

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00CN/ERO/2025/0696**
Property	**:**	**Thorndike Theatre, Church Street, Leatherhead, Surrey, KT22 8DF**
Claimant (Operator)	**:**	**1)EE LIMITED** **2) HUTCHISON 3G UK LIMITED**
Representative	**:**	**Womble Bond Dickinson (UK) LLP**
Respondent (site provider)	**:**	**HAGUE INVESTMENTS LIMITED**
Representative	**:**	**Clifford Holmes Solicitors**
Application	**:**	**Electronic Communications Code** **Paragraph 20 (operator on-site)**
Tribunal	**:**	**Judge D Barlow**
Date of Hearing	**:**	**9 November 2026**
Date of Decision	**:**	**11 November 2026**

DECISION

Background

1. This is a reference by EE Limited and Hutchison 3G UK Limited ("the Claimants") under Part 4 of the Electronic Communications Code ("the Code") seeking the imposition of a new Code agreement relating to a telecommunications site at the rooftop of the Thorndike Theatre, Church Street, Leatherhead Surrey.

2. The reference was heard on 9 November 2026 at Centre City Tower Birmingham. The Claimant was represented by Mr James Andrews-Tipler, instructed by Womble Bond Dickinson. The Respondent was represented by Mr Clifford Holmes of Clifford Holmes Solicitors.

3. At the commencement of the hearing Mr Clifford-Holmes confirmed that the Respondent did not dispute the Tribunal's jurisdiction under paragraph 20 of the Code and did not challenge satisfaction of the paragraph 21 tests. The sole remaining disputes concern the terms of the proposed agreement.

4. The agreed outstanding issues were:

   a. whether any airspace should form part of the demise in LR4;
   b. whether the Claimants should have a right of access through internal parts of the Building where necessary;
   c. whether the Claimants should be granted temporary rights relating to generators, battery back-up equipment, parking, turning and cherry-picker access over adjoining parts of the Respondent's property.

5. The parties provided a joint statement of points in dispute showing their respective positions and the final iteration of the travelling draft lease, also annotated with their respective comments.

Evidence

6. The Claimants relied on two witness statements from Emily Rose Beeby MRICS of Mobile Broadband Network Limited ("MBNL"), the Claimants' professional site managers. Ms Beeby attended the hearing and confirmed the content of her two statements. She was not cross-examined.

7. The Respondent relied on a single witness statement from Tracy O'Sullivan of Hague Investments Limited. Ms O'Sullivan did not attend the hearing and was therefore not available for cross-examination. In her statement she explained that day-to-day management of the Building is undertaken by professional managing agents, currently Hurst Warne Commercial Property Management, and that she becomes involved principally in lease renewals and other matters referred to the Respondent by the managing agents. Her evidence concerned the practical operation of the Building, historical access arrangements and her views regarding the disputed lease provisions.

8. The Tribunal accepts that Ms O'Sullivan has long-standing involvement with the Building on behalf of the Respondent. However, her own evidence establishes that day-to-day management of the Building is undertaken through external managing agents, currently Hurst Warne Commercial Property Management, and that her involvement principally concerns lease renewals, lease variations and matters referred to the Respondent by others.

9. No evidence was called from Hurst Warne Commercial Property Management, from the Respondent's surveyor at Batchellor Monkhouse, or from any occupier of the Building. Nor were any leases, licences, plans, parking agreements or other documents produced to substantiate the Respondent's assertions concerning the extent of third-party rights, parking arrangements, restrictions affecting access, or the alleged consequences of the exercise of the disputed Code rights.

10. The Tribunal therefore had no direct evidence from any person responsible for the day-to-day management of the Building, no evidence from the surveyor who negotiated the proposed agreement, and no documentary evidence establishing the extent of the third-party rights upon which many of the Respondent's objections depended.

11. Consequently, the Tribunal has approached the Respondent's evidence with appropriate caution where it consists of assertions concerning third-party rights, operational constraints or anticipated prejudice unsupported by documentary evidence and incapable of being tested through cross-examination.

12. The Tribunal is unable to attach significant weight to those parts of Ms O'Sullivan's evidence which amount to speculation, prediction or opinion concerning matters such as:

- the inability of the Respondent to facilitate internal access;
- the extent of third-party occupational rights;
- the availability of parking and circulation areas;
- the effect of temporary obstruction of accessways or parking spaces;
- the likelihood of economic loss;
- the alleged impact on capital value; and
- the practical consequences of the exercise of the disputed rights.

