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Date: Fri, 21 Dec 2018 at 10:43

Subject: City of London response to DCMS consultation: "Ensuring tenants' access to gigabit-capable connections".

To: tenantconnectivity@culture.gov.uk <tenantconnectivity@culture.gov.uk>

I enclose the City of London's response to the above consultation.

1.	Would the placing of an obligation on landlords in the manner proposed encourage more landlords to respond to requests sent by operators?
	<ul style="list-style-type: none">• No, the imposition of an order by a criminal court is unlikely to promote better digital connectivity.• In the City Corporation's work to develop and deliver the Digital Infrastructure Toolkit we worked closely with all the significant operators in London and across the UK. Operators said that delays to the installation of telecoms infrastructure was largely caused by the delay in agreeing legal arrangements for the installation of digital infrastructure. No mention was made about delays in landlords responding to requests for access.• The vast majority of landlords and managing agents want to have connectivity in their buildings in a timely manner for their tenants' use. Issues over landlord responsiveness generally occur due to:<ul style="list-style-type: none">○ Operators failing to research the identity of the relevant landlord or property interest. For example, the City Corporation is often contacted to sign wayleaves for buildings where we own freehold interests, when the operator should be in contact with the leaseholder(s).○ Back log of workload of surveyor / lawyer reviewing wayleave request.○ Managing agent / landlord having fixed views on which operators they wish to allow into their building due to previous installs etc.○ Managing agent / landlord being unhappy with provisions of the wayleave, Method Statement, risk assessment or proposals for executing works and reinstatement○ It may be more helpful to mandate transparency about digital connectivity available at a premises. This could be done by landlords or by independent rating organisations such as WiredScore.• Placing an obligation on landlords to facilitate the deployment of digital infrastructure into their properties will not help to overcome these issues, especially when the lack of response is due to a genuine inability (on behalf of the operator) to locate the relevant person who can agree to the connecting to the building. In other words, a warrant should not be a substitute or short-cut for operators who have difficulty in identifying the relevant property interest.

2.	<p>To what extent would placing an obligation on landlords complement or undermine the facilitation within the Electronic Communications Code of negotiated agreements between landlords and operators.</p>
	<ul style="list-style-type: none"> • Placing an obligation on landlords would be very likely to undermine the ECC process. Operators would have a substantially disproportionate advantage during negotiations. Operators are unlikely, as the proposal is currently articulated, to give much attention to identify the relevant property interest if the operator is able to use a new court process (see below for one way in which to ensure an operator takes all reasonable steps to contact a landlord). The only other likely scenario is that landlords develop a practice of issuing negative answers as a default response to an operator’s application to install apparatus. Both scenarios seem to run counter to the negotiation process in the ECC. Landlords who are already engaged with operators in negotiating agreements are unlikely to find the threat of compulsion to be complimentary to a negotiated agreement under the ECC.
3.	<p>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?</p>
	<ul style="list-style-type: none"> • No. It is considered that operators have the ability to resolve this issue themselves without the need for further legislation or recourse to the criminal courts in the manner proposed. • As stated elsewhere, the proposal is misconceived. • The Court Service is under severe strain and re-directing a commercial interaction as between operator, tenant and landlord would not be an efficient or effective use of court time. • If the Government decides to proceed, prior to any application for a warrant several steps should be required of a telecoms provider. For example, the provider should be required to prove that it has sought to contact the landlord through recorded or registered post, via email and by telephone. The operator should be required to prove it has taken these steps.
4.	<p>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? If not, how much time would be appropriate?</p>
	<ul style="list-style-type: none"> • This question is based on a false premise, the criminal courts should not be engaged in determining property issues between landlords, tenants and operators. • If the Government were to proceed, a longer period than 2 months should pass before an operator may seek entry via the criminal courts. Factors that must be taken into account include postal times for countries around the world (which can be more than 2 weeks), the response time of postal services where an operator’s notice is not delivered, the time to take instructions, the time to institute negotiations and time to appoint an agent. • If the Government were to proceed, it should make the notice period longer than 2 months.

