



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

Case Reference : **LC – 2024 – 000597**

Property : **1 London Bridge, London SE1**

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

Representative : **Osborne Clarke LLP**

**Respondent
(Site Provider)** : **St Martins Property Investments Limited**

Representative : **Bryan Cave Leighton Paisner LLP**

Application : **Electronic Communications Code**

Date of Order : **12th May 2024**

DECISION - COSTS

1. On 19th October 2021 the Upper Tribunal imposed an agreement upon the Claimant operator and the Respondent site provider pursuant to paragraph 26 of the Electronic Communications Code (**Cornerstone Telecommunications Infrastructure Limited v St Martins Property Investments Limited and another** [2021] UKUT 262 (LC)). The agreement was imposed on an interim basis to enable the Claimant to access the roof of the building at 1 London Bridge for the purpose of carrying out an MSV (“multi-skilled visit”).
2. The Upper Tribunal awarded litigation costs of £12,500 and transactional costs of £11,000. The Upper Tribunal did not impose provisions for the Claimant to carry out intrusive investigative works at that stage.
3. On 13th August 2024 the Upper Tribunal received a further reference including an application for an order imposing an agreement for interim rights. That further reference sought rights to carry out intrusive investigations. By order dated 14th August 2024 the reference was transferred to the First-tier Tribunal.
4. The reference was listed for hearing on 7th November 2024. However on the evening of 6th November the parties reached agreement. The following day, 7th November 2024, by consent, the Tribunal made an Order in the following terms:

BY CONSENT IT IS ORDERED THAT:

1. *Pursuant to paragraph 26 of the Code, the Tribunal imposes on the parties the Agreement annexed to the Schedule to this Order.*
 2. *The Case Management Hearing listed for 11.30am on 7 November 2024 be vacated.*
 3. *The Claimant agrees to pay the Respondent's reasonable costs with reference to Paragraph 84(2) of the Code.*
 4. *If the parties are not able to agree costs after using reasonable endeavours to do so, the Tribunal shall determine costs on the basis of written costs submission to be filed by 4pm on 10 January 2025.*
5. In the Upper Tribunal the Deputy Chamber President made a number of observations in respect of costs [42-46]:

“42. The Tribunal has in the past made it clear that it does not regard applications for access as justifying the sort of expenditure which it sees yet again in this case. In Cornerstone Telecommunications Infrastructure Ltd v Central Saint Giles General Partner Ltd [2019] UKUT 183 (LC) three parties incurred more than £100,000 in aggregate in a dispute (eventually resolved by agreement) over access to the roof of a residential building. The Tribunal said this, at [4], about the objects of the Code:

“The new Code regime is intended to facilitate the provision of telecommunications services without delay and at limited cost. The preparatory stages of the installation of new equipment (at least if the site itself is a new one) will almost always require a survey, conducted over a period of a few weeks and involving a

small number of visits by a limited group of individuals, before a decision can be taken about the suitability of the site. If those preparatory stages are allowed to become the occasion for preliminary trials of strength involving legal firepower on the scale deployed in this reference there is a serious risk of the objectives of the Code being frustrated.”

The Tribunal awarded the site providers a small fraction of the costs they had incurred and added this warning, at [30]:

“The Tribunal wishes it to be known by other parties who refuse access to their land or buildings for surveys that, whatever the outcome, they cannot expect to recover costs on the scale incurred by the parties in these proceedings.”

43. I take this opportunity to reiterate that warning.

44. I do not think the Tribunal’s view of how this sort of litigation should be conducted is unrealistic. The issues are usually quite narrow. They do not require extensive evidence. They do not require complicated statements of case which obscure the issues or elaborate bundles of documents. They ought to be capable of being conducted within a relatively restricted budget, proportionate to the matters in issue. The Tribunal knows from other cases that they are capable of being conducted in that way. This is the second paragraph 26 reference the Tribunal has dealt with today. In the first reference the site providers agreed in principle that Code rights should be imposed but the parties were in dispute over a number of the terms. The dispute had not gone on for as long as this one, but the bill of costs provided by the site provider’s solicitors came to a little over £6,500. I do not think I can regard this that case as setting a benchmark for cost in MSV cases because each case will involve a particular building and particular issues. In this case, for example, there was an important dispute over intrusive works. Nevertheless, I am influenced by the confirmation provided by that bill of costs that these proceedings can be sensibly conducted at really quite modest expense. It can be done; and since it can be done, it ought to be done.

45. In this case the respondent will recover its transactional costs in full but I do not intend to make an order for its litigation costs in anything like the figure which it seeks. The claimant has managed to conduct this litigation at a cost of £30,500, which I consider to be hugely disproportionate for a case in which the principle of access was not in dispute and the elaborate evidence concerning satisfaction of the paragraph 21 conditions was therefore unnecessary. Yet the respondent’s bill comes in at more than twice as much and again features much irrelevant evidence and unproductive activity (as the Tribunal itself has experienced in the last few days).

46. The order I make is that the claimant will pay the first respondent’s costs assessed at £12,500 and the second respondent’s costs assessed at £1,500. That sum reflects both the extent of the respondent’s success and the proportionate cost of achieving it.”

6. The Respondent does not appear to have heeded the warning given by the Deputy Chamber President. The Respondent now seeks costs in the total sum of £142,243.43 comprising transactional costs of £88,292.62 and litigation costs of £53,950.81.

7. I have been invited by the parties to determine the question of costs without a hearing. I have considered 'Breakdown of Costs on behalf of the Respondent'. I have been assisted by 'Costs Submissions of the Claimant' prepared by James Tipler of counsel and dated 31st January 2025 and 'Costs Submissions of the Respondent' dated 14th February 2025 prepared by Jonathan Wills of counsel. I have also considered Respondent's Bundle of documents.
8. The regime for the award of litigation costs and reasonable legal expenses (referred to as transactional costs) differs and I have therefore dealt with each separately.

Litigation Costs

9. Paragraph 96 of the Code provides:

(1) Where in any proceedings a tribunal exercises functions by virtue of regulations under paragraph 95(1), it may make such order as it thinks fit as to costs, or, in Scotland, expenses.

(2) The matters a tribunal must have regard to in making such an order include in particular –

- (a) the extent to which any party is successful in the proceedings, and
(b) any unreasonable refusal to engage in alternative dispute resolution*

10. I see no reason to depart from the usual order that the operator should pay the site provider's costs to be summarily assessed.
11. The Respondent's solicitors have helpfully broken down the work done into 4 periods:

Part 1: Costs incurred up to date of Notice on 19th June 2024 – only £405 incurred.

Part 2: Costs from Notice to Notice of Reference 19th June 2024 – 14th August 2024 - considering Para. 26 Notice, responding and advising - £5,521.77

Part 3: Costs from Notice of Reference to Respondent's Statement of Case 14th August 2024 – 18th September 2024 – considering Notice of Reference, instructing counsel, preparing Response and Statement of Case and advising - £17,966.64 plus counsel fees of £5,000.

Part 4: Costs from 18th September 2024 to conclusion on 7th November 2024 – schedule of terms in dispute and preparing Witness Statement of Charlie Prentis - £19,357.40 plus counsel fees of £5,700.

The total claim for litigation costs amounts to £53,950.81.

12. The work done by Claimant's solicitors was entirely typical of a MSV case. Consideration of statutory notice, preparing Response and Statement of Case,

preparing Witness Statement, preparing schedule of terms remaining in dispute, briefing counsel and negotiating terms of Consent Order.

13. The principle of access was not in dispute. The meat of the dispute was in respect of the terms on which an intrusive survey would be allowed. A single witness statement was required. There was no expert evidence. I heed the warning given by the Deputy Chamber President. I “*do not intend to make an order for [the Claimant’s] litigation costs in anything like the figure which it seeks*”. I summarily assess the Claimants costs at £10,000 plus £5000 for counsel. That total figure of £15,000 “*reflects both the extent of the respondent’s success and the proportionate cost of achieving it*”. The Respondent is able to recover VAT and accordingly no VAT is to be included.

Transactional Costs

14. Paragraph 25(1) of the Code provides:

“If the court makes an order under paragraph 20 the court may also order the operator to pay compensation to the relevant person for any loss or damage that has been sustained or will be sustained by that person as a result of the exercise of the code right to which the order relates”

Paragraph 84(2)(a) provides:

“Depending on the circumstances, the power of the court to order the payment of compensation for loss or damage includes power to order payment for—

(a) expenses (including reasonable legal and valuation expenses, subject to the provisions of any enactment about the powers of the court by whom the order for compensation is made to award costs or, in Scotland, expenses),”

These provisions are applicable in this case by virtue of paragraph 26(6).

15. In the Upper Tribunal the Deputy Chamber President made the following observations [32-35]:

32. In this case the respondent has instructed a substantial firm of City solicitors who, as you would expect of any solicitor, have done their best to negotiate favourable terms for their client. The claimant objects to paying those solicitor’s fees which comes to a little over £11,000 for the transactional work of advising on and negotiating the agreement (not the costs of litigation). The claimant says that sum is manifestly excessive. In addition, the respondent seeks £875 for advice which it has obtained from a telecom’s agent about the form of the agreement. Mr Cochrane has suggested that the reasonable costs of negotiating an agreement of this sort ought to be no more than £750. Nevertheless, the claimant has offered a contribution of £1,500.

