Case No: L01BS205

IN THE COUNTY COURT AT FLEETWOOD

Date: 1 May 2026

Before: **His Honour Judge Christopher Dodd**

Between:

CORNERSTONE TELECOMMUNICATIONS INFRASTRUCTURE LIMITED

Claimant

-and-

AP WIRELESS II (UK) LIMITED

Defendant

Hearing dates: 9 – 12 December 2025 and 5 February 2026

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Judgment

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His Honour Judge Christopher Dodd:

Introduction

1. This is the reserved judgment given at the conclusion of the trial of an unopposed claim for the renewal under Part II of the Landlord and Tenant Act 1954 of a lease of a telecommunications mast site located in the Redmarsh Industrial Estate, Thornton Cleveleys, FY5 4HP, Cell Site No VF3317 (the **'Site'**). There is no dispute that the Claimant is entitled to a new lease of the Site, but the parties cannot agree either the terms of that lease or the rent.

2. The Claimant is a wholesale infrastructure provider. It provides infrastructure systems to providers of electronic communications networks, typically mobile network operators such as Vodafone Limited and Telefonica UK Limited, which are its customers.

3. The Defendant is a property investment company. Its business involves the acquisition of leasehold or freehold interests in existing telecommunications sites entitling it to receive the future rent payable by the relevant operator.

4. The Claimant occupies the Site pursuant to a lease dated 1 February 2011 (term runs from 23 May 2010) made between (1) Michael Richard Scott and (2) Vodafone Limited, as varied by a Licence to Assign and Deed of Variation dated 4 December 2015 (altogether the "Existing Lease").

5. The Claimant's leasehold interest is registered under the Land Registry title number LAN114079. The Existing Lease was assigned to the Claimant by way of transfer dated 4 December 2015 and is protected by security of tenure provisions in sections 24-28 of the 1954 Act. The contractual term expired on 22 May 2020 and the Existing Lease has continued since then by virtue of section 24 of the 1954 Act.

6. The Defendant acquired its freehold interest in the Site by way of transfer dated 18 April 2016. That interest is registered under Land Registry title number LAN177521.

7. The Existing Lease is a "subsisting agreement" within the meaning of Schedule 2 of The Digital Economy Act 2017. On renewal under the 1954 Act, the new tenancy will be a Code agreement to which the Electronic Communications Code (Schedule 3A to the Communications Act 2003, introduced by The Digital Economy Act 2017) will apply.

8. Operators at the Claimant's Site include Vodafone, EE Limited, Virgin Media O2 Limited, Hutchison 3G UK Limited, and Arqiva Limited.

The Applicable Law

(A list of principal authorities is appended to the end of this judgment)

9. There was no dispute of law between the parties on the general approach which the Court should take when resolving the issues in this case.

10. Section 35(1) of the 1954 Act provides that:

    a. The terms of the renewal lease *"shall be such as may be agreed between the landlord and the tenant or as, in default of such*

agreement, may be determined by the court; and in determining those terms the court shall have regard to the terms of the current tenancy and to all relevant circumstances"".

11. The House of Lords set out certain principles for determining the terms of a new lease under the 1954 Act in O'May v City of London Real Property Ltd [1983] 2 AC 726 ("*O'May*"). They include the following:
    a. the starting point is the existing lease;
    b. the burden is on the party seeking to depart from the existing position to justify the change, and the standard to be applied is whether the change argued for is fair and reasonable in the circumstances of the case;
    c. these circumstances include the comparatively weak negotiating position of a sitting tenant requiring renewal, particularly in conditions of scarcity, and the general purpose of the 1954 Act, which is to protect the business interests of the tenant;
    d. there must be a good reason based on essential fairness for the court to impose a new term not in the current lease on a party against its will;
    e. there is no intention to freeze or petrify the terms of the lease, especially where the terms of an older lease may have become out of date or unsuitable;
    f. but the court should not generally exercise its discretion under s 35 to change the basic parameters of the commercial arrangement between the landlord and tenant.

12. The terms of the new lease will take account of the legislative change brought about in the telecommunications sector by the new Electronic Communications Code, but the principles which the Court must apply in determining what those terms should be are no different from any other lease renewal under the 1954 Act - On Tower UK Limited v AP Wireless (II) UK Limited (*'New Zealand Farm'*) [2022] All ER (D) 12 (Sep).

13. The rent to be paid under the new tenancy will be determined in the usual way applying section 34 of the 1954 Act. The fact that the site is a telecommunications site and subject to the new Code does not alter the principles to be applied: the rent is to be such as the Court determines the site would reasonably be expected to let for in the open market on the terms of the new agreement by a willing lessor disregarding the matters in section 34(1)(a)-(d), including any effect on rent of the tenant's occupation and any goodwill attached to the holding by reason of the tenant having carried on its business there.

14. Guidance on how an open market in telecommunications sites might behave in light of the Code (and on how the current market differs from an open market) can be found in Vodafone Ltd v Hanover Capital Ltd ("*Hanover*") [2021] 2 P. & C.R. 3 and EE Ltd v Morriss ("*Pippingford*") [2022] EW Misc 1 (CC).

15. The current Code came into force on 28 December 2017, with transitional provisions contained in schedule 2 of the Digital Economy Act 2017 (the 'Transitional Provisions'). For telecommunications sites that were held by an operator pursuant to a lease protected by the 1954 Act as at that date, any lease renewal has to occur under the 1954 Act and not pursuant to the provisions of the Code: Transitional Provisions, para 6, Cornerstone

Telecommunications Infrastructure Ltd v Compton Beauchamp Estates Ltd [2022] 1 W.L.R. 3360 [166]-[168], *Hanover* at [15]-[20].

16. However, on renewal, the new lease will be a fully-fledged Code agreement, excluded from the 1954 Act, with future renewals taking place under Part 5 of the Code: s 43(4) 1954 Act.

The Issues

17. The dispute between the parties concerns the precise terms of the new lease and the rent payable. For obvious reasons, it is appropriate to decide upon the terms before addressing the rent.

18. The key terms of the Existing Lease (as varied) are as follows:
    a. Term: 10 years from 23 May 2010 (thus expiring 22 May 2020).
    b. Demised premises: land shown edged red on the plans at Trial Bundle **[33/471]** (i.e. the Site). The plan at Trial Bundle **[33/473]** has a 'Car Storage Area' marked just outside the Site.
    c. Permitted Use: Installation and operation for commercial purposes of apparatus for an electronic communication network.
    d. Rent: £4,250.
    e. Rent review: Following a 'Review Notice', open market rent review on the fifth anniversary of the lease (cl 7). The current rent remains £4,250.
    f. Tenant rights: To erect, use and upgrade the equipment on 'the Estate', defined as the Landlord's land registered with title number LA575503 (current Land Registry entries at Trial Bundle **[49/558]**,

which is defined herein as 'the Adjoining Land'); full and free access along an 'Access Route' and such other appropriate areas of the Adjoining Land as reasonably necessary; to occupy a reasonable working space surrounding the Site; and to park a vehicle in a place reasonably convenient to the Site (Cl 2, Deed of Variation sch 1).

g. Alienation: The Tenant is not to assign or underlet without the Landlord's consent (not to be unreasonably withheld or delayed) but can share the Site with third parties wishing to install equipment, provided the Landlord is notified in advance.

h. Termination: The Tenant can terminate on six months' notice (cl 5). No Landlord's break clause.

19. In default of agreement, s 34 of the 1954 Act determines that the rent payable under the renewal lease: '*shall be such as…may be determined by the court to be that at which, having regard to the terms of the tenancy (other than those relating to rent), the holding might reasonably be expected to be let in the open market by a willing lessor, there being disregarded –*

    a. *any effect on rent of the fact that the tenant has or his predecessors in title have been in occupation of the holding,*
    b. *any goodwill attached to the holding by reason of the carrying on thereat of the business of the tenant (whether by him or by a predecessor of his in that business),*
    c. *any effect on rent of an improvement to which this paragraph applies…*'

20. General guidance on the approach to s 34 in the telecommunications context was provided by the Deputy Chamber President of the Upper Tribunal (Martin Rodger KC) sitting as a judge of the County Court in *Hanover* at [48]-[62]. In summary:

    a. The exercise involves imagining a hypothetical negotiation between a hypothetical landlord and tenant, willing to enter into a tenancy of the Site on the terms that have been settled.
    b. The negotiation assumes the tenant has removed its Electronic Communications Apparatus and has complied with its yielding up obligation (i.e. it assumes a bare site).
    c. Both negotiating parties are assumed to be prudent and knowledgeable, and it is likely that both would be professionally advised.
    d. Both parties would be aware of how the Code operates, that Code rights are available to the operator if agreement cannot be reached (via para 20 of the Code), and that the imposition thereof by the Upper Tribunal/First Tier Tribunal (Property Chamber) may take up to a year, would be costly and would result in a Code agreement on the Code's operator-friendly valuation hypothesis.
    e. The negotiation is assumed to be fair and friendly and will be conducted in the light of all the advantages and disadvantages which would affect the property and any tenant of it. Neither party is anxious to do a deal, nor under particular pressure to do so, and the hypothetical tenant will not pay more than is necessary, nor will the hypothetical landlord expect to receive more.

21. Further guidance on s 34 valuations in this context was provided by the Deputy Chamber President (again sitting as a County Court Judge) in *Pippingford.*

    a. The effect of negotiating *'in the shadow'* of the Code can be expected to be reflected in the rents agreed, though (unlike a Code valuation) there is no need to assume the Site will not be used for the purposes of an electronic communications network [20], [57], [62].

    b. Evidence of rents agreed in the market for new telecommunications lettings is the best evidence on which to base a rent determined under s 34 [58]. By contrast, telecommunications lease renewals are poor comparables [69].

    c. The *Hanover* structured approach is only necessary where reliable transactional evidence is missing [88]-[90]. This is a reference to the valuation analysis for Code lettings approved by the Court in *Hanover* at [89] and adopted in later Code cases:

        i. *'Mr Jourdan suggested a helpful framework which sought to replicate the factors which would influence the hypothetical parties negotiating a rent for a new letting under the Code; it involved consideration of the following six topics [only the first three are relevant]:*

            (a) the first step would be to assess the alternative use value of the site, which would be equal to the rental value of the holding for the most valuable non-operator use. This would be a matter of evidence and would depend entirely on the location of the property and land values in that location. Parking spaces next to a sports ground

or an airport would have a higher value than on an industrial estate;

(b) secondly, if any additional benefit was to be conferred on the tenant by the letting an allowance would have to be made to reflect it. In one example, the letting of part of a secure car park at the Gillingham Vehicle Testing Centre, internal analysis showed that Arqiva was prepared to pay an additional £1,000 a year for the benefit of a manned security gate;

(c) thirdly, if the letting would have a greater adverse effect on the willing lessor than the alternative use on which the existing use value was based, this should also be reflected by an adjustment…'

d. Given the evidence of their wide-spread payment, capital payments made to site providers should be taken into account when setting the rent [108]-[109].

