

## STATUTORY NOTICE

### SEEKING AGREEMENT TO THE CONFERRAL OF INTERIM RIGHTS UNDER THE ELECTRONIC COMMUNICATIONS CODE

Paragraph 26(3) of Part 4 of Schedule 3A of The Communications Act 2003

#### IMPORTANT NOTICE

**If you are willing to enter into a  
Code Agreement, you should  
respond within 28 days**

1. This is a statutory notice pursuant to paragraph 26(3) of the electronic communications code, set out in Schedule 3A to the Communications Act 2003 (the "**Code**").<sup>1</sup>
2. This notice has been issued by EE Limited ("**we**" or "**us**") to you, Test Valley Borough Council, because we would like to carry out works on land occupied by you for the purposes of our electronic communications network and/or infrastructure system. We are seeking your agreement, on an interim basis, to confer these rights on us.

~~[OR delete appropriate version of paragraph 2]~~

- ~~2. This notice has been issued by [Name of Code operator] ("**we**" or "**us**") to you, [Insert name], because we have certain rights to [insert brief description of rights already exercisable by operator in relation to the land, e.g. keep apparatus installed on land in relation to which you have an interest] for the purpose of our [electronic communications network and/or infrastructure system]. We are seeking your agreement, on an interim basis, to be bound by these rights.~~

#### BACKGROUND

3. We provide an electronic communications network and/or infrastructure system in the United Kingdom. This is used in order to provide consumers with mobile telecommunications services, including voice and broadband services.
4. For this purpose, the Office of Communications (OFCOM) has given a direction applying the Code to us. The Code regulates the relationships between us and occupiers of land, thereby facilitating the deployment of electronic communications apparatus.

#### INTERPRETATION

5. In this notice:
  - a. "**Apparatus**" means the electronic communications apparatus described in Annex 1;
  - b. "**Land**" means the land at Beech Hurst, Weyhill Road, Andover, SP10 3AJ as comprised in title number HP648980.

<sup>1</sup> A copy of the Communications Act 2003 is available online at [www.legislation.gov.uk](http://www.legislation.gov.uk).

DETAILS OF THE AGREEMENT WE ARE SEEKING

6. In this notice, we are seeking your agreement to confer on us ~~/be bound by~~ the following rights, on the interim basis specified at paragraph 8 below:
- a. the right to install the Apparatus on, under or over the Land;
  - ~~b. the right to keep installed the Apparatus which is on, under or over the Land;~~
  - ~~c. the right to inspect, maintain, adjust, alter, repair, upgrade or operate the Apparatus which is on, under or over the Land;~~
  - d. the right to carry out any works on the Land for or in connection with the installation of the Apparatus on, under or over the Land or the installation of electronic communications apparatus elsewhere;
  - ~~e. the right to carry out any works on the Land for or in connection with the maintenance, adjustment, alteration, repair, upgrading or operation of the Apparatus which is on, under or over the Land or of electronic communications apparatus elsewhere;~~
  - ~~f. the right to enter the Land to inspect, maintain, adjust, alter, repair, upgrade or operate the Apparatus which is on, under or over the Land or any electronic communications apparatus elsewhere;~~
  - ~~g. the right to connect the Apparatus to a power supply;~~
  - ~~h. the right to interfere with or obstruct a means of access to or from the Land (whether or not the Apparatus is on, under or over the Land); and~~
  - ~~i. the right to lop or cut back, or require another person to lop or cut back, any tree or other vegetation that interferes or will or may interfere with the Apparatus.~~

(together, the “**Code Rights**”).

7. In addition to the Code Rights, we are also seeking in this notice your agreement to the additional terms set out in Annex 2.
8. We would like the Code Rights, and additional terms set out in Annex 2, to be exercisable for a period of three months. ~~/until the occurrence of [Insert details of a particular event (e.g. until redevelopment of alternative property)]~~.

CONSEQUENCES OF NOT REACHING AGREEMENT

9. If either:
- a. you do not, before the end of 28 days beginning with the day on which this notice is given, agree to confer ~~/to be bound by~~ the Code Rights; or
  - b. at any time after this notice is given, you give notice in writing to us that you do not agree to confer ~~/to be bound by~~ the Code Rights,

we will be entitled to apply to the court for an order under paragraph 26 of the Code. Further detail on these orders is provided in the supplementary information at the back of this notice.



