

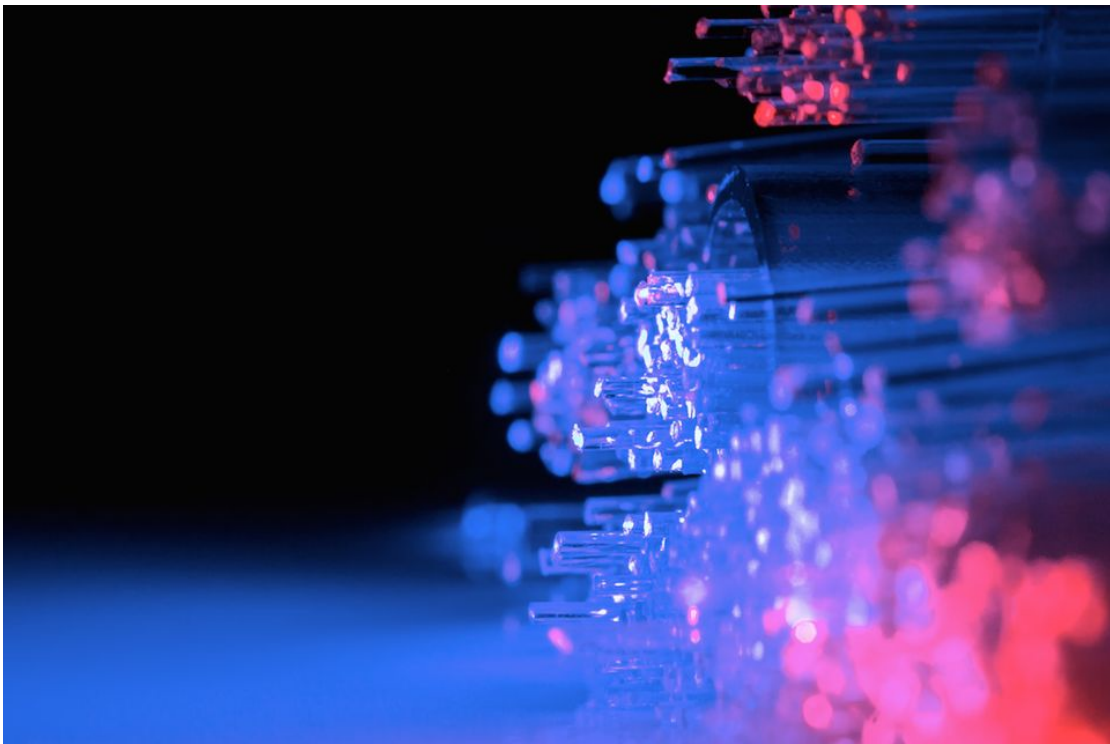
0. Homepage

Guidance

Digital connectivity portal

From: Department for Digital Culture Media & Sport

The digital connectivity portal provides guidance for local authorities and network providers on improving connectivity in local areas.



The Government intends to deliver nationwide gigabit-capable broadband as soon as possible, and aims for the majority of the population to have 5G coverage by 2027.

The [Future Telecoms Infrastructure Review](#) outlined a package of measures to create the right market and policy conditions to deliver world-class connectivity for citizens and businesses. These measures include removing barriers to deployment of gigabit-capable and mobile networks.

Making it easier for network providers to access public sector property and following best practice guidance on street works can help achieve this. Local authorities and property developers have a vital role to play in ensuring that all parts of the UK can enjoy the many social and economic benefits of the next generation of digital connectivity. Network providers, in turn, must work collaboratively with local authorities.

This digital connectivity portal has therefore been developed to:

- encourage closer cooperation between network providers, local authorities and property developers for the deployment of digital infrastructure
- offer guidance on effective policies and processes to facilitate deployment of broadband and mobile networks

The guidance presented in this portal will be updated periodically as new laws, regulations and examples of best practice develop.

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1. Resources for local authorities

Guidance

Resources for local authorities

Published XX December 2018

From: Department for Digital, Culture, Media & Sport

This section offers guidance for local authorities on: digital leadership, legislation and regulation, planning and deployment.



[Digital strategy and leadership](#) → 1.1

How can local authorities demonstrate leadership and create a strategy to encourage investment in digital infrastructure?

[Legislation and regulation](#) → 1.2

This section provides an overview of the current legislative and regulatory environment around the deployment of digital infrastructure at the local level, including the Electronic Communications Code and the role of Ofcom.

[Access to Public Sector Assets](#) → 1.3

This section presents practical guidance on access matters, including advice on access agreements and how local authorities can promote and encourage

the use of public sector land, buildings and other assets for digital deployment.

[Guidance for the local planning authority](#) → 1.4

Local planning authorities have a crucial role in the deployment of fibre and mobile infrastructure. This section offers guidance on how local planning policies and practices can support a wider digital infrastructure strategy.

[Additional Resources](#) → 1.5

The guidance below has been developed to address challenges around street works and deployment of digital infrastructure on the Government estate.

- The [Street Works Toolkit](#) offers guidance for highway authorities and network providers on how effectively to coordinate street works for the deployment of telecommunications infrastructure*
- The [Digital Infrastructure Toolkit](#) provides advice for central government and network providers regarding access to government sites. Local authorities are encouraged to consider this guidance and how it might be applied to their sites.

*applies to England and Wales

5G technologies: radio waves and health

This section presents information on [exposure to radio signals from 5G technologies](#). This [5G Mobile Technology Guide](#) also provides advice to help councils and local politicians deal with queries from the public, counter misinformation and explain the facts about 5G. Mobile UK, which represents the mobile network operators, provides additional information on its website.

1.1 Digital strategy and leadership

Guidance

Digital strategy and leadership

Published XX December 2018

From: Department for Digital, Culture, Media & Sport

[Resources for local authorities](#)

How can local authorities demonstrate leadership and create a strategy to encourage investment in digital infrastructure?

Digital infrastructure is a vital part of delivering a local authority's vision for the future of its community and can form an important element of both a local digital strategy and a local industrial strategy. A 'digital champion' can provide the leadership and focus required to develop and deliver an effective digital infrastructure strategy.

Digital infrastructure strategy

A focused strategy for encouraging and facilitating the deployment of telecommunications networks could help to boost economic growth, digital inclusion and deliver a range of societal benefits including the more effective provision of local public services. This could be a part of a wider digital strategy or a standalone document. Developing a local digital infrastructure strategy could involve:

- identifying a senior 'digital champion' to lead the process.
- bringing together local teams involved in the deployment of digital infrastructure.
- translating digital connectivity ambitions into a detailed strategy.
- agreeing the required skills and resources to deliver the strategy.
- collaborating with network providers, and
- clarifying a division of tasks and resources in two-tiered local authorities.

An effective digital infrastructure strategy could:

1. Explain how the local authority will facilitate the rollout of digital infrastructure

For example, this could include developing planning policies that support the roll out of new digital infrastructure in line with policies in the National Planning Policy Framework (NPPF). This states local authorities "should support the expansion of electronic communications networks, including next

generation mobile technology (such as 5G) and gigabit broadband connections”.

It could also include making available their ducts, roof-tops and street furniture to support the rollout of public wi-fi, 4G and/or small cells for 5G, and/or committing to only procure lamp posts with the capability of hosting digital infrastructure.

- Further information on [access to public sector assets]
- NPPF Chapter 10 on “Supporting high quality communications”

2) Increase cooperation with infrastructure providers and network operators

The strategy could stress the importance to the local authority of working in partnership with infrastructure providers and network operators.

3) Encourage the local authority to plan for the future

A digital infrastructure strategy could highlight the importance of taking future digital infrastructure requirements into account when conducting council business. For example, considering the potential for additional capacity when installing ducting/fibre-optic cables, or the potential need for mobile small cells when procuring street lights.

4) Promote long-term investment

An effective strategy could recognise the long-term benefits to the community from encouraging investment in digital infrastructure, over the short term benefits from revenue generation. For instance, it could highlight the significance of digital connectivity to the area and the social and economic benefits of connectivity.

5) Identify and aggregate public sector demand for connectivity services

A digital infrastructure strategy could support investment in infrastructure by encouraging local authorities to consider how to aggregate demand by combining the connectivity needs of different public services when entering into procurements.

6) Provide transparent contact information of key local authority stakeholders

In particular those of a local and senior digital champion and a digital infrastructure coordinator.

Digital champion

A digital champion in a local authority could help to minimise barriers to the rollout of broadband and mobile networks and support effective engagement

between local authority and industry stakeholders. This could be a senior cabinet member, councillor or senior local authority official.

The digital champion could work closely in partnership with industry to develop, implement and advocate a local area digital infrastructure strategy, in line with other local policies and priorities.

The digital champion could:

1. Provide strategic leadership on the local authority's digital infrastructure strategy.
2. Engage with senior stakeholders within the local authority, such as the highways, planning, estates, IT, legal, transport, economic regeneration and digital economy policy areas, to coordinate the development and delivery of the digital infrastructure strategy.
3. Promote the adoption of policies, processes and practices across the policy teams within the local authority which can help to minimise the time and costs needed for the roll-out of fibre and mobile networks.
4. Know what the connectivity needs of the local area are.
5. Work with industry to promote to the local authority, residents and businesses, the social and economic benefits of improved connectivity in the area/region. This could include training for elected members, such as planning committee members, on the ambitions of the council in respect of their digital infrastructure strategy and other related issues to help to ensure they can make informed decisions when presented with planning applications for telecoms infrastructure.

A local authority may also consider appointing a digital infrastructure coordinator who could:

1. Act as the main point of contact or 'account manager' for industry on issues related to digital infrastructure, and work closely with local authority stakeholders involved in the deployment process. For example, if the planned deployment is likely to affect the road network, the digital infrastructure coordinator could engage early and regularly with the local highways authority (within two-tier authority areas) during the planning process.
2. Be responsible for a register of public sector assets and infrastructure, which can be used to host digital equipment.
3. Be responsible for a register of digital infrastructure including masts and fibre cabinets.
4. Ensure managing agents and subcontractors, responsible for managing local authority assets, conform to any policies as outlined in the local authority's digital infrastructure strategy.

In two-tier authorities, both District and County Councils may consider appointing a digital champion (if they have a cabinet function) and Digital

Infrastructure Coordinator to work together to support the deployment of digital infrastructure at the local level.

1.2 Legislation and regulation

Guidance

Legislation and regulation

Published XX December 2018

From: Department for Digital, Culture, Media & Sport

[Contents](#)

The Digital Connectivity Portal provides an overview of the current legislative and regulatory environment around the deployment of digital infrastructure.

The Electronic Communications Code

The Electronic Communications Code ('the Code') regulates the legal relationships between site providers and operators of electronic communications networks (known as Code Operators), to support the rollout and sustainability of communication technology infrastructure. Rights to install infrastructure on public and private land are normally subject to an agreement between the site provider and the operator. Where this cannot be achieved, or where disputes arise, the Code allows either party to apply to a Tribunal for an agreement to be imposed or for resolution of the disputed matter.

The Code was substantially reformed through the Digital Economy Act 2017. The purpose of these reforms was to ensure UK consumers and businesses receive the digital connectivity they need, by making it cheaper and easier for Code Operators to install, maintain and upgrade their apparatus.

The reformed Code is set out in Schedule 3A to the Communications Act 2003. Links to that legislation and additional resources are provided below.