22. The Claimant also applies under s 24A of the 1954 Act for an interim rent to be determined while the Existing Lease continues by virtue of s 24. The experts agree that the date from which the interim rent is payable pursuant to s 24B is 10 April 2024. Section 24C of the 1954 Act provides the relevant framework: the interim rent will be the rent payable under the renewal lease unless the Claimant shows to the satisfaction of the court that such a rent *'differs substantially from the relevant rent',* i.e. that determined as at 10 April 2024.

Evidence

23. Documentary evidence was provided in the usual way, albeit piecemeal: there was a Trial Bundle, Supplemental Appendices and a Bundle of Miscellaneous Documents. It was not necessary for me to view the Site in person: the available photographs, plans and descriptions were sufficient.

24. The parties called four live witnesses between them; each called one expert valuer and one witness of fact.

Terms - the factual evidence

For the Claimant - Mr Hugh Paton

25. Mr Paton gave evidence on behalf of the Claimant in his capacity as an Asset Manager within Cornerstone's Property and Estates team. His written evidence was rooted in the operational realities of maintaining and operating a national telecommunications infrastructure. He emphasised that Cornerstone is not an end-user operator but a wholesale infrastructure provider whose business model depends on granting multiple third parties reliable, flexible and continuous access to sites. Throughout his statement, he framed the Claimant's position by reference to the need to secure network resilience, operational flexibility and continuity of service across a large national portfolio.

26. He described the Site as a greenfield mast site which is physically constrained once the tower, cabins and associated electronic communications apparatus are installed. He emphasised that the compound is already heavily utilised by multiple operators and must accommodate ongoing upgrades, maintenance and emergency works over a ten-year term

in a rapidly evolving technological environment. A central and clearly expressed proposition in his written evidence was that there was insufficient space within the fenced compound to accommodate an emergency generator, and that removal or re-organisation of existing equipment would not resolve that constraint. That conclusion was presented in definitive terms and treated as inherent in the physical characteristics of the site.

27. Mr Paton's written evidence also addressed a wide range of disputed lease terms, all of which he justified by reference to operational necessity rather than valuation advantage. He supported five-yearly CPI-linked rent reviews and resisted annual RPI reviews and periodic open-market reviews, explaining that across Cornerstone's portfolio of some 20,000 sites, frequent reviews would impose a disproportionate administrative burden relative to modest individual rents. CPI was preferred to RPI because RPI is due to be phased out, creating foreseeable drafting and dispute risk mid-term.

28. A further significant theme in Mr Paton's statement was the need for a set-down area beyond the fenced compound. He explained that the compound is largely occupied by permanent apparatus, leaving insufficient room for generators, cranes, Mobile Elevating Work Platforms, fuel storage or plant required for upgrades or power failures. He stated that telecommunications leases have long included set-down areas for precisely these reasons, and that the existing lease already contains such a right. Without a set-down area, he said, the Claimant might be unable to respond quickly to outages or upgrades, risking service disruption.

29. Closely linked to this, Mr Paton resisted restrictions on the siting or operation of generators. He stated that generators are inherently undesirable to operators because of cost, noise and logistics, and are used only when unavoidable. The Claimant, he said, has no incentive to retain generators longer than necessary. Additional landlord controls were said to be unnecessary, particularly given that the Defendant does not itself occupy neighbouring land and the site adjoins a disused railway line.

30. Mr Paton also supported broad rights relating to electricity supply, cabling and wayleaves, resisting landlord approval of routing and fixed pre-conditions. He explained that the renewal lease demises all of the landlord's land, making landlord control of internal routing artificial, and that imposing consent requirements risks delay at precisely the point where speed is operationally critical, particularly following power outages. Similar reasoning underpinned his support for a 56-day longstop in relation to wayleaves.

31. Access was a further recurring theme. Mr Paton sought exceptions to normal notice requirements both for emergencies and for situations of "operational urgency", explaining that telecoms faults may not always meet a narrow definition of emergency yet still require rapid access to restore connectivity. He also stressed the importance of the Claimant holding all keys, fobs and access codes to ensure that contractual rights translate into effective real-world access.

32. In relation to equipment, Mr Paton strongly supported unrestricted upgrade rights, resisting limitations tied to paragraph 17 of the Code, which he described as minimum statutory rights rather than a ceiling. He emphasised the pace and unpredictability of technological change over a ten-year term

and noted that the existing lease imposed no such restrictions. He also supported robust non-interference provisions and wide sharing rights, explaining that Cornerstone's customer base extends beyond mobile network operators to include smart metering, radio and fixed wireless users, and that restrictions undermine the rationale of infrastructure sharing.

33. Finally, Mr Paton supported a rolling six-month tenant break consistent with the existing lease, citing the need for flexibility in response to changing demand and industry developments, while resisting broad landlord break rights absent redevelopment, on the basis of investment certainty and Tribunal authority.

34. When Mr Paton gave oral evidence, his position on many of these matters remained consistent in substance but became more qualified in important respects. In particular, under cross-examination and questioning by the Defendant, he accepted that he had not personally visited the Site prior to the hearing, had not taken measurements, and did not know which, if any, cabinets were redundant or decommissioned. He accepted that his understanding of the Site derived primarily from plans, photographs and documents rather than direct inspection.

35. Most significantly, when pressed on the question of whether re-organisation of equipment might create sufficient space to accommodate a generator within the compound, Mr Paton accepted that he could not rule this out with complete certainty. While he maintained that, in his view, accommodating a generator would be unlikely, he acknowledged that it was not possible for him to assert that it was impossible.

36. On other issues, Mr Paton did not retreat from the substance of his position but articulated it more fully. In relation to ICNIRP drawings and safety information, he maintained that such material should be controlled by the operator rather than provided via the Defendant. He made explicit that a key underlying concern was the risk of misinterpretation by third parties and the potential exposure of the operator to legal liability.

For the Defendant - Mr David Powell

37. Mr Powell gave evidence on behalf of the Defendant as Regional Asset Manager. His written evidence was shaped by his role as steward of a large investment-led portfolio and emphasised asset protection, predictability of return and control of the externalities generated by telecommunications use. He placed significant weight on estate management discipline and the cumulative burden of telecoms activity on surrounding land.

38. In his written statement Mr Powell explained that the Defendant operates as a lease aggregator and long-term investor, acquiring telecoms sites to generate stable income streams. Given the impact of Code-driven rent reductions, he said that certainty of term, predictable rent growth and control of site impacts were central to the Defendant's commercial model.

39. He supported the introduction of landlord break rights notwithstanding their absence from the existing lease, contending that the renewal would produce a Code agreement and that Code jurisprudence supports such breaks. Even absent immediate redevelopment plans, he said the Defendant must retain strategic flexibility over a ten-year horizon. Conversely, while accepting the principle of a tenant break, he strongly resisted an unconditional rolling break, asserting that predictable duration is essential

where the Defendant pays lump sums to acquire income streams. A single post-year-three break with eighteen months' notice was said to strike a more equitable balance.

40. On rent review, Mr Powell advocated annual Retail Prices Index ("RPI") reviews and three-yearly open-market reviews, citing inflation protection, market volatility since the Code, and the need to future-proof returns. The Consumer Prices Index ("CPI") was rejected as inappropriate for property-linked assets, and any future demise of RPI was said to be capable of management through substitute-index provisions.

41. Mr Powell's written evidence strongly opposed any formal set-down area, emphasising that the Defendant demises only the compound and that surrounding land forms part of a busy industrial estate under third-party control. He asserted that a set-down area would create unmanaged interference with neighbouring businesses and criticised the Claimant for reintroducing a provision he said had previously been accepted as unnecessary.

42. In contrast to Mr Paton's approach, Mr Powell gave detailed written evidence about the practical impacts of generators. He stated that generators often remain on site far longer than operators intend, that multiple sharers may deploy multiple generators, and that risks include noise, fumes, fuel storage, fire hazards and neighbour complaints. For these reasons he supported explicit restrictions, prompt removal obligations and noise mitigation, rejecting reliance on nuisance clauses alone as ineffective.

43. Mr Powell also insisted on landlord approval of electricity and cable routing, not on technical grounds but to enable the Defendant to manage relationships with neighbours and avoid reputational harm. Similar concerns underpinned his resistance to fixed wayleave timescales and his insistence on full indemnification where wayleaves are sought.

44. On access, Mr Powell supported structured arrangements, advance notice and portal-based control, and resisted "operational urgency" as vague and open to abuse. He supported restricting upgrade rights to paragraph 17 of the Code and limiting sharing to Code operators, citing loss of contractual nexus and increased management risk. Finally, he strongly supported ADR provisions as an effective means of resolving recurring low-level disputes.

45. In oral evidence, a number of Mr Powell's positions became more qualified. In particular, although he had asserted in his statement that a set-down area would not be practical, he accepted under cross-examination that some form of limited set-down area could be workable, depending on extent and legal ability to grant it.

46. Similarly, Mr Powell's concern about multiple generators fell away once he accepted that the clause under consideration contemplated a single temporary generator only.

47. Mr Powell's evidence on estate management also narrowed. While his statement suggested a significant managerial role, he accepted in oral evidence that the Defendant has no contractual obligation to estate-manage the site, no legal power to control upgrades and no enforceable duty owed to adjoining owners. Although he maintained that the Defendant seeks in

practice to act cooperatively, the legal foundation for the role described in his statement was substantially qualified.

48. Finally, while maintaining a preference for RPI, Mr Powell accepted that RPI does not track land values, that CPI is also an inflationary measure, and that RPI is scheduled to be phased out.

Submissions and Conclusions

49. By the end of the evidence, a substantial number of terms had been agreed. This judgment addresses only the remaining, disputed provisions.

General approach

50. The Claimant (properly) reminded me that the court's task under section 35 of the Landlord and Tenant Act 1954 is to determine terms that are fair and reasonable, having regard to the existing lease and all other relevant circumstances, emphasising the avoidance of duplication of obligations and safeguards, and the importance of drafting terms which minimise the risk of future disputes, and relying, in particular, on guidance in authorities such as Cornerstone Telecommunications Infrastructure Ltd v University of the Arts London ("*University of the Arts*") [2020] UKUT 248 (LC), EE Ltd and Hutchison 3G UK Ltd v AP Wireless ("*Vache Farm*") [2024] UKUT 216 (LC) and *New Zealand Farm*, while accepting that Code cases are not determinative in a 1954 Act renewal.

51. The Claimant further submits that the court may properly take into account the operational realities of a wholesale infrastructure provider operating in a fast-moving technological environment, including the desirability of standardised terms across its estate for estate management purposes. It

argues that reliance on the operator's ability to apply later under paragraph 20 of the Code for additional rights is an uncertain and impractical substitute for addressing reasonably anticipated operational needs at the point of renewal.

52. The Defendant accepts the statutory framework but places primary reliance on the principle in *O'May,* submitting that the party seeking change from the existing tenancy bears the burden of justifying it. It submits that standardisation carries limited weight in the context of a 1954 Act renewal, relying on Wallis Fashion Group Ltd v CGU Life Assurance Ltd (2001) 81 P & CR 28[1] and warns against the inappropriate importation of Code-based reasoning into the section 35 exercise. It further submits that Code authorities on terms are not binding, relying on Vodafone v Gravesham Borough Council, and that the Claimant's ability to seek additional Code rights during the term reduces the need for expanded contractual rights at renewal.

