Neutral Citation Number: [2025] UKUT 0213 (LC)

Case No: LC-2023-835

IN THE UPPER TRIBUNAL (LANDS CHAMBER)
IN THE MATTER OF A NOTICE OF REFERENCE

Royal Courts of Justice, Strand,

1 July 2025

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – Electricity – wayleave for pole and 10kv electricity line – compensation based on reduction in value of property, annualised for 15 years – compensation determined at £47,250 – Schedule 4, Electricity Act 1989

BETWEEN:

SIMON NELSON

Claimant

and-

SOUTHERN ELECTRIC POWER DISTRIBUTION

Compensating Authority

Dale House, Foundry Road,
Anna Valley,
Andover,
Hampshire,
SP11 7NG

Mr P McCrea OBE FRICS FCIArb

11 June 2025

The claimant represented himself
Camilla Chorfi, instructed by CMS Cameron McKenna Nabarro Olswang LLP, for the compensating authority

Introduction

1. This is a claim for compensation by Mr Simon Nelson arising out of the grant of a necessary wayleave by the Secretary of State for Energy Security and Net Zero to Southern Electric Power Distribution ('SEPD'). The wayleave was granted on 7 July 2023 under paragraph 6 of Schedule 4 to the Electricity Act 1989 ('the Act'). It allowed SEPD to retain a pole and three-cable 11KV electricity line ('the apparatus') which crosses Mr Nelson's property - Dale House, Foundry Road, Anna Valley, Andover, SP11 7NG ('Dale House'). Mr Nelson claims compensation under paragraph 7 of Schedule 4 to the Act.

2. At the hearing at the Royal Courts of Justice on 11 June 2025, Mr Nelson represented himself, calling Mr John Davies MRICS to give expert valuation evidence. Ms Camilla Chorfi of counsel appeared on behalf of SEPD, calling Mr Craig Goulding, its 'Opex Portfolio Investment Manager' as a witness of fact, and Mr Henry Church MRICS FAAV to give expert valuation evidence. I am grateful to them all.

3. On the day before the hearing I inspected Dale House, accompanied by Mr Nelson, Mr Davies and Mr Church.

Statutory Provisions

4. As far as relevant to this reference, Paragraph 7 of Schedule 4 to the Act provides:

> "(1) Where a wayleave is granted to a licence holder under paragraph 6 above—
>
> (a) the occupier of the land; and
>
> (b) where the occupier is not also the owner of the land, the owner,
>
> may recover from the licence holder compensation in respect of the grant.
>
> (2) Where in the exercise of any right conferred by such a wayleave any damage is caused to land or to moveables, any person interested in the land or moveables may recover from the licence holder compensation in respect of that damage; and where in consequence of the exercise of such a right a person is disturbed in his enjoyment of any land or moveables he may recover from the licence holder compensation in respect of that disturbance.
>
> (3) Compensation under this paragraph may be recovered as a lump sum or by periodical payments or partly in one way and partly in the other.
>
> (4) Any question of disputed compensation under this paragraph shall be determined by the Tribunal; and … section 4 of the Land Compensation Act 1961 shall apply to any such determination."

5. Section 4 of the 1961 Act concerns costs, which are for a later date.

The Claim

6. Mr Nelson's original Notice of Reference dated 7 October 2023 put the claim at '£75-£90k'. That was subsequently amended by his statement of case received by the Tribunal in January 2024, where it increased to £266,681.02. It then reduced to £177,126 in May 2024. At the hearing, Mr Nelson confirmed that his claim was based on the revised expert evidence of Mr Davies, and stood as follows:

A. Compensation in respect of the wayleave:	£19,462
B. Compensation in respect of the loss of development value:	£53,500
C. Compensation in respect of restrictions on access:	£69,000
Total:	*£141,962

