



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

Case Reference : **LC – 2023 – 000696**

Property : **Land lying to the north of Lark Park,
Roston, Ashbourne DE6 2EL**

Claimant : **On Tower UK Limited**

Representative : **Pinsent Masons LLP**

Respondent : **AP Wireless II (UK) Limited**

Representative : **Freeths LLP**

Application : **Electronic Communications Code**

Tribunal : **Judge D Jackson
Mrs J Rossiter MRICS**

Date of Decision : **1st April 2026**

DECISION

1. The final hearing of this reference took place, alongside other references, in Birmingham on 23rd and 24th March. The Claimant was represented by Kester Lees KC and Imogen Dodds and the Respondent by Wayne Clarke KC and Fern Schofield.
2. By the date of the final hearing the parties had agreed all terms in dispute and consideration payable under the new agreement in the sum of £2,500 p.a. The only matter remaining for determination is the date from which interim consideration is payable.
3. The relevant chronology is as follows:
 - 23rd October 2023 – Notice of Reference received by the Upper Tribunal
 - 24th October 2023 – Order of Upper Tribunal transferring reference to FTT
 - 12th December 2023 – Application for interim rent (email timed at 18:46)
 - 13th December 2023 – Date of receipt of application for interim rent at FTT
 - 20th December 2023 – FTT direct a Preliminary Hearing - whether the agreement was a lease or a licence and, consequently, whether the tribunal has jurisdiction under Part 5 of the Code.
 - 18th April 2024 – Hearing of Preliminary Issue
 - 2nd May 2024 – Decision - the Agreement is a lease to which Part 2 of the Landlord and Tenant Act 1954 applies. The Tribunal has no jurisdiction in relation to the reference. The reference is struck out pursuant to Rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
 - 24th May 2024 FTT extends time making application for permission to appeal as appeals against another decision on the same issue relating to other sites due to be heard by the Upper Tribunal.
 - 9th September 2025 – Decision of Upper Tribunal in Fields Farm, Congleton Road, Sandbach [2024] UKUT 263 (LC). An agreement not granted for a term which was capable of being a term certain took effect only as a licence
 - 1st October 2024 – FTT issues Review of Decision - Directions
 - 25th July 2025 - Court of Appeal decision in Fields Farm, Congleton Road, Sandbach [2025] EWCA Civ 971. The Court of Appeal held that a minimum term agreement could not be a lease.
 - Respondent does not oppose the Claimant’s application for review the Decision and agree that Order of 2nd May 2024 should be set aside.
 - 27th August 2025 - Decision of 2nd May 2024 is set aside. Judge re-decides Preliminary Issue and determines that the agreement is not a lease to which Part II of the Landlord and Tenant Act 1954 applies.
4. The Claimant’s case is that interim rent should be paid from the date of receipt of the application – 13th December 2023. The Respondent’s case is that interim rent should be payable from date of “reinstatement” – 27th August 2025.
5. Paragraph 35(2A) (a) of the Code provides:

The operator or the site provider may apply to the court for—

(a) an order specifying the payments of consideration to be made by the operator to the site provider under the agreement relating to the existing code right until the application for an order under paragraph 32(1)(b) or 33(5) has been finally determined

(b)

6. Paragraph 35(2B) of the Code provides:

An order under sub-paragraph (2A)(a) may provide for the order to have effect from the date of the application for the order.

7. The Tribunal has a discretion as to the date the order is to have effect. The purpose of the statutory provisions is to prevent prejudice to either party caused by delay in determination of the renewal. In this case Ms Dodds for the Claimant argues that the Claimant should not be prejudiced by the Respondent's decision to pursue a preliminary issue on which it was ultimately unsuccessful. Delay in renewal should not fall on the Claimant.
8. The Respondent's position is fundamentally misconceived. The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 provide for reinstatement under Rule 9(5) where an application has been struck out for failing to comply with directions. Similarly, under Rule 22(5) a party that has withdrawn its case may ask for it to be reinstated.
9. Reinstatement applies where a Claimant has been at fault or elects to withdraw. The position in relation to set aside under FTT Rule 55 and section 9 of the Tribunals, Courts and Enforcement Act 2007 is wholly different. The Claimant is blameless and the Order of 2nd May 2024 has been set aside.
10. The delay in determination of this reference is in no way the fault of the Claimant. The Respondent has chosen to pursue a preliminary issue on which it ultimately unsuccessful. We exercise our discretion in favour of the Claimant.
11. The consideration to be made by the Claimant to the Respondent under the agreement relating to the existing code right from 13th December 2023 until the application for an order under paragraph 33(5) has been finally determined is £2,500 per annum.

D Jackson
Judge of the First-tier Tribunal

Either party may appeal this Decision to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal for permission. Any application for permission must be in writing, stating grounds relied upon, and be received by the First-tier Tribunal no later than 28 days after the Tribunal sends its written reasons for the Decision to the party seeking permission.