Specific Terms

Set Down Area (Clauses 3.1.2 and 4.2.2)

53. The Claimant seeks express rights to use adjoining land as a "Set Down Area" for the temporary storage of equipment and machinery and for the parking and turning of vehicles, subject to restrictions limiting its use to the daytime except in emergencies. It relies on comparable provisions in the existing lease, submits that such access is operationally necessary given

[1] *"So far as estate management factors are concerned, I accept that it is mildly more convenient for a landlord to have all leases in a given development on as similar terms as possible. However, particularly in the age of computers, it seems to me unrealistic to suggest that CGU's records will have any difficulty in coping with the fact that this particular tenancy will contain a slightly different provision…. I have had no specific evidence as to any difficulty which CGU might encounter in relation to estate management factors, and therefore I do not think it right to give that much weight in the present case."* per Neuberger J at paragraph [32]

the restricted size of the Site, and contends that industry practice supports inclusion.

54. The Defendant resists the inclusion of a Set Down Area. Its primary submission is that it cannot lawfully grant the rights sought because its own rights over the adjoining land are limited by the terms of the Transfer by Michael and Linda Scott on 18 April 2016 ("the Transfer") under which it acquired the freehold, which confines access to reasonable hours in the daytime except in the case of emergency. It contends that the imposition of broader rights would expose it to the risk of third-party injunctions. At most, it submits, it should be subject to a reasonable endeavours obligation to procure additional rights, conditional upon payment of its professional costs.

55. I accept that the Defendant's rights under the Transfer define the outer limits of what it can lawfully grant. The Claimant's proposed wording risks obliging the Defendant to confer rights exceeding those it enjoys. In circumstances where the Transfer permits access only where necessary and only during reasonable daytime hours (save in emergency), the designation of a predefined "Set Down Area" is legally incongruent. This is not a question of standardisation but of legal capacity.

56. I do not consider it fair or reasonable to make the Defendant's obligation contingent upon pre-payment of professional costs. Such a mechanism introduces unnecessary delay. The appropriate solution is to mirror the Transfer wording precisely. The renewal lease will therefore adopt that wording at clause 12.4.1.3.

Temporary Generator (Clause 3.1.2)

57. The Claimant seeks an express right to install and operate a temporary generator on the Premises and/or the Set Down Area, submitting that continuity of service in the event of power loss is critical and that there is insufficient space within the demise to accommodate a generator.

58. The Defendant resists the grant of any such right outside the demise. It submits that the same limitations arising from the Transfer apply as in relation to the Set Down Area and that the Claimant has failed to establish an essential operational need for broader rights.

59. The Defendant's submission is correct. The Defendant cannot grant rights beyond those permitted by the Transfer. Any generator placement must therefore be confined to locations and times where lawful access exists, namely reasonable daytime hours except in emergency. No evidence has been advanced demonstrating a necessity for broader rights.

Wayleaves (Clause 3.4.1)

60. The Claimant accepts that, in respect of adjoining land, the Defendant's obligation may properly be limited to using reasonable endeavours to procure third-party wayleaves. However, it resists any provision requiring payment of the Defendant's professional costs as a condition precedent to that obligation arising, submitting that such a gateway mechanism risks delaying necessary works and is unnecessary given other cost and indemnity provisions.

61. The Defendant submits that, if it is to assume a reasonable endeavours obligation in respect of adjoining land, fairness requires that it be entitled to recover the professional costs incurred in dealing with adjoining owners

and their agents and that the Claimant must ensure the Defendant is not left out of pocket if such endeavours are required.

62. Fairness requires that the Defendant be reimbursed for professional costs actually and reasonably incurred. However, making pre-payment a gateway to performance is unjustified and risks obstruction. The existing reimbursement mechanism provides adequate protection and can be widened. The renewal lease will therefore remove the pre-payment condition and extend clause 1.6.2 accordingly.

Access and notice requirements (Clause 4.2.1.1)

63. The Claimant relies on the unrestricted access provisions in the existing lease and submits that exceptions to notice requirements should apply not only in cases of "emergency" but also where there is "operational urgency", to avoid disputes as to whether urgent operational circumstances qualify as emergencies.

64. The Defendant submits that the phrase "operational urgency" is vague and likely to generate disputes, and that the lease should reflect the natural and ordinary meaning of "emergency" and align with the Defendant's own access rights under the Transfer.

Access to Other Unoccupied Land (Clause 4.2.3)

65. The same issue arises in relation to access to other unoccupied land, where the Claimant seeks, and the Defendant resists, the inclusion of "operational urgency" in the notice exception.

66. In each case I prefer the Defendant's formulation. Introducing ambiguous terminology would invite future dispute. The fair and reasonable outcome is an exception limited to emergencies, with a definition sufficiently broad to reflect the Existing Lease.

ICNIRP compliance (Clause 7.3.1)

67. The Claimant accepts responsibility for compliance with ICNIRP (International Commission on Non-Ionizing Radiation Protection) requirements but submits that the Defendant should play no role in policing or duplicating that responsibility and resists obligations entitling the Defendant to receive plans, define exclusion zones or undertake assessments. It contends that ICNIRP information should be provided only to third-party contractors carrying out works and limited to occupational exclusion zones.

68. The Defendant submits that information sharing is straightforward and refers to the case of On Tower UK Ltd v AP Wireless ("*Ewefields*") FTT 5 August 2024. Specifically, it should be entitled to receive ICNIRP drawings, including public exclusion zones, in order to respond to enquiries from neighbouring occupiers and third parties. It relies on public safety considerations and the fact that similar clauses have been accepted in other agreements.

69. I am not persuaded that the additional obligations proposed are justified. The Defendant has no physical presence, no statutory responsibility for ICNIRP compliance, and no demonstrated need for duplicate oversight. Additional layers of administration would yield minimal benefit and conflict with the guidance against duplication in *University of the Arts*. In

the absence of contextual detail, I attach no weight to a reference to *Ewefields*.

70. The renewal lease will therefore adopt the Claimant's formulation, limited to provision of information to third-party contractors and restricted to occupational zones.

Indemnity exclusions (Clause 7.4.4)

71. The Claimant seeks to exclude from the indemnity it provides any proceedings to the extent that they are caused or contributed to by the Defendant's acts or omissions, even where non-negligent, submitting that it should not be required to indemnify the Defendant against the consequences of the Defendant's own conduct.

72. The Defendant resists this extension, submitting that it departs from the terms of the existing lease, is uncertain in scope, and would be likely to generate disputes, and that no realistic scenario has been identified to justify the proposed wording.

73. In my judgment, no realistic factual scenario has been advanced in which liability would arise absent negligence. The proposed extension is uncertain and unjustified. The existing wording will remain.

Non-interference (Clause 7.6.1)

74. The Claimant seeks the continuation of non-interference protections equivalent to those in the Existing Lease, including obligations on the Defendant not to release and to enforce restrictive covenants obtained on the acquisition of the freehold. It submits that interference may arise from

physical structures or third-party installations and that reliance on regulatory mechanisms alone is inadequate.

75. The Defendant submits that interference issues are rare, primarily a matter for operators and regulators and that it has no operational involvement. It submits that the tenant can enforce any relevant covenants pursuant to section 78 of the Law of Property Act 1925 and resists any obligation requiring it to act as an intermediary.

76. I do not accept that section 78 provides sufficient protection, given the possibility of unilateral covenant release. The existing non-interference regime has not been shown to be unnecessary. *Ewefields* is not determinative, being confined to spectrum overlap. Clauses 7.6.1.1–7.6.1.3 will therefore be retained.

Sharing (Clause 8.2)

77. The Claimant seeks a broad right to share the rights granted by the lease with third parties, not limited to Code operators, submitting that this reflects the nature of its business and the rapid evolution of technology.

78. The Defendant submits that sharing should be confined to Code operators or electronic communications network providers and that the Claimant's proposals are speculative and go beyond what is necessary to protect its existing business.

79. The Claimant's proposal is too broad, and the Defendant's too narrow. The fair balance lies in the Existing Lease formulation, permitting sharing with

third parties wishing to install electronic communications equipment, subject to notification. That wording will be adopted.

Tenant's break (Clause 9.1)

80. The Claimant seeks retention of the existing six-month tenant's break, submitting that flexibility is essential in a dynamic sector and that the burden lies on the Defendant to justify any extension of the notice period.

81. The Defendant seeks a longer notice period, submitting that such a period would better protect its investment and would not materially prejudice the Claimant.

82. No sufficient justification for a longer period has been established. The six-month period will be retained.

Landlord's break (Clause 9.2.3)

83. The Claimant accepts a landlord's redevelopment break exercisable from year five on 18 months' notice but submits that it should be limited to redevelopment and should not be widened to Code-wide grounds.

84. The Defendant submits that the landlord's break should extend to all Code grounds and should operate on a rolling basis.

85. A rolling, Code-wide break has not been justified. The Claimant's concerns regarding instability and litigation risk are well founded. A redevelopment-only break aligns with both the policy of the 1954 Act and the structure of the Existing Lease.

86. Requiring the break to expire on an anniversary is not oppressive. Significant notice provisions reasonably demand careful compliance. The break will therefore operate only on redevelopment grounds, from year five onwards, on 18 months' notice expiring on an anniversary.

ADR costs (Clause 10.4)

87. The Claimant proposes that the ADR clause should include a mechanism permitting the mediator or appointed third party to determine costs or failing that that costs should be shared equally.

88. The Defendant resists any provision empowering the mediator to determine costs, submitting that such a provision is inconsistent with mediation.

89. I agree. Such a power risks distorting the nature of mediation by introducing adjudicative consequences. No sufficient justification has been shown for departing from an equal-costs default. The Defendant's clause will be adopted.

Rent review (Schedule 1)

90. The parties have agreed to a move to index-linked review. The Claimant seeks rent reviews by reference to the CPI, submitting that the RPI is being phased out and that the adoption now of CPI avoids foreseeable disputes.

91. The Defendant submits that RPI is a more appropriate index as, unlike CPI, it incorporates changes in property values and that future substitution provisions can address any change to the index.

92. The Defendant's submission that RPI better reflects changes to property values is unsupported, particularly in a telecommunications context – it takes into account mortgage interest payments on domestic property, but not other land values.

93. Adoption of CPI, on the other hand, would avoid foreseeable transition difficulties, and it is neither more nor less artificial in this context than RPI. Rent will therefore be reviewed every three years by reference to CPI, with expert determination as a backstop.

Rent

Summary of expert evidence

94. The court received expert valuation evidence from Mr Jonathan Stott MRICS, instructed by the Claimant, and Mr Paul Williams FRICS, instructed by the Defendant. Both are senior chartered surveyors practising in the specialist field of telecommunications site valuation. It is common ground that this is a highly specialised and polarised field, a feature recognised in the authorities, where experts frequently act predominantly for one side of the market and where care is required in evaluating both methodology and judgment.

95. The experts each produced a main report, supplementary reports, and met to prepare a Joint Statement, which identifies matters agreed, matters not agreed, and the reasons for disagreement. The Joint Statement significantly narrowed the issues. This section summarises the expert evidence as a whole, integrating the written reports, the Joint Statement, and the oral evidence given by both experts.