10. We consider that the agreement sought in this notice is *not* a matter of urgency and therefore *do not* intend to apply for such an order prior to the end of the 28-day period referred to above.<sup>2</sup>

#### YOUR OPTIONS

11. In response to this notice, you may:
- agree *to confer the Code Rights on us* ~~/to be bound by the Code Rights~~ on the interim basis requested in this notice;
  - give notice to us that you do not agree *to confer* ~~/to be bound by~~ the Code Rights on the interim basis requested in this notice; or
  - do nothing.
12. In deciding how to respond to this notice, you may wish to seek independent legal advice.
13. If you agree to confer the Code Rights on us ~~/to be bound by the Code Rights~~ on the interim basis requested in this notice, we will send you an agreement reflecting the terms set out in this notice and ask you to sign it. ~~we ask you to sign the agreement attached at Annex 2.~~ You would be entitled to seek independent legal advice in relation to this agreement.
14. Alternatively, and as explained at paragraph 9 above, if you do nothing or give notice to us that you do not agree *to confer* ~~/to be bound by~~ the Code rights on the interim basis requested in this notice, we will be entitled to apply to the court for an order under paragraph 26 of the Code.
15. Please submit any notification pursuant to paragraph 11a. or b. to us in writing as soon as possible and, in any event, before the end of 28 days beginning with the day on which this notice is given.
16. To be effective, such notification must be **delivered by hand** or sent by **registered post** or **recorded delivery** to the following address:
- DWF Law LLP, Bridgewater Place, Water Lane, Leeds, LS11 5DY  
(Ref: 17197/FOO00270-12419)
17. If you have any questions about this notice, please do not hesitate to contact us via telephone 07902 106988 or e-mail [Mollie.Wood@dwf.law](mailto:Mollie.Wood@dwf.law)

Dated: 30 September 2022

Signed: *DWF Law LLP*

DWF Law LLP, as authorised agents for and on behalf of EE Limited

<sup>2</sup> In limited circumstances, where the court agrees that it is a matter of urgency for an order to be made under paragraph 26(5) of the Code, it may make such an order even though the 28-day period referred to at paragraph 9a. above has not elapsed (and paragraph 9b. does not apply).

ANNEX 1  
THE APPARATUS

All equipment necessary to carry out the Surveys detailed in the Agreement attached at Annex 2.

ANNEX 2

ADDITIONAL TERMS OF AGREEMENT SOUGHT

As set out in the Agreement attached hereto.

SUPPLEMENTARY INFORMATION FOR THE RECIPIENT OF THIS NOTICE

Orders under paragraph 25(3) of the Code

1. An order under paragraph 25 of the Code is an order which imposes on us and you an agreement. The effect of such an agreement would be [*to confer the Code Rights on us /provide for the Code Rights to bind you*], on an interim basis.
2. Paragraphs 23 and 24 of the Code contain further detail about the terms of the agreement that the court may impose. And paragraph 22 of the Code states that such an agreement takes effect for all purposes of the Code as an agreement under Part 2 of the Code between the operator and the relevant person.
3. The court may only make an order if:
  - a. you have agreed with us to the making of the order and the terms of the agreement imposed by it; **or**
  - b. it thinks that there is a good arguable case that **both** of the following conditions are met:
    - i. the prejudice caused to you by the order is capable of being adequately compensated by money; and
    - ii. the public benefit likely to result from the making of the order (having regard to the public interest in access to a choice of high quality electronic communications services) outweighs the prejudice to you.
4. The court may **not** make such an order if it thinks that you intend to redevelop all or part of the land to which the Code Rights would relate, or any neighbouring land, and could not reasonably do so if the order were made.
5. The court also has the power to order us to pay you compensation for any loss or damage that you have sustained or will sustain as a result of the exercise of the Code Rights. Paragraphs 25 and Part 14 of the Code contain further detail about this.

EE Limited & Hutchison 3G UK Limited - EARLY ACCESS AGREEMENT FOR SURVEY PURPOSES

THIS AGREEMENT is dated

2022

**BETWEEN**

(1) **TEST VALLEY BOROUGH COUNCIL** whose registered office is situate at Beech Hurst, Weyhill Road, Andover, Hampshire, SP10 3AJ (the "**Owner**");

(2) **EE LIMITED (company number: 02382161)** whose registered office is situate at 1 Braham Street, London, E1 8EE [and **HUTCHISON 3G UK LIMITED (company number: 03885486)** whose registered office is situate at 450 Longwater Avenue, Green Park, Reading, Berkshire, England, RG2 6GF (together the "**Operator**")

**PROPERTY: all the land and building situate at and known as Beech Hurst, Weyhill Road, Andover, SP10 3AJ (Site Ref: 97564) as occupied by the Owner and comprised in title number HP648980**

**1. Background**

The Operator requires to carry out site visits, surveys and inspections as listed in the Schedule to this Agreement ("**Surveys**") in order to assess the suitability of the Property for the installation of the electronic communications apparatus in connection with the Operator's Network (*as defined in the Electronic Communications Code, as set out in Schedule 3A to the Communications Act 2003*).

**2. Grant of Rights of Access to the Operator**

2.1 In consideration of the obligations on the Operator's part contained in this Agreement the Owner grants the Operator and all those authorised by it from time to time, (which shall include where appropriate their respective employees, agents, independent contractors, telecommunication link providers) rights (the "**Rights**") to:

2.1.1 carry out the Surveys at the Property; and

2.1.2 take vehicular (where appropriate) and pedestrian access over and through [any access leading to the Property and such parts of the Property as are reasonably necessary for the purpose of carrying out the Surveys (with such materials, machinery, tools, plant and equipment as the Operator considers reasonably necessary),

for a period of 3 (three) months commencing on the date upon which the Operator enters the Property to commence the Surveys or, if earlier, until the date on which the Operator gives notice in writing that it does not intend to carry out any further Surveys at the Property (the "**Period**").

