



FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : LC-2024-000533

Property : Plot 2, The Timberyard, Grove Street,
London SE8 3JX

Claimant
(Operator) : Cornerstone Telecommunications
Infrastructure Limited

Representative : Osborne Clarke LLP

Respondents
(Site Provider) : (1) The Timberyard Plot 2 Nominee
No1 Limited
(2) The Timberyard Plot 2 Nominee
No2 Limited

Representative : CMS Cameron McKenna Nabarro
Olswang LLP

Type of Application : Electronic Communications Code

Tribunal Member : Deputy Regional Judge Nigel Gravells

Date of Decision : 6 June 2025

DECISION ON COSTS

Introduction

- 1 On 24 July 2024 the Claimant made a Reference to the Upper Tribunal (which was subsequently transferred to the First-tier Tribunal), including an application to undertake a multi-skilled visit to the Property pursuant to paragraph 26(1) of the Electronic Communications Code (Schedule 3A to the Communications Act 2003 ('the Code')).
- 2 On 18 December 2024 the Tribunal issued a Consent 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 Claimant agrees to pay the Respondent's reasonable costs with reference to Paragraph 84(2) of the Code.
 3. 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 submissions to be filed by 4.00pm on 28 January 2025.
- 3 On 6 February 2025 the Tribunal issued Directions for the parties to provide written submissions on costs. The Tribunal indicated that it would determine costs on the basis of written submissions. The Tribunal has considered the submissions dated 7 March 2025 prepared by Jonathan Wills of Counsel on behalf of the Respondent (and the accompanying documents) and the submissions dated 7 March 2025 prepared by Jaysen Sharpe of Counsel on behalf of the Claimant.
- 4 The Respondent claims transactional costs in the sum of £23,925.50 and litigation costs in the sum of £40,833.53, a total of £64,759.03.
- 5 The Claimant submits that transactional costs should be capped at £2,000.00 and that no order should be made as to litigation costs.
- 6 The regimes for transactional costs and litigation costs differ and the Respondent's claims are considered separately.

Transactional costs

- 7 Paragraph 25 of the Code provides (so far as material) -
 - (1) 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.
 - (2) Paragraph 84 makes further provision about compensation in the case of an order under section 20.
- 8 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)
- 9 Paragraphs 26(4)(e) and (f) provide that the provisions of paragraphs 25 and 84 apply in relation to an order under paragraph 26 and an agreement imposed by it as they apply in relation to an order under paragraph 20 and an agreement imposed by it.

Representations of the parties

Representations of the Respondent

- 10 In the present case the Respondent claims transaction costs of £23,925.50, made up of solicitors' transactional fees of £8,655.00 and specialist agent's fees of £15,270.50.
- 11 Mr Wills, on behalf of the Respondent, relied on the decision of the Deputy President in *Cornerstone Telecommunications Infrastructure Limited v St Martins Property Investments* [2021] UKUT 262 (LC) and submitted that the Tribunal should award all of the costs claimed 'where the efforts made by the Respondent's solicitors have been reasonable', so long as (i) the sums claimed were indeed incurred and (ii) having regard to the value of the building and the rights sought, it was reasonable to instruct the solicitors who were in fact instructed.
- 12 Mr Wills submitted (i) that the sums claimed by the Respondent are verified by a statement of truth, (ii) that the property is a building of substantial value close to the River Thames and (iii) that it was reasonable to instruct solicitors who have specialist knowledge of the Code.
- 13 Mr Wills further submitted that, if the Tribunal did not award the full costs, the Respondent would be left out of pocket and he referred to the observation of Judge Cooke at paragraph 94 of her decision in *Cornerstone Telecommunications Infrastructure Limited v The Mayor and Burgesses of the London Borough of Hackney* [2022] UKUT 210 (LC) –