96. In the course of oral evidence, the professional positions occupied by the two experts within the telecommunications valuation market were explored in greater detail. Mr Williams remains actively involved in negotiating new site agreements, predominantly on behalf of site providers, and continues to conduct a significant number of live transactions. He emphasised that direct involvement in negotiations provides insight into commercial pressures, incentives, and bargaining behaviour which are not always apparent from completed documentation alone.

97. Mr Stott no longer personally negotiates individual site rents but remains closely engaged with market practice through regular discussions with agents who are actively negotiating such agreements, through analysis of concluded transactions, and through his work as an expert witness in telecommunications cases. He rejected the proposition that recent personal negotiation activity confers any hierarchy of expertise, maintaining that professional valuation judgment is properly grounded in completed market evidence and accepted valuation methodology rather than anecdotal negotiation dynamics.

98. Each expert accepted that their differing professional roles gave them different perspectives on prevailing market behaviour, and that those perspectives informed their respective approaches, particularly in relation to market tone, premiums, and the selection and treatment of comparables.

Matters agreed

99. The experts agree that the valuation of the new tenancy is to be carried out under section 34 of the Landlord and Tenant Act 1954, at the

valuation date corresponding with the commencement of the new lease. They agree that interim rent falls to be assessed under section 24C, with the appropriate date being 10 April 2024. They further agree that the valuation exercise is to be conducted in the real market, rather than on the artificial "no-network" assumptions applicable to paragraph 24 of the Electronic Communications Code.

100. The experts nonetheless agree that valuation takes place "in the shadow of the Code", in the sense explained in *Pippingford*, namely that the possibility of Code proceedings forms part of the background negotiating context but does not displace or rewrite the section 34 exercise.

101. It is common ground that there exists in practice a minimum or "floor" rent below which a willing landlord would not let a telecommunications site, even where the site has no alternative use value ("AUV"). Mr Stott puts the floor for a site in an industrial context at around £1000 per annum; Mr Williams at £1,500 per annum.

102. The experts also agree that setting materially influences value, even where AUV is excluded. Sites in industrial or urban locations command higher rents than rural sites by reason of access, hardstanding, operational convenience, and reduced installation, trackway, and reinstatement costs for operators and their contractors.

103. They further agree that site area is not, of itself, a dominant driver of value where no viable alternative use exists. Instead, value is driven by the nature of the setting, access, and operational suitability.

104. There is no dispute that professional fees of £5,000 are market standard. Where such fees are not provided for as a separate contractual obligation, they should be reflected on a rentalised basis. The agreed annual equivalent is £648 per annum.

105. The experts also agree that labels such as "premium", "incentive payment", and "disturbance payment" can be misleading. In economic terms, the market is concerned with the overall financial package agreed between landlord and operator, and labels do not determine substance. They do not, however, agree that such payments are routine in every case, nor that any particular component must necessarily be assumed where alternative use value is excluded.

Issues in dispute

106. The Joint Statement, written reports, and oral evidence make clear that the real differences between the experts lie in four principal areas.

a. comparability: whether, once alternative use value is excluded, the subject site should be treated as comparable only to unexceptional rural greenfield sites, or whether its industrial context remains materially relevant notwithstanding the absence of AUV.

b. methodology: whether valuation should proceed by comparative analysis of no-AUV telecommunications lettings, or by a hybrid approach identifying a transactional floor and then adjusting for benefits, burdens, premiums, disturbance, and fees.

c. premiums and disturbance: whether such payments should be assumed as part of market expectation in a no-AUV scenario,

and whether their continued appearance in some transactions reflects enduring market practice or historically contingent commercial pressure.

d. quantum, including both the appropriate rent for the new tenancy and the appropriate level of interim rent.

107. A related area of dispute concerned the weight to be attached to renewals, replacement sites, and transactions associated with particular rollout programmes (including Shared Rural Network and Emergency Services Network – "ESN"), as opposed to new site lettings freely negotiated at arm's length.

Mr Stott's evidence

108. Mr Stott's analysis proceeds on the basis that the restrictive covenant limiting use to telecommunications removes any viable alternative use value. In his opinion, that places the site in the same valuation category as an unexceptional greenfield site for the purposes of assessing whether premiums should be assumed, albeit with an uplift to reflect setting-specific advantages.

109. He considers that the most reliable evidence is that of new telecommunications site lettings, rather than renewals. He relies on *Pippingford* for the proposition that renewals are particularly weak comparables in telecommunications cases, a position he maintained in oral evidence.

110. Mr Stott relies on *Vache Farm* and *Ewefields* as establishing a benchmark figure of approximately £1,750 per annum for

unexceptional rural greenfield sites. He gave evidence that post-*Vache Farm* market transactions have not generally incorporated inflationary uplifts and that micro-adjustments for inflation do not reflect how the telecommunications market operates in practice.

111. In his opinion, the market for new unexceptional greenfield sites has hardened, with headline rents converging around £1,650–£1,750 per annum, and with incentive payments no longer being a market norm for no-AUV sites. He accepted that lower and higher figures exist but regarded such transactions as outliers explicable by special circumstances.

112. Mr Stott identified £1,650 per annum as the practical floor below which a willing landlord would not let such a site. Applying that approach to the present site, he concluded that although the site is not rural, it should be assimilated to a no-AUV greenfield category, with an uplift of £300 per annum to reflect its industrial setting, hardstanding, access, and operational advantages.

113. On that basis, his primary assessment produced a headline rent of £1,950 per annum, to which the agreed annualised professional fees of £648 fall to be added, resulting in £2,598, rounded to £2,600 per annum.

114. Mr Stott also set out alternative figures depending on assumptions. If the restrictive covenant were disregarded, he considered that the most likely alternative use would be open storage, producing a rent of approximately £1,500 per annum, which, when adjusted for the relative benefits and burdens of a telecommunications use and with annualised

fees and incentive assumptions included, could support a significantly higher figure.

115. For interim rent purposes, including professional fees, Mr Stott considered that with the restrictive covenant applied, the appropriate interim rent would fall in the range of £1,775–£1,900, depending on Terms. If the covenant were disregarded, he accepted that interim rent could lie in the region of £3,400–£3,625 per annum.

Mr Williams' evidence

116. Mr Williams approached the valuation from the perspective of the physical and commercial reality of the site. He did not accept that exclusion of alternative use value assimilates the site to a rural unexceptional greenfield site. In his view, the industrial setting remains materially relevant even on a strict no-AUV assumption.

117. He relied on comparables from industrial and commercial estates and on evidence from his own recent negotiations, contending that incentive payments of £4,000–£6,000 remain prevalent in the market and must be annualised into rent.

118. Mr Williams adopted a hybrid methodology, identifying a base or floor figure and then adjusting for benefits, burdens, disturbance, premiums, and professional fees. On that basis, he arrived at a rent of approximately £6,350 per annum for the new tenancy.

119. He considered that interim rent should broadly match the full annualised value of the new tenancy, rather than a lower transitional figure.

Expert evidence - weight

120. I now consider the relative weight to be attached to the expert valuation evidence of Mr Williams and Mr Stott respectively in a specialised telecommunications context. Both are experienced practitioners. In determining weight I have regard to:
    a. the expert's engagement with current negotiations in the relevant market;
    b. the quality, representativeness and transparency of the comparable evidence;
    c. the coherence of the valuation methodology and the explanation of adjustments;
    d. the stability of opinion and responsiveness to testing; and
    e. independence and objectivity.

    Each factor is material; none is determinative in isolation.

121. It is common ground that both experts are familiar with telecommunications lettings and the recent case law landscape. As I have already noted, the principal areas of disagreement are:
    a. the proper comparator set;
    b. the role and prevalence of premiums;
    c. the treatment of disturbance; and

d. the significance to value of alternative-use potential (AUV) given the legal constraints affecting the Site.

The parties also joined issue on the independence and objectivity of Mr Williams and, to a lesser extent, the breadth of Mr Stott's evidential base.

122. Mr Williams' evidence is grounded in contemporaneous participation in negotiations. He described his active involvement in a substantial number of transactions within the relevant period and identified current negotiations—some not yet completed—in which premiums were being sought notwithstanding uncertainty as to alternative use potential. He explained that his comparable data is drawn from multiple site providers rather than a single operator or a single solicitor-provided stream, and that he applies ordinary verification with site providers where feasible.

123. Crucially, in my view, Mr Williams provided an account of the negotiation process as it is currently experienced in practice, not merely as it appears in executed agreements. He (and the submissions based upon his evidence) described the iterative movement of positions, the leverage exerted by opportunity cost and access requirements, and the manner in which packages of rent and payments (including premiums and disturbance) are assembled. This illuminates how knowledgeable market participants presently approach agreement.

124. He grounded this evidence in his direct participation in a substantial number of transactions in the relevant period, including "some 10 to 15" such negotiations during 2025. I am satisfied that this

contemporaneous engagement provides an important additional insight into current market practice.

125. Mr Stott's analysis is careful and professionally presented. It is, however, largely retrospective and documentary in character. The comparable set on which he relies in this case was narrower and, on the evidence before me, predominantly sourced through the Claimant and via solicitors. The supporting transactional detail was in several instances less readily interrogable than would be ideal for forensic testing. He accepted that that was a failing when he was giving oral evidence. None of this impugns his integrity, but it bears on the weight of his evidence.

126. Mr Stott advances a more rigid site categorisation, placing emphasis on rural unexceptional greenfield site (RUGS) comparables and contending that premiums have diminished in prevalence post-*Vache Farm*. He treats disturbance payments as exceptional and ordinarily requiring particularised justification. Those propositions depend on a narrower dataset and a stricter conceptual framework which, while coherent, is inevitably less reflective of the dynamics of live negotiation described above.

127. A further point concerns vantage point. Mr Williams has intimate, comprehensive knowledge of transactions he negotiates. While Mr Stott's practice involves discussions with other telecoms agents active in the market, his knowledge is more often that of an outsider reviewing recorded details and information obtained through others. In this case, aspects of his comparable set were obtained by means which were, on the evidence, unorthodox and curated through legal rather than

surveying channels. That route is not inherently improper, but it necessarily limits representation and the depth of market testing the Court can perform on the underlying material.

128. The Claimant mounted a sustained challenge to Mr Williams' independence, relying on (i) evolution of his position following the Joint Statement, (ii) email correspondence with a third-party agent concerning a disputed comparable, and (iii) his frequent representation of site providers in live negotiations. It was said that these matters show alignment with one side of the market and a departure from the stance of an independent expert.

129. These criticisms required and received careful scrutiny. I accept that market embeddedness can carry a risk of partisanship and that tone in correspondence may invite concern if taken in isolation. However, I do not accept that the matters relied upon justify rejecting Mr Williams' evidence or materially reducing its weight. The fact that an expert refines analysis as assumptions are tested is not, without more, an indicator of partiality. As to the correspondence, while the language was robust, I am satisfied it reflected the culmination of an enquiry into provenance and reliability rather than an attempt to manufacture evidence. Finally, structural risks to independence are bidirectional: an expert acting predominantly for operators faces different but real risks of perspective bias.

130. The submission that Mr Williams' position "changed considerably" during the litigation is correct at the level of figures but not persuasive as to reliability. Valuation may be iterative. Where the evidence base evolves—through joint statement processes, disclosure, or

cross-examination—movement in an expert's figures can be a function of refined assumptions rather than unreliability. The question is whether the expert's ultimate view is properly reasoned and supported by the totality of the evidence. In this case, I am satisfied that it is.

131. Mr Stott's approach is orthodox and simpler to apply, but it relies on a stricter categorisation of sites and a narrower empirical base. Mr Williams' approach is more flexible and expressly acknowledges the constraints affecting the Site while recognising that market participants attribute discounted contextual value to sites within industrial or commercial environments. Neither approach is inherently improper, but I must determine which better reflects market reality on the evidence.

132. On balance, the market-anchored, package-based analysis advanced by Mr Williams is more consistent with the evidence. It explains the coexistence, in practice, of headline rents with additional payments (such as premiums and disturbance) and the manner in which parties price contextual potential even where legal constraints and uncertainty require discounting.

RUGS

133. The central dispute about comparators is whether the Site should be assessed primarily by reference to RUGS comparables, adjusted upwards for context, or (if possible) by reference to industrial/commercial comparables, adjusted downwards for constraints.

134. The parties would agree that the ideal starting point and the highest-weight evidence in a s.34 valuation is a set of suitable comparables. Thereafter, the parties' positions diverge fundamentally. Mr Stott contends that the Site is functionally equivalent to a RUGS because it lacks AUV. Mr Williams argues that this use of RUGS classification here is conceptually wrong, factually inappropriate, and leads to valuation distortion.

135. The Claimant's argument is that:

a. The defining characteristic of a RUGS is not rurality but the absence of lawful AUV, emphasising that valuation categories are defined by constraints, not geography.

b. The Site is subject to a restrictive covenant limiting its lawful use to telecommunications – therefore no industrial, storage, commercial, or ancillary use is lawfully available, and the Site must be valued as having no AUV.

c. Therefore, location within an industrial estate is legally irrelevant for this purpose and the closest functional comparables are new telecoms lettings of ground based greenfield locations with no AUV.

d. The post-*Vache Farm* market evidence supports the RUGS baseline: converging rents around £1,650–£1,750 p.a. and a decline in incentive payments reflects the true market for constrained sites.

e. There is no recognised valuation category between RUGS and AUV-bearing sites; any attempt to construct a "hybrid category" (an industrial site with no AUV but a higher base rent) is conceptually incoherent.

136. The Defendant's response is that:

a. RUGS is a factual, not merely functional, category. It is not just a site with no AUV; it is rural, agricultural, or isolated, lacking any commercial environment. By contrast, the Site is within or immediately adjacent to an industrial estate, served by major roads, and surrounded by commercial activity.

b. Market actors do not price industrial context sites as if they were farmland. Industrial landowners have different expectations, negotiating dynamics, and opportunity costs compared with rural landowners.

c. Rural land is simply less valuable than commercial land, irrespective of actual permissible uses.

d. The RUGS comparator set understates rent for this Site because the existence of the restrictive user covenant does not collapse value to RUGS levels. The industrial surroundings create scarcity and enhanced desirability, which RUGS comparables cannot capture.

137. I have found the Defendant's argument and Mr Williams' evidence on this point (grounded as it is in his market experience) persuasive.

138. The statutory task is to determine the open market rent on the basis of the Site's characteristics, location, constraints, and the market reality in which hypothetical negotiations occur. RUGS exist in markedly different environments—rural, agricultural, isolated, lacking commercial surroundings. The Site does not share these characteristics. The industrial environment is not incidental; it is part of the factual matrix.

139. It is also worthy of note that, to a significant extent, RUGS comparables are used here not because they are similar, but because they are available: Mr Stott candidly acknowledged when it was put to him that he was not comparing like with like: "..*trying to compare this site as apples with apples is very difficult because there are so few sites that have this restriction on them in an area in this sort of situation*…." i.e. an industrial context but governed by a telecoms-only covenant.

140. The deployment of the RUGS dataset is therefore being used by default, not because of genuine analogy. This undermines its conceptual validity. If comparables have to be the subject of adjustments as a class rather than to reflect site-specific differences, their advantage as a starting point over other valuation techniques is, to say the least, less than obvious.

141. For these reasons, I conclude that RUGS are not the appropriate starting point for valuation of this Site. They are neither factually analogous, nor reflective of market behaviour, nor representative of how hypothetical prudent parties would negotiate in a commercial environment, even one constrained by a restrictive covenant.

142. I am satisfied that the correct approach is to begin with industrial context comparables, adjusted to reflect, if and to the extent appropriate:

a. the covenant constraint,
b. benefits and burdens,
c. any site-specific features.

143. When the totality of the evidence is considered, the strengths of Mr Williams' evidence lie in its breadth, typicality and grounding in current negotiations. The limitations of Mr Stott's dataset and the retrospective vantage point of his analysis limit the assistance it can provide in capturing present market dynamics. The criticisms of Mr Williams' independence warrant caution but do not overcome the substantive reliability of his analysis.

144. Accordingly, save in the case of the Restrictive Covenant / AUV issue, which I consider below, I prefer Mr Williams' evidence where it conflicts with that of Mr Stott.

The effect of the Restrictive Covenant

145. I now turn to the correct approach to valuation in circumstances where, as here, the title to the site contains a restrictive user covenant ("the Restriction") permitting use of the land solely "*for the purposes of telecommunications*".

146. The parties' dispute is whether, and to what extent, that Restriction constrains the hypothetical negotiation and precludes any allowance for AUV.

147. The Claimant's case is that the Restriction is absolute and determinative: the hypothetical negotiation must proceed on the footing that the covenant will be fully enforced and that, as a consequence, no

AUV may form part of the valuation. The Claimant relies principally on Plinth Property Investment Ltd v Mott, Hay & Anderson (1979) 38 P&CR 361.

148. The Defendant argues that the Claimant's approach is legally incorrect, commercially unrealistic, and inconsistent with established valuation principles under the Code: even an absolute covenant may admit valuation consequences which allow some reflection of AUV and that, in any event, the hypothetical negotiation takes place "in the shadow of the Code", which exerts upward pressure on rent regardless of covenant strictness.

149. In the alternative, the Claimant submits that:

a. although in Code cases there may, for valuation purposes, be a notional relaxation of contractual terms which would otherwise limit permitted use of the site to statutory Code purposes only (because of the paragraph 24 "no network" assumption - EE Ltd v Islington LBC *("Threadgold House")* [2019] UKUT 53 (LC) at [70] and On Tower UK Ltd v AP Wireless *("Audley House")* [2022] UKUT 152 (LC) at [233])

b. nonetheless, where the contractual restriction permits a wider use than statutory Code purposes (even if only marginally wider), the restriction must be taken into account when determining compensation under paragraph 24: EE Ltd v Stephenson *("Pendown Farm")* [2022] UKUT 180 (LC) at [66]–[68]; in such cases, there is no upward pressure on rent arising from the possibility of Code proceedings.

150. Further, the Claimant argues paragraph 24's "no-network" assumption does not apply to the assessment of rent under the 1954 Act. Accordingly, there is no legal basis to disregard restrictions on user when assessing rent pursuant to section 34 of that Act. As the Upper Tribunal observed in *Vache Farm* (albeit in a different context):

"There is no justification for having regard to the economic value capable of being created by some alternative use of the Site unless that use is one for which the Site could in fact be used."

Agreed expert evidence

151. In their Joint Statement the experts agreed the following:

a. The Restriction is binding and is not one of the disregards to be applied when assessing value under section 34.

b. If the Defendant wished to remove or modify the Restriction, it would require either:

i. the agreement of the beneficiary; or

ii. an order of the Upper Tribunal.

c. The Defendant would incur costs in making either an application to the Upper Tribunal or in negotiations with the beneficiary and, in each case, the outcome might not result in removal or modification of the Restriction. It is also likely that consideration or compensation would need to be agreed or determined.

d. The Claimant's existing use (defined in the Existing Lease as "*the installation and operation for commercial purposes of the*

Apparatus for an electronic communication network") does not fall outside the Restriction.

e. The permitted use under the proposed new tenancy ("*the purposes of providing electronic communications network(s) and/or providing an infrastructure system*") likewise does not fall outside the Restriction.

f. Other telecommunications uses and users, apart from operators benefiting from the favourable statutory valuation regime provided by the Code ("non-Code Operators"), would also be lawful and would not offend the Restriction, although there is no evidence of current demand for such uses.

Issues

152. Four issues arise:

a. Whether the Restriction is to be treated as absolute and determinative in valuation.

b. Whether *Plinth* compels the exclusion of AUV.

c. Whether the Restriction falls within the *Threadgold House / Audley House* category (requiring notional relaxation) or the *Pendown Farm* category (requiring the covenant to be taken into account).

d. Whether, even if the Restriction is taken into account, the "Shadow of the Code" remains a material factor.

Summary of submissions

The Claimant

153. The Claimant submits that:

a. The Restriction is absolute and allows no possibility of alternative use.

b. *Plinth* mandates that where a covenant prohibits non-telecommunications use, the hypothetical negotiation must proceed on the basis that it will be enforced.

c. AUV must therefore be entirely ignored.

d. As this case falls within the *Pendown Farm*, rather than the *Audley House*, category, the covenant must be taken into account and cannot be notionally relaxed; accordingly, the Shadow of the Code has no material role in the valuation.

The Defendant

154. The Defendant submits that:

a. *Plinth* is a construction case tied to its own wording.

b. It was distinguished in Forte v General Accident Life Assurance Ltd (1986) 54 P&CR 9 because the lease in *Plinth* permitted only a single form of user, whereas in *Forte* other uses were at least contemplated, albeit subject to landlord consent.

c. Since the covenant in *Forte* was unqualified by any requirement that consent not be unreasonably withheld, such consent could in practice be arbitrarily refused.

d. There is no material legal difference between a covenant which allows for authorisation without a reasonableness constraint

and one which contains no express consent provision at all; in each case the landlord (or beneficiary) could, if it wished, authorise a change of use.

e. Accordingly, the question is one of fact: whether valuation should have regard to the likelihood that the third-party beneficiary of the restrictive covenant would agree to its relaxation.

f. As a matter of commercial common sense, such a beneficiary might well agree to relaxation because it presently receives nothing and could instead receive a share of value released by the change, in accordance with the principles in Stokes v Cambridge (1962) 13 P&CR 77 (for example, a 30% "cut").

155. On Mr Williams' assessment, that approach would still leave the site provider with approximately £4,500 per annum.

156. Finally, and in any event, the Defendant submits that the Restriction would either be ignored or carry limited weight because the hypothetical negotiation would take place in the Shadow of the Code:

a. under Code valuation principles restrictive covenants limiting use to telecommunications must be ignored (following *Audley House*), because to take them into account would be to value the site by reference to the very use which paragraph 24 requires to be excluded, thereby rendering the valuation referable to AUV.

b. Although *Audley House* was later distinguished in *Pendown Farm* on the basis that the restriction there extended to "*any*

communications use", this distinction does not assist the Claimant because the Restriction in the present case is neither more nor less restrictive than that considered in *Audley House*.

c. Accordingly, even if the Restriction is operative, a prudent site provider would recognise the risk of a less favourable imposed Code agreement, thereby exerting upward pressure in the negotiation.

Legal framework and analysis

157. The starting point is *Plinth*, which establishes that where a lease contains a narrowly drawn, single-use covenant and the rent review machinery provides no route to wider use, the valuer cannot assume relaxation of that covenant. The decision was rooted in contractual construction.

158. In *Forte*, the court distinguished *Plinth* because the lease there at least contemplated the possibility of a change of use. As Peter Gibson J observed (at p.22): *"The decision in the Plinth case… turned on the particular wording of the particular lease which permitted only one form of user."*

159. It is important to note that the distinction made was not one of valuation principle but of contractual scheme.

160. Where the title restricts use to statutory Code purposes only, the covenant directly conflicts with Paragraph 24's "no network" assumption. In such a case, the covenant is notionally relaxed for valuation purposes. *Pendown Farm* establishes the converse principle. Where the restriction is wider than statutory Code purposes (even marginally):

a. the covenant is taken into account;

b. it is not notionally relaxed;

c. Paragraph 24 valuation proceeds subject to its terms.

161. In *Plinth*, the rent review provision required the arbitrator to review the rent "*having regard to the provisions of this underlease*", including a clause restricting use to offices in connection with the business of civil engineers. The covenant was absolute. The Court of Appeal held that no allowance could be made for the possibility of relaxation. Brandon LJ stated (at 373):

"The arbitrator is not to say to himself: 'Those who have rights may not enforce them…'. He is to assume that the rights will be enforced and that the obligations will be performed."

162. Here, the restriction arises from a restrictive covenant in the landlord's title rather than from the lease itself, but neither party suggested that this distinction makes any difference in principle.

163. I do not find the Defendant's reliance on *Forte* persuasive. *Forte* concerns a contractual scheme in which the relevant user restriction itself contemplated authorised departures, so that the valuer was operating within a framework in which change of use was at least conceptually within the parties' bargain. Here, by contrast, the Defendant is legally constrained: the restrictive covenant forms part of the holding being valued, and it is not within the site provider's unilateral power to remove or vary it.

164. Although the valuation here is conducted pursuant to section 35 rather than under a contractual rent review clause, the underlying principle in *Plinth* remains applicable: the valuation proceeds on the assumption that binding covenants will be enforced and obligations performed, and the court is not to approach the hypothesis on the footing that rights will not be asserted or that restrictive obligations will be ignored. The statutory setting supplies the mechanism for valuation; it does not displace the assumption that legal constraints affecting the holding are operative.

165. On the evidence before me, there is no proper basis for concluding that the Restriction would in practice be relaxed. The Defendant's submission on this point amounts to little more than assertion. Nothing is known about the beneficiary's financial position, incentives, commercial objectives, or attitude to release; and there is no evidential foundation for treating release as likely within any meaningful timescale.

166. In the hypothetical negotiation, any relaxation would therefore not be within the site provider's gift. The tenant would, in substance, be asked

to pay an increased rent on the basis only that the landlord might then seek to negotiate or procure a release from a third party, with uncertain prospects, cost, and delay. A properly advised tenant would treat that as a landlord-side contingency rather than as value to be paid for upfront.

167. Mr Williams' proposal to "start with full AUV and discount back" assumes, without evidential foundation, that the beneficiary is likely to cooperate because it would be a "win-win". That approach inverts commercial risk by requiring the tenant to pay today for value which may never be realised, and it invites the court to treat speculative third-party cooperation as if it were part of the settled legal and commercial position. In my judgment, a properly advised hypothetical tenant would not agree to do so.

168. The Defendant's reliance on *Audley House* does not assist. The Tribunal's use of the word "telecommunications" at [233] is best understood as verbal shorthand. The Paragraph 24 assumption is, in substance, that the transaction does not relate to the provision or use of an electronic communications network. The mere coincidence of the word "telecommunications" in *Audley House* and in the present Restriction does not provide a principled basis for treating this covenant as one which would be notionally relaxed.

169. Both experts agreed that the Restriction permits certain non-Code telecommunications uses. It therefore falls squarely within the *Pendown Farm* category and would not be notionally relaxed. The covenant must be taken into account, and it is not displaced by Paragraph 24 assumptions.

170. That leaves Mr Williams' contention that, irrespective of strict legality, the market would attach some hope value to the prospect of consensual release. I accept in principle that the prospect of securing a release of a restriction can, in an appropriate case, constitute a legitimate element of value. However, where the evidential basis does not permit even a rational range to be identified—and where the prospect depends on third-party cooperation that is materially uncertain—it is not legitimate to assign an arbitrary or even nominal uplift. The correct course is to attribute no material weight to the factor.

171. In the present case, the endpoint of Mr Williams' evidence on hope value was highly uncertain (for example, "*I don't necessarily say what the hope value would be*…"). Under cross-examination he accepted that, against the background of a relatively recent covenant, uncertainty as to the beneficiary's reaction, and the costs and risks of release, the availability of alternative use was speculative. His evidence did not identify a principled basis on which the court could quantify hope value without descending into guesswork.

172. By contrast, Mr Stott's evidence was robust and on this point is to be preferred. He identified a double layer of uncertainty: (i) whether the beneficiary would agree at all; and (ii) at what price and on what timetable. In my judgment, that compound uncertainty justifies attributing minimal or no rational hope value in the section 35 valuation exercise in this case.

173. It follows from the conclusions I have reached on the Restriction that the valuation must proceed on the footing that no lawful alternative use value forms part of the section 35 hypothesis. In determining the rent

under section 34, I have therefore taken the Restriction fully into account and have not attributed any element of value to speculative or contingent alternative use, nor allowed any allowance which depends upon the prospect of third-party release. The conclusions reached above operate as a controlling premise for the valuation exercise that follows.

New Zealand Farm* and its interaction with *Vache Farm

174. The parties and their respective experts disagree as to the relevance of *New Zealand Farm* to the present valuation and its interaction with *Vache Farm*.

175. *New Zealand Farm* was a decision of the County Court on a lease renewal under section 34 of the Landlord and Tenant Act 1954 following a full evidential hearing. It is not binding authority. However, it contains a careful and detailed analysis of the valuation of a telecommunications site in the post-Code landscape and, for that reason, carries significant persuasive weight.

176. The Court in *New Zealand Farm* stated (or restated) that valuation under section 34 remains an open market valuation and is not to be assimilated to, or constrained by, the artificial statutory assumptions mandated by paragraph 24 of the Electronic Communications Code.

177. The court specifically rejected the argument that section 34 rent should equate to Code consideration plus professional fees. It held that such an approach was inconsistent with the section 34 hypothesis and unsupported by the evidence. Expert evidence which sought to align section 34 rents with paragraph 24 outcomes was rejected as both legally misconceived and evidentially unsound.

178. Of particular importance was the court's finding that a properly advised landlord offering a site to the open market would reasonably expect to achieve a rent in excess of Code-restricted consideration. That conclusion reflected the commercial reality that Code valuations are frequently enhanced in practice by premiums or capital payments, and that consensual agreements avoid the cost, delay, and uncertainty associated with imposed Code proceedings.

179. The court did not treat Code outcomes as determinative, nor did it import Code assumptions into the valuation exercise. Instead, it treated evidence of actual market behaviour—including the prevalence of commercial "top-ups"—as informing what a willing landlord and willing tenant would agree, consistently with the section 34 hypothesis.

180. On the evidence before it, the court concluded that a competitive negotiation would settle within a range of £2,000 to £3,000 and fixed the rent at £2,750, having regard to the specific characteristics of the site.

That conclusion was fact-sensitive and expressly not intended to establish any benchmark or minimum rent applicable to other cases.

181. Although not determinative of the present valuation, *New Zealand Farm* is instructive in demonstrating that section 34 valuations which are in substance anchored to Code consideration, or which fail to reflect evidence of real-world commercial payments, are unlikely to reflect true open market rent.

182. I therefore accept the Defendant's submission that *New Zealand Farm* materially undermines the Claimant's methodological approach, which seeks, in effect, to replicate Code valuation outcomes within a section 34 exercise. While the case does not dictate the result here, it provides a persuasive calibration point and confirms that the Claimant's approach on this issue is misaligned with both authority and market reality.

The role of Vache Farm

183. *Vache Farm* was decided under paragraph 24 of the Electronic Communications Code and operates within a fundamentally different statutory valuation regime. Under paragraph 24, the court is required to apply assumptions which deliberately strip out network value and any ransom element, producing a consideration calculated on a constrained "no-scheme" basis.

184. In *Vache Farm*, the Tribunal fixed consideration at £1,750 per annum for an unexceptional rural greenfield site. That figure has since been treated as a reliable reference point for Code valuations of broadly comparable sites.

185. Crucially, however, *Vache Farm* does not address section 34 of the 1954 Act. It does not apply the open market hypothesis, does not involve a willing landlord and willing tenant free of Code assumptions, and does not ask what rent would be agreed where statutory compulsion is absent.

186. The valuation exercise undertaken in *Vache Farm* is therefore analytically distinct from that required under section 34. A direct transposition of the figure reached in *Vache Farm* into a section 34 valuation would be legally erroneous.

187. The critical question is not whether *Vache Farm* applies directly to section 34—it does not—but whether, and to what extent, it forms part of the market context against which a section 34 valuation is carried out.

Market context and reconciliation of the authorities

188. In my judgment, considerable care is required. The court must not import Code assumptions into the section 34 hypothesis or treat Code consideration as a proxy for open market rent. To do so would collapse two distinct statutory regimes into one, contrary to authority.

189. At the same time, section 34 requires the court to determine the rent which the site "*might reasonably be expected to let in the open market*". That necessarily assumes reasonably well-informed parties operating in the real commercial world.

190. In that commercial world, parties are taken to know that, absent agreement, an operator may seek Code rights, that Code consideration is likely to be assessed by reference to authorities such as *Vache Farm*, and that invoking the Code carries cost, delay, and uncertainty. They are also taken to know that consensual agreements commonly involve payments exceeding Code-restricted consideration.

191. That does not mean that *Vache Farm* supplies a benchmark, minimum, or starting point for section 34 rents. It does not. Rather, it forms part of the shared commercial background knowledge against which parties negotiate and against which the court assesses the commercial realism of a proposed section 34 valuation.

192. This approach is reflected in *New Zealand Farm*. The court there neither adopted Code consideration nor applied an arithmetical uplift. Instead, it recognised the artificial constraint inherent in Code valuations, observed that the market routinely departs from them by agreement, and fixed rent by reference to evidence of what parties actually agree outside the Code regime.

193. Read together, therefore, *Vache Farm* and *New Zealand Farm* occupy different analytical domains. *Vache Farm* explains how consideration is fixed where Parliament requires the court to disregard market reality. *New Zealand Farm* explains how rent is fixed where the court is required to apply it.

194. Where a section 34 valuation produces a figure materially below the level of Code consideration identified in *Vache Farm*, that fact is not determinative, but it warrants careful scrutiny. Such an outcome would require cogent evidential justification, given that *New Zealand Farm* demonstrates that open market rents have historically exceeded, not undercut, Code-restricted figures.

195. I therefore take into account the (apparently agreed) expert evidence that *Vache Farm* has materially influenced market behaviour for rural unexceptional greenfield sites, shifting negotiating anchors from figures around £750 to figures around £1,750. I treat that evidence as relevant background to the market context in which section 34 negotiations now take place.

