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T: 020 8607 2500

E: info@westlondon.com

Twitter: @westlbusiness

Tenant Connectivity consultation
Digital Infrastructure Directorate
Department for Digital, Culture, Media and Sport
100 Parliament Street
Westminster
London SW1A 2BQ
tenantconnectivity@culture.gov.uk

20 December 2018

Dear Sir/ Madam,

Ensuring tenants' access to gigabit-capable connections – Response to Consultation

West London Business (WLB) is a business-led non-profit established in 1994 with a board including firms such as PwC, Fullers, Kingston Smith LLP, Brunel University London, micro enterprises – and Heathrow. Our mission is to ensure that West London remains the best place to do business. West London is an amazing sub-region: it's a £50bn economy and the second largest economic powerhouse in the UK. Our members work together to raise West London's global economic competitiveness, whilst pursuing social and environmental sustainability.

In north-west London we receive ongoing feedback regarding poor digital infrastructure in new build (resi and commercial). In recent years we have worked extensively in Park Royal – the UK's largest industrial estate; also probably the UK's largest business broadband not spot. This has resulted in Openreach investing in a pilot FTTP installation reaching 500 out of 2000 businesses this Autumn.

1. Would the placing of an obligation on landlords in the manner proposed encourage more landlords to respond to requests sent by operators

Land Registry's open database provides landlord data for England and Wales, making it relatively simple to contact the landlord. Overseas owners can be more challenging to reach; and this can slow down roll out to businesses when they are in Multiple Occupancy Units (MOUs).

However there are genuine landlord concerns which should be addressed by Government and Communication Providers. WLB broadly supports the recommendations of one of our partners Community Fibre.

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Landlords have told, Community Fibre, about some of the reasons there is a delay in responding to wayleave requests:

- They are concerned that signing a wayleave will prevent them from renovating or redeveloping their property. The current Code requires a landlord to provide a Communication Provider 18 months' notice of termination to a wayleave agreement. Recommendation: If DCMS concludes the Code needs changing again then it should also be changed so that Communication Providers can negotiate a shorter termination notice period with Landlords.
- There is general distrust of Communication Providers. Many landlords have been told by Communication Providers in the past that they would be installing a future proof full fibre optic network only to find that the Communication Provider actually installs a cheaper, more energy consuming, less reliable and bulky copper / hybrid solution. Recommendation: Any additional powers awarded by the Code should only be available to those Communication Providers installing a full Fibre to the Home / Premise (FTTH/P) solution.
- Risk of damage to the integrity of their land. Some landlords that have previously granted access agreements have subsequently experienced very poor quality installations carried out by Communication Providers. In some instances this has damaged cladding materials on the building, impacted the operation of other building services and compromised the fire safety integrity of buildings. This dis-incentivises Landlords to grant access agreements. Recommendation: Communication Providers must provide a detailed survey report, including method statements, before being granted Ground Access to install their equipment.
- Costs associated with reviewing and checking the Communication Providers' works. The landlord will often incur costs in supervising the Communication Providers works and managing tenant engagement. Recommendation: Explore whether an obligation placