Neutral Citation Number: [2025] UKUT 136 (LC)

Case Nos: LC-2024-769
LC-2024-692

IN THE UPPER TRIBUNAL (LANDS CHAMBER)
ON APPEAL FROM THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)
FTT Ref: LC-2024-000071

Royal Courts of Justice, Strand,
London, WC2A 2LL
30 April 2025

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

ELECTRONIC COMMUNICATIONS CODE – CONSIDERATION – INTERIM CODE RIGHTS – application for permission to adduce expert evidence in claim for interim rights to permit an "MSV" survey – application refused – whether refusal a proper exercise of case management power – whether refusal of application made decision to award nominal consideration unjust – appeal dismissed

BETWEEN:

COVENT GARDEN IP LIMITED

Applicant

-and-

CORNERSTONE TELECOMMUNICATIONS INFRASTRUCTURE LIMITED

Respondent

Alder Castle,
10 Noble Street,
London EC2

Martin Rodger KC,
Deputy Chamber President

10 April 2025

David Holland KC, instructed by Concorde Solicitors, for the appellant
Oliver Radley-Gardner KC and *James Tipler*, instructed by Osborne Clarke LLP, for the respondent

The following cases are referred to in this decision:

Cornerstone Telecommunications Infrastructure v Central Saint Giles GP Ltd [2019] UKUT 183 (LC)

Cornerstone Telecommunications Infrastructure v The University of London [2019] EWCA Civ 2124, [2020] 1 WLR 2124

EE Ltd v Hutchison 3G UK Ltd v HSBC Bank plc [2022] UKUT 174 (LC)

Goldman Sachs International v Revenue and Customs Commissioners [2009] UKUT 290 (TCC)

Wallbrook Trustee v Fattal & Ors [2008] EWCA Civ 427

The issue

1. When a building owner is compelled by a tribunal to allow access for a survey to ascertain whether its building would be a suitable site for the installation of telecommunications apparatus, is the owner required to accept nominal consideration of £1, plus compensation for any damage or inconvenience caused, or should it be permitted to adduce expert evidence to support a claim for meaningful consideration assessed under paragraph 24 of the Electronic Communications Code? That is the question raised by this appeal.

2. At the hearing of the appeal both parties were represented by leading counsel, David Holland KC for the appellant and Oliver Radley-Gardner KC and James Tipler for the respondent. I am grateful to them for their submissions.

The facts

3. The appeal concerns an office building in the City of London known as Alder Castle (the Building). The appellant, Covent Garden IP Ltd, owns the Building for which it paid more than £103 million in 2019 and which it has since spent further substantial sums refurbishing. I will refer to the appellant as the Building Owner.

4. The respondent is a telecommunications company, which I will refer to as CTIL. In 2021 it identified the Building as a possible replacement site for telecommunications apparatus which it had been required to remove from another building in the vicinity. In November 2021, with the agreement of the Building Owner, it undertook an initial inspection (or "MSV", meaning "multi skilled visit" i.e. a survey and inspection by professionals in various telecommunications disciplines). It later needed access for further investigation but by that time the Building Owner had a refurbishment scheme of its own to plan and was distinctly less cooperative.

5. In October 2023 CTIL made a formal request of the Building Owner for an agreement confering interim rights under paragraph 26 of the Code to enable access for a further MSV. Interim rights can only be imposed by order of a tribunal so, when its request was ignored, CTIL referred the matter to this Tribunal which promptly transferred it to the First-tier Tribunal, Property Chamber (the FTT). The FTT gave directions on 20 February 2024 in which it stated that it was under a duty imposed by regulation 3(2) of the Electronic Communications and Wireless Telegraphy Regulations 2011 to determine the reference within 6 months, which meant by no later than 7 August 2024. It directed the parties to exchange drafts of an interim rights agreement by 12 April and listed the matter for hearing on 16 July.

6. The directions provided for an exchange of witness statements dealing with any disputed factual issues and included the following paragraph concerning expert evidence:

> "If the parties are unable to reach agreement on the consideration to be paid under the new agreement, and if either party wishes to rely on expert valuation evidence on that issue, they may apply not earlier than 12 April 2024 for permission to do so, including in their application a proposed timetable (agreed so far as possible) for the exchange of evidence or the appointment of a single joint expert."

The stipulation that no application for expert evidence could be made before 12 April 2024 was included to allow time for negotiation and because by that date, and not before, the formal, open position each party was taking on the issue of consideration would be apparent as the Building

Owner would either have agreed CTIL's proposal or would have included an alternative figure in the travelling draft agreement.