2.2 The Owner acknowledges that the Rights may be exercised by the Operator in one or more separate site visits during the Period, and further acknowledges that the parties attending each site visit shall have the right to take photographs in exercise of the Rights.



**3. In consideration of the Rights granted by the Owner the Operator undertakes as follows:**

- 3.1 to provide the Owner with at least 48 (forty eight) hours' prior notice (which need not be in writing) before entering the Property to carry out the Surveys;
- 3.2 to comply with all laws from time to time relating to the carrying out of the Surveys by the Operator;
- 3.3 to cause as little damage to the Property as reasonably possible in the exercise of the Rights and to as soon as is reasonably practicable make good all physical damage caused to the Property as a result of undertaking the Surveys and exercising the Rights to the reasonable satisfaction of the Owner;
- 3.4 at the end of Period to remove any materials, machinery, tools, plant and equipment used by the Operator in the exercise of the Rights;
- 3.5
  - 3.5.1 If the Owner (acting reasonably) does not accept the Operator's reinstatement carried out in accordance with clause 3.3, the Owner will notify the Operator of that fact within 14 (fourteen) days of completion of such reinstatement works by the Operator, and will confirm the wants of repair that it believes the Operator must rectify.
  - 3.5.2 In the event of a dispute between the Owner and the Operator as to the wants of repair to be rectified and/or as to the reinstatement that has been carried out by the Operator the matter will be referred to an expert ("**Joint Expert**") appointed jointly by the parties or in default of agreement the Joint Expert shall be appointed by the President of the Royal Institution of Chartered Surveyors.
  - 3.5.3 The decision of the Joint Expert shall be final (except in the case of manifest error) and each party is to bear its own professional costs, with the costs of the Joint Expert being paid for by the Operator or the Owner or jointly as the Joint Expert may direct.
- 3.6 to indemnify the Owner from and against liability to a third party arising directly out of (a) negligent exercise of the Rights or (b) the breach by the Operator of any of the terms of this Agreement PROVIDED THAT:
  - 3.6.1 the Operator shall have no liability for any economic or consequential loss;
  - 3.6.2 the Owner shall promptly notify the Operator of any claims or proceedings alleging such liability and shall not compound compromise or settle any such claims or proceedings without the Operator's prior written approval (such approval not to be unreasonably withheld or delayed) and shall permit the Operator to defend the same in the name of the Owner at the expense of the Operator;
  - 3.6.3 the Owner shall take all reasonable steps to mitigate its losses and liability to such third party;
  - 3.6.4 this indemnity does not extend to claims proceedings or liabilities to the extent they result from any negligence wilful act default or omission of the Owner (or its employees agents workmen contractors licensees or invitees);



- 3.6.5 the Operator's total liability under this clause 3.6 in relation to a single claim or series of claims arising from any one event or circumstance or series of connected events or circumstances shall not exceed one million pounds (£1,000,000) (except in the event of death or personal injury caused by the Operator's negligence where there shall be no limit);and
- 3.7 to reimburse to the Owner any reasonable costs properly incurred by the Owner in providing access for the Operator to the Property to carry out the Surveys.

#### **4. Insurance**

The Operator shall maintain insurance for a sum of no less than one million pounds (£1,000,000) against public liability and other third party liability in connection with any death or personal injury, loss or damage to persons or property arising out of the exercise of the Rights and will upon the Owner's request provide evidence of such insurance.

#### **5. The Owner covenants with the Operator that:**

- 5.1 the Operator may quietly and peacefully exercise the Rights during the Period without any interruption by the Owner or any other lawful agent or occupier;
- 5.2 if an asbestos register and a fire risk assessment exist in respect of the Property it will provide a copy of such documents to the Operator upon request; and
- 5.3 if structural drawings are available in respect of the Property it will provide details and copies to the Operator upon request.

#### **6. Alienation**

- 6.1 This Agreement is personal to the Operator and is not assignable.
- 6.2 Should the Owner intend to transfer or otherwise dispose of the Property during the Period the Owner shall give the Operator not less than 14 (fourteen) days' notice of the intended disposal and the identity of the intended disponent, and the Owner shall use reasonable endeavours to secure the continuance of this Agreement.

#### **7. General**

- 7.1 A person who is not a party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 7.2 This Agreement will in all respects be governed by and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the English Courts.

For and on behalf of the **Operator**

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For and on behalf of the **Owner**

.....

The Owner's preferred point of contact is as follows (complete as applicable):

Contact name (if different from above):

Phone:

Email:

Postal address:

**The Schedule - Surveys**

The Surveys shall include (without limitation) the following:

- Multi-skilled visit - which shall include (without limitation) the following, with the parties acknowledging that the multi-skilled visit may be carried out in one or more than one visit to the Property.

Within the area outlined in yellow on the attached plan:

- Borehole survey,
- Trial dig survey,
- Slit Trench.