196. Both experts also accepted that there is a level below which a reasonably advised landlord would not let <u>any</u> telecommunications site within an industrial estate. Mr Stott placed that level at approximately £1,000 per annum. Mr Williams suggested £1,500, while accepting that for a rural

or less advantaged site the figure would in fact be closer to £1,000. For reasons already explained, I prefer the evidence of Mr Williams on this point.

197. The Defendant submits that because *New Zealand Farm* pre-dated *Vache Farm*, the figure reached there should be mechanically "upgraded" by reference to post-*Vache Farm* market conditions and treated as a minimum no-AUV rent in the present case.

198. That submission has superficial attraction, but it is ultimately conceptually flawed. *Vache Farm* is a paragraph 24 case operating within a different statutory hypothesis, and to treat it as mandating a fixed uplift risks conflating valuation regimes. Moreover, *New Zealand Farm* emphasises that structured valuation logic is a fallback where evidence is absent, not a mechanism for importing later Code benchmarks into section 34 by arithmetic adjustment.

Premiums and capital payments

199. A further area of dispute concerns the role of premiums, incentive payments, disturbance payments and other capital sums in the valuation exercise, particularly in cases where there is no AUV.

200. The Claimant's case, as advanced by Mr Stott, is that incentive or premium payments have largely ceased to be a feature of the market for new sites with no AUV. The essence of that thesis is that, since

headline rents have increased to approximately £1,650–£1,750 per annum for such sites, there is no longer any need for an additional capital inducement. On that analysis, premiums are said to be confined to sites with AUV, to renewals, or to special cases, and should not be treated as a general feature of market rent for no-AUV sites.

201. The Defendant's case, advanced by Mr Williams, is that this thesis does not reflect market reality. Mr Williams' evidence is that premium payments continue to be negotiated in the market even where a site has no AUV, and that disputes about whether a payment is labelled a "premium", "incentive" or "disturbance" are largely semantic. On his evidence, such payments remain a commonplace component of negotiated outcomes, forming part of the overall consideration agreed between willing parties. The Defendant relies both on authority and on a series of recent transactions (including agreements not yet completed) said to demonstrate that premium payments continue to feature in practice.

202. The authorities cited to me do not support the proposition that premiums are either irrelevant or extinguished as a feature of the market. In *New Zealand Farm*, the court rejected as dogmatic the contention that capital payments must be ignored, holding that the evidence established "beyond doubt" that capital payments were (in 2022) widely available and that there is a relationship between rent and premiums, such that if no premium were offered the transaction would be likely to complete at a higher rent. The court emphasised that operators often seek to hold down headline rents, while nonetheless being prepared to pay more by way of capital sums or commercial top-ups.

At paragraph [101] –

"*A properly advised landlord offering a site to the market at large and looking to receive an annual rent which was not supplemented by a premium would expect to better a rent restricted by the artificial assumptions dictated by paragraph 24 of the Code. They would look around at the transactions taking place and would see that Code consideration is routinely enhanced by annual "commercial payments" and capital sums. They would recognise the substantial saving in time and money which an operator would achieve by doing a consensual deal rather than by using the Code. So too would the operators to whom the site would be likely to be attractive*".

203. Similarly, in *Pippingford,* the court recognised capital payments as an established and routine feature of the telecoms market, describing them as part of the "financial package" agreed between willing landlords and operators, available "*irrespective of the level of enthusiasm of the particular site provider or the significance of the particular site*" (paragraph [108]) and cautioning against treating them as mere payments for willingness or as somehow extraneous to value.

204. Against that background, I accept Mr Williams' evidence that, in market practice, it is often immaterial what label is attached to a particular payment. Whether described as a premium, an incentive or disturbance, such sums reflect part of the overall commercial bargain. Where a higher headline rent is paid, a premium may not be agreed in addition; conversely, where operators resist higher rent, they may agree an upfront capital payment instead. As Mr Williams put it in his oral evidence, such payments are "window-dressing" only in the sense that

they allow parties to express value in different ways, not in the sense that they are economically meaningless.

205. I do not accept the Claimant's submission that premiums have ceased to be a feature of the market for sites with no AUV. The evidence does not support so sharp a bifurcation. Nor do I accept that the continued existence of premiums can be dismissed as anomalous, exceptional, or confined to special regimes. The authorities demonstrate that premiums and capital payments have long formed part of telecoms transactions, and the market evidence confirms that they have not disappeared.

206. However, it is equally important to be clear as to the limits of what follows from that conclusion . The mere fact that premiums continue to be agreed does not mean that they have independent justificatory force as a separate head of value. The evidence shows the opposite. Premiums are not additive to a properly assessed market rent; they are an alternative way of expressing the same overall consideration. Where full market rent is paid, no premium is ordinarily agreed in addition. Where a premium is paid, it is typically because the headline rent has been constrained, whether by negotiation strategy, internal operator benchmarks, or the desire to frame payments as incentives rather than rent.

207. I therefore find that premiums, incentives and similar capital payments should not be treated as freestanding valuation items, capable of being added on top of market rent by way of a discrete adjustment. They derive no independent justification once the court has fixed the rent which a willing landlord and a willing tenant would agree in the open

market. Their relevance lies instead in confirming that negotiated outcomes frequently exceed bare headline rent, and in illustrating the flexibility of the market in allocating value between rent and capital payment.

208. In the present case, this means that while the market evidence supports the conclusion that capital payments continue to feature in agreed telecoms transactions, that fact does not warrant the mechanical addition of a notional premium to the rent I determine under section 34. The appropriate course is to determine a single composite market rent which reflects the overall value of the transaction, recognising that in practice that value might be apportioned differently by parties in negotiation, but without treating premiums as a separate or additional entitlement.

Rent and Interim rent

209. On the evidence before me, the parties' no-AUV positions are widely divergent. The Claimant advances a rent of £2,600 per annum, reflecting Mr Stott's primary case. The Defendant advances £4,680 per annum, reflecting Mr Williams' no-AUV case as ultimately presented. The dispute turns in particular on :

    a. the correct approach to comparability once alternative use value is excluded;
    b. the extent to which the court can, and should, make an evaluative judgment where reliable close comparables are sparse;
    c. the use and weight to be attached to imperfect or non-arm's-length transactional evidence.

Comparability once AUV is excluded

210. I have found that a telecommunications site located within an industrial estate, even on a no-AUV assumption, is not properly comparable to a RUGS. The removal of AUV removes one valuation driver; it does not efface the commercial setting, ownership profile, or operational context of the holding within an active industrial estate.

211. The consequence is that RUGS evidence may assist as background context, but it cannot, without more, provide the principal comparator platform for the rent of this holding, viewed in its actual commercial and operational setting.

212. That conclusion bears directly on the weight to be attached to the Claimant's RUGS comparables. Even where such transactions are genuinely no-AUV, they remain drawn from a materially different segment of the market, characterised by different land use constraints, different ownership incentives, and different negotiating dynamics.

Evidential gap and the need for judicial evaluation

213. A central difficulty in this aspect of the case is the absence of a coherent and well-populated body of comparable evidence of new telecommunications lettings of industrial-estate sites on a no-AUV footing.

214. The Claimant's dataset consists largely of rural greenfield sites. The Defendant relies upon a small and fragmented group of transactions said to involve no AUV, but those transactions are affected by atypical features or limited detail, and other sites relied upon have an uncertain AUV position.

215. The consequence is that the court is not presented with a reliable run of true industrial-estate no-AUV new-letting comparables from which the rent can be read directly. In these circumstances the valuation exercise necessarily involves a greater degree of judicial evaluation, informed by cross-checks rather than by direct extrapolation from close comparables.

Non-arm's-length evidence and structured cross-checks

216. In *New Zealand Farm* (at [100]), the court observed that, although the renewal transactions considered there were not at arm's length because they were between parties already in a landlord and tenant relationship, they nevertheless provided evidence of the levels at which settlements were reached between well-informed and advised parties. That observation supports a pragmatic approach to imperfect evidence where the comparator pool is thin.

217. In *New Zealand Farm* [58], the court also explained that the structured approach resorted to in *Hanover* is appropriate only where reliable transactional evidence is missing. That principle is engaged where, as here, the evidence does not provide a reliable run of truly comparable transactions for the specific category of holding to be valued (industrial estate, no-AUV).

218. It follows that, to the extent that the evidence does not permit a straightforward comparative valuation using close industrial-estate no-AUV comparables, the court is entitled to have regard to structured valuation logic as a cross-check, provided it remains anchored in the section 34 statutory hypothesis and does not import paragraph 24 assumptions.

Treatment of renewals and ESN comparables

219. The Claimant urges the court to give no weight, and to disregard altogether, comparables which involve renewal transactions or ESN agreements. I cannot accept that submission.

220. It is well established that such comparables require careful handling and ordinarily carry reduced weight. However, in this sector, and particularly where the body of truly comparable evidence is sparse, they cannot simply be discounted altogether. As observed in *New Zealand Farm*, settlements reached between professionally advised parties may provide legitimate evidence of the levels at which the market in fact clears, even if they are not ideal arm's-length exemplars.

221. I therefore treat such evidence as part of the overall evidential landscape, bearing in mind its limitations, and of course using it as a cross-check rather than as a determinative comparator.

The SR1 and RUGS comparables

222. With that approach in mind, I consider the comparables listed at SR1 – annexed to Mr Williams' Supplemental report. These include renewals

and ESN agreements; they relate to rural or "greyfield" rather than industrial sites; and they involve holdings with no AUV.

223. When capital payments are annualised and added to the agreed headline rents, those transactions produce a range of outcomes between approximately £1,750 and £4,100 per annum. Most fall within a narrower band between approximately £2,600 and £3,600 per annum. The Court's valuation in *New Zealand Farm* also fell within this range.

224. I treat this range not as a definitive scale from which the subject rent can be read directly, but as a contextual indication of the levels at which no-AUV telecoms packages are agreed in practice across a range of constrained or non-ideal settings.

225. I also address specifically the Claimant's reliance on Mr Stott's RUGS comparables. A significant number of those transactions were obtained indirectly via solicitors, involved no professional representation on the landlord side, and derive from only a limited segment of the market. They are few in number and cannot represent a balanced or comprehensive sample of negotiated outcomes across the sector.

226. In those circumstances, even leaving aside their rural character, I consider that those RUGS comparables cannot safely bear the weight placed on them by the Claimant and do not provide a reliable foundation for fixing the rent of this holding.

Expert preference

227. The experts differed slightly as to the adjustment attributable to the difference between rural and industrial-estate sites. Mr Stott assessed that difference at £300; Mr Williams at £500.

228. Mr Williams drew on extensive and recent experience of negotiating such leases in practice. Mr Stott provided no detailed supporting analysis for his figure, and his experience of negotiation is materially less recent. I prefer Mr Williams' evidence on this point.

229. More generally, I accept Mr Williams' evidence as to market reality and the way in which professionally advised parties negotiate in cases of disagreement. I accept his evidence (it was not challenged in cross-examination) that structured valuation logic of a *Hanover* type is used in practice, not as a rigid formula but as a shared analytical framework against which competing positions are tested.

