



### Key Instruction Facts

- Client: Private Southwest Land Owner
- Location: Devon
- Instruction Date: June 2020
- Works: Lease Renewal under the Electronic Communications Code 2017
- Legislation and powers: Electronic Communications Code 2017
- Lead Surveyor: Declan Oddy MRICS FAAV
- Client Partner: Chris Hicks MRICS (Head of Telecoms)

### Project summary

Fisher German (FG) were appointed in June 2020 to act on behalf of a private land owner in the renewal of a Lease to Arqiva (now On Tower UK) to locate and use telecoms equipment on the clients property.

On Tower issued terms to our client which would substantially prejudice our clients ability to maintain, repair, operate and use their existing water tower, as well as the adjoining land, with little say in routing and installation of equipment or services to the site or the use of it by third parties. Additionally, On Tower had issued a paragraph 33 notice to terminate the existing agreement and create a new agreement on modified terms which were in line with the Electronic Communications Code, whereupon expiry of which they threatened to make an application to the Upper Tribunal (Lands Chamber) and for the court to impose terms on the parties.

### Solution

The site is unique in that the Telecoms equipment is attached to a steel-framed platform around the top of the client's existing water tank. The initial Heads of Terms proposed to our client disregarded the sites specific characteristics, were extremely limiting, offering our client no forfeiture break clause in any event and allowing the Tenant to have 24/7 access rights without requiring any notice at a heavily discounted rent.

Citing from recent case law arising from the courts, as well as our substantial experience in working for Landlords with telecom sites, we were able to negotiate bespoke Heads of Terms which included an increased rent, obligations and restrictions on the Tenants rights to protect the clients use of their water tower and adjoining land. In particular, they included a 'lift and shift' clause to enable development or repairs to the water tower. Y

### Benefits

The client was able to benefit from expert advice on the Electronic Communications Code and how the provisions thereof impacted on the terms of the lease renewal and them generally.

With OnTower threatening escalation to the Upper Tribunal (Lands Chamber); we were able to negotiate terms which provided reasonable checks and balances in the agreement, coverage of professional fees and the ability for the landlord to control the site, which ultimately avoided the risk to the client being subjected to court proceedings and litigation.

Having agreed commercial terms with the Tenant, the client is able to continue with their main business, safe in the knowledge and security of a reasonable rent being paid for the site, as well as routes of recourse should the Tenant breach any of the terms.