



Falcon Chambers

# Upper Tribunal Update

Fern Schofield



[falcon-chambers.com](http://falcon-chambers.com)



## **This year's cases**

**Cornerstone Telecommunications Infrastructure Ltd v Compton Beauchamp Estates Ltd [2022] UKSC 18**

**EE Ltd v Morriss [2022] EW Misc 1 (CC) (“Pippingford”)**

**EE Ltd & Hutchison 3G UK Ltd v Affinity Water Ltd [2022] UKUT 8 (LC)**

**Crawley Borough Council v EE Limited and Hutchison 3G Limited [2022] UKUT 158 (LC)**

**EE & H3G v HSBC Bank Plc [2022] UKUT 174 (LC)**

**EE Ltd v Stephenson [2022] UKUT 180 (LC) (“Pendown”)**

**CTIL v London Borough of Hackney [2022] UKUT 210 (LC)**

**Vodafone Ltd v Gencomp (No.7) Ltd [2022] UKUT 223 (LC)**

**On Tower Ltd v AP Wireless (II) [2022] EW Misc 6 (CC) (“New Zealand Farm”)**



Falcon Chambers

# Valuation evidence update



[falcon-chambers.com](http://falcon-chambers.com)



**EE Ltd & Hutchison 3G UK Ltd**

**v**

**Affinity Water Ltd**

**[2022] UKUT 8 (LC)**



**“We have some difficulty with the exhaustive approach taken by the experts, which seems to us to be entirely detached from any exercise which parties negotiating on the assumed basis might undertake. On any view the level of rent being negotiated is modest, and we are sceptical that the notional parties seeking to agree it would descend to the level of granularity with which the experts have analysed the evidence in this reference.”**

# Affinity Water



Decision	Type of property	Annual consideration
<i>CTIL v Fotheringham</i> (Lands Tribunal for Scotland)	Rural, estate location	£600 (£1,500 in year of installation)
<i>On Tower v Green</i>	Rural, adjacent to housing	£1,200
<i>Marks &amp; Spencer</i>	City, department store/offices	£3,850
<i>London &amp; Quadrant</i>	City, residential rooftop	£5,000



“These decisions provide guidance not only on an approach to valuing sites on the artificial assumptions required by paragraph 24, but more broadly on the levels of consideration which parties can expect the Tribunal to determine in other cases. Without taking account of any special features or particular sensitivities which a particular location may exhibit, we would be surprised if the value of Code rights fell significantly outside the ranges indicated by previous decisions concerning sites with similar characteristics”



“We would suggest that the pattern, or tone, is now becoming clear enough that **it should rarely be necessary** when presenting evidence to the Tribunal in future for parties **to adopt the much more detailed Hanover Capital approach to valuation**”





- 1. No-network assumption → No real market transactions**
- 2. Small amounts of money**
- 3. Similar sites**



**EE Ltd v Stephenson**  
**[2022] UKUT 180 (LC)**  
**“Pendown”**



**“In future, therefore, parties should avoid the expense of preparing evidence of real-world telecommunications transactions and analysis on the comparative method where the relevant assessment is being undertaken under paragraph 24 of the Code. Where it is said that a particular site has an alternative use value which is more than nominal then a comparable assessment based on transactions for that alternative use will of course be valuable.... **but evidence of what other parties have agreed for sites with no alternative use value for lettings on Code terms are of no assistance.”****



**“There is nothing particularly unusual about this example of a rural mast site. Looked at in the round, there is no reason to depart from the figure which the Tribunal identified in *On Tower v Green* as the letting value, on the paragraph 24 assumptions, of an unexceptional rural site remote from any housing. I therefore determine that the rent under the new lease will be £750 a year.”**



**On Tower Limited**

**v**

**AP Wireless II (UK) Limited**

**[2022] UKUT 152 (LC)**

**“Audley House”**



“Absent special features (such as a valuable alternative use), it is **unlikely that the Tribunal will assess consideration at a level that is not consistent with the range of values seen in the table above.** The Tribunal is **unlikely to be assisted by analysis of comparables**, save for the value of alternative uses where that is in dispute. The Hanover approach may be useful as a cross-check in negotiations, but **the Tribunal will not be assisted by micro-analysis** of the cost of benefits and burdens measured in tens of pounds which... is not how negotiations work in practice.”