Finally we come to transaction costs. The MSV, and the process of negotiation leading up to it, should not leave the Respondent out of pocket; it is well-established that it can expect the Claimant to reimburse the legal and professional fees that it has occurred in the negotiation of the agreement.
- 14 Mr Wills submitted that the Tribunal should allow the actual costs incurred in negotiations unless it was shown that there were emails, meetings or telephone calls that were unreasonable.
- 15 The Respondent included in its claim for transaction costs the fees of Elaine French of Telecoms Portfolios. According to Ms French's invoice, her fees of £15,270.50 related to (i) 'consultancy advice in connection with an approach by [the Claimant] to install roof top telecommunications apparatus at Kingswood House, Deptford' and (ii) 'dealing with all issues regarding the provision of drawings to [the Claimant], input regarding terms of a proposed MSV agreement, preparation of witness statement in connection with legal proceedings'.
- 16 Mr Wills submitted that, given the Respondent's concern that intrusive works to the roof during the MSV might potentially cause damage to the building, it was entirely reasonable to engage the services of a specialist telecoms surveyor to advise on the terms of the MSV agreement and to negotiate with the Claimant's technical experts.

Representations of the Claimant

- 17 Mr Sharpe, on behalf of the Claimant, accepts that the Claimant is liable to pay the Respondent's reasonable legal and valuation expenses, pursuant to paragraph 84(2) of the Code.

- 18 However, Mr Sharpe argued that legal expenses are limited to those incurred in seeking to agree terms for a Code agreement: see *EE Limited and Hutchison 3G UK Limited v Islington LBC* [2019] UKUT 0053 (LC) at paragraph 122.
- 19 Mr Sharpe argued that –
- (i) that the Claimant had repeatedly sought information on the Respondent's transactional costs but that the Respondent only provide a time sheet at 9.23pm on 6 March 2025;
 - (ii) that the claimed legal costs of £8,655 are entirely unreasonable and disproportionate given the 'short and simple daft MSV agreement' provided by the Claimant;
 - (iii) that the time sheet is not a statement of costs and does not provide sufficient detail to enable the Tribunal to assess whether the costs claimed were reasonably incurred;
 - (iv) that it appears that all four fee earners named on the time sheet are charged out at hourly rates in excess of London Band 2 Grade A and that no lower grade fee earner was used;
 - (v) that the Respondent had failed over an extended period of time to co-operate and engage with the Claimant.
- 20 For the above reasons Mr Sharpe submitted that the legal costs should be capped at £2,000 (the undertaking provided by the Claimant in October 2024).
- 21 In relation to the fees of Ms French, Mr Sharpe argued that on the facts of the reference there was no justification for her involvement and that the Respondent had failed to provide a justification.
- 22 Mr Sharpe further argued (i) that costs claimed for Ms French's supply of documents are unreasonable since the reference was made because the Respondent had failed to supply the structural documents requested by the Claimant; and (ii) that costs claimed for the preparation of a witness statement are disproportionate and unreasonable and, in any event, appear to involve some duplication of costs claimed in respect of the same work undertaken by the Respondent's solicitors.
- 23 Finally, Mr Sharpe noted that the Respondent's N260 form included a claim for £10,479.00 for 'surveyor's fees'. He argued that no supporting documentation had been provided and that it was unclear whether those costs were additional to the costs claimed for Ms French's fees.

Discussion

- 24 In *St Martins* the Deputy Chamber President made the following observations (at paragraphs [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.

- 25 In *Cornerstone Telecommunications Infrastructure Limited v The Mayor and Burgesses of the London Borough of Hackney* [2022] UKUT 210 (LC) Judge Cooke said (at paragraph [94]) -

Finally we come to transaction costs. The MSV, and the process of negotiation leading up to it, should not leave the Respondent out of pocket; it is well-established that it can expect the Claimant to reimburse the legal and professional fees that it has occurred in the negotiation of the agreement.

- 26 Transaction costs in that reference (£29,580 less litigation costs to be stripped out) were 'higher than normally seen for an MSV, because this has been an unusually fraught and indeed hostile negotiation'.

- 27 In *EE Limited and Hutchison 3G UK Limited v Affinity Water Limited* [2022] UKUT 8 (LC) the Deputy Chamber President reiterated that –

A site provider is entitled to seek advice on the lease and recover the reasonable cost of doing so.