7. The Building Owner did not resist an agreement in principle but the parties did not reach agreement on the consideration payable or on certain other terms including the areas of the Building to which access was to be permitted. CTIL's draft agreement proposed a nominal fee of £1 for the right to undertake non-intrusive surveys of the unlet parts of the Building as often as might reasonably be required during a period of six months, on giving seven days' notice on each occasion. On 16 March the Building Owner's solicitors indicated that it would accept consideration of £2,000 in place of the £1 offered by CTIL in the draft agreement.

The application and the FTT's decision

8. On 6 May the Building Owner's solicitors informed CTIL's solicitors that it might be necessary to apply to the FTT for permission to rely on expert valuation evidence, but it was not until 19 June, less than four weeks before the hearing, that any application was made. No draft report was provided with the application, which proposed that the parties exchange expert evidence seven days before the hearing.

9. The Building Owner's request was opposed by CTIL and was refused by a procedural judge of the FTT in a decision communicated to the parties on 24 June, as follows:

> "The application in respect of expert witness evidence is refused. The application is misconceived. This is an application for an MSV only. Decisions of the Upper Tribunal and the FTT have consistently made nominal orders for consideration only in respect of survey visits."

10. At the start of the hearing on 16 July 2024 the FTT dismissed an application for permission to appeal the refusal to permit expert evidence and proceeded to determine the reference without it. By a decision issued on 24 July it imposed an agreement on the parties for the interim rights requested in return for consideration of £1. Compensation was also provided for to meet certain expenses which would be incurred by the Building Owner and its general right to obtain compensation for any loss suffered as a result of the exercise of the interim rights was acknowledged.

11. In a second decision published on 9 September 2024, the FTT ordered the Building Owner to pay a contribution of £8,400 towards CTIL's costs of the reference (a sum intended to cover counsel's fees only).

The appeal

12. Permission to appeal was granted by this Tribunal. The grounds of appeal ran to 29 pages but, stated succinctly, the material points for which permission was given were:

    (1) Whether the decision was wrong in law because the FTT refused to consider evidence of the market value of the rights conferred over the Building.

    (2) Whether the decision to award consideration of £1 was based on a finding of fact for which there was no supporting evidence.

(3) Whether a procedural irregularity or obvious unfairness in the proceedings caused the decision to be unjust.

The Building Owner also took issue with the description in CTIL's standard form of MSV agreement of the area over which interim rights could be exercised, but as the rights have long since been exercised without the difficulties which the original grounds of appeal anticipated, this complaint was not argued at the hearing and I need say no more about it.

13. When I gave permission to appeal I suggested that the two questions of importance raised by the appeal were, first, whether there is any principle that only nominal consideration should be payable for an agreement under paragraph 26 of the Code imposing interim rights to carry out an MSV; and, secondly, the proper practice where a site provider wishes to rely on expert evidence in support of more than nominal consideration.

14. The Building Owner also sought permission to appeal the FTT's order that it pay part of CTIL's costs. That application was listed for consideration at the hearing of the substantive appeal.

Legal background

15. Schedule 3A to the Communications Act 2003 (the Electronic Communications Code) provides for the acquisition or imposition of certain rights listed in paragraph 3, referred to as Code rights, in favour of the operators of electronic communications networks or those who provide infrastructure for such networks. CTIL is an "operator" for the purpose of the Code and is therefore entitled to acquire Code rights over land belonging to other people, provided certain conditions are met.

16. The most common Code right is the right to install electronic communications apparatus. In *Cornerstone Telecommunications Infrastructure v The University of London* [2019] EWCA Civ 2124, the Court of Appeal held that the right to install apparatus included an ancillary right to enter a building to undertake a non-intrusive survey to determine whether the building might provide a suitable site for such apparatus. A right of access for inspection can therefore be the subject of an agreement within the Code.

17. Code rights are conferred on operators by agreement between the operator and the occupier of land (paragraph 9). If agreement cannot be reached, an operator may apply for an order imposing an agreement (paragraph 20). In England and Wales, such applications are now made to the FTT.

18. An agreement entered into under paragraph 9 or imposed under paragraph 20 confers significant security of tenure on the operator but paragraph 26 makes provision for interim Code rights, which do not carry that security. To avoid abuse, interim rights may not simply be agreed between the parties but must be imposed by order.