# Tribunal Procedure



## 1. First-Tier Tribunal

## 2. Standard directions



## Key takeaways

1. **1954 Act → telecoms comparables OK. Code → AUV comparables only.**
2. **Starting point under the Code: the Affinity Water table**
3. **Broad brush approach**
4. **What makes this site different?**





Falcon Chambers

# Terms update

[falcon-chambers.com](http://falcon-chambers.com)



	Pippingford	Audley House	Pendown	Hackney	New Zealand Farm
Access					
Contractual compensation					
Indemnity					
Non-interference					
Tenant's break					
Landlord's break					
Rent review					
Health & safety, security					
RAMS					
ICNIRP					
Sharing/upgrading					
Parking					
Access to superior landlord's property					
Generator					
Repair					
Vacant possession					
Enforcement					
Provision of warranties and guarantees					
ADR					
Laying conduits					
Landlord's reserved rights					
Cost of enforcing superior landlord's covenants					
Planning applications					



## Key takeaways

1. **Site provider control – generally limited**
2. **Simplicity is key**



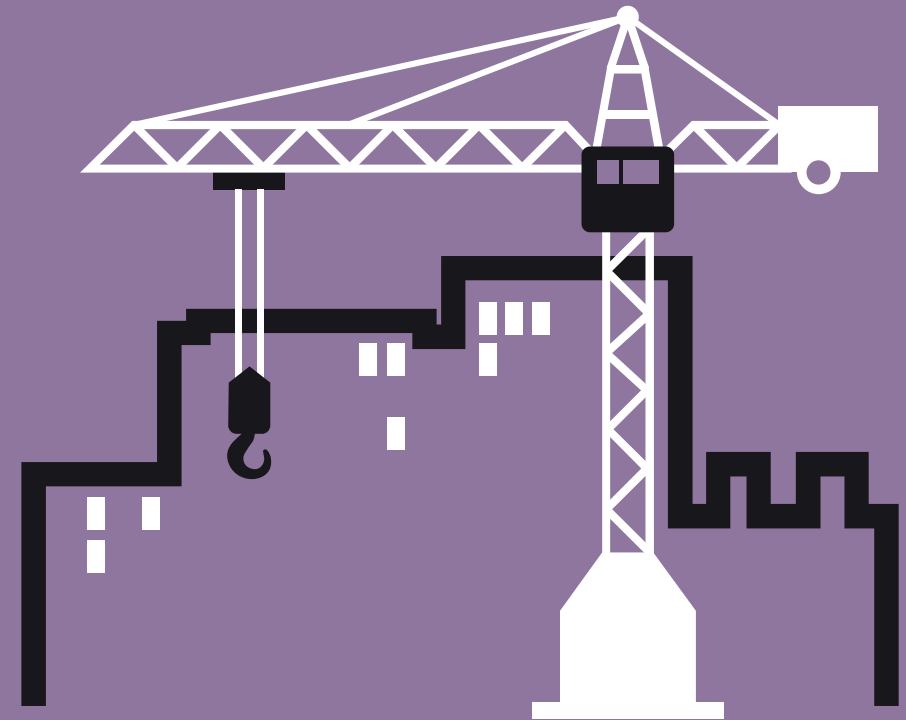
# **Crawley Borough Council v EE Ltd**

## **[2022] UKUT 158 (LC)**



Falcon Chambers

# 2023 forecast



[falcon-chambers.com](http://falcon-chambers.com)



# Vodafone Ltd v Gencomp (No.7) Ltd [2022] UKUT 223 (LC)

# Product Security and Telecommunications Infrastructure Bill



**1. New Code right to share**

**2. 1954 Act: incorporation of code valuation & compensation**

**3. Unresponsive occupier provisions**

**4. National security veto**



Falcon Chambers

# Upper Tribunal Update

Fern Schofield



[falcon-chambers.com](http://falcon-chambers.com)