- 28 In that case legal expenses were reduced from £7,449 to £6,000, 'allowing for some duplication'.

- 29 In *On Tower UK Limited v AP Wireless II (UK) Limited* [2022] UKUT 152 (LC) Judge Cooke allowed transaction costs in respect of two properties in the sums of £6,276 and £6,472, observing at paragraph [261] –

These were never going to be inexpensive transactions, in view of the number of terms that the parties had to negotiate and of the fact that both parties regarded the health and safety terms as issues of principle. As is pointed out for APW the complexity is seen by the number of colours on the travelling drafts; these were not three matching leases and none of them was simple. We accept the transaction costs as claimed, and we point out that there is no reason for them to be matched in less complex deals where the parties are able to reach agreement.

- 30 At the risk of oversimplification, the principle that emerges from the jurisprudence of the Upper Tribunal is that the site provider is entitled to recover its reasonable transaction costs in full.
- 31 However, that principle requires the Tribunal (i) to identify what constitutes *transaction* costs and (ii) to determine whether those transaction costs are *reasonable*.
- 32 The Tribunal considered those two issues in relation to (i) the solicitors' transactional costs claimed and (ii) the fees of Ms French.

Solicitors' transactional costs

- 33 In relation to the first issue, there appears to be nothing in the solicitors' transactional time sheet which is obviously outside the normal range of transactional costs. However, the Tribunal accepts Mr Sharpe's argument that the lack of detail in the time sheet makes a detailed assessment difficult and that the Respondent has failed to establish that all the claimed costs were incurred.
- 34 Turning to the second issue, the Respondent has made no attempt to establish the reasonableness of the costs claimed. Despite repeated requests from the Claimant, the Respondent failed to provide any breakdown of the constituent figures included in the claim for legal costs until the last minute and therefore denied the Claimant the opportunity to question the reasonableness of those figures.
- 35 The Tribunal finds that the exclusive use of Grade A fee earners throughout the transactional phase, charged out at hourly rates in excess of London Band 2 Grade A, was unreasonable.
- 36 The Tribunal finds that costs for the preparation of a non-intrusive MSV were unreasonable, given that the Claimant had been consistent throughout in seeking both non-intrusive and intrusive MSV rights.
- 37 The Tribunal finds that the Respondent failed over an extended period of time to co-operate and engage fully with the Claimant.
- 38 For the reasons set out above, the Tribunal determines that the Respondent's reasonable legal transactional costs are £4,000 and the Tribunal determines that those costs are recoverable in full.

Fees of Ms French

- 39 This reference concerns a high value London property. Intrusive rights were being sought with the potential risk of damage to the building. The Respondent was also rightly concerned about invalidation of its roof guarantee. The Tribunal therefore finds that the Respondent was entirely justified in instructing specialist central London solicitors and counsel.

- 40 However, the Tribunal is not persuaded that it was reasonable in addition to engage the services of Ms French. Her invoice and time sheet provide no evidence of work over and above what the specialist lawyers could be expected to carry out.
- 41 The Tribunal determines that the engagement of Mr French was not reasonable and her fees are not recoverable from the Claimant as expenses under paragraph 84(2)(a) of the Code.

Litigation costs

42 Paragraph 96 of the Code provides (so far as material) –

- (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
- (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.

Representations of the parties

Representations of the Respondent

- 43 In the present case the Respondent claims litigation costs of £40,833.53.
- 44 Mr Wills relied on the decision of the Deputy President in *EE Limited and Hutchison 3G UK Limited v HSBC Bank plc* [2022] UKUT 174 (LC) and submitted that, where, as here, the parties have not agreed that there should be no order for costs, the Tribunal's usual order is that the operator should pay the site provider's costs, which will then usually be summarily assessed: see paragraph [9].
- 45 Mr Wills submitted that the Tribunal should award the full costs claimed. He submitted –
- (i) that, notwithstanding the compressed timetable in MSV cases, substantial work is required to take the reference to trial;
 - (ii) that no unnecessary work was carried out by the Respondent's lawyers and the costs incurred were proportionate given the high value of the property;
 - (iii) that the Respondent's principal concern was to ensure that adequate safeguards were in place to ensure that the roof guarantee was not invalidated and that the Claimant's draft MSV agreement was amended to provide for intrusive works to be carried out by contractors appointed by the Respondent.

Representations of the Claimant

- 46 Mr Sharpe accepted the statement of principle in *EE Limited and Hutchison 3G UK Limited v HSBC Bank plc* that the usual order on a reference seeking interim Code rights is that the operator pays the site provider's litigation costs; but he submitted that the Tribunal retains an unfettered discretion as to costs: see *Cornerstone Telecommunications Infrastructure Limited v Quadrant Housing Trust* [2020] UKUT 341 (LC), at paragraphs [25]-[30], *Cornerstone Telecommunications Infrastructure Limited v Covent Garden IP Limited* LC-2024-000071.

47 Mr Sharpe submitted that the Claimant could be seen as the successful party since the final item in dispute was unreasonably pursued by the Respondent because the Respondent failed to appreciate that the proposed works were already covered by its existing insurance policy. However, Mr Sharpe accepted that both parties made compromises and the matter was ultimately settled on consensual terms.

48 Mr Sharpe referred to *Cornerstone Telecommunications Infrastructure Limited v Central Saint Giles General Partner Limited and Clarion Housing Association Limited* [2019] UKUT 183 (LC), where the Deputy President said (at paragraphs [2] and [4]) –

[2] ... I also wish to emphasise the importance the Tribunal places on discouraging senseless disputes of this sort, and to put down a marker that the conduct which this case illustrates, over-reaching on one side and obstruction on the other, is disproportionate, inappropriate, and unacceptable. The Tribunal will do what it can to ensure such conduct is not allowed to become a recurring feature of Code disputes concerning new sites. There are legitimate matters to argue about in such cases, and nothing in this decision is intended to discourage those from being raised, but whether a small number of surveyors is permitted to go on a rooftop for a few hours on two or three occasions to establish whether it is even suitable for the installation of apparatus ought not to be one of them.

[4] 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.

49 Mr Sharpe also referred to the Ofcom Code of Practice in relation to the Code and paragraph 14.8 of the Upper Tribunal's Practice Direction on references under the Code.

50 Against that background Mr Sharpe submitted that the Respondent had behaved unreasonably and that that had led to costs being unreasonably incurred. He argued –

- (i) that for over a year the Respondent failed to provide structural documents despite repeated requests by the Claimant and repeated confirmation by the Respondent that they would be provided;
- (ii) that for five months the Respondent did not provide any comment on the Claimant's draft MSV agreement;
- (iii) that the Respondent raised objections to post-tension concrete works that were never sought by the Claimant;
- (iv) that the Respondent refused the Claimant's offer to pay an insurance premium when the Respondent's existing policy covered the risk.

51 In relation to the Respondent's N260 form Mr Sharpe submitted –

- (i) that the hourly rate charged for Grade A and B fee earners was significantly in excess of the applicable Guideline Hourly Rates for London Band 2;

- (ii) that the time sheet disclosed a number of attendances on Ms French, the costs of which must stand or fall with the (un)reasonableness of Ms French's engagement and fees;
- (iii) that it was unreasonable to instruct pre-eminent 2006 call Counsel to deal with the limited issues in dispute;
- (iv) that a brief fee of £4.000 in respect of a hearing where only a single term of the agreement remained in dispute was unreasonable;
- (v) that the Respondent claimed unreasonable costs for work on documents: 1.6 hours for the notice of reference; 5.2 hours for the statement of case (which was settled by Counsel); 8.7 hours for 'preparing documents and notes for hearing (when Counsel had been instructed for the hearing); 3.7 hours for strategy consideration; 13.3 hours for statement of costs.

Discussion

52 In *St Martins* the Deputy Chamber President made a number of observations in respect of costs (at paragraphs [42]-[44]) –

[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 Limited* [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.

