UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2021] UKUT 262 (LC)
UTLC Case Number: LC-2020-391

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

ELECTRONIC COMMUNICATIONS CODE – INTERIM CODE RIGHTS – access for multi-skilled visit – whether freeholder need be bound by interim rights – whether right to undertake destructive investigations to be granted at first hearing - terms of agreement – costs

IN THE MATTER OF A NOTICE OF REFERENCE UNDER SCHEDULE 3A, COMMUNICATIONS ACT 2003

BETWEEN:

CORNERSTONE TELECOMMUNICATIONS INFRASTRUCTURE LIMITED

Claimant

-and-

(1) ST MARTINS PROPERTY INVESTMENTS LIMITED
(2) THE MAYOR AND COMMONALTY AND CITIZENS OF THE CITY OF LONDON

Respondents

Re: 1 London Bridge,
London SE1

Martin Rodger QC, Deputy Chamber President
8 October 2021
by CVP
(transcript approved 19 October 2021)

Mr Rory Cochrane, instructed by Osborne Clarke LLP, for the claimant
Mr Jonathan Wills, instructed by Bryan Cave Leighton Paisner, for the first respondent
Mr Frank Marchione, of the Comptroller and City Solicitor's Office, for the second respondent

The following cases are referred to in this decision:

EE Ltd and another v The London Borough of Islington [2019] UKUT 0053 (LC)

EE Ltd and another v London Underground [2021] UKUT 128 (LC)

1. The Tribunal is concerned this afternoon with a reference under paragraph 26 of the Electronic Communications Code. The claimant, Cornerstone Telecommunications Infrastructure Limited, asks for an order under paragraph 26 of the Code imposing an agreement on it and on the respondents on an interim basis granting it access to the roof of a building known as 1 London Bridge. The purpose of access would be to facilitate what are referred to as "multi-skilled visits" or "MSVs" to enable the claimant's contractors to assess the suitability of the building to accommodate electronic communications apparatus by carrying out.

2. The claimant also seeks the right to carry out what it refers to as "investigative works", by which it means the right to take up parts of the roof of the building in order to investigate its structure and suitability to host the proposed equipment.

3. 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.

4. The first respondent, St Martins Property Investments Limited, holds a head lease of the building for a term of 150 years from 1987 and sub-lets it to a number of occupational tenants. The second respondent, The City of London Corporation, owns the freehold of the building.

5. Neither of the respondents takes issue with the principle that the claimant should be allowed access to the roof of the building to carry out its surveys. The issues in this case, at least as between the claimant and the first respondent, are about the terms on which access should be allowed and in particular whether the right to undertake destructive "investigative works" should be granted at this stage.

The position of the freeholder

6. I will first deal with the position of the second respondent, the City Corporation. As freeholder of a building let on a long lease the Corporation's immediate interest is remote and its reversion is deferred by more than 100 years. The claimant does not need its permission to carry out the proposed surveys.

7. Mr Cochrane, who appears for the claimant, has explained that the Corporation was served with notice under paragraph 26 of the Code and then made a party to this reference so that it would be bound by the Code rights to be imposed between the claimant and the first respondent. The headlease which the Corporation granted to the first respondent includes a covenant by the lessee not to interfere with the structure of the building or to carry out any modifications to it. It was said that the first respondent might be held to be in breach of that covenant if it agreed with the claimant that the claimant should be entitled to carry out the proposed investigative works. Hence it was said to be necessary, for the first respondent's protection, that the Corporation be made a party to the reference so that an order could be made under paragraph 26(1)(b) of the Code providing for the claimant's new rights to bind the Corporation.

8. The Corporation's position was that it was entirely unnecessary for it to be party to the proceedings. Its statement of case denies that it has the right to interfere with any rights of access which might be conferred on the claimant in this reference.

9. I agree with Mr Marchione, who appeared on behalf of the Corporation, that it has been dragged into this reference unnecessarily. It has not suggested that it objects to the exercise by the claimant of any rights conferred by the Tribunal; on the contrary, it has indicated that it is well disposed towards telecommunications operators and the extension of their services. Even if it objected in principle to the claimant being granted rights, which it does not, the suggested reason for its involvement is misconceived and overlooks the way in which interim rights are acquired under the Code. As the Tribunal explained in *EE Ltd and another v London Borough of Islington* [2019] UKUT 53 (LC) referring to paragraphs 20 and 22 of the Code (which are not different in this respect from paragraph 26): "Taken together these provisions seem to us to provide conclusively for Code rights to be conferred on the operator and made binding on the site provider (and any other relevant person) by force of the Tribunal's order, which has the same effect as an agreement under Part 2."

10. The conferral of interim Code rights under paragraph 26 is not a voluntary act of the site provider; it is an imposition provided for by statute and sanctioned by an independent tribunal. The "agreement" conferring the rights is made for the parties and imposed on them. It follows that a freeholder could not complain that a leaseholder was in breach of a covenant prohibiting it from carrying out works or interfering with the building, or from permitting or suffering a third party to do those things, when those things were done, not by the leaseholder, but by a third party whom the leaseholder had no power to resist because it acted under rights imposed by the Tribunal. I cannot see any circumstances in which the City Corporation would have a cause of action arising out of the exercise of rights imposed under the Code. As it clearly does not intend to complain if the rights are exercised, and as there is no realistic prospect of the lease being terminated for the short period the rights will be exercisable, there is no need for them to be made binding on the Corporation. I will therefore dismiss the claim against the Corporation, which ought not to have been included as a party to the reference. Nor should it be necessary for other freeholders in the same position be made parties to references under paragraph 26 (at least where the only rights sought are to carry out an MSV).

The position of the first respondent

11. No.1 London Bridge has been identified by the claimant as a potential site for apparatus required to replace equipment currently located on a building in Borough High Street, but its suitability needs to be confirmed by the various surveys involved in an MSV. A new site is required to serve an area including the approaches to London Bridge Station, Borough Market, and local hospitals. Mr Wills, who appeared for the first respondent, emphasised that it does not challenge the claimant's contention that it has shown a good arguable case that the test under paragraph 21 of the Code is satisfied so as to allow an agreement under paragraph 26 to be imposed. The issues between the parties relate only to the terms on which access for the MSV should be granted.

12. The claimant first served a paragraph 26 notice in June 2020 after discussions about access had been going on for some months. The first respondent's agent confirmed on 30 June that it was willing in principle to grant access to the roof of the building. No agreement was

reached although on 6 April 2021 the respondent's agent again confirmed that access would be provided for up to 5 people on suitable notice. The main sticking point at that stage was the payment of compensation to cover expenses incurred by the respondent and to which it is entitled under paragraph 84 of the Code. It is therefore surprising that the claimant served a further paragraph 26 notice at the end of April and eventually commenced these proceedings in August 2021.

13. Mr Cochrane has submitted that the respondent's professed willingness to allow access is simply a smoke-screen and that its real intention has been to obstruct and delay access as far as it is able to in order to deter the claimant ultimately from serving notice under paragraph 20 and obtaining full Code rights to install apparatus in the roof of its building. I do not accept that the material before the Tribunal justifies that inference. It is true that the respondent has explained to the claimant in some detail why it considers its building is unsuitable. It is said, for example, that it is within the protected lines of sight for St Paul's Cathedral and that the claimant will have great difficulty in obtaining planning permission. It is also said that the building is not well adapted for the proposed equipment because of the design of the roof. It seems to me to be perfectly proper for a building owner to point out those sorts of difficulties, but they are irrelevant to the issues the Tribunal has to determine. The effort that has been devoted to debating them in this case is surprising, especially given the willingness of the claimants to cooperate with the provision of access.

14. The parties have spent considerable time and resources on negotiating a draft form of agreement but there are a number of outstanding issues which it is necessary for the Tribunal to determine. Many issues appear to have been resolved in the days immediately before this hearing and I do not propose to consider the extent to which each party has secured concessions or taken good or bad points. I will deal only with the main items in dispute. I have read what the parties have said about a number of more peripheral issues and my views on those will be apparent from the final form of the agreement.