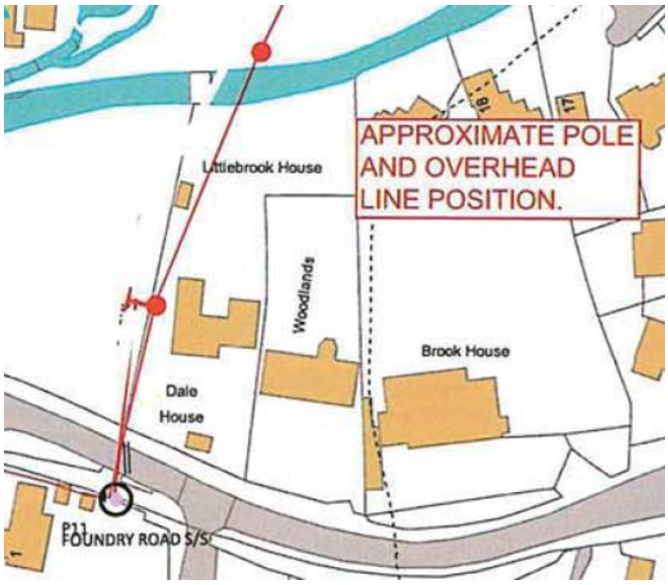
*At the start of the hearing Mr Nelson mistakenly said £139,375 but this was based on a previous version of Mr Davies's calculation of basis A which was at £16,875.

7. SEPD say that only basis A is valid, and puts compensation at £19,462.

Facts

8. From the evidence and my site inspection, I find the following facts.

9. Mr Nelson bought Dale House in December 2020. It is in a picturesque Hampshire location, with woodland to the west, and with direct access to Pilhill Brook to the north, on the back boundary. A wooden pole supports a three-cable 11KV electricity line which crosses the left hand side of the plot, broadly from front to back. The apparatus provides electricity to both Dale House and a number of surrounding properties. The approximate location of the apparatus is shown below (the pole being a large dot):



10. When he bought the property, there was a modest house of 1950's/60's vintage, on a large plot. Mr Nelson wanted to refurbish and extend the house. He made three planning applications, which the parties have called PP1-PP3. PP1was refused by the local planning authority on 1 February 2021. PP2 was granted on 30 June 2021. PP3, which envisaged a smaller house than PP2, was granted on 9 December 2022, and in the end the house was redeveloped in line with that consent.

Evidence of fact

Mr Simon Nelson

11. As is often the case when someone's domestic property is concerned, Mr Nelson and his family, understandably, simply want to be paid the compensation they feel they are owed, and then get on with their lives. He said the mental toll the matter has had on his family, coupled with the time and resources it has taken, has been completely draining.

12. Mr Nelson has fought his case with admirable tenacity, exploiting to date all avenues of appeal open to him, including a judicial review of the Planning Inspector's recommendation to the Secretary of State, and an unsuccessful appeal to the Court of Appeal against a Directions Order of the Tribunal. He has submitted an extensive volume of evidence; I mean no disrespect to him to observe that this was of varying degrees of relevance to the legal basis of his claim, and by no means do I refer to all of it in this decision. He simply wanted to make sure his case had been fully made out. In the paragraphs that follow I summarise the main points which are relevant. As I will explain later, given the amount of common ground between the valuation experts, at the heart of the dispute on two of the three heads of claim is valuation principle, rather than quantum, and Mr Nelson's evidence doesn't really influence that debate.

13. Mr Nelson said that when he viewed Dale House prior to purchase, he noticed the apparatus on site. He didn't give it much thought, focussing on the building itself. Soon after purchase, he instructed an architect to make a planning application (PP1) which was refused by the local planning authority, Test Valley Borough Council. Mr Nelson told me

that this was based on the appearance of the proposed building from the front, and the effect on the street scene of a proposed garage building and removal of a hedge.

14. His Architect made a subsequent application in early May 2021, which was registered under code 21/01361/FULLN ('PP2'). Planning permission was granted on 30 June 2021. It was to extend the existing building to form a large six-bedroomed house. Mr Nelson said that he then carried out a tender process to instruct a builder, appointing one that winter. In the Spring of 2022, at a pre-start meeting, he said that the builder raised the issue of the apparatus. Mr Nelson contacted SEPD, who he said told him that the line could be 'shrouded' (the live lines covered in an insulating material), while construction took place, and beyond. He said that this advice turned out to be erroneous - the shrouding was booked in, but he said when SEPD's operatives came to Dale House, they said the work could not be done (SEPD dispute that version of events, but nothing turns on this).