- [The Electronic Communications Code](#)

Additional Resources

- [Electronic Communications Code: Explanatory Notes](#) - Paragraphs 398 - 529
- [Schedule 2 - Transitional Provisions](#)
- [Schedule 3 - Consequential Amendments](#)

Ofcom and the Code

Ofcom is the statutory regulator for all domestic communications services. This includes digital communications services, like the provision of fixed and mobile broadband services. Ofcom plays an important role in relation to the

Code. Individuals or bodies wishing to acquire 'Code operator' status must apply to Ofcom.

Additionally, Ofcom has a statutory duty to publish guidance to support the effective operation of the Code, including: a Code of Practice, examples of standard terms that might be included in an agreement, and template notices for site providers and operators to use where needed. Links to these sources and Ofcom's guidance on the Code are provided below.

- [Ofcom: Guidance on the Electronic Communications Code](#)
- [Ofcom's Code of Practice](#)
- [Ofcom's Standard Terms](#)
- [Ofcom's Template Notices](#)

Access to public sector assets

Published XX December 2018

From: Department for Digital, Culture, Media & Sport

This section presents an overview of providing communications operators with access to public sector assets.

Introduction

The inability to secure suitable sites for electronic communications equipment is one of the biggest barriers to network deployment. Network providers require different kinds of sites for different kinds of network deployment, such as ducts for fibre, rooftops of tall buildings for macro cell sites and street furniture for small cell sites. They may also require rights to cross land in order to reach a site or to install fibre networks.

Local authorities can facilitate network deployment by making their assets and land available to network providers. Both local authorities and network providers can benefit from the use of local authority assets in this way.

This guidance provides advice for local authorities on:

- taking proactive action to map land, buildings and other assets that are potentially suitable for digital deployment;
- how to engage with industry when rights to access or use public sector assets is requested by network providers;
- how to progress agreements for the use of public sector assets quickly, efficiently and in line with the legislative framework and public policy

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Mapping public sector assets (→ 1.3.1)

Local authorities are encouraged to identify suitable assets and infrastructure that they own that could be made available to support the installation of gigabit and mobile networks.

Engaging with industry to promote and encourage the use of public sector land and assets for digital deployment (→ 1.3.2)

This section outlines best practice guidance on ways to encourage and provide access to local authority land, buildings and other assets for digital deployment by effective engagement with industry

Access agreements: form and terms (→ 1.3.3)

This section provides advice on access agreements and how local authorities can engage constructively with industry to reach agreements that are aligned to the legislative framework and public policy

1.3.1 Mapping public sector assets

Guidance

Mapping public sector assets

Published XX December 2018

From: Department for Digital, Culture, Media & Sport

To encourage the rollout of networks, local authorities may wish to map their assets.

Local authorities are encouraged to identify suitable assets and infrastructure that they own that could be made available to support the installation of fixed and mobile networks. Such assets might include: underground ducts, dark fibre networks, buildings, CCTV networks, streetlights and other street furniture.

Examples include the creation of a database of the available infrastructure, which would increase transparency and reduce the time and costs of network deployment. Industry could use this information to develop their plans for the rollout of fixed and/or mobile infrastructure in that area.

Information that local authorities may wish to consider sharing to assist operators to assess the suitability of the public sector sites/assets may include:

- the location of the site
- confirmation that the site meets any relevant regulatory requirements and is viable for telecoms use
- confirmation that there are no known factors which may impact deployment of telecoms infrastructure at that site

Local authorities could also use this information to help to encourage investment in underserved areas by highlighting publicly owned assets that can be used for digital infrastructure deployment.

1.3.2 Engaging with industry to promote and encourage the use of public sector land and assets for digital deployment

Guidance

Engaging with industry to promote and encourage the use of public sector land and assets for digital deployment

Published XX December 2018

From: Department for Digital, Culture, Media & Sport

This section provides best practice guidance on ways to encourage and provide access to local authority land, buildings and other assets for digital deployment.

Background

The Government is committed to supporting investment in high-quality, reliable digital connectivity so that communities can benefit from faster economic growth and greater social inclusion. It is essential to keep pace with growing demand for internet bandwidth and mobile data from local businesses, residents and those who visit our communities. Creating and maintaining the digital networks that the UK needs depends to a significant extent on communications network operators being able to install, maintain and upgrade their apparatus quickly and efficiently. As potential site providers for digital infrastructure installations, you can play a pivotal role in making this happen.

Access Agreements

Agreements that give communications network operators rights to access private and public land and buildings for network installation and maintenance are regulated by the Electronic Communications Code (the Code). The Code was substantially revised in 2017. This guidance sets out best practice principles of which DCMS recommends Local Authorities should be aware when providing communications network operators with rights to access their land and assets, to ensure consistency with the legislative framework and Government policy. The overarching aim of these principles is to help Local Authorities provide access to operators in ways that maximise the use of public sector land, buildings and other assets for providing UK consumers with high quality digital coverage and connectivity.

The Electronic Communications Code covers all types of agreements between site providers and Code operators that deal with rights to install, maintain, upgrade and share electronic communications apparatus. These best practice principles therefore apply to a wide range of scenarios including leases, licences and wayleaves. As well as granting new rights, the Code can apply to the renewal of existing agreements and requests for access to upgrade or maintain infrastructure that is already in place. Local authorities should consider seeking their own legal advice in relation to any aspects of this document. This document is a summary of best practice principles and should not be treated or regarded as legal advice.

Application of the Code to street furniture

- The Electronic Communications Code confers rights to install infrastructure on buildings and structures affixed to land, as well as to the land itself. The only exception is electronic communications apparatus - an operator cannot rely on the Code to obtain rights to install electronic communications apparatus on other electronic communications apparatus.
- It would therefore appear to follow that rights to install electronic communications apparatus on street furniture (such as lamp-posts or bus stops) are therefore regulated by the Code. These assets can be an ideal resource for the installation of digital infrastructure such as mobile small cells, CCTV systems or sensors.