The duration of the agreement

15. The first issue is the period or term of the agreement, although the extent of disagreement has been reduced. It is now agreed that the rights will be available for a period of six months from the date the agreement is imposed and that access may be taken during any period of two months within those six months. That seems to me to be a sensible limitation of the rights which the claimant seeks and that is what it has offered. The period during which the rights may actively be exercised is subject to the possibility of an extension if intrusive investigative works are found to be required. The claimant wishes the period of the agreement to be extended while investigative works are being carried out even if that would prolong the agreement beyond the long-stop date of six months. The respondent does not want the uncertainty of a potentially indeterminate period of access. As the whole issue of investigative works is in dispute it is convenient to resolve that issue first before reaching any conclusion on this point of detail on the period of the agreement.

"Investigative works"

16. The claimant's standard form of draft agreement has been seen by the Tribunal before. It includes a schedule of small print terms and conditions section 7 of which deals with what

are euphemistically referred to as "investigative works". The original draft of the agreement put forward in this case has been modified and amended but in its first form it defined investigative works simply as works to be undertaken pursuant to section 7. The best that could be said of that drafting is that it was circular because section 7 did not explain what works could be undertaken as investigative works at all; it was entirely open ended. That gave rise to a legitimate concern on the part of the building owner and its advisers that the claimant was asking for unrestricted rights to do undefined works, constrained only by the purpose for which they were to be undertaken.

17. The claimant appreciated that concern and now proposes a more informative definition of investigative works. They are to be:

> "… as stipulated in an investigative works notice, which may include intrusive structural survey works carried out by suitably qualified contractors, such as, without limitation:
>
> (1) Cutting the roof covering on the building forming part of the grantor's property to determine the structural framework underneath;
>
> (2) Drilling holes in the roof or walls of the building, forming part of the grantor's property to ascertain the location of any structural beams and load-bearing capacity;
>
> (3) Removing plaster board to identify the construction materials beneath and or removing cladding to identify the construction materials beneath."

18. The provisions of the schedule dealing with investigative works require the claimant to serve a notice on the site provider of its intention to carry out those works and oblige it to consider any recommendations which the site provider may make about the works. The claimant is not required to follow the site provider's recommendations. Nor is it obliged to refer any disagreement about the need for works or their form to any process of dispute resolution. All of that is left by the agreement to be determined by the claimant.

19. There is no doubt that the Tribunal has power to impose rights authorising an operator to investigate the structure of a building to ascertain whether it is suitable for the installation of communications apparatus. The question in all of these cases is whether and at what stage the Tribunal should do so. Under paragraph 26(3) the Tribunal's jurisdiction to make any order conferring interim rights is discretionary. By paragraph 23(1) of the Code the Tribunal may make such modification to the Code rights sought by an operator as it thinks appropriate. By paragraph 23(2) the agreement must contain such terms as the Tribunal thinks appropriate and by paragraph 23(5) these must include terms ensuring that the least possible loss and damage is caused by the exercise of the rights. Where the rights are sought on an interim basis under paragraph 26 the low evidential hurdle a claimant must cross to demonstrate that the conditions in paragraph 21 for the imposition of Code rights are met also seems to me to be an additional reason for exercising restraint.

20. It is said by Mr Cochrane that it is in the interest both of site providers and of operators that there should be certainty about the rights which are to be granted and that the Tribunal should deal with all of the rights requested in a single document imposed at the first hearing of the reference if possible. I appreciate the force of this point, which is consistent with the Tribunal's repeated insistence that references seeking access rights under paragraph 26

should be conducted as economically as possible. There certainly have been occasions when terms permitting intrusive works in the form of section 7 of the claimant's draft agreement have been imposed by the Tribunal. But I am not aware of a case in which terms authorising interference with the structure of the building have been granted where these have been opposed by the site provider. In one of the Tribunal's very early cases, *EE v Islington*, the site provider objected to destructive works being undertaken when it had not yet been established that the site was suitable from a radio planning perspective. The Tribunal permitted the operator to go onto the roof of a building to carry out non-intrusive works and gave it permission to come back within the same reference to seek the right to carry out intrusive works.