13. The Tribunal does not disregard the Respondent's evidence. However, where the Respondent invites the Tribunal to find that particular rights would be unworkable, commercially damaging or incompatible with third-party interests, the evidential foundation for such findings is limited. In several respects the Respondent asks the Tribunal to infer substantial prejudice without documentary support and in circumstances where its only witness was unavailable for cross-examination. The Tribunal declines to do so.

Applicable Principles

14. The Claimants relied upon the guidance given by the Upper Tribunal in cases including ***On Tower UK Limited v JH and FW Green Limited*** *[2020] UKUT 348 (LC)* ("Dale Park"); ***CTIL v London & Quadrant Housing Trust*** *[2020]*

UKUT 0282 (LC) ("Quadrant"); and ***On Tower UK Ltd v AP Wireless II** (UK) Ltd [2025] UKUT 280 (LC)* ("Ewefields"), namely that:

a. the starting point is the operator's proposed terms and identified business need, which do not need to be a compelling case;
b. restrictions should generally be imposed only where justified by evidence of actual prejudice;
c. the purpose of the Code is to facilitate the provision and upgrading of electronic communications networks;
d. the Tribunal should avoid generating future disputes by imposing unnecessary restrictions.
e. that historic contractual terms carry no special weight in a paragraph 20 renewal, ***O'May v City of London Real Property Corp** [1983] 2 A.C. 726 ("O'May"); and **EE & H3G v Stephenson & AP Wireless (II) UK Ltd** [2021] UKUT 167 (LC) at [55]-[57*], which confirms that site providers are required *"to put up with a degree of change in the public interest of facilitating the provision of high quality networks"*

15. The Tribunal accepts those principles and has applied them in determining the remaining disputed terms.

Outstanding Issues

LR4. Property - Extent of the Demise and Airspace

16. It became apparent during the hearing that a substantial part of the Respondent's objection proceeded from a misunderstanding of the extent of the airspace sought. The Claimants confirmed that they seek only the airspace immediately above the demised area shown edged red on the plan and not the airspace above the whole roof.

17. The Claimants do not seek a demise the antennae and other apparatus mounted elsewhere on the roof. Those items are instead intended to be accommodated through the Rights granted by the agreement.

18. The Tribunal accepts the Claimants' submission that inclusion of the airspace above the demised area provides useful certainty concerning the vertical extent of the demise and assists in avoiding future disputes concerning maintenance, replacement and upgrading of apparatus.

19. The Respondent produced no evidence that inclusion of the limited airspace sought would adversely affect any redevelopment prospects, interfere with occupational interests, diminish the value of the Building or otherwise cause material prejudice.

20. As a matter of ordinary property law, ownership of airspace extends only so far as reasonably necessary for the ordinary use and enjoyment of land and the structures on it (***Lord Bernstein v Skyviews and General Ltd** [1978] QB 479*).

21. Whether the demise of part or parts of a roof includes the airspace depends on proper construction of the lease *(**Ralph Kline Ltd v Metropolitan and County Holdings Ltd** [2018] EWHC 64 (Ch)*). As the extent of any demise of airspace is ultimately a matter of lease construction it is neither unusual nor objectionable to expressly define the vertical boundaries of rooftop telecommunications premises.

22. The Tribunal therefore accepts the principle that the demise should include the airspace immediately above the red-edged area. However, the drafting proposed in LR4 lacks complete clarity. The Tribunal suggests substituting the revised wording:

LR4. Property: The area of roof shown edged red on plan [insert drawing number] extending from the upper surface of the roof slab, tiling or other roof finishing, but excluding all roof structures, roof tiles and coverings, columns, beams, joists, supports and pillars, save for those specific points to which the Equipment is affixed, together with the airspace immediately above the demised area.

Internal Access Rights

Section B meaning of Access Route paragraphs (a)(b) and (c); Section 4, Clause 4.2.1 (a) and (c)

23. The Respondent objects to any right permitting access through internal parts of the Building, relying principally upon the terms of the historic agreement, the existence of external ladder access and the asserted impracticality of internal access arrangements.