Best Practice Principles

1. The Electronic Communications Code regulates all agreements between site providers and Code operators. Requests for access to all types of asset, including street furniture, can and should be dealt with on an individual, ad hoc, “first come, first served” basis. Equally, negotiations with multiple operators can take place in parallel. It is considered that a market engagement exercise as part of a tender or procurement is not required.
2. Unlike arrangements which involve the provision of services, such as agreements for local area Wi-Fi provision, these agreements only involve the conferring of a right, and not the procurement of services. It would therefore appear to be unnecessary for the local authority to run a procurement exercise before entering into a lease, licence, wayleave, or other form of property right with a Code operator.
3. Similarly, unless there is an intention to offer exclusivity over an entire estate of assets, it would also appear not to be necessary to offer access through a concession agreement, run under tender. The aim in all cases should be to enter into access agreements on an open access basis, which means exclusivity is not granted, and on terms

which reflect Government policy and the legislative framework¹. Where a concession model approach is preferred, Local Authorities should require the concessionaire to offer open access to those assets and ensure that the arrangement does not create a ransom situation leading to the imposition of high access or rental fees.

4. Local Authorities should engage constructively with all requests from communications network operators to use their land, buildings or other assets for digital infrastructure deployment. Such requests should be dealt with as promptly and efficiently as possible, having regard to the importance of digital connectivity for communities.
5. Local Authorities should refer to the [guidance on access agreement form and terms](#) when negotiating actual agreements.

Government would like to include case studies on this page showing a variety of effective commercial models available to local areas who choose to offer their assets for use by investors in digital infrastructure. If you would like to submit a case study, please do so by emailing connectivityportal@culture.gov.uk.

¹ *In relation to street furniture, it may be helpful if Local Authorities work collaboratively with industry to understand the number and location of assets likely to be required. This may assist in the event that there are parallel negotiations with multiple operators.*

1.3.3 Access agreements: form and terms

Guidance

Access agreements: form and terms

Published XX December 2018

From: Department for Digital, Culture, Media & Sport

An overview of key points around access agreements between property owners and network operators for the deployment of digital infrastructure.

What is an access agreement?

If a communications network provider needs to use another party's land in order to install, operate or maintain a digital communications network or system of infrastructure, they must obtain the other party's agreement to do this. The following guidance sets out best practice when negotiating and formalising agreements. Local authorities should [refer to section 1.3.2](#) for advice ways to encourage and engage with requests from industry

Agreements that give communications network operators rights to access private and public land and buildings for network installation and maintenance are regulated by the Electronic Communications Code (the Code). [Refer to section 1.2](#) for further information. This guidance sets out best practice principles that DCMS recommends Local Authorities should be aware of when providing communications network operators with rights to access their land and assets, to ensure consistency with the legislative framework and Government policy.

The overarching aim of these principles is to help Local Authorities provide access to operators in ways that maximise the use of public sector land, buildings and other assets for providing UK consumers with high quality digital coverage and connectivity.

Forms of agreement

In order for a network provider to successfully connect a home, a business or a school with telecommunications infrastructure, they must obtain the right to do so from a landlord by signing an access agreement. Access agreements may take different forms, which will often depend on the right being sought.

The most common forms of agreement in digital communications deployment are wayleaves and leases, whereas easements are more typical for traditional utilities.

A **wayleave** is a contractual agreement between a landowner or landlord and a telecommunications provider, where the landowner grants the network provider a licence with the right to access land and/or property, to install and/or maintain electronic communications apparatus. Wayleaves are commonly used for the deployment of fixed-line broadband infrastructure.

A **lease** is a contractual agreement in which the owner of property grants a right to use the property for a specified period of time in return for specific periodic payments. Lease agreements are more common for mobile masts on land or rooftops.

In the case of a wayleave, the grantor of the wayleave receives a payment, either annually or one-off, and is commonly open-ended. The rights may include occupation but may simply be limited to rights to pass a cable or a fixed line on, under or over the land (and may not be precise as to the location).

A lease agreement is usually for a fixed period of time and confers occupational rights to a specific area of land or a building. For this reason, wayleaves are commonly used for the deployment of fixed-line broadband infrastructure, whereas lease agreements are more common for mobile masts on land or rooftops.

The difference between these forms of agreement had particular importance in the past, because the relevant form determined whether any subsequent purchaser of the land would be 'bound' (required to uphold) rights granted under the agreement and what Land Registry requirements applied. However, the Code reforms introduced in 2017 dealt with this issue, making it clear that the form of an agreement to grant Code rights does not affect whether successors in title (subsequent owners or purchasers) are 'bound' by the rights previously agreed.

It remains useful for local authorities to be aware of the different forms that an access agreement can take. However, in all cases, the key issues to consider when negotiating an access agreement are:

- what rights the network provider wants or needs to successfully install maintain or operate their network
- whether the local authority is able to grant these rights
- what the appropriate terms should be

What does a good agreement look like?

An effective agreement will:

- be made in writing
- record the terms agreed between the parties

- help ensure the rights and interests of all parties are protected for the duration of the agreement
- include a mechanism to prevent and resolve disputes or misunderstandings

Agreements will vary, depending on the rights being sought and the terms agreed. However, there are a number of available sources that local authorities may find useful when considering what to include in their own agreements. These include:

- Ofcom guidance on the Electronic Communications Code may be useful when negotiating an agreement granting Code rights. The guidance includes:
 - Code of Practice
 - Standard terms (template agreement)
 - Template notices. This is an overview of appropriate legal terms for various actions around the code agreement.
- A template access agreement that has been developed for granting rights to use central government sites. This toolkit could also be useful for local authority solutions.
 - Digital infrastructure Toolkit
 - Template agreement
- The City of London have developed a toolkit to speed up wayleave agreements, which is endorsed by Greater London Authority for the London Plan.
 - Standardised wayleave agreement
 - Key steps flow chart
 - Model risk assessment and method statement

Of these model agreements, only the Digital Infrastructure Toolkit and accompanying documents have been developed by central government. The others are not endorsed by central government, but they may be useful starting points depending on the context and nature of the agreement being sought.