21. The owner of any valuable, high-quality building will understandably be reluctant to allow contractors over whom it has no authority or control to interfere with the structure of its building. In this case there are particular sensitivities on the part of the respondent to the claimant being given ***carte blanche*** to undertake intrusive works. In particular, the surface of the roof of the building is said to be coated with a particular proprietary material which would be very difficult to reinstate to its original condition if it was pierced or damaged by intrusive works. The also respondent considers that the structure of the building can be assessed by a purely visual inspection but apart from the very wide definition of investigative works in the draft agreement the claimant has provided absolutely no information concerning the sort of intrusions it may need to make. The respondent firmly believes that its roof is not suitable for the installation of apparatus at all and that they should not be exposed to the risks of intrusive work at least until the claimant has had the opportunity to consider whether it has chosen the wrong building.

22. In some cases those points may not weigh particularly heavily. There are no doubt buildings of no particular architectural or engineering merit or complexity where there is little risk to the integrity of the building from relatively modest destructive investigations. But I am not satisfied that this building falls into that category. It is a prominent building completed to a very high specification and in view of the evidence about the surface of the roof and other issues this does not seem to me to be a case in which the respondent's concerns can be dismissed as mere obstruction or oversensitivity.

23. I therefore do not propose to impose an agreement including provisions for the claimant to carry out intrusive investigative works at this stage. Once the claimant has carried out such non-intrusive works as it needs to establish the suitability of the building the parties should consider between themselves whether further works of a more intrusive nature are required to enable the claimant to determine whether the building is able to accommodate its apparatus. If the parties cannot agree then the claimant can come back to the Tribunal in this reference and seek additional rights. The Tribunal would expect the claimant to be able to say in rather more detail what works it wished to carry out. The claimant ought to be able to determine for example where it would wish to site any apparatus, which would narrow the field of debate considerably, and to provide details of the particular works which it felt were necessary.

24. I therefore determine the second issue in favour of the respondent. Having done so the remaining debate over the period of the agreement falls away. If it is necessary for the claimant to come back to the Tribunal, it can ask at that stage for any additional time to carry out further investigations.

Contractual compensation

25. The next issue concerns compensation. Section 1.2 of the schedule to the claimant's standard agreement comprises a contractual entitlement to compensation which runs for more than a full page of small print. The parties have not agreed the details of that contractual machinery but the principle is not in dispute. The claimants are not seeking to take away rights to compensation provided by the Code but rather to establish a standard structure and procedure for the management and resolution of claims. I can understand the thinking behind that attempt but it seems to me to be both unnecessary and counter-productive. By trying to design a one-size fits all compensation scheme the claimant have produced a rather complicated piece of drafting which may be over-sophisticated and unnecessary if the compensation being sought is modest (as is likely in most cases involving only access). It may also be inadequate if a substantial compensation claim is necessary as a site provider which has sustained significant loss is unlikely to be sympathetic to the claim being managed at a pace dictated by the claimant.

26. I cannot see any reason why the agreement needs contractual compensation machinery at all. Had that machinery been agreed I would have happily imposed it. But as the details of the provisions are not agreed, rather than determine those details the better course in the circumstances is to omit them entirely together with the definitions and ancillary provisions (such as for the service of notices) which support them. That will leave the parties free to agree how they should resolve any compensation claims which arise out of the exercise of the rights to be conferred. If they cannot reach agreement they can make use of the statutory compensation procedure and come to the Tribunal for it to determine compensation.

Expenses, supervision and legal and valuation fees

27. The next two issues concern professional expenses.

28. The respondent wants the claimant to pay for the respondent's telecommunications agent to supervise access to the building by the claimant's contractors. The claimant has no objection to its visits to the building being accompanied but it objects in principle to paying the fees of a professional telecommunications agent to accompany its own contractors.

29. Now that the Tribunal has refused to impose terms allowing the claimants to open up the roof of the building this issue seems to me to be rather less significant. But it is a problem which is regularly encountered in these cases and it is appropriate for the Tribunal to say something about it.