19. The conditions which an operator must satisfy to obtain interim rights reflect their transient nature. By paragraph 21 the operator need only show that it has a "good arguable case" that the usual test for the imposition of Code rights is satisfied. In the present case it has never been disputed that CTIL has such a case and the Building Owner did not oppose the principle that the FTT should impose an agreement for interim rights to enable CTIL to carry out an MSV.

20. Paragraph 24(1) of the Code provides that the consideration payable by an operator to a site provider under an agreement imposed under paragraph 20 is to be an amount representing "the market value of the relevant person's agreement to confer … the code right." As paragraph 24(2) explains, that amount is: "… the amount that at the date the market value is assessed, a willing

buyer would pay a willing seller for the agreement" on certain assumptions listed in paragraph 24(3). The most important of those assumptions is that the right that the transaction relates to does not relate to the provision or use of an electronic communications network, which is often referred to as the "no-network" assumption.

21. The terms of a code agreement imposed by the FTT are governed by paragraph 23. By sub-paragraph (3), the terms of the agreement must include terms as to the payment of consideration by the operator. Otherwise, by sub-paragraph (2), an agreement under paragraph 20 (i.e. an agreement attracting security of tenure) is to give effect to the code right sought by the operator with such modifications as the FTT thinks appropriate.

22. Where the FTT imposes an agreement under paragraph 26 providing only for interim rights, paragraph 23 applies in a modified form. In particular, the duty to provide for the payment of consideration becomes a power to do so. Whereas every code agreement under paragraph 20 *must* provide for payment of consideration, an agreement for interim rights *may* do so (paragraph 26(6)(b)). Paragraph 23 applies subject to that modification, so the discretionary decision whether to provide for consideration is governed by paragraph 23(2) and the agreement will include a term for payment of consideration if the FTT thinks it "appropriate" that it should.

The challenge to the FTT's case management decision

23. According to the Building Owner's notice of appeal, the appeal is against the FTT's decision of 24 July to impose an agreement providing for only nominal consideration for the interim rights conferred on CTIL, but in substance the first ground of appeal focusses on the prior case management decision of 24 June to refuse to permit the Building Owner to rely on expert evidence. The Building Owner's original application for permission to appeal the procedural judge's case management decision was considered by the FTT and dismissed at the start of the hearing on 16 July, with reasons for the dismissal being given as part of the substantive decision on 24 July.

24. When it considers an application for permission to appeal the FTT is required by rule 53 of its procedural rules to first consider whether to review the decision in accordance with rule 55 and, before refusing permission, the FTT stated specifically that it had decided not to review its decision.

25. A decision not to review an earlier decision is an "excluded decision" against which there is no right of appeal (section 11(1) and 11(5)(d), Tribunals, Courts and Enforcement Act 2007). That is important in this case because in considering whether to review the decision of 24 June the FTT gave much fuller consideration to the question whether expert evidence should be permitted than had the procedural judge. But the case management decision had already been taken, and it is clear that it was not taken again on 16 July; all the FTT then did was to consider whether to review the case management decision, or whether to grant permission to appeal. It is not known whether the procedural judge was also the judge at the substantive hearing and it cannot be assumed that the considerations taken into account on 16 July were in the procedural judge's mind on 24 June.

26. When the Building Owner applied for permission to appeal it specified the decision under appeal as the decision of 24 July, and it was for that appeal that this Tribunal granted permission. But to the extent that it concerned the refusal to permit expert evidence, that decision was an excluded decision which cannot be appealed. In form and substance, it was no more than a refusal to review the earlier case management decision. For the avoidance of any uncertainty, I additionally now grant permission to appeal the decision of 24 June.

27. It is an important principle that case management decisions should not be interfered with by an appellate court if made by a judge who has:

> "applied the correct principles and who has taken into account matters which should be taken into account and left out of account matters which are irrelevant, unless the court is satisfied that the decision is so plainly wrong that it must be regarded as outside the generous ambit of the discretion entrusted to the judge."

See, *Wallbrook Trustee v Fattal & Ors* [2008] EWCA Civ 427 per Lawrence Collins LJ at [33]. The same principle applies in tribunals. In *Goldman Sachs International v Revenue and Customs Commissioners* [2009] UKUT 290 (TCC), Norris J, sitting in the Upper Tribunal, stated (at [23]) that "the Upper Tribunal should exercise extreme caution in entertaining appeals on case management issues". He considered that Lawrence Collins LJ's statement in *Walbrook* applied with "at least as great, if not greater, force in the tribunals' jurisdiction as it does in the court system".