Agreeing Terms

When agreeing individual terms, local authorities should carefully consider what the communications network provider needs to install and maintain their apparatus or network, and have regard to the importance that the Government attaches to digital infrastructure deployment and the social and economic benefits that it delivers.

Agreeing Financial Terms - background

As with any other term of an agreement to host digital communications infrastructure, financial terms should be agreed, wherever possible, on a consensual basis between the parties. However – as with other terms - it is

important to note that these agreements are underpinned by a statutory framework, (the Electronic Communications Code – “the Code” - as set out in the Communications Act 2003, amended by the Digital Economy Act 2017).

Amongst other things, the Code sets out how a court should determine the financial terms for rights under the Code (where these cannot be reached on a voluntary basis and the court considers it appropriate for an agreement to be imposed).

Government Departments, other public sector bodies, valuation experts and legal advisers should note the Government’s clear hope and expectation that these reforms will lead to significant reductions in the amounts paid for rights to install and maintain digital communications infrastructure. The Regulatory Impact Assessment which was published with the Digital Economy Act 2017, provides further information about this.

The Government also encourages departments, other public sector bodies and their valuation experts and legal advisers to familiarise themselves with this statutory framework, particularly when negotiating the financial terms of an agreement.

The Code provides for two forms of remuneration: Consideration and Compensation. Departments, public sector bodies and their valuation experts and legal advisers are encouraged to familiarise themselves with the legislative framework and relevant Tribunal determinations when negotiating financial terms.

Consideration and compensation

Overview

The Code makes separate provisions for both consideration and compensation and the balance of consideration and compensation elements is likely to vary on a case-by-case basis, reflecting site-specific circumstances and issues. Under the “old Code”⁽²⁾, new agreements tended to focus on a single payment, combining both elements, in the form of annual rent. Emerging case law suggests that under the “new Code”⁽³⁾, this practice appears to be continuing.

However, it is important that when assessing any payment under the Code, there is full clarity and transparency on how the different components that make up the overall payment are assessed, to avoid double counting. In approaching the assessment of consideration and compensation, it is sensible

² *i.e. the Code as it existed before it was most recently amended by the Digital Economy Act 2017.*

³ *i.e. the Code as it now exists following its most recent amendment by the Digital Economy Act 2017.*

All references to “the Code” in this guidance are, unless specified otherwise, to this version of the Code.

to explicitly identify the factors that fall under both these headings to (i) avoid double counting and (ii) ensure all claim headings are properly considered.

REMINDER: the assessment of consideration under paragraph 24 of the Code is not an assessment under a compulsory purchase regime. The legislation provides for a separate assessment of consideration and compensation as they are sums payable for different things. Payment under one or both headings may be applicable depending on the circumstances of each case.

- The full definition of Consideration is in paragraph 24 of the Code. Readers are encouraged to familiarise themselves with it as this guidance should not be read in substitution of it, or indeed any other term mentioned here.
- For the purposes of this document, in general terms it is a one-off or periodic payment representing the value of the right to use the land for the term, on the terms that have been agreed or imposed. It represents, as the Code states, the market value of the site provider's agreement to be bound by the Code rights.
- Compensation, on the other hand, represents loss or damage sustained (or that will be sustained) by the site provider as a consequence of the agreement reached or imposed. It is the monetary equivalent of the loss or damage sustained. For more detail, see paragraph 25 and Part 14 (i.e. paragraphs 83 to 86) of the Code.

A process map covering the different steps to be followed when calculating consideration and compensation can be accessed [here](#).

Consideration

Key points:

- need to disregard telecoms use
- other / alternative uses to which the land or asset may reasonably be put can be relevant
- nominal consideration may be appropriate where, realistically, the characteristics of the land or asset mean no-one would pay anything for them.

Consideration: legislative background

The Government's 2016 response to its consultation on reforms to the Electronic Communications Code announced that 'site providers should continue to receive fair payment (consideration) for the use of their land and that this should be in addition to simple compensation for any damage or loss of value to the land'. Additionally, as a matter of principle, payment should not

include a share of any economic value created by demand for electronic communications services.

The statutory basis of the consideration element is found in paragraph 24(2) of the Code. It requires the assessment of market value being:

‘the amount that, at the date the market value is assessed, a willing buyer would pay a willing seller for the agreement:

- (a) in a transaction at arm’s length
- (b) on the basis that the buyer and seller were acting prudently and with full knowledge of the transaction and
- (c) on the basis that the transaction was subject to the other provisions of the agreement imposed by the order under paragraph 20.’

This assessment is subject to the following specific provisions of paragraph 24(3):

‘The market value must be assessed on these assumptions:

- (a) the right that the transaction relates to does not relate to the provision or use of an electronic communications network [i.e. the “no network assumption”]
- (b) paragraphs 16 and 17 (assignment, and upgrading and sharing) do not apply to the right or any apparatus to which it could apply
- (c) the right in all other respects corresponds to the code right and
- (d) there is more than one site which the buyer could use for the purpose for which the buyer seeks the right.’

What is consideration and what is being valued?

The key point is that the asset to be valued is the relevant person’s ‘agreement to confer or be bound by the Code right (as the case may be)’, noting that the definition explicitly refers to both parties being willing.

It is therefore necessary for the key terms of the agreement to be identified first because these will have a bearing on the market value of consideration. The appropriate agreement terms will normally reflect the current practice in the market within which the property is situated. For example, matters such as the duration of the agreement, the frequency of rent reviews (if any) and the responsibilities of the parties for maintenance and outgoings can all affect the market rent assessed under the consideration principles.