15. Mr Nelson said that the existing house was in poor repair, with various leaks, damp and defective heating. This had an effect on his family, with three of them contracting pneumonia. The house was badly insulated, and heating bills were spiralling. Discussions about moving the apparatus came to nothing. In early November 2022, two things happened. Mr Nelson served notice on SEPD seeking the removal of the apparatus, and he made a further planning application for a smaller building ('PP3'), registered by the planning authority on 3 November 2022 under code 22/02868/FULLN. Planning permission was granted on 9 December 2022, but by this point, SEPD had made an application for a necessary wayleave (the Planning Inspector records this having been made on 2 December). So while Mr Nelson was keen to proceed with improving and extending the house, he did not know which planning consent he could implement. He said he was in limbo. So he asked his builders to install the substructure for PP2, allowing him the option of either PP2 or PP3 (which shared the same footprint).

16. The wayleave application was heard by the Inspector on 25 and 26 April 2023, and his decision to recommend the granting of a Necessary Wayleave was in his report dated 17 May 2023. He noted in his decision that at the time of his site visit on 26 April, works to implement PP3 were underway. The 15 year Wayleave was granted on 7 July 2023. In his evidence, Mr Nelson referred to various parts of the Wayleave agreement, but the Tribunal has no jurisdiction over performance or otherwise of the terms of the agreement – we can only determine compensation under the Act. Mr Nelson said that by being deprived of the opportunity to build out PP2, he has lost a guest bedroom for family or for a live in nanny to help care for his autistic son. He has 'lost' floor area, and the valuation experts have agreed the effect of that in terms of market value.

17. At its closest point to the house ('the pinch point') it is agreed that the electricity line is 3.87m away, and at maximum sag, this reduces to 3.819m. Mr Nelson says that this is too close to enable him to either carry out roofing work to the original roof to make it watertight and energy efficient, and is too close to enable him to safely clear his gutters which, he says, regularly fill with leaves and debris causing damp and maintenance issues. The only way of doing this safely is to have SEPD 'power down' the line. A previous power down, of one month, in July 2023, was not sufficient to enable all of the required work to be done to the rear roof. Much of the work to the remainder of the property was able to be done, for instance to the front section which was in the order of 5m away from the electricity line.

18. During the shutdown period, the area of the roof which was worked on was that to the front left hand corner, further away from the line than the rear left area which was nearer to the pinch point. Mr Nelson said this was because the front section was open to the weather. By the time the shut down had finished, limited work had been carried out to the area nearer to the line, leaving it without total refurbishment; the tiles have been re-bedded, but the sub-structure was not adequately replaced in the time available, making it more likely to leak in the future. He accepted that at the point the majority of work under PP3 had been completed, it would be unlikely that he would have knocked that new work down and built out PP2, had that been an option.

19. Mr Nelson said that for basic maintenance, he made a further shut down request of one month, which SEPD rejected. He said that this month was in effect only 8 days – four weekends – to allow him to clear the gutters, and he needed to build in some allowance for weather conditions. Mr Smith (SEPD's previous valuation expert, now retired) had suggested in his expert report some alternative measures – netting, vacuuming out, etc – but he accepted in that report that he wasn't a guttering expert, and Mr Nelson rejected that advice, partly because one of the firms which Mr Smith had suggested might help him, didn't exist. He hadn't cleaned his gutters out since 2023 (and during my site inspection I noticed debris in them). Mr Nelson said that he wasn't prepared to risk his life, nor ask others to risk theirs, to clean the gutters out while the lines are live. He included evidence of where people had been severely injured by 'arcing' from high voltage lines, and a letter purporting to be from a window cleaner, who would not work on that side of the house owing to the presence of the apparatus.

Mr Craig Goulding

20. Mr Goulding has been employed by SEPD for around 20 years; for the last three as an Opex Portfolio Investment Manager (Western Regions), and before that in a variety of other roles. He is also a '11kV Senior Authorised Person' ('SAP') which means he is authorised to issue safety documents and set authorised staff to work on the company's 11kV networks.

21. Mr Goulding said that the risk of 'arcing' from a 11kV line was within about 300mm from the line, depending on weather conditions. His own contractors considered a safe distance to be 1.1m, but members of the public should observe a 3m safety zone.

22. Using laser scanning, SEPD had records of measurements from the line to Dale House. Mr Goulding said that at the pinch point, the line was 3.87 m to the gutter of the house, but 3.81m allowing for sag (the effect of wind which can move the line by 45 degrees). To the apex of PP3 is around 4 metres. The pole is about 3.7m from the property's wall, at which point the conducting line is 5m from the gutter, and just over 6m to the apex of the roof. At the front of the property, the line is about 5m horizontally, and about 8m to the guttering.

23. Mr Nelson's contractors, Dale Construction, had drawn up a risk assessment before commencing the extension to Dale House, in which they specified that no work would be carried out 'within 4.5m of any live 11kv cables. Due to potential or [sic] arcing'. Mr Goulding said that work could safely be carried out if the 3m distance was observed. He did not consider there was a risk of 'arcing' when clearing the guttering at Dale House, which was outside this zone.

24. Mr Goulding said that he refused Mr Nelson's request for a shutdown in May for two reasons. First, in his view, work to clear the guttering could be carried out without the need to shut down the line if the safety measures of which he had made Mr Nelson aware were observed; secondly, because the 2023 shutdown granted to Mr Nelson, by putting extra strain on the secondary network, made SEPD at risk of failing in its obligation to maintain a supply to all customers.

25. Mr Goulding said that SEDC had no record of any requests from any customer for an isolation/shutdown for gutter clearing – at Dale House or anywhere else.

Expert Evidence

26. This reference was made to the Tribunal in October 2023, and was for a period stayed whilst the parties discussed a possible settlement. By the time of the preparation for the hearing SEDC's expert valuer, Mr Colin Smith, had retired. With permission, his place was taken by his colleague, Mr Henry Church MRICS FAAV. Mr Church (having discussed the matter with Mr Smith on many occasions) adopted Mr Smith's evidence, and submitted a second report of his own which was to the same effect. Mr Nelson's expert valuer throughout has been Mr John Davies MRICS.

27. Given the commendable degree of common ground between the valuers, it is convenient to outline their evidence together on each head of claim. The valuers called them 'issues', but I prefer Ms Chorfi's 'bases'.

Basis A – the diminution in value to the property caused by the presence of the apparatus

28. It is common ground that the value of what the experts call 'the existing property' (the implemented PP3) has been affected by the presence of the apparatus. They have agreed this basis, if awarded, at £19,462. That figure is based upon:

Freehold value without apparatus:	£1,500,000
Reduction of 2.5%:	£37,500
annual equivalent of £37,500 @ 5% in perpetuity:	£1,875 per annum
£1,875 per annum x yp 15 years @ 5% (10.3797):	£19,462

29. At the date of the grant of the wayleave, the house had not been completed, but the valuers were content to proceed assuming it was.

30. I should add at this point that Mr Nelson referred to advice he had received from estate agents, but these were not produced as expert evidence, and Mr Nelson confirmed that he was not demurring from the advice of Mr Davies, who had agreed a value of £1,500,000 with Messrs Smith and Church.

Basis B – the loss of 'development value'

31. This is agreed at £53,500, if awarded. That is based on the floor difference between that of PP3 and the larger PP2. The total loss of floorspace comprised 328 sq ft ground and first floor, and 285 sq ft of roof space, which the experts value at £322 and £107 per sq ft respectively, arriving at a total loss of gross development value of £136,206. After deducting build costs and £10,000 for 'reverting to PP2 in July 2023', they agree that compensation on this basis should be £53,500.

32. Mr Davies says that the compensation under Basis A and B should be added together. Mr Church says that compensation is correctly assessed as Basis A, in the alternative Basis B, but not both.