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?
	<ul style="list-style-type: none"> • Proof of insurance. If an undertaker were to damage equipment serving a bank trading floor, for example, the undertaker may be responsible for £1,000,000s of damages. The Government should consult on the minimum level of insurance that undertakers should hold prior to starting work. • Proof of working method • Proof of attempts to serve notices on the landlord, including a witness statement describing such attempts. • Proof of an order for a connection submitted by the tenant(s) in the building, dated and signed. • A witness statement describing the order for connection and attempts the tenant has made to contact its landlord. • Copies of letters served by operator (quoting relevant sections of Electronic Communications Code) to landlord requesting permission to connect building • Proof of Electronic Communications Code rights held by the operator. <p>Only by producing this evidence and examining it before magistrates, with witnesses and legal representation on both sides, can the process offer a fair trial.</p>
6.	Is there a need to define what constitutes a request by a tenant for a communications service?
	<ul style="list-style-type: none"> • Yes, as above
7.	Do you agree that the temporary access granted by the court should be valid until such time as a negotiated agreement underpinned by the Code is signed between an operators and landlord?
	<ul style="list-style-type: none"> • No. Such an approach would introduce significant uncertainty into the legal certainties of the property law relationships between all parties. It would not be possible to provide a landlord with certainty in relation to court proceedings if an operator had an open-ended warrant affecting its property. A warrant issued by a court should be executed within a short, defined period – if an operator is to benefit from such a draconian step then it seems reasonable to conclude that there is a substantial time pressure on installing a new connection. Indeed, if there were no such time pressure then that would undermine the operator’s case for obtaining a criminal warrant.

	<ul style="list-style-type: none"> • Further consideration must be given to ancillary and important factors, including what would happen if an operator were granted a warrant and the landlord establishes contact after the grant of the warrant but prior to installation working taking place. What would the process be for the landlord to intervene at such a stage in proceedings?
8.	Would temporary access granted by the court provide an incentive for landlords to re-engage?
	<ul style="list-style-type: none"> • It is impossible to predict whether a criminal court proceeding to obtain a warrant would encourage an unengaged landlord to engage. In cases where the landlord is un-contactable it is likely to make no difference to the level of engagement. The meaning of ‘re-engagement’ is not clear. Is the Government anticipating that landlords will move in and out of engagement? • The scope of any warrant should be limited – and should be temporary.
9.	Do you foresee any issues with operator / landlord negotiations which take place after the installation has taken place?
	<ul style="list-style-type: none"> • The Government should consider how a landlord would ensure work done under the permission granted in a warrant would be supervised and, ultimately, quality assured. The operator’s work may, for example, not be of a quality suitable for the building or to the landlord’s usual standard. How would the landlord’s property interests be protected?
	General comments
	<ul style="list-style-type: none"> • It would be unwise to allow operators to proceed in installing fibre optic infrastructure without taking into account the points below. It may be that the tenant or head lessee may be able to fulfil that role in the absence of the landlord. Alternatively, consideration could be given to the appointment of an independent surveyor to fulfil this function (similar to the arrangement for Party Walls where there is no response from a building owner). ○ Check entry into a building, in particular waterproofing particularly where below ground. ○ Agree suitable route for cabling and ensure the agreed route is adhered to. ○ Check Risk Assessment and Method Statement to ensure that due consideration has been given to H&S issues. ○ Check likely disturbance of Asbestos Containing Materials. s. ○ Emphasise need to reinstate any fire stopping disturbed by the installation. ○ Ensure the needs of other tenants are considered whilst the installation is being undertaken and particularly where the proposed installation runs through another tenant’s demise. ○ Consideration as to effects of the installation in a listed or heritage property. ○ Overview of the likely effects the installation may have on the property. ○ Inspections of property to ensure compliance with works outlined in Risk Assessment & Method Statement.

- It is unlikely that operators would allow their contractors to install a new fibre optic service into a building without knowledge of duct routes, safety file (particularly the asbestos file), fire standards and so. Similarly under CDM Regulations 2015 the operator would be the client and possibly also the Principal Designer / Contractor and so would be liable for any Health & Safety breaches occurring. It is unlikely that operators would be willing to expose themselves and their contractors to such risks.
- The Government should consult further on how to ensure works are completed safely and to an acceptable standard. For example, would the operator be responsible for the cost of an independent surveyor, or similar, to monitor compliance and quality assure the process?
- The City Corporation echoes the sentiments of the City of London Law Society's submission that there is no evidence of a large number of landlords not responding to access requests and that there is no need for further legislation or regulation in this area. The City Corporation is not linked to the City of London Law Society.

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