A practical consequence of the fundamental change to the statutory definition of consideration introduced by the 2017 reforms is that there is presently a relative lack of available empirical data on which to base a valuation judgment. In these circumstances, transparency plays an important role in smoothing the process of negotiating new agreements in an embryonic market. Therefore, in the absence of any overriding commercial or legal requirement, thought could be given to limiting the use of confidentiality

clauses, as their inclusion would constrict the availability of comparable evidence.

Possible approaches

The valuation exercise to be undertaken follows conventional lines with the inclusion of the assumptions of a willing buyer and of a specific transaction on a particular date and terms, in the open market with all the features present in that market. There are, though, some factors specific to the Code such as the no-network assumption, which are critical to the outcome.

Recent case law ⁽⁴⁾ acknowledges that other uses to which the asset/property might be reasonably put may be considered even though the only permitted use under the proposed agreement relates to electronic communications use.

When considering potential alternative uses, there is a need to assess the strength of the market for that potential alternative use or commodity and to recognise that the notional willing buyer embodies the actual level of demand.

Additionally, the fact that there may be only one bidder in the market does not mean that the price agreed will necessarily be a nominal one. Nevertheless, if the characteristics of the asset/property mean that in reality nobody would pay anything for them, a possible conclusion may be that their market value is nominal. The value of the land to the willing buyer will depend in every case on its characteristics and potential uses, and not simply on the number of potential bidders in the market.

Evidence of transactions for similar rights but granted for non-telecommunications purposes (such as parking compounds, weather stations etc) has the advantage of not requiring adjustment to reflect the no network assumption. It is **likely to prove useful if it can be shown:**

- **that the subject property may realistically be of interest to those types of user; and**
- **there is also a realistic prospect of forthcoming planning permission for that use.**

As emerging case law appears to be acknowledging⁽⁵⁾, the valuation assumptions required to be made when assessing the amount of consideration payable may be impacting on the site provider's ability to maximise the value of the land. This is because the site provider is prevented from realising that portion of the value of its land that is attributable to its suitability for use in connection with the provision of an electronic communications network. However, whilst acknowledging that position, the

⁴ *EE Ltd and Hutchison 3G UK Ltd v The Mayor and Burgesses of the London Borough of Islington* (2019) and *Cornerstone Telecommunications Infrastructure Ltd v Compton Beauchamp Estates Ltd* (2019).

⁵ *EE Ltd and Hutchison 3G UK Ltd v The Mayor and Burgesses of the London Borough of Islington* (2019)

case law has also appeared to confirm that this **does not** give rise to a loss for which compensation is payable.

Compensation: legislative background

Key points:

- need to avoid double counting
- need to mitigate loss / avoid incurring unreasonable expenses

Paragraph 25 of the Code sets out the relevant provisions for allowing the court to order the payment of compensation. Case law has confirmed that the three general conditions appropriate for supporting a claim for fair and adequate compensation are:

- there must be a causal connection between acquisition and loss
- the loss must not be too remote and
- the claimant is expected to behave reasonably to mitigate the loss and avoid incurring unreasonable expenses.

The application of these principles and any assessment of compensation should be conducted with specific regard to the Code activity in hand. In this respect, the disregard of electronic communications use found within paragraph 24 relating to the assessment of consideration does not apply in relation to the assessment of compensation.

Recoverable expenses and fees will be those incurred in seeking to agree terms for a Code agreement. They do not include costs incurred in resisting the imposition of the agreement in principle, or in attempting to compromise the agreement itself.

You are encouraged to note that the risk of double counting should be guarded against. For example, in relation to wear and tear to the common parts as part of the operator's presence, use of safety equipment and contribution to future repair costs, these would appear to be unlikely to form separate claims under compensation if such matters had already been factored into the consideration payment in lieu of a service charge contribution.

Additional factors to take into account when negotiating financial terms

In addition to the Code, when negotiating financial terms, local authorities are also asked to note:

- the economic benefits of making their area attractive for investment by network providers
- the social and economic benefits of digital connectivity for communities, and the UK as a whole

- state aid and financial propriety considerations
- the 'no network' assumption: payment should not include a share of any economic value created by demand for electronic communications services

Commercial agreements that permit communications network providers to use public assets (which include local authority land and buildings) must be consistent with State Aid and any relevant financial propriety requirements.

Consideration, compensation and the duty of best value

Section 3 of the Local Government Act 1999 sets out that local authorities are under a general duty of best value when allowing their land or assets to be used. However, this duty is not limited to obtaining the highest rent possible. In addition to economic considerations, site providers must also take into account 'efficiency and effectiveness'. This holistic approach to defining the duty of best value encompasses the social and economic benefits of investment in digital connectivity.

When assessing market value, assets with little or no demand other than that for electronic communications are likely to attract low or nominal rent. However, where market value is assessed as the best price that can be reasonably obtained under the new Code, it can be argued that best value has been achieved purely in monetary terms and does not consider wider social and economic benefits.

Renewal of agreements protected by the Landlord and Tenant Act 1954

Some agreements dealing with local authority land and assets were concluded prior to the new Code being introduced, and they may therefore be protected by the Landlord and Tenant Act 1954 ("LTA 1954"). In such circumstances, the courts do not have jurisdiction to impose an agreement under the new Code. Where a consensual agreement cannot be reached, operators must apply to the courts for a new tenancy under LTA 1954.

It is open to local authorities to agree to a termination of an existing LTA 1954 lease and to enter into a new Code agreement consensually. In doing so, site providers should have regard for the wider definition of the best value principle described above, which takes into account overall value - including social value.

A process map covering the different steps to be followed when calculating consideration and compensation can be accessed [here](#).

1.4 Guidance for the local planning authority

Guidance

Guidance for the local planning authority

Published XX December 2018

From: Department for Digital, Culture, Media & Sport

How can the local planning authority support the rollout of fixed and mobile networks at the local level?