30. Under paragraph 84(2)(a) of the Code a site provider has the right to compensation for expenses which it has incurred including reasonable legal and valuation expenses. Where a building is of a sensitive nature or has a restricted access policy such compensation may well include the cost of the building owner supervising access. A recent example of such a case involved a sensitive building belonging to London Underground where the Tribunal thought that supervision at the operator's expense was appropriate (*EE and another v London Underground* [2021] UKUT 128 (LC)). But generally for a site provider to incur the costs of arranging professional "supervision" of other professionals does not seem to the Tribunal to be necessary or appropriate. A building owner is obviously entitled to witness what goes

on in the building and to accompany and observe any visitors to the building, including while they carry out their surveys and investigations, but that does not mean that the operator should be expected to write a cheque to a specialist telecommunications agent who may have no relevant experience of the technical matters which are being investigated. The Tribunal has generally lent against the imposition of terms in agreements requiring the payment of professional fees in such circumstances, while permitting the recovery of the reasonable expense of a security guard to accompany contractors around a building or the expense of a building manager providing a briefing about access routes or services or unlocking secure areas where that is necessary. Those sorts of expenses are likely to be modest and ought not to be contentious. If they become contentious then a claim for compensation can be made in respect of them. But in principle, at least where non-destructive investigations are being undertaken, professional supervision of professionals is not something which operators should be expected to pay for.

31. The second matter of compensation which the parties are unable to agree concerns the expenses incurred by the respondent in obtaining advice on the Code and negotiating the agreement itself. Provision is made for in the claimant's standard form of agreement for it to make a contribution towards legal and valuation fees, but the claimant's practice is to seek to limit these to a sum agreed at the start of the process. As this case demonstrates, agreement of that sum can often delay the commencement of negotiations and result in additional costs being incurred. It is therefore important that the parties' rights and obligations are clear.

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.

Health and safety

36. The final matter of particular concern to the respondent relates to compliance with its health and safety requirements and the provision of method statements for its approval. Some of these points are points of detail and others reflect the respondent's concern over the proposed intrusive investigations; as the right to undertake intrusive works has been removed at this stage, some of those concerns will have been alleviated and the resulting amendments may now prove unnecessary. When I review the draft agreement and settle its final terms I will bear in mind that an abundance of caution is not required because the respondent does not need reassurance about how intrusive or destructive works will be carried out.

37. I do not think there are any other particular points about which it is necessary for me to express an opinion on at this stage. The agreement to be imposed will be attached to this decision when the corrected transcript is published and it will then be apparent to the parties how I have resolved the less substantial matters.

38. If it is necessary for the parties to come back to deal with an application for the right to carry out intrusive works then it may be necessary to revisit some of the issues which I have already dealt with, in particular, supervision and health and safety concerns. But, if they arise at all, those will be for another day. I very much hope that the parties will be able to reach an agreement if the need for intrusive works is identified and that it will not be necessary for them to come back.

Costs

39. After delivering my decision orally I have heard argument on costs. Earlier in the day, when I had dealt with the position of the City Corporation, I determined that it should be entitled to £1,500 towards its costs. That sum reflected the simplicity of the Corporation's position, its success in the outcome, and the fact that the evidence it did file was entirely unnecessary.

40. Mr Cochrane has realistically accepted that the first respondent is the successful party in the dispute over the terms of the agreement. The single biggest issue concerned intrusive works and the respondent was successful on that issue.

41. Mr Cochrane accepted that the respondent should have some of its costs. The schedule of costs that I have been shown indicates that those costs come to £82,500. They include almost £20,000 of surveyor's fees and £55,000 in solicitor's costs.

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 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.

Martin Rodger QC,

Deputy Chamber President

8 October 2021

THIS AGREEMENT is imposed by order of the Upper Tribunal, Lands Chamber in reference LC-2021-391 on 19 October 2021 pursuant to paragraph 26 of Schedule 3A to the Communications Act 2003,

ON:

1. **ST. MARTINS PROPERTY INVESTMENTS** (COMPANY NUMBER 01124205) WHOSE REGISTERED OFFICE IS AT SHALCKLETON HOUSE, 4 BATTLEBRIDGE LANE, LONDON BRIDGE CITY, LONDON, SE1 2HX ("**GRANTOR**"); AND

2. **CORNERSTONE TELECOMMUNICATIONS INFRASTRUCTURE LIMITED** (COMPANY NUMBER 08087551) WHOSE REGISTERED OFFICE IS AT HIVE 2, 1530 ARLINGTON BUSINESS PARK, THEALE, READING, BERKSHIRE, RG7 4SA ("**OPERATOR**").

