ms Davies made the following submissions.
- 53 Ms Davies referred to the decision of the Upper Tribunal in *Icon Tower Infrastructure Ltd v On Tower UK Ltd* [2026] UKUT 89 (LC), where the Tribunal stated (at paragraphs 15-16) –

[15] Where appropriate, and suitably modified, principles applicable under the 1954 Act are to be applied under the Code. These include the requirements that: (i) where

intentions have changed over time, it is the intention at the date of the hearing that is relevant; (ii) the defence in paragraph 21(5) is not made out unless the relevant person has a firm intention to carry out the redevelopment, and this is something that they have a reasonable prospect of being able to bring about of their own volition.

[16] To succeed at trial, and largely mirroring the applicable test underground (f) in section 30(1) of the 1954 Act, Icon needed to establish that it intended, as at the date of the hearing in the First-tier Tribunal, to carry out the work upon which it relied (namely, erecting its own mast on its site). Intention has three components:

(1) The subjective element: Icon had to prove that it had a firm and settled intention to carry out the work, and that this was not likely to change.

(2) The objective element: Icon had to prove that there was a reasonable prospect of being able to bring about the relevant redevelopment by its own act or volition, and surmounting any hurdles or pre-conditions.

On Tower emphasises that it was Icon which bore the burden of establishing that it had the requisite intention to redevelop. On Tower had no need to prove anything. It merely had to raise challenges which called for an answer from Icon in order that Icon might discharge the burden that lay upon it: see *MVL Properties (2017) Limited v The Leadmill Limited* [2025] EWHC 349 (Ch) at [10a] per Norris J.

- 54 Although the first Respondent has stated that the proposed site was currently being promoted through 'Call for Sites' for the Local Plan, Ms Davies asserts that no evidence of this had been provided. Indeed, there was firm evidence to suggest that the most recent Call for Sites for the Local Plan had been completed, and that the proposed site was not selected.
- 55 Ms Davies argues that earlier documentation relied upon by the first Respondent does not assist her. First, she provided Call for Sites documentation dating back to 2015 or 2016, but the application to include the subject property was rejected. Second, she also relied on a 2018 Strategic Housing Land Availability Assessment but the planning appraisal stated that the subject premises were not included and that there was little prospect that that 'non-inclusion' would change. Third, a Planning Appraisal produced by Pro Vision in October 2020 clearly states (at paragraph 6.1) that residential development at the subject premises is 'unlikely to be supported by the [local planning authority] at this time'; and that 'there is no indication that this approach is likely to change in the short term'.
- 56 Furthermore, Ms Davies submitted that even a successful submission through a 'Call for Sites' was a very long way from 'something that [the Respondents] have a reasonable prospect of being able to bring about of their own volition', including by 'surmounting any hurdles or preconditions'. The site is in a National Park and subject to very strict planning restrictions and conditions.
- 57 In summary, the likelihood of the Respondents being able to bring about redevelopment of their own volition, including by surmounting any hurdles or pre-conditions is, at best, remote.
- 58 While it is not disputed that the first Respondent fervently *wishes* to redevelop the subject premises, Ms Davies argues that that is very different from satisfying the required intention to redevelop under paragraph 21(5) of the Code, which the first Respondent has failed to do.
- 59 Moreover, even if such an intention and likelihood of success could be sufficiently evidenced, paragraph 21(5) of the Code also requires that the Respondents 'could

not reasonably [develop the proposed site] if an order were made'. Ms Davies submitted that no evidence had been produced to indicate what the proposed redevelopment entails, but it seemed highly implausible that the proposed installation of underground ducting and cabling would prevent such redevelopment. The Claimant is highly experienced and adept at making alterations to their routing to accommodate redevelopment, including by drilling sections at depth, routing closer to field edges, changing position of chambers and other measures.

- 60 In any event, the proposed paragraph 20 agreement contains a comprehensive lift and shift provision, which requires the Claimant at its own expense to move the ducting and cabling an unlimited number of times to a suitable new position, in the event of redevelopment. And, if such relocation is not possible, then the Respondents have the right under the Code to terminate the agreement with 12 months' notice.
- 61 Ms Davies submitted that the Respondents had not met the intention to redevelop test.

Substantive issues: (3) terms of the agreement

Representations of the first Respondent

- 62 The first Respondent raised a number of issues relating to the terms of the proposed agreement –
- (i) that the proposed agreement grants an easement to the Claimant, which requires the concurrence of both the Respondents as co-owners of the subject premises;
 - (ii) that the proposed agreement is internally contradictory in that it purports to grant an easement to the Claimant and then provides that the agreement confers no easement;
 - (iii) that the proposed agreement fails to identify the 'core backbone node' or its proposed location;
 - (iv) that the plans provided by the Claimant fail to identify the proposed route of the ducting and cabling accurately and consistently;
 - (v) that the protection that the Claimant argues is provided to the Respondents is illusory in that –
 - (a) the right to terminate the agreement in order to redevelop the subject premises is barred by the provisions for diversion of the ducting and cabling;
 - (b) the access points are fixed so that the apparatus is trapped at the boundary of the subject premises;
 - (c) that the fixed access points obstruct development and depress the potential development value of the subject premises;
 - (d) the right to terminate the agreement is suspended for 25 years.

Representations of the Claimant

63 The Claimant responded –

- (i) that, while the grant of rights over co-owned land normally requires the concurrence of all the co-owners, that principle has no application where the grant of rights is imposed by the Tribunal;
- (ii) that, in any event, the proposed agreement does not grant to the Claimant any easement over the subject premises, as clause 16.1 makes clear; that the first Respondent's reliance on the term 'easement strip' fails to understand that the term is a drafting device;
- (iii) that the core backbone node issue seems to be based on a misunderstanding: the proposed agreement does not involve the installation of a core backbone node on the subject premises;
- (iv) that the proposed routing of the ducting and cabling has been the subject of numerous discussions and site visits with representatives of the first Respondent and remains open to further reasonable adjustments;
- (v) that the first Respondent's interpretation of the terms of the proposed agreement as to termination is wholly misconceived; that the Respondents' right to terminate the agreement in the event that the Claimant cannot relocate its apparatus so as to allow for redevelopment of the subject premises is exercisable on giving 12 months' notice; and that the 25-year restriction referred to by the first Respondent has no application in such circumstances.

64 More generally, the Claimant noted that the proposed agreement had been amended to take account of the concerns identified by the second Respondent's solicitor.

65 In conclusion, the Claimant submits that the proposed agreement (as amended) is entirely compliant with paragraph 23 of the Code, that it contains appropriate terms for the protection of the Respondents, ensuring that the least possible loss or damage is caused by the exercise of the rights granted, and that it makes appropriate provision enabling the Respondents to require the repositioning of apparatus and to terminate the agreement.

Determination of the Tribunal

66 In determining the issues in dispute between the parties, the Tribunal took full account of the written and oral representations of the parties so far as relevant to the issues in dispute.

67 For the reasons advanced by the Claimant the Tribunal determines that the first Respondent has failed to advance any argument and/or evidence to undermine Ms Davies' submission that the Claimant has established that that two-fold test in paragraph 21 is satisfied.

68 For the reasons advanced by the Claimant the Tribunal determines that the first Respondent has failed to demonstrate an intention to redevelop the proposed site such as to preclude the Tribunal from imposing the proposed agreement (as amended) on the parties.

- 69 For the reasons advanced by the Claimant the Tribunal determines that the terms of the proposed agreement for paragraph 20 rights satisfy the requirements of paragraph 23 of the Code and are appropriate.
- 70 The Tribunal determines that the proposed agreement for paragraph 20 rights should be imposed on the parties.

Costs

- 71 The Claimant claims that the first Respondent should pay the Claimant's costs incurred in connection with the hearings on 11 June 2026 and 2 July 2026. The claim is for £20,973.75.
- 72 The Claimant has been wholly successful in the proceedings.
- 73 The Tribunal finds that the conduct of the first Respondent throughout the proceedings has been unreasonable. The first Respondent –
- (i) failed to engage constructively with the Claimant;
 - (ii) failed to instruct solicitors despite repeated offers from the Claimant to pay for legal advice;
 - (iii) failed to instruct solicitors despite requesting an adjournment of the hearing specifically to do so;
 - (iv) failed to comply with the Tribunal's Directions;
 - (v) disrupted hearings;
 - (vi) persisted in pursuing arguments and issues that were clearly irrelevant and/or had no legal or factual foundation.
- 74 For the above reasons the Tribunal orders that the first Respondent pay the Claimant's hearings costs, which are summarily assessed at £15,000.00.

Order

- 75 In order to give effect to this Decision, the Tribunal has issued a formal Order.

Appeal

- 76 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 77 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- 78 If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- 79 The application for permission to appeal must state the grounds of appeal and must state the result the party making the application is seeking.

27 July 2026

Professor Nigel Gravells
Deputy Regional Judge