Local planning authorities have a crucial role in the deployment of fixed and mobile infrastructure at the local level*. Local planning authorities should make decisions for digital infrastructure in a timely manner and, where possible, should discuss operators' deployment plans well in advance.

*It is noted that planning is a devolved matter, and legislation varies in each nation.

National Planning Policy Framework

Applies to: England

The National Planning Policy Framework (→ Chapter Ten) states local planning authorities:

“should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections.

Policies should set out how high quality digital infrastructure, providing access to services from a range of providers, is expected to be delivered and upgraded over time; and should prioritise full fibre connections to existing and new developments (as these connections will, in almost all cases, provide the optimum solution).”

Local Plans

Local authorities can help create incentives for future investment in digital infrastructure in their area by ensuring Local Plans effectively support it. To do this, Local Plans can outline how planning policies will support the rollout of both fixed and mobile infrastructure.

This could include policies that will support the future of mobile connectivity and the rollout of small cells for 5G, which is most likely to be needed in urban areas. This is important as all formal planning applications will be assessed against the Local Plan.

For example, a Local Plan could ensure that all new developments have sufficient ducting space for full fibre connectivity or ensure the local planning authority takes appropriate measures to support the effective use of rooftops and street furniture to accommodate mobile digital infrastructure, including small cells for 5G.

Early Engagement and pre-application consultations

Local authorities and industry are encouraged to engage at the earliest opportunity to discuss deployment plans to minimise costs, time and uncertainty associated with the planning process for the deployment of fixed and mobile infrastructure.

Feedback from industry and local authorities suggests that pre-application consultations can help to streamline the planning application process and maximise the chances of applications being approved. While it is the responsibility of the potential applicant to undertake pre-application consultations, local planning authorities can help to make sure these are used effectively to support the rollout of networks.

For example, local planning authorities could provide communications network providers with detailed feedback on initial plans for deployment and offer a meaningful response, which could be used to inform the formal planning process. Local planning authorities are also encouraged to provide pre-application services at a rate that encourages early engagement to support timely and effective planning processes. Some local planning authorities have chosen not to impose a fee for pre-application consultations.

Coordination between the local planning department and highways department

Effective rollout of digital infrastructure relies on coordination and communication within local authorities. If the planned deployment is likely to impact the road network, the digital champion in local authorities is encouraged to engage early and regularly with the local highways authority during the planning process, using the process as outlined in the [Street Works Toolkit].

1.5 Additional Resources

Guidance

Additional Resources

Published XX December 2018

From: Department for Digital, Culture, Media & Sport

The guidance below has been developed to address challenges around street works and deployment of digital infrastructure on the Government estate.

- The [5G Health Guidance](#) provides advice to help councils and local politicians deal with queries from the public, counter misinformation and explain the facts about 5G.
- The [Street Works Toolkit](#) offers guidance for highway authorities and network providers on how effectively to coordinate street works for the deployment of telecommunications infrastructure*
- The [Digital Infrastructure Toolkit](#) provides advice for central government and network providers regarding access to government sites. Local authorities are encouraged to consider this guidance and how it might be applied to their sites.

2. Resources for communications network providers

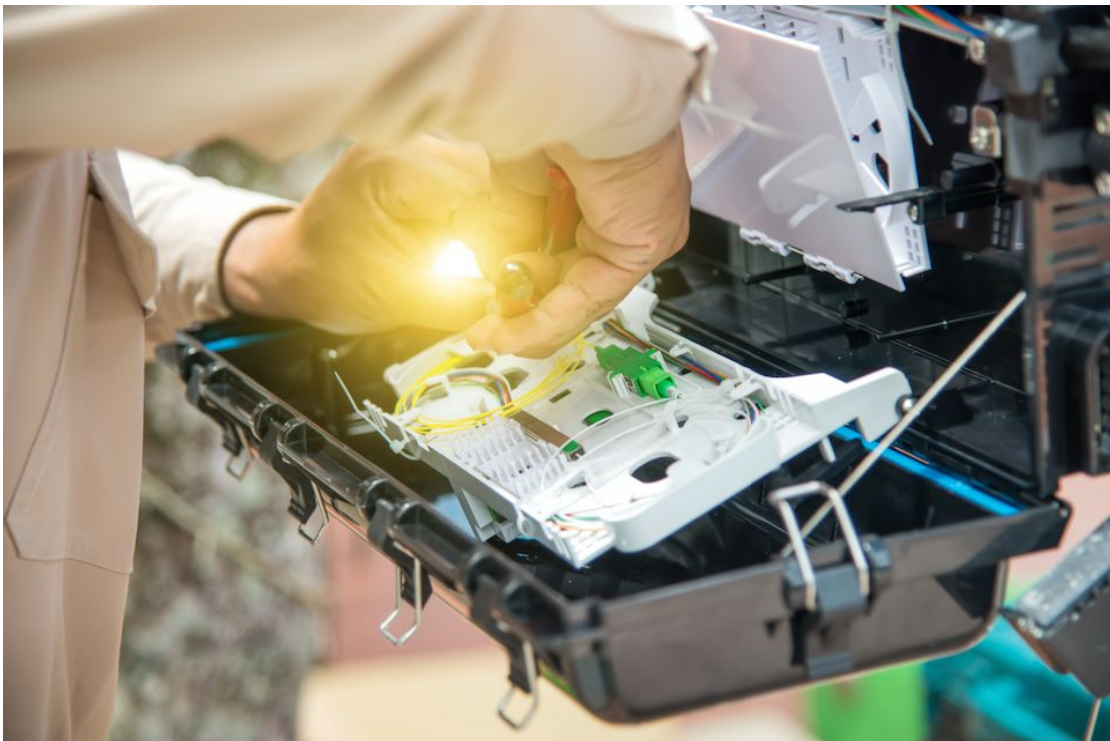
Guidance

Resources for communications network providers

Published XX December 2018

From: Department for Digital, Culture, Media & Sport

The Digital Connectivity Portal provides guidance for communications network providers on legislation, regulation and ways of working with local authorities.