Basis C – 'shutdown costs'

33. Mr Davies does not opine on the extent of compensation under basis C, but provides a calculation of £69,000, based on the cost of two shutdowns per year, at £3,000 per shutdown, across the 15 year life of the wayleave (the calculation is £6,000 x years' purchase for 15 years @ 3.5%).

34. Mr Church says that no compensation is payable under this basis that is not already accounted for under Bases A and B.

Discussion

35. I can deal with Basis C in short order. First, I accept Mr Goulding's evidence that it was possible to clear the gutters, even at the pinch point, without trespassing into the danger zone of proximity to the line. Mr Goulding's evidence was persuasive, and was not in my view controverted by the documents which Mr Nelson submitted, based on news reports and AI. Secondly, and perhaps more importantly, for the first two years of the wayleave, following the original (and only) shutdown, no further shutdowns have been permitted, and the notional figure of £6,000 has not been incurred – Mr Nelson has incurred no loss to date, and in my view should not do so in the future. I reject Basis C as a head of claim.

36. That leaves Bases A and B, which I can take together, and which present an interesting principle of valuation. The valuation experts agree that PP3, as built out, would have a market value of £1,500,000, if there were no apparatus on site. They agree that the presence of the apparatus would reduce the value of the property by 2.5% - £37,500. As Mr Davies put it, this would be the effect on the view of a notional purchaser sitting at the entrance to the drive, noticing the apparatus. I should mention at this point that Mr Nelson very fairly accepted that he noticed the apparatus, but didn't give it much thought, as he was concentrating on the property itself.

37. But as Ms Chorfi emphasised, the valuation exercise demands an assessment of any effect on value of the grant of the wayleave, for 15 years. The experts' agreement (at least as far as Basis A is concerned) reflects that by capitalising for 15 years an annual equivalent of the freehold reduction in value. As Ms Chorfi noted in closing, that is perhaps a generous assessment given that at the valuation date of 7 July 2023, PP3 had not been fully

implemented and the house was not complete, but since the experts have agreed that I do not depart from it.

38. Mr Nelson says that, but for the wayleave, he would have built PP2, and has been prevented from doing so. Ms Chorfi taxed him on that point, suggesting that at the valuation date he had already decided to abandon PP2, but I accept Mr Nelson's evidence on this. The valuers have agreed a basis on which this can be calculated. There was some late suggestion from Mr Church, adopted by Ms Chorfi in questioning, that there would have been an alternative to PP2, by building more floorspace on parts of the building away from the pinch point and the apparatus, but that departs from the pleaded position and the valuers' agreed statement.

39. The real issue in dispute is whether bases A and B are alternatives as Mr Church suggests? Or should they be aggregated, as Mr Davies says. Or is there a middle ground?

40. The agreed PP3 value is £1.5 million, without the apparatus present. Does that market value include an element to reflect the ability to implement PP2? Is there a 'hope' of being able to extend within that value? Mr Davies explained that the £53,500 reflects the extra value, over and above £1.5 million, of the ability to build out PP2, and I can envisage a purchaser adding what would be between 3 and 4% to reflect the ability to extend the PP3 house to create the PP2 house, for which there had been planning permission.

41. Without the apparatus, we have PP3, and the ability to alter to the more valuable PP2, but at a cost.

42. With the apparatus, we have PP3, less an agreed 2.5%. In my judgment, the figure to which the annual equivalent should be applied is the difference between the two.

43. The calculation becomes:

Without apparatus	
£1,500,000, plus £53,500:	£1,553,500
With apparatus	
£1,500,000 less 2.5%	£1,462,500
Capital loss:	£91,000
annual equivalent of £90,500 @ 5% in perpetuity:	£4,550 per annum
£4,550 per annum x yp 15 years @ 5% (10.3797):	£47,227
(say)	**£47,250**

44. In my judgement, this figure represents Mr Nelson's loss, under a hybrid of bases A and B, and I therefore determine £47,250 as compensation under paragraph 7 of schedule 4 to the Act.

45. This decision is final on all matters except costs, and a letter to the parties accompanies the decision with directions for submissions on costs.

Mr P McCrea OBE FRICS FCIArb

1 July 2025

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.