In this Agreement, unless the context otherwise requires, the following words have the following meanings:

DEFINITIONS

Agreement Period	from the date of this Agreement to the earlier of: a) six months from the date of this Agreement and b) two months from and including the Access Date
Designated Email Addresses	[…]
Grantor's Access Contact	[…]; or such other person as may be advised
Consideration	£1 (if demanded);
Grantor's Property	1 London Bridge, Fennings Sun and Topping Wharves, London, SE1 9BG
Access Date	as agreed between the parties not later than 7 days before access is first required
Site	such parts of the rooftop, communal areas and service areas of the Grantor's Property as are not in the possession or occupation of any tenant and as are reasonably required for the MSV

STANDARD DEFINITIONS

Authorised Personnel	the Operator's agents, utility companies and telecommunications link providers appointed or duly authorised by the Operator in

	connection with the MSV and their respective employees, contractors and subcontractors;
MSV	a visit or visits to the Grantor's Property to determine whether the Site is suitable for the installation and operation of electronic communications apparatus;
Permitted Hours	09:00 to 17:00 Monday to Friday (excluding any day which is a bank holiday) or such hours agreed between the parties acting reasonably;
Rights	the rights in Section 4 of the Schedule;

A. Interpreting the agreement

In this Agreement, unless the context otherwise requires:

1. references to any rights exercisable by the Operator shall be construed as being exercisable by the Operator and Authorised Personnel;

2. where this Agreement provides that the consent or approval of the Grantor is required such approval or consent is not to be unreasonably withheld or delayed;

3. a reference to any statute or statutory provision includes that statute or statutory provision as amended, re-enacted, consolidated or replaced.

B. Granting the Agreement

In consideration of the Operator agreeing to pay the Consideration and the entry by each party into this Agreement the Grantor:

1. grants the Operator the Rights over the Grantor's Property for the Agreement Period for the purpose of conducting the MSV; and

2. agrees to be bound by the terms of this Agreement and the Rights for the Agreement Period.

C. Obligations

The Parties each agree to comply with the obligations in the Schedule.

SCHEDULE

SECTION 1: PAYMENT

1.1 **Consideration**

The Operator shall pay the Consideration to the Grantor within seven days of written demand.

1.2 **Costs**

Within seven days of the date of this Agreement, the Operator shall pay to the Grantor £11,000 in respect of the Grantor's solicitors' fees.

1.3 **VAT**

1.3.1 All sums payable under this Agreement are exclusive of VAT (where applicable) unless otherwise stated.

1.3.2 The Operator shall pay any VAT due on payments under this Agreement within 28 days of receiving a valid VAT invoice addressed to the Operator.

SECTION 2: OPERATOR'S OBLIGATIONS

2.1 **Exercise of the Rights**

2.1.1 In exercising the Rights, the Operator agrees to do, and to procure that Authorised Personnel do, the following:

2.1.1.1 cause as little inconvenience to the Grantor, its tenants or occupiers of the building as is reasonably practical;

2.1.1.2 ensure that Authorised Personnel (i) carry with them identification, to be produced on demand, and (ii) (where required by the Grantor) report to Grantor's Access Contact on arrival and on departure;

2.1.1.3 make good any physical damage caused by the exercise of the Rights as soon as reasonably practicable to the Grantor's reasonable satisfaction;

2.1.1.4 access the Grantor's Property only during the Permitted Hours;

2.1.1.5 comply with all applicable health and safety legislation and the Grantor's reasonable health and safety requirements and ensure that the Authorised Personnel use appropriate personal protective equipment;

2.1.1.6 comply with the Grantor's reasonable requirements concerning access to the Grantor's Property and/or the Site, and any reasonable precautions necessary for the safe and effective management of the Grantor's Property,