28. But the decision maker must have "applied the correct principles". If a tribunal misdirected itself on some relevant legal principle, an appellate tribunal will be much readier to reconsider its decision. In those circumstances the decision maker will have had regard to an irrelevant consideration, and will have overlooked a relevant consideration, so its case management discretion will have been exercised on a flawed basis.

29. The case management decision of 24 June described the application for permission to rely on expert evidence as "misconceived" because "this is an application for an MSV only" and because decisions of this Tribunal and of the FTT had "consistently made nominal orders for consideration" in cases involving rights to carry out an MSV survey.

30. Mr Holland KC submitted that the case management decision was based on a misdirection and Mr Radley-Gardner KC did not dissent from that proposition, with which I agree.

31. The description of the application as "misconceived" suggests that it was the understanding of the procedural judge that the application to permit expert evidence was unarguable. The explanation that the application was "for an MSV only" suggests that there was thought to be a principle of law, or an inflexible practice, which prevents an award of more than nominal consideration in such a case.

32. As I have explained, paragraph 26(6)(b) of the Code makes the inclusion of a term for the payment of consideration a matter of discretion. But if there is a dispute, the FTT must decide how to exercise that discretion and in doing so it must take all relevant matters into account. One relevant matter would obviously be if, in an open market, willing parties would agree an amount of consideration which was more than nominal. Whether they would do so is a question of valuation on which expert evidence is admissible. There is therefore no principle that expert evidence cannot be relied on in an interim rights claim concerning an MSV.

33. As for consistency of practice, this Tribunal has never been required to determine a dispute over the consideration payable for interim rights to conduct an MSV. Interim rights cannot be conferred by agreement and may only be imposed on application; for a number of years after the introduction of the Code in 2017 applications were determined by this Tribunal. Many orders were made imposing interim rights, including a number after contested hearings, but as far as I am aware there has never previously been a dispute over the amount which should be paid as consideration for an MSV agreement. In the very great majority of cases the parties have agreed that the consideration

to be included in the agreement should be nominal only, typically £1. Sometimes more substantial figures may have been agreed, although I suspect where this happened it may have been in lieu of compensation, but in no case was the Tribunal called on to determine a dispute.

34. The primary jurisdiction to determine applications under the Code is now with the FTT and I understand the same general pattern has continued and that there has been no determination of a contested case where consideration was in issue.

35. Tribunals are not party to the negotiations which lead litigants to reach agreements, but it is not difficult to think of reasons why nominal consideration should routinely be agreed for MSV rights. The rights themselves are insubstantial and permit a small number of vetted surveyors or other technical experts to have access to a rooftop or service areas of a building for a few hours at a time on what, in practice, are usually two or three occasions. Destructive investigations are not normally permitted (where provision is sometimes made for them it is on the basis that full reinstatement will be achieved). The rights are exercisable during a limited period, usually of six months. Building owners are entitled to compensation for any loss or damage caused by the exercise of the rights. Where a substantial building is involved, agreements will typically include the payment of fees to the building owner to cover the cost of approving risk assessments and the credentials of contractors, attendance during the surveys, providing an escort round the building, and providing plans or other documents or information required. When it is additionally remembered that the no-network assumption removes the commercial value of the rights to the operator as a relevant factor in the assessment of consideration, it is unsurprising that a nominal sum is routinely agreed. The alternative would be an expensive piece of litigation the costs of which would be likely to dwarf any sum awarded. Taking this case as an example, the Building Owner is said to have incurred costs of more than £50,000, excluding VAT, in the FTT proceedings in pursuit of consideration which its own advisers now put no higher than £10,000.

36. The willingness of most parties to reach agreement cannot provide grounds for prohibiting other parties who are not willing to accept the prevailing consensus from putting forward evidence in support of a different outcome. There is no decision of a tribunal, at either level, determining what consideration might be appropriate. If a site provider wishes to argue for substantial consideration it must be entitled to do so, and for so long as there is no pattern of decisions for the FTT to refer to as guidance, it should be allowed to rely on expert evidence in support of its case, unless there is a good reason not to permit it.