230. I further accept that, in a case such as the present—where there is an evidential gap in direct industrial-estate no-AUV comparables—the hypothetical negotiating parties would be influenced by an assessment of the kind set out in Mr Williams' evidence, even if they did not adopt it wholesale or treat it as determinative. That does not convert the section 34 exercise into a paragraph 24 valuation, nor does it justify mechanical aggregation of assumed components. It does reinforce the legitimacy of structured reasoning as a cross-check.

Tyburn Trading Estate, Aerotron Sports Ground, and Grove Industrial Estate

231. Tyburn Trading Estate and Aerotron Sports Ground are no-AUV sites, but they are not direct industrial-estate comparables in the market

sense. Tyburn is a streetworks site and an outlier within that category; Aerotron is a greyfield sports ground site with limited contextual detail.

232. Grove Industrial Estate, in respect of which Mr Williams stated "*I consider this new letting transaction most useful due to the close similarities in setting, established alternative land use, and area of demise*", and which was negotiated by Mr Williams himself, does on its face appear closer to the subject holding than many other transactions relied upon.

233. However, Grove is materially affected by AUV. That feature taints it as a no-AUV comparator and prevents it from being relied upon as a direct benchmark for the present valuation, notwithstanding its surface similarity of setting.

234. Nevertheless, taken together, Tyburn, Aerotron and Grove provide an indication of the level at which telecoms packages settle in constrained, atypical, or mixed-feature contexts, and they assist in anchoring the court's evaluative judgment. The annual rent plus annualised capital payments agreed in each case are:

Aerotron - £2,745
Tyburn Trading Estate - £2,777
Grove Industrial Estate - £6,610

235. Accordingly, any *Hanover*-style adjustment applied in this case is not a second allowance already reflected in those transactions, but a targeted adjustment to reflect features of the subject holding not captured by

imperfect comparables, including its commercial setting within an active industrial estate.

236. In that context, I give substantial weight to Mr Williams' modified-*Vache Farm* assessment, while recognising that it is not to be applied mechanistically.

237. In doing so, I accept Mr Williams' evidence that:
    a. the practical floor for industrial sites is £1,500;
    b. the benefits of this site by comparison with a RUGS include hardstanding access, adjacent hardstanding and a secured and fenced compound;
    c. parties would consider and negotiate around a "disturbance" payment even where there is little physical disturbance to the landlord and the payment is merely part of a package of capital payments; and
    d. this approach and assessment of value is, at least to a limited extent, supported by his experience as expert witness in the *Audley House* and *260 Brighton Road* cases.

238. That assessment is:
    a. Floor for industrial sites: £1,500;
    b. Benefits and burdens of a telecoms lease: £1,500;
    c. Premium of £4,500 annualised to £583;
    d. Disturbance payment of £2,000 annualised to £259;
    e. Total: £3,842.

239. Adding agreed professional fees annualised at £648 produces a total of £4,490, conveniently expressed as £4,500 per annum.

240. I do not treat any individual component as an entitlement or as an item to be aggregated. The assessment is relied upon only as reflective of how professionally advised parties would reason through value in a negotiation where direct industrial-estate no-AUV comparables are lacking.

Inflation

241. A limited issue arose as to whether inflation necessitated an adjustment to historic comparables and earlier valuation figures. The point can be dealt with shortly.

242. In *Vache Farm*, the Tribunal declined to update historic figures by reference to inflation, while recognising that inflation may affect the real value of figures determined in earlier years. The observation was contextual, not prescriptive: inflation was not treated as mandating indexation or mechanical uplift.

243. Mr Stott addressed the issue expressly. At paragraph 10.17 of his report dated 10 November 2025, he considered whether any further adjustment was required by reason of inflation, having regard to the comments in *Vache Farm*. He concluded that no such adjustment was justified, noting that inflation had moderated significantly since the 2022 peak and that there was no proper basis for an inflation-based recalibration of rent.

244. Mr Williams did not advance CPI, RPI, or any other index-based methodology, nor did he propose that historic figures should be uprated by reference to inflation. While it is correct that cumulative inflation since 2022 has reduced purchasing power by in excess of 15% (as measured by CPI), neither expert provided evidence or reasoning capable of supporting the application of that fact as a valuation adjustment under section 34.

245. Inflation did not feature in the oral evidence, and no party invited the court to apply indexation or to adjust rent by reference to inflation. The experts were recorded as agreeing that inflation, of itself, did not require adjustment for the purposes of this valuation exercise.

246. I accept that general price inflation since 2022 forms part of the economic background against which market negotiations have taken place and historic evidence falls to be assessed. Since cumulative inflation over that period has reduced purchasing power by in excess of 15% (as measured by CPI), it seems to me that it would be artificial to approach valuation as if those changes in the wider economy had no bearing at all on market conditions.

247. That said, inflation does not lend itself, on this evidence, to mechanistic treatment or indexation. No party advanced, and no expert supported, any automatic or formulaic uplift to historic figures by reference to inflation (however measured). Rather, in my view, the effect of inflation is one of a number of background factors to be borne in mind when drawing the threads together and arriving at a final section 34 rent, alongside the market evidence, comparability, and the evaluative judgments which that evidence requires.

Conclusion - rent

248. Drawing together the imperfect but informative comparator evidence, the contextual significance of the decision in *New Zealand Farm* and the market influence of *Vache Farm*, the absence of a reliable run of industrial-estate no-AUV comparables, and my preference for Mr Williams' evidence as to market behaviour, I am satisfied that the rent would not settle at anything like the generic rural no-AUV floor.

249. Instead, in a hypothetical negotiation between well-informed and professionally advised parties, the rent would reflect the commercial setting of the holding within an active industrial estate.

250. Taking all of those matters into account and allowing for inflation and the inherent imprecision of valuation where close comparables are lacking, I conclude that Mr Williams' figure of **£4,500 per annum** best reflects the centre of gravity of the evidence, and the level at which the parties would be likely to arrive at an agreed annual rent. A materially lower figure would be inconsistent with the evidence of market behaviour in an industrial-estate context; a materially higher figure would not be defensible in the absence of a coherent run of industrial-estate no-AUV comparables capable of sustaining it.

Interim Rent

251. I turn finally to interim rent. The relevant statutory framework is contained in sections 24A–24D of the Landlord and Tenant Act 1954. The default position under section 24C(2) is that the interim rent is the

rent which would be payable under the new tenancy determined under section 34, unless one of the statutory exceptions applies.

252. The parties are agreed that the relevant valuation date for interim rent purposes is 10 April 2024, being the commencement of the interim period. The dispute is whether, having regard to market conditions at that date, it would be just to depart from the section 34 rent determined above.

253. The Claimant submits that the interim rent should be lower than the section 34 rent, on the basis that, as at April 2024, the market had not yet been influenced by the decision in *Vache Farm*, which was handed down in July 2024. On that footing, the Claimant relies on Mr Stott's interim rent analysis, which produces a figure of £2,260 per annum inclusive of annualised professional fees.

254. That figure is derived by reference to two transactions relied upon by Mr Stott (Lower Clicker and Main Street), producing an average pre-*Vache Farm* rent of £1,612.50, to which is added the agreed annualised professional fees of £648, giving £2,260.50, rounded to £2,260.

255. The Defendant submits that this figure is unrealistically low and is not a proper reflection of the market, even at April 2024. It argues that the interim rent cannot properly be materially lower than the section 34 rent ultimately determined, and in any event should not fall below the level indicated by *New Zealand Farm*, which was a section 34 determination made in August 2022 and therefore already part of the market well before April 2024.

256. The court's task on interim rent is not to re-run the section 34 exercise, but to ask whether, as at the interim rent valuation date, there is a substantial difference between the rent then payable in the market and the rent determined under section 34, such that it would be unjust to apply the section 34 figure throughout the interim period.

257. The mere fact that market conditions evolve, or that a later authority influences negotiating behaviour, does not of itself justify a departure from the section 34 rent. There must be a real and material difference, grounded in evidence, between the market rent at the interim date and the rent fixed for the new tenancy.

258. I am not persuaded that such a substantial difference has been demonstrated in this case.

259. First, although *Vache Farm* post-dates the interim rent valuation date, it does not follow that the market as at April 2024 was operating on materially different assumptions such as would justify an interim rent almost half of the section 34 rent I have determined. As the evidence acknowledged by both experts indicates, the market had already moved on from the much earlier figures seen in cases such as *Dale Park*, and *New Zealand Farm* was already part of the valuation landscape by 2022.

260. Secondly, the Claimant's interim rent figure proceeds from the same foundational premise which I have rejected in the section 34 analysis, namely that the holding can be treated, once AUV is excluded, as equivalent to a rural unexceptional greenfield site. For the reasons already given, that premise is unsound. An interim rent built on that footing is correspondingly unreliable.

261. Thirdly, I accept the Defendant's submission that an interim rent in the region of £2,260 per annum, inclusive of professional fees, would sit implausibly low when cross-checked against section 34 determinations such as *New Zealand Farm*, even allowing for the passage of time and market-hardening arguments advanced by the Claimant.

262. Standing back, I am not satisfied that the evidence shows a market at April 2024 which was so materially different from the market informing the section 34 determination as to justify fixing a substantially lower interim rent.

263. In those circumstances, the default position applies. I determine that the interim rent is the same as the rent payable under the new tenancy determined pursuant to section 34.

264. Accordingly, the interim rent is £4,500 per annum, being the rent I have determined above, inclusive of the agreed annualised professional fees.

Consequentials

265. I invite the parties to agree a draft lease and draft order to give effect to the decisions set out above.

266. If any matters cannot be agreed, I would propose in the first instance to decide them on the basis of written submissions limited to 10 pages per party, filed within 14 days of formal hand-down; however, I will consider a request for a further oral hearing if made with reasons.

Principal Authorities cited

O'May v City of London Real Property Co Ltd [1983] 2 AC 726 (HL)
Plinth Property Investments Ltd v Mott, Hay & Anderson (1979) 38 P & CR 361
Wallis Fashion Group Ltd v CGU Life Assurance Ltd (2001) 81 P & CR 28

Cornerstone Telecommunications Infrastructure Ltd v University of the Arts London ("*University of the Arts*") [2020] UKUT 248 (LC)
EE Ltd v Stephenson ("*Pendown Farm*") [2022] UKUT 180 (LC)
EE Ltd and Hutchison 3G UK Ltd v AP Wireless ("*Vache Farm*") [2024] UKUT 216 (LC)
EE Ltd and Islington LBC ("*Threadgold House*") [2019] UKUT 53 (LC)
EE Ltd and others v Morriss and others ("*Pippingford*") [2022] EW Misc 1 (CC); [2023] 1 P & CR 7
On Tower UK Ltd v AP Wireless ("*Audley House*") [2022] UKUT 152 (LC)
On Tower UK Ltd v AP Wireless (II) UK Ltd ("*New Zealand Farm*") [2022] All ER (D) 12 (Sep)
On Tower UK Ltd v AP Wireless ("*Ewefields*"), FTT 5 August 2024; [2025] UKUT 280 (LC)
Vodafone Ltd v Gravesham Borough Council (judgment 6 November 2025)
Vodafone Ltd v Hanover Capital Ltd ("*Hanover*") 2021] 2 P. & C.R. 3.