33. Section 84(2) of the Code entitles the respondent to receive as compensation its reasonable and legal valuation expenses. There has been no need for valuation in this case and as it is not clear what involvement the respondent’s telecommunications agent has had I will leave the cost of their advice to one side

and focus on the solicitor's fees. I am not in a position to say that the respondent's reasonable legal expenses are £1,500 or anything like it. I have no reason to doubt that the figure of £11,000 is the sum which has been incurred and I have no reason to doubt that the efforts made by the respondent's solicitors have been reasonable. The fact that they may have eventually agreed some matters which they initially resisted does not mean their work was undertaken unreasonably. The claimant has put forward a relatively complex form of agreement, including many detailed provisions on which a reasonable building owner would expect to be advised, and other provisions (such as the circular definition of investigative works) which the claimant knows have met with resistance in the past. It cannot be surprised that the resulting negotiation is not completely straightforward.

34. The notion that an operator should be required only to make a contribution towards the legal expenses incurred by a site provider, and that the site provider should thereby be left out of pocket, is flawed. The site provider is entitled to recoup its reasonable legal expenses – all of them – and in this case, on the material before the Tribunal, those reasonable legal expenses are £11,000.

35. I appreciate that that is a substantial sum, but this case concerns a particularly valuable building where it was reasonable for the respondent to engage these solicitors and to take the points which it has taken. The sum is not significantly different from compensation ordered by the Tribunal in other cases. In the case referred to colloquially as Dale Park (admittedly a paragraph 20 case in which transactional costs may be expected to be higher) the Tribunal awarded £8,000 for negotiating the agreement. Neither that figure nor the figure that I award in this case should be regarded as setting a norm; they are simply the figures produced by the application of the proper principle to the circumstances of a particular case. They could no doubt be reduced if the claimant chose to use a simpler form of agreement.

16. This reference concerns a very high value central London property. The Deputy Chamber President at [3] describes the site in the following terms:

“The building was completed in the 1980s and occupies a very prominent location at the southern end of London Bridge immediately adjoining the river. It is of a distinctive design which anyone regularly crossing the Bridge would instantly recognise.”

This is clearly a high value building. Intrusive rights were being sought affecting specialist rooftop membrane. The Respondent was also rightly concerned about invalidation of its warranty. The Respondent was entirely justified in instructing specialist central London solicitors and counsel.

17. Transactional costs claimed have been verified by a statement of truth appended to “Costs Submissions of the Respondent”. In the Upper Tribunal the Respondent recovered recouped its reasonable expenses, “*all of them*”, in the sum of £11,000. In most cases a statement of costs supported by a statement of truth will be sufficient, without more, to determine reasonable legal expenses.

18. I have not been assisted by sums awarded by this Tribunal and the Upper Tribunal in other references. There is no “going rate”.

19. The Respondent is able to recover VAT and accordingly no claim is made for VAT. The sum claimed for transactional costs is £88,292.62. The Respondent’s solicitors have again broken down the work done into 4 periods:

Part 1: Costs incurred up to date of Notice on 19th June 2024 – considering MSV request, structural information and drawings, review of RAMS, identification of scope of intrusive works and consideration of sensitivity of rooftop membrane – £25,711.74.

Part 2: Costs from Notice to Notice of Reference 19th June 2024 – 14th August 2024 – correspondence in connection with scope and rooftop membrane and initial review of draft MSV agreement - £7,156.35.

Part 3: Costs from Notice of Reference to Respondent’s Statement of Case 14th August 2024 – 18th September 2024 – review of MSV agreement and consideration of differences between agreement imposed by UT together with continued correspondence - £10,316.93.

Part 4: Costs from 18th September 2024 to conclusion on 7th November 2024 – negotiating terms including 15 turns of the draft, bespoke drafting of intrusive works and narrowing down points in dispute - £45,107.60.