37. The FTT's standard directions in interim rights cases (which in this respect mirror the directions previously used by this Tribunal) reflect this approach. A party who wishes to rely on expert evidence is required to apply for permission to adduce it. That is because it is incumbent on every court or tribunal to limit expert evidence to what is necessary, and because experience has shown that it is rarely necessary in interim rights cases. But the restriction in the standard directions is intended to control rather than to prohibit reliance on expert evidence and was included to check the preparation of lengthy and unfocussed reports at disproportionate expense. The directions do not spell out what is to happen if an application for permission to rely on expert evidence is made, because that will depend on the circumstances of the case and the stage at which the application is received. In an ideal case, at the time of making the application for permission the applicant will identify the expert they wished to instruct and provide a brief synopsis, prepared by the expert, of the evidence they intend to give. That will enable the FTT, and the other party, to consider a timetable for the production of the evidence and the form in which it should be permitted to be produced (i.e. whether in writing only, or by attendance at a hearing, and whether by simultaneous exchange or sequentially). In a less than ideal case, if an application is made too late for the production of expert evidence to be accommodated in the existing timetable, the application may be refused.

38. In short, the FTT's refusal to permit reliance on expert evidence was not justified by the reasons it gave, which were based on a misunderstanding of law and practice and were procedurally irregular.

The challenge to the FTT's substantive decision awarding nominal consideration only

39. It does not follow that the FTT's flawed procedural decision requires that its substantive decision be set aside. Setting aside the procedural decision will be of no consequence unless the Building Owner can demonstrate that the substantive decision of 16 July to require payment of only nominal consideration was rendered unfair by the earlier refusal to permit expert evidence. Mr Holland KC submitted that it was and that, additionally, the decision to award only £1 was made without evidence to support it and was contrary to evidence on which the Building Owner had relied.

40. I can deal with the second and third of those submissions briefly. The FTT decided to award only nominal consideration; as far as a requirement for evidence is concerned, there is no difference between awarding nominal consideration and awarding no consideration at all. The FTT was not obliged to award real as opposed to nominal consideration because, in an interim rights case, paragraph 26(6)(b) of the Code releases it from the duty in paragraph 23(3) to include terms as to the payment of consideration. Whether it should include substantive consideration was a decision to be made on the basis of whether the FTT thought it "appropriate" to do so. I reject Mr Holland KC's submission that the FTT could not properly decide whether it was appropriate to include substantial consideration without first hearing evidence on whether, in a notional no-network open market, parties would agree a substantial sum. The FTT had to make the discretionary decision on the basis of the material the parties had put before it. In the absence of useful evidence, and in view of its experience of previous agreements, the FTT was entitled to decide that it was not appropriate to include more than nominal consideration. There is no inconsistency between this conclusion and the recognition that expert evidence is required to determine the consideration which it would be appropriate to award if it is to be more than nominal.

41. Mr Holland KC also suggested that there was evidence which the FTT should have had regard to, but I am satisfied that such evidence as there was was neither objective nor persuasive. Ms Joss Dobbie, an asset manager with responsibility for the management of the Building, made a witness statement which included statements to the effect that the Building Owner is "not in the business of permitting the acquisition of rights over their building in return for no payment". That is no doubt also true of most building owners, but it does not help in determining whether a hypothetical building owner which must be assumed to be willing to grant rights for a few short and unobtrusive visits would require payment; experience suggests otherwise and even this Building Owner made no charge for the MSV of November 2021. The evidence of Mr David Boyne, a chartered surveyor, on which the Building Owner also relied, was that sums of between £1,000 and £2,500 had been paid for MSV's in his experience of arranging them. That is no doubt true, but similar sums are provided for by the agreement imposed on the Building Owner by the FTT (£440 per day for any visit of more than 4 hours duration and £220 for shorter visits; £550 for providing documents and £275 for approving risk assessments). Mr Boyne's examples are also of negotiated agreements to which the no-network assumption did not apply.

42. The only valid ground of complaint open to the Building Owner is that its application for permission to rely on expert evidence was refused for reasons which were not justified. But that irregularity, which amounts to an error on a point of law, does not automatically render the substantive decision unfair. A finding on an appeal that a decision involved the making of an error in point of law engages the Tribunal's power under section 12(2), Tribunals, Courts and Enforcement Act 2007, to set aside the decision; that power is discretionary ("the Upper Tribunal … may (but need not) set aside the decision of the First-tier Tribunal").

43. The substantive decision will only have been unjust if the application to admit expert evidence ought to have succeeded. But it is clear to me that the application should have been dismissed for entirely different reasons from those relied on by the procedural judge.

