

UPPER TRIBUNAL (LANDS CHAMBER)



LC-2025-000315

LC-2025-315

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

AN APPEAL AGAINST A DECISION OF THE FIRST TIER TRIBUNAL
(PROPERTY CHAMBER)

BETWEEN:

EE LIMITED (1)
HUTCHISON 3G UK LIMITED (2)

Appellants

-and-

CLOCKTOWER INVESTMENTS LIMITED

Respondent

On the application of the appellants on 28 May 2026 for a certificate under s.14A of the Tribunals Courts and Enforcement Act 2007 and in the alternative for an extension of time within which to apply for permission to appeal to the Court of Appeal against the Tribunal's decision of 14 April 2026 ([2026] UKUT 163 (LC))

And no response to the application having been filed by the respondent

1. I GRANT a certificate, pursuant to Section 14A of the Tribunals, Courts and Enforcement Act 2007, permitting the appellants to apply to the Supreme Court for permission to appeal directly to it against the Tribunal's decision of 14 April 2026
2. If the Supreme Court declines to hear an appeal, the time for the appellants to apply to this Tribunal for permission to appeal to the Court of Appeal against the Tribunal's decision of 14 April 2026 is extended and will expire 21 days after the Supreme Court notifies the parties of its decision

Reasons

1. The issue raised by the proposed appeal to the Supreme Court is whether incorporeal property alone can comprise "premises" capable of being occupied by a tenant for the purpose of section 23 of the Landlord and Tenant Act 1954. In *Pointon York Group plc v Poulton* [2007] 1 P & CR 115 the Court of Appeal held that an incorporeal

hereditament comprising a right to park vehicles could be premises which are occupied by a tenant, within the meaning of section 23, enabling the tenant to apply to the Court for a new tenancy under Part 2 of the 1954 Act.

2. The meaning of “premises which are occupied” in section 23 of the 1954 Act, and whether an incorporeal hereditament can be such premises, is a point of law that relates wholly or mainly to the construction of a statute. It was fully considered in the judgment of Arden LJ (with whom Hooper and Hughes LJ agreed) in *Pointon*.
3. The point of law concerns the qualifying conditions for the application of Part 2 of the Landlord and Tenant Act 1954 which confers security of tenure on business tenants. It is for that reason a point of law of general public importance.
4. This Tribunal was bound by the decision of the Court of Appeal in *Pointon*, and but for that decision the Tribunal’s own decision would have been in the appellant’s favour. I am satisfied that a sufficient case has been made out to justify an application under section 14B of the 2007 Act.
5. The point arises in this case in the context of the renewal of rights under the Electronic Communications Code. The distinction between Code rights to which Part 2 of the 1954 Act applies, which must first be renewed under the 1954 Act, and other Code rights to which the 1954 Act does not apply, and which may be renewed under the more favourable regime provided by the Code, has become a significant subject of litigation between participants in the telecommunications sector. The circumstances in which a tenant may make use of incorporeal rights alone without being in occupation of the physical premises which the rights were originally ancillary to are unusual, but changes in technology may mean that they are encountered in the telecommunications field. The question has previously arisen in relation to different property rights including parking (*Pointon*), leasehold rights of way (*Land Reclamation Co Ltd v Basildon District Council* [1979] 1 WLR 767), and under the Landlord and Tenant Act 1927 (the predecessor to the 1954 Act) fishing rights (*Whitley v Stumbles* [1930] AC 544). The point concerns the scope of the 1954 Act and may therefore be expected to arise in the context of other forms of property right.
6. The relevant appellate court as regards the proceedings is the Court of Appeal.

Martin Rodger KC,
Deputy Chamber President

17 August 2026