20. The 15 turns of the MSV agreement are helpfully set out by Mr Wills in his Costs Submissions at paragraph 35:

13 September – Rachel Sheridan (BCLP - transactional lawyer) circulated mark-up of MSV agreement to OC.

4 October - Dawn Savage (OC – transactional lawyer) responded with a draft MSV mark-up.

22 October – Rachel Sheridan (BCLP - transactional lawyer) sent revised draft.

25 October – Dawn Savage (OC – transactional lawyer) responded with a draft.

28 October – Dawn Savage (OC) provides wording for section 3 e.g. provision of information.

28 October – Richard Brearley (BCLP) responded with draft MSV.

29 October – Julie Breeds (OC) responded with draft MSV.

30 October – Ed Gardner (BCLP) sends OC works rider relating to intrusive works process.

30 October – Ed Gardner (BCLP) sends Julie Breeds (OC – litigator) MSV draft.

31 October – Dawn Savage (OC) sends MSV draft to BCLP.

4 November – Ed Gardner (BCLP) circulates draft MSV.

5 November – Dawn Savage (OC) circulates MSV.

6 November – Ed Gardner (BCLP) circulates MSV.

6 November – Julie Breeds and Ed Gardner call on final MSV points.

6 November – Julie Breeds provides MSV markup.

6 November - MSV agreed.

21. Taking stock. This is a very valuable building. Intrusive rights were sought affecting a specialist roofing membrane and potentially invalidating the owner’s warranty. The

use of specialist solicitors and counsel is clearly justified. The claim for transactional costs of £88,292.62 is supported by a statement of truth. The starting point is that the Claimant is entitled to its costs – “*all of them*”. However the amount claimed is simply astonishing. I have no hesitation in finding that the sum of £88,292.62 far exceeds what is reasonable.

22. I therefore have to do the best I can on the information before me to determine the amount that is reasonable. I have two helpful pieces of evidence. The first is the amount claimed and allowed in full for the initial MSV - £11,000. That provides a benchmark for the amount of work required by these parties, for this building in order to conclude an MSV agreement.

23. The other important piece of evidence is the agreement imposed by consent on 7th November 2024. I have been assisted by the redline comparisons between the MSV imposed by the Upper Tribunal and MSV appended to Notice and between MSV appended to Notice and MSV as finally agreed between the parties (pages 382 – 416 of Respondent’s Bundle).

24. The agreement runs to 12 pages together with a plan. The main areas of work relate to:

2.1 - operator’s obligations

2.2 - intrusive works

6 - RAMS

Annexure 2 - Intrusive Survey

This was important and complex work. However it cannot be said that this was a lengthy document. Indeed the crucial clauses ran to at most 5 pages.

25. Costs have been considerably increased by the use of multiple fee earners:

Part 1 – 9 fee earners (RC, AI, EG, PS, RB, JH, RH, LL and SF)

Part 2 – 3 fee earners (RC, EG and RH)

Part 3 – 4 fee earners (RS, EG, RB and RH)

Part 4 – 6 fee earners (RC, RB, RS, EG, PS and RH)

The use of multiple fee earners no doubt explains, in part, the extraordinary level of costs. The use of multiple fee earners has caused unnecessary duplication and is unreasonable.

26. The fee earners mentioned in the 15 turns of the agreement are RS (£595), RB (£680) and EG (£550). I also note a significant amount of work carried out by RH (£485). There was no need for all of them to be involved in connection with a 12 page agreement especially against the background of the previous MSV which covered much of the groundwork. Doing the best that I can I assess reasonable costs based on 2 hours per turn of the agreement (15 turns = 30 hours). That figure is a broad average, some turns will have taken more time others less. However the total of 30 hours work on this 12 page agreement against the background of a previous MSV agreement seems to me to be reasonable. I adopt the hourly rate of £550 based on EG. That produces a figure of £16,500. Standing back, although that figure is considerably higher than the costs incurred for the MSV before the Upper Tribunal, I

am satisfied that it reflects the additional costs attributable to intrusive works. I find that £16,500 reflects the Respondent's reasonable legal expenses payable as compensation for loss under Paragraph 84 of the Code. VAT is recoverable by the Respondent and is not payable.

27. At Part 4 the Respondent includes a disbursement: "Elaine French of Telecoms Portfolios - £14,086.67" Ms French has explained the work she undertook at page 417-418 of Respondent's Bundle. In the Upper Tribunal the Deputy Chamber president made the following observations [33]:

"There has been no need for valuation in this case and as it is not clear what involvement the respondent's telecommunications agent has"

I find that no valuation issues have arisen and therefore there can be no question of "valuation expenses". The principle of access was not in dispute and there was no expert evidence. The decision of the Claimants to instruct Telecoms Portfolios was not reasonable and those costs are not recoverable as expenses under Paragraph 84(2)(a).

Decision

28. Pursuant to Paragraph 84(2)(a) of the Code the Tribunal orders the Claimant to pay to the Respondent the sum of £16,500 being compensation in respect of reasonable legal expenses in relation to the Agreement imposed upon the parties by Order of the Tribunal dated 7th November 2024.
29. Pursuant to Paragraph 96(1) of the Code the Tribunal orders the Claimant to pay the Respondent's costs of these proceedings summarily assessed in the sum of £15,000.
30. Payment of expenses and costs shall be made within 28 days of the date of this Decision.

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.