Ensuring tenants' access to gigabit-capable connections

Response submitted by the National Trust to the DCMS (Department of Digital Culture Media and Sport) consultation concerning "Ensuring tenants' access to gigabit-capable connections."

December 2018

The National Trust is a charity founded in 1895 by three people who saw the importance of our nation's heritage and open spaces and wanted to preserve them for everyone to enjoy. More than 120 years later, these values are still at the heart of everything we do. We look after special places throughout England, Wales and Northern Ireland for ever, for everyone.

Introduction

The National Trust welcomes the opportunity to reply to this consultation. Having a gigabit enabled tenanted estate has clear, long term benefits for our tenants and the Trust as a whole. We are grateful of the clarification by DCMS that these proposals will be reserved only for those landlords and landowners considered "absent", that is, non-responsive and that where a landlord is responsive, the current Electronic Communications Code remains unchanged. Whilst we do not regard ourselves as an absentee Landlord, we do have some comments about how these proposed powers could be refined to better operate in practice. In this response we also explain a little more about the National Trust and inalienable land and why we feel it is important that inalienable land should be treated differently.

Background about the National Trust

1. The National Trust is Europe's largest conservation organisation. Through our ownership we look after more than 250,000ha of land and around 25,000 buildings throughout England, Wales and Northern Ireland for ever, for everyone in the nation. 95% of the National Trust's land is held 'inalienably[1].To protect inalienable land, once it has been declared inalienable the National Trust can never voluntarily part with it so it is protected forever.

2. We declare land inalienable because it is land of great beauty, because it is of significant historical importance or because it is of outstanding importance for nature conservation, archaeology or landscape value. Alternatively it can be land which protects other land which is itself of such value.

[1] The power to declare land inalienable is in section 21 of the National Trust Act 1907. Land acquired under the National Trust Act 1939 is also inalienable (section 8 of the National Trust Act 1939). Once land has been declared inalienable it cannot be sold and only Parliament can authorise its compulsory acquisition in the face of any objection by the Trust to a compulsory acquisition proposal.

3. DCMS has confirmed that all those who occupy (commercial and residential) but do not own a property will fall within the scope of this consultation as "tenants". The National Trust has a varied portfolio of agreements which allow other people to occupy National Trust land. We have in the region of 11,000 different agreements in place across England, Wales and Northern Ireland and in Appendix A we have set out more details about the types of agreements we have granted out of inalienable land. We want to find a way of making any new proposals work whilst protecting the special nature of inalienable Trust properties which we hold for ever, for everyone.

Response to Specific Questions (against the numbered points in the consultation document).

1. **Would the placing of an obligation on landlords in the manner proposed [*placing an obligation on landlords to facilitate the deployment of digital infrastructure in their properties where request for services has been made by a tenant*] encourage more landlords to respond to requests sent by operators?**

   We believe direct communication between operators, tenants and landlords would continue to be the most effective method of agreeing an installation rollout. As a large landowner and landlord, in the Trust's experience ensuring that the process is tenant led, that plans and specifications are sufficiently detailed and that notices are sufficiently circulated are the factors most likely to result in a timely response from the Trust.

2. **To what extent would placing an obligation on landlords complement or undermine the facilitation within the ECC of negotiated agreements between landlords and operators?**

   An obligation for the landlord to engage with the operator could complement the current regime, however, a strict obligation compelling landlords to allow deployment of fibre risks being a disincentive to negotiate if the landlord is not able to have meaningful input into the proposed works. It is noted that this stricter approach would be contrary to the principle purpose of the Code, being "to establish a voluntary process which avoids recourse to the courts".[2]

   The complexity, scale and impact of works on complex estates, particularly in a rural setting will vary greatly, so having a fixed, short set timetable to conclude negotiations is likely to be unworkable from a landlord point of view.

   We would welcome an obligation on the operator to think strategically, for example, to aim to connect up multiple properties or whole communities at once to maximise the workability of the proposals.

3. **Do you consider that the use of the courts for the purpose of granting entry to operators where they have been unable to contact a landlord is reasonable? If not, why not?**

   We consider this could be a good solution where there is an absent landlord who has failed to respond to repeated attempts by both tenant and operator to make contact, providing sufficient information has been provided for the landlord to properly assess the proposals.

[2] See para 1.27 Electronic Communications Code Of Practice, 15 December 2017

4. **Do you agree that two months is an appropriate amount of time to pass before a landlord is considered absent and an operator can seek entry via the courts?**

Provided sufficient information has been given for the landlord to understand the proposals fully, a two month deadline for the landlord to provide an initial response should be sufficient in all but the most complex of cases. However, as previously stated, having a fixed standardised timetable to conclude negotiations that relate to complex works at sensitive estates is likely to be unachievable, particularly for larger landowners.

5. **What evidence should an operator be reasonably expected to provide to the courts of their need to enter a property and their inability to contact a landlord?**

It would be impossible to provide an exhaustive list of evidence but as a minimum the Trust would welcome all of the following being a pre-requisite to any order being made:

a) Evidence of multiple attempts to contact the landlord in writing by both tenant and operator sent to the contact details for the landlord contained in the tenancy agreement, addresses available on public registers (for example held by the Land Registry, Companies House and the Charity Commission) along with any other known contact address (for example any estate management office or land agent).

b) Evidence that suitable plans and specifications have been provided that would enable the landlord to understand what land is involved and what works are proposed. For example, Land Registry compliant plans, schedule of works, proposed timetable for works.

c) Evidence that no other viable route is reasonably available and mitigation measures have been included to minimise disturbance to the landowner and any associated business interests.

d) Evidence of strategic planning and efficiencies of scale, for example, connecting up multiple properties in the same location, at the same time.

e) Evidence that compensation is an adequate remedy for works proposed or where compensation would not be an adequate remedy, that appropriate mitigation measures have been built into the proposals, for example:

    a. Inalienable Land: proposals should not be tantamount to a disposal. All proposed apparatus should be underground.
    b. Common Land: All necessary consents should be obtained. All proposed apparatus should remain underground. Construction works should not unreasonably restrict public access to the land.
    c. Environmental, cultural or archaeological designations: meaningful mitigation measures for example, wildlife corridors or archaeological watching briefs.
    d. Where works concern a listed or historic property, the operator should provide evidence that they have obtained all necessary consents and demonstrate they have engaged appropriate expertise to ensure works can be and are carried out appropriately.

Re-instatement of sites should be addressed through detailed records of condition produced in advance of these installations, to ensure disputes are minimised and landowners receive a fair outcome.

6. **Is there a need to define what constitutes a request by a tenant for a communication service?**

   Yes, we agree there is a need to define what constitutes a request and also the potential application of minimum standards of information to these requests. Setting out a defined process is likely to be as helpful to tenant as landlord so tenants are clear how to initiate the process. This does not need to be long winded but should be in writing and contain enough detail to understand what is proposed and what contact (if any) has been had with the operator to date.

7. **Do you agree the temporary access granted by the Court should be valid until such a time as a negotiated agreement, underpinned by the Code, is signed between an operator and a landlord?**

   We welcome DCMS's assertion that allowing operators to use magistrates' courts to gain entry are not intended to be alternatives to formal access agreements. However, to be workable the process should incentivise both operator and landlord. One way of achieving this is to ensure that, at the point the landlord re-engages with the process, the operator is under an obligation to pursue a formal arrangement.

   We would also welcome, as part of the conditions for temporary access, the operator being obliged to provide as built plans to the landowner to help facilitate and perpetuate on-going discussions.

8. **Would temporary access granted by the court provide an incentive for landlords to re-engage?**

   We think this process would be most successful at striking a balance between landlord and tenant rights and interests where the landlord has the opportunity to engage with the court process, not only once a temporary access order is made but also prior to that at the time the operator makes its initial application to the magistrates' court.

9. **Do you foresee any issues with operator/landlord negotiations which take place after the installation has taken place?**

   We would welcome a front-loaded process to ensure that all works are appropriate and take into account the sensitivities of the land, ahead of any works being carried out. Once works have been carried out, the hitherto absent landlord should be able to apply to the magistrates' court in a similarly expeditious process to modify or remove the apparatus where the works are considered inappropriate and the operator has failed to engage.

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Appendix A

National Trust Let Estate

The National Trust has a varied portfolio of agreements which allow other people to occupy National Trust land. We have in the region of 11,000 different agreements in place across England, Wales and Northern Ireland. Below is some information on these types of agreement.

Residential Leases

We have in the region of 5,000 residential properties. Some of these are let on what we would usually class as 'typical' shorter term tenancies, i.e. those for an initial fixed term of less than 21 years.

Of these we have the following leases:

- Assured Shorthold Tenancies for under 21 years -in the region of 2100
- Assured Tenancies with initial fixed term under 21 years -in the region of 115
- Tenancies protected by the Rent Act 1977 -in the region of 350
- Tenancies linked to occupancy by an agricultural worker (either under the Housing Act 1988 or the Rent Agricultural Act 1976) -in the region of 30
- Controlled and Uncontrolled tenancies in Northern Ireland -in the region of 115
- Longer term leases (over 21 years) -in the region of 800

The remainder of our residential properties are governed by other types of agreement. For example, some properties are occupied by members of staff on a service occupancy agreement as they need to live in the property to be able to fulfil their duties. Our farmhouses form part of agricultural tenancies. Equally as mentioned above, some of our residential properties will be included in business tenancies.

Agricultural Tenancies

The National Trust has in the region of 1700 Agricultural tenancies These are a mix of tenancies protected by the Agricultural Holdings Act 1986 and those granted under the more recent Agricultural Tenancies Act 1995. We additionally have many hundreds of grazing, allotment and other forms of similar agreements. We also have a number of conacre agreements which are specific to Northern Ireland.

Commercial Leases

The National Trust has in the region of 800 leases of commercial property. Some are protected under part II of the Landlord and Tenant Act 1954 and some have been excluded from the provisions of that act.

The nature and use of these properties varies significantly. For example,

- Some of these leases are of mainstream commercial properties located off our core estates but which are still important historic properties;
- Some will comprise significant historic mansions let with associated parkland, currently let for use as hotels;
- Some form part of an historic estate or village and form local facilities such as post offices or a pub;
- Others will comprise small buildings on our core estate (small workshop units in redundant farm buildings for example) used for small scale commercial enterprises. The specific use varies hugely from workshops for local artisan craft skills such as local blacksmiths or potters through to use as converted commercial office space.