2.1.1.7 comply with the Grantor's reasonable requirements relating to the Grantor's insurance of the Grantor's Property, and/or to any warranties, guarantees or other rights relating to the Grantor's Property and/or any plant or equipment at it,

obtain and maintain all necessary statutory consents prior to exercising the Rights;

2.1.1.8 comply with the provisions of all relevant legislation, orders, regulations, bylaws, directions, licences and consents made thereunder or deriving therefrom; the regulations of the Institution of Electrical Engineers; and all relevant British Standards and codes of practice;

2.1.1.9 To carry out each MSV with such skill, care, and diligence as is reasonably expected of skilled and properly qualified professionals undertaking surveys and investigations of similar size and scope

provide the Grantor all necessary risk assessments and method statements, upon reasonable request.

2.2 The Operator will pay to the Grantor within 10 working days of demand, the cost of any electricity used in the exercise of any of the Rights.

2.3 **Insurance**

The Operator shall maintain insurance to a minimum of £10,000,000 against public liability and other third-party liability in connection with any injury loss or damage to any persons or property arising out of the exercise by the Operator of the Rights and shall provide evidence that it is in force to the Grantor on reasonable request.

2.4 **Grantor's Indemnity**

2.4.1 The Operator shall indemnify the Grantor against all third party liabilities costs expenses damages and losses including but not limited to legal costs and all other legal professional costs and expenses suffered or incurred by the licensor arising out of or in connection with:

1. this agreement;
2. any breach of the Operator’s undertakings;
3. the exercise of the Rights
4. the enforcement of this agreement,

such indemnity to be limited to £10,000,000 (ten million pounds).

2.4.2 The Grantor:

2.4.1.1 shall promptly notify the Operator of any proceedings or of any circumstances which may give rise to such proceedings;

2.4.1.2 will not compound, settle or admit those proceedings without the consent of the Operator (such consent not to be unreasonably withheld or delayed) unless the Grantor is compelled to compound, settle or admit the Proceedings by an order of a court of competent jurisdiction;

2.4.1.3 will use reasonable endeavours to mitigate any costs, expenses or losses the subject of the indemnity.

2.4.3 Nothing in this Agreement shall restrict or interfere with the Operator's rights against the Grantor or any other person in respect of contributory negligence.

SECTION 3: GRANTOR OBLIGATIONS

3.1 The Grantor agrees to provide to the Operator at the Operator's reasonable cost within 28 days of request:

3.1.1 such health and safety documentation relating to the Site as may be reasonably required;

3.1.2 any structural drawings and/or structural calculations relating to any buildings on the Grantor's Property; and

3.1.3 any asbestos survey and any method statement for managing any known asbestos.

3.2 The Grantor is not obliged to provide any information which is not in the Grantor's possession or control at the time of the Operator's request.

3.3 The Operator acknowledges that any third party reports or other documents provided to the Operator are provided on a non-reliance basis.

SECTION 4: THE RIGHTS

4.1 The following Rights are exercisable by the Operator and the Authorised Personnel during the Agreement Period for the purposes of conducting the MSV:

4.1.1 the right, to access the Site without vehicles but with such hand held equipment as may be reasonably necessary for the purpose of carrying out the MSV by such route as may be agreed between the parties acting reasonably as often as may be reasonably required;

4.1.2 to park load and unload vehicles in such place (if available) as shall be agreed between the parties acting reasonably as often as may be reasonably required

4.1.3 to test and plug into to an existing power supply;

4.1.4 to take photographs, measurements and recordings at the Site; and

4.1.5 (subject to first obtaining all necessary permits) to operate drones over the Grantor's Property and take drone footage

4.2 Before exercising the Rights, the Operator must give not less than 2 working days' prior notice (such notice to be via email or letter to the Grantor's Access Contact). Such a notice must include the date, and proposed start and finish times, of the intended MSV, and the names of those Authorised Personnel expected to attend the Grantor's Property.

SECTION 5: MSV DATES

5.1 The Operator shall use its reasonable endeavours to carry out the first MSV on or before the MSV Access Date. The Operator shall notify the Grantor of any delays to the MSV Access Date with reasons.