- 53 In *EE Limited and Hutchison 3G UK Limited v HSBC Bank plc* [2022] UKUT 174 (LC) the Deputy President stated (at paragraphs [8]-[10]) –

[8] As for the costs of the reference itself, most references under paragraph 26 of the Code for the imposition of an agreement conferring interim Code rights to enable operators to conduct surveys of potential telecommunications sites are resolved by consensus, without the need for a hearing. Often parties file an agreed form of order which they invite the Tribunal to make, including in it an agreement that there shall be no order for the costs of the reference.

[9] It should nevertheless be appreciated that the costs of references under paragraph 26 are in the discretion of the Tribunal. Where parties have not agreed that there should be no order for costs the Tribunal's usual order in such cases is that the operator should pay the site provider's costs which will then usually be summarily assessed ...

[10] The Tribunal's usual order reflects the principle that the costs of a reference are necessary because interim Code rights cannot be conferred by agreement but may only be imposed by order of the Tribunal. Statutory rights of compensation may also only be conferred by order of the Tribunal. The costs incurred by a site provider in a reference made necessary because an operator wishes to have a Code right to undertake a survey ought not in principle to fall on the site provider.

- 54 The Tribunal also notes the comments of the Deputy Chamber President in *Cornerstone Telecommunications Infrastructure Limited v Central Saint Giles General Partner Limited* [2019] UKUT 183 (LC). At paragraph 2, he said –

I also wish to emphasise the importance the Tribunal places on discouraging senseless disputes of this sort, and to put down a marker that the conduct which this case illustrates, over-reaching on one side and obstruction on the other, is disproportionate, inappropriate, and unacceptable. The Tribunal will do what it can to ensure such conduct is not allowed to become a recurring feature of Code disputes concerning new sites. There are legitimate matters to argue about in such cases, and nothing in this decision is intended to discourage those from being raised, but whether a small number of surveyors is permitted to go on a rooftop for a few hours on two or three occasions to establish whether it is even suitable for the installation of apparatus ought not to be one of them.

- 55 And at paragraph 4 –

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.

- 56 And at paragraph 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. Equally, the Tribunal wishes to make it clear to operators, as it has done in the past, that they cannot simply demand unquestioning cooperation from property owners.

- 57 Although the Tribunal is minded to make an order for costs, that order must reflect the relative success of the Respondent and the view of the Tribunal on the Respondent's conduct of the litigation.
- 58 As Mr Sharpe submitted, although the matter was ultimately settled on consensual terms, the Respondent could be seen as the unsuccessful party in far as the final item in dispute was unreasonably pursued by the Respondent. On the other hand, the Respondent had secured the provision that intrusive works would be carried out by contractors appointed by the Respondent.
- 59 In the view of the Tribunal, the manner in which the Respondent has conducted some aspects of the proceedings has been unreasonable (for the reasons identified by Mr Sharpe: see paragraphs 50 and 51 above) and disproportionate to the dispute.
- 60 Moreover, as paragraph 9 of decision in *EE Limited and Hutchison 3G UK Limited v HSBC Bank plc* makes clear, the usual order is not an order for the full costs claimed by the site provider: the costs will usually be summarily assessed.
- 61 The Tribunal determines that the appropriate order in this case is that the Claimant should pay £10,000 towards the costs of the Respondent. That figure is much less than the Respondent has incurred; but, in the view of the Tribunal, it reflects both the extent of the Respondent's success and the proportionate cost of achieving it. The Respondent need not have incurred nearly as much as it has. The Respondent does not appear to have heeded the clear message of the Deputy President in the cases referred to in paragraphs 52-56 above.

Decision

- 62 Pursuant to Paragraph 84(2)(a) of the Code the Tribunal orders the Claimant to pay to the Respondent the sum of £4,000 being compensation in respect of transactional costs in relation to the MSV Agreement imposed upon the parties by Order of the Tribunal dated 18 December 2024.
- 63 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 £10,000.
- 64 Payment of expenses and costs shall be made within 28 days of the date of this Decision.

Appeal

- 65 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.
- 66 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.
- 67 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.

68 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

6 June 2025

Professor Nigel Gravells
Deputy Regional Judge