24. The Claimants submitted that the historic agreement is not determinative, that indirect internal routes exist, and that flexibility is required over the term of the agreement should external access become unavailable or unsuitable. They further submitted that internal access may be required for inspections, structural investigations and electrical works.

25. The Respondent produced no evidence from the managing agents, no evidence from occupiers and no documentary evidence demonstrating that internal access would be impossible, impracticable or materially prejudicial. The Tribunal accepts the Claimants' evidence that some form of internal access route exists and may be required for inspections, structural investigations, electrical works or in circumstances where the external ladders become unavailable. In the absence of contrary evidence capable of being tested, the Tribunal accepts that the limited and qualified right sought by the Claimants is operationally justified.

26. The proposed provisions do not confer an unrestricted right of access through occupied parts of the Building. They require agreement between the parties acting reasonably and impose only an obligation upon the Respondent to use reasonable endeavours to facilitate access where necessary.

27. Given the length of the proposed term, it is plainly sensible that the operators should not be wholly dependent upon a single means of external access. The Tribunal also accepts that access to internal parts of the structure may occasionally be required for legitimate operational purposes.

28. The Respondent's reliance upon the terms of the 2000 agreement is of limited assistance. The Tribunal is not engaged in an ***O'May*** exercise and must determine what rights are reasonably required going forward rather than simply reproducing historic arrangements.

29. The Tribunal therefore rejects the Respondent's proposed amendments to the above clauses.

Generator, Battery, Parking, Turning and Cherry-Picker Rights

Section 3, Clause 3.1.6 (a) and (b); Section 4, Clause 4.2.1 (b) and (c)

30. The Respondent submitted that there is insufficient space around the Building to accommodate generators, batteries, cherry-pickers or temporary vehicle movements and that any such rights would be disruptive to occupiers and users of the Building.

31. The Claimants relied upon authority establishing the obvious operational need for temporary backup power and submitted that the disputed rights are heavily qualified, requiring landlord approval which cannot be unreasonably withheld. They further noted the absence of documentary evidence concerning parking rights or third-party occupation.

32. The Tribunal accepts that the site is constrained and that the surrounding areas are heavily used for parking, circulation and access. However, difficulty is not the same thing as impossibility.

33. On any realistic view, a rooftop telecommunications installation may during a ten-year term require occasional use of lifting equipment, temporary generators, backup batteries or short-term vehicle access. The constrained nature of the site tends to support the need for flexibility rather than undermine it.

34. The Respondent's objections rest principally upon assertions that all parking spaces are allocated, that access routes must remain unobstructed at all times, and that temporary occupation of external areas would cause disruption and economic harm. However, no leases, licences, plans, parking agreements, management records or tenant evidence were produced in support of those assertions. Indeed, the Tribunal was provided with no documentary evidence identifying either the extent of the rights relied upon or the consequences said to flow from interference with them.

35. The Tribunal therefore cannot be satisfied that the exercise of the proposed rights would give rise to the difficulties suggested by the Respondent. By contrast, the

Claimants' operational need for occasional temporary use of external areas for maintenance, replacement works, backup power provision and lifting operations is self-evident and supported by both the evidence and the authorities relied upon. The Tribunal accordingly prefers the Claimants' evidence and submissions on these issues

36. Further, the rights sought are not unrestricted. The Claimants require landlord approval, which may not be unreasonably withheld, and remain subject to obligations minimising inconvenience to occupiers and complying with applicable consent requirements.

37. The Tribunal is satisfied that these provisions strike an appropriate balance between the operational requirements of the network and the interests of the Respondent and third parties.

38. The Respondent's proposed amendments to the above clauses are therefore refused.

Determination

39. Subject to the proposed amendment of LR4 set out above, the Tribunal determines that the disputed provisions should remain substantially in the form proposed by the Claimants.

40. The Tribunal will make an order imposing the agreement based on the Claimants' draft lease as amended by this decision.

DIRECTIONS

1. Within 14 days of this decision, the Claimants' solicitors shall circulate:

    a. A clean copy of the lease reflecting this determination; and

    b. Coloured copies of the plans to be attached to the final order.

Costs

2. Any application for costs under paragraph 96 of the Code shall be made within 21 days of this decision, supported by a schedule of costs and written submissions.

3. Any response shall be filed within 21 days thereafter. The Tribunal will determine any application on the papers unless otherwise directed.

D Barlow
Deputy Regional Judge

Rights of Appeal

If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).