44. The application could have been made at any time after 12 April but it was delayed for more than two months before finally being made on 19 June, less than a month before the hearing was due to take place on 16 July. That delay was unexplained in the body of the application, other than by the statement that the parties had been unable to agree what consideration should be paid. But the parties' inability to agree was inevitable as soon as the Building Owner made clear on 16 March that it sought substantial consideration and proposed a payment of £2,000. CTIL's position on consideration was well known to the Building Owner's solicitor, Mr Watson, who is very experienced in Code litigation; it was stated explicitly on 29 April when CTIL's solicitors asserted that "consideration (other than a nominal figure of £1) is not payable for a MSV Agreement".

45. When the application was made it was not accompanied by a draft report or any indication of the consideration being proposed. The only direction suggested was for simultaneous exchange of reports one week before the hearing date. The Building Owner's solicitors had instructed its own expert on 30 May in a detailed letter accompanied by relevant documents, but they did not inform CTIL's solicitors that they had done so. The timetable they proposed, which assumed a simultaneous exchange of reports, would therefore have allowed their own expert significantly more time to prepare than any, as yet unidentified, expert whom CTIL might instruct. Had the FTT allowed the application on 24 June, rather than refusing it, CTIL and any expert would have had less than three weeks to prepare evidence before the proposed date of exchange, and less than four weeks before the hearing date. Nor did the timetable propose or allow time for preliminary discussions between experts to narrow issues or prepare an agreed statement. The Building Owner and its solicitors gave no consideration to the practicalities of their proposed timetable.

46. When its solicitors made the application the Building Owner said that the original time of 3 hours allocated for the hearing would now be inadequate in view of what was said to be the need to cross examine the expert witnesses. No alternative time estimate was supplied, although it was said that the requirement of additional time had been discussed with counsel.

47. In summary, the application was hopelessly late, was not accompanied by any indication of the substance of the evidence which the Building Owner wished to adduce, did not propose a realistic timetable for evidence in response and was guaranteed to disrupt the determination of the substantive interim rights application.

48. Mr Holland KC suggested that the FTT could have given directions for a split hearing, with consideration being dealt with on a later date, or it could have given directions for sequential exchange of evidence. No doubt it could, although no proposal to that effect was made, but that misses the point that it was being invited to consider directions for expert evidence so close to the hearing date that a sensible timetable was simply not feasible. Had the FTT considered that it should permit reliance on expert evidence it was inevitable that the hearing would not be completed on 16 July.

49. The Building Owner was under a duty to cooperate with the FTT to enable it to manage the proceedings consistently with its overriding objective of dealing with the matter fairly and justly. For the reasons I have given its application of 19 June was not consistent with that duty. It was calculated to obstruct the achievement of that objective and, by necessitating the postponement of the hearing, to delay the resolution of the application and to waste the FTT's resources.

50. Although the procedural judge's reasons for refusing the application were flawed, it is overwhelmingly likely that a judge properly directing themselves on the law would have reached the same conclusion for purely practical case management reasons and would have dismissed the application in any event. In those circumstances, there was no injustice in the FTT's determination of the terms of the new Code agreement without permitting the Building Owner to rely on expert evidence.

51. The appeal is therefore dismissed.

The challenge to the FTT's costs decision

52. This Tribunal's usual practice where an operator seeks interim rights (which cannot be conferred other than by the Tribunal) is that the site provider should be entitled to its costs of participation in the proceedings and in connection with the transaction (receiving advice, negotiating the form of the agreement and its execution) but that the additional costs of resolving any dispute should be allocated on the usual principle that the unsuccessful party should pay the costs of the successful party unless there is some good reason to make a different order (see *EE Ltd v Hutchison 3G UK Ltd v HSBC Bank plc* [2022] UKUT 174 (LC), at [8]-[10], and *CTIL v Central Saint Giles GP Ltd* [2019] UKUT 183 (LC) at [28]-[30]). I understand the same approach is taken by the FTT.

53. The FTT ordered the Building owner to contribute a sum towards meeting CTIL's costs. Its decision appears to me to be consistent with the approach I have identified. The one departure from it was that none of the Building Owner's transaction costs were awarded to it, but this appears to have been because no claim was made for them and the costs were not separately identified. The proposed appeal against the FTT's order for costs raises no point of principle and, having dismissed the appeal against its substantive decision, there are no grounds on which this Tribunal would be justified in interfering with its costs decision. I therefore refuse permission to appeal the costs decision.

Martin Rodger KC,
Deputy Chamber President

30 April 2025

Right of appeal

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