The Government recognises the challenges communications network providers face in deploying digital infrastructure and has created the Barrier Busting Task Force (BBTF) to work with industry, local authorities and landowners to identify and remove barriers to deployment, including changes to the law.

This section provides guidance for providers on working collaboratively with local authorities, land owners, and property developers, and adopting best practice within the current legal framework.

Working with local authorities

This section contains practical advice for working with local authorities, including identifying a single point of contact, early engagement, and opportunities to communicate the benefits of enhanced connectivity.

Working with property developers

Network providers and developers need to work together, share information early and establish best practice principles to deliver high quality connectivity. Early engagement, coordinated planning and good communication enables smoother deployment.

Legislation and Regulation

Operators are encouraged to understand how the new Electronic Communications Code (the 'Code') affects their deployment; and to take note of the guidance and code of practice developed by Ofcom.

- Digital Connectivity Portal [guidance on the Code]
- [Ofcom guidance on the Code]

Deployment

Operators are encouraged to cooperate with local authorities and developers in accordance with best practices around access agreements and streetworks.

- [Access to public sector assets]
- [Guidance on access agreements]
- [Digital Infrastructure Toolkit]
- [Street Works Toolkit]

2.1 Working with local authorities

Guidance

Working with local authorities

Published XX December 2018

From: Department for Digital, Culture, Media & Sport

How can communications network providers work constructively with local authorities?

Communications network providers may reap benefits from a collaborative approach to network deployment, providing local authorities with visibility of their overall aims and broader deployment strategy. The following are some steps we would encourage providers to take when engaging with local authorities.

Identify a Single Point of Contact for local authority engagement

Network providers should provide a Single Point of Contact (“SPOC”) for local authorities prior to, and during, the deployment of digital infrastructure. Introducing a SPOC, and making their contact information available to local authorities, can support the rollout of networks by providing an effective means for local authorities to engage with operators and vice versa.

The SPOC will also be responsible for coordinating the work of those responsible for builds and any subcontractors, making sure they are aware of, and adhere to, local policies and processes as outlined by local authorities.

Engage early, and regularly, in the deployment process

Network providers should engage with local authorities at the earliest opportunity to discuss deployment plans, making use of the pre-planning application process, in order to minimise costs, time, complexity and uncertainty associated with the deployment of fixed and mobile infrastructure. Operators should provide as much information as possible regarding the areas for deployment, public sector assets and facilities that might be needed, as well as timescales for their builds.

The SPOC can meet with the digital champion and other key stakeholders (as frequently as agreed, dependent on deployment plans) to resolve, where possible, any potential barriers to the effective deployment of broadband and mobile infrastructure.

Network providers can also provide local authorities with the details of all current mobile phone masts and fibre broadband cabinets to enable the

provision of an up-to-date mast register on an annual basis on 1st April each year. This should also include the plans for network expansion for the next year. They can also provide local authorities with regular updates on infrastructure upgrades and when new services are live in areas.

Work with local authorities to identify opportunities to communicate the benefits of enhanced connectivity

Industry is encouraged to work with the digital champion to identify opportunities to explain the need for enhanced broadband and mobile networks to local authority teams, residents and local businesses.

For instance, effective and transparent engagement can highlight the importance of works happening in their area, the benefits of connectivity, and allow operators and local authorities to respond meaningfully to any questions from residents about installations.

Communities and key local authority stakeholders are more likely to support plans for the rollout of infrastructure if they are aware of the economic, social and well-being benefits for both businesses and residents in urban and rural areas.

For example, in rural areas, access to e-learning resources can help with schoolwork; improved video-calling to distant family members can reduce loneliness; and reliable access to national and local authority services can increase fairness.

These opportunities could, for instance, include presentations on digital connectivity at general planning meetings, or County Council or District Council Network sessions.

2.2 Working with property developers

Guidance

Working with property developers

Published XX December 2018

From: Department for Digital, Culture, Media & Sport

How can network operators best work with property developers?

Introduction

Developers and operators should work together, share information early and establish best practice principles to deliver improved connectivity to local communities.

Agreements

The largest network providers have agreements that promote communication and efficiency, with both trade bodies and individual developers. We encourage smaller developers to adopt a similar approach by contacting operators as soon as possible in the planning process.

The government worked with Openreach and the Home Builders Federation (HBF) on an [\[agreement\]](#) which aims to deliver superfast broadband connectivity to new build properties in the UK.

- Virgin Media have a [\[similar agreement with the HBF\]](#)
- GTC have a [\[similar agreement with the HBF\]](#)

Openreach now offers a [\[rate card\]](#) for sites of 30 units and below; this offers certainty to developers and helps inform financing decisions.

Government proposal

To support widespread provision of gigabit capable networks, the Government is considering new 'backstop' measures to prevent new homes being built that lack high quality connections. The policy consultation and impact assessment are found at:

- [New Build Developments: Delivering gigabit-capable connections](#)

Early engagement

Successful fibre deployment requires early engagement to ensure that fibre is deployed while building works are undertaken. This means preparing for fibre delivery early in the planning process alongside traditional utilities.

Early engagement is the most frequent request by developers for network operators. Local authorities have a [statutory duty to publish](#) all planning applications.

In the [2017 Budget](#), the Chancellor called for the creation of a “central register of residential planning permissions from local authorities to improve information on where permissions are held”. The Ministry of Housing Communities and Local Government (MHCLG) is currently developing this.

Until a full central database is operational, planning applications can be [searched by postcode](#) and link through to a relevant local authority page for planning search. Network operators can use this to identify new developments that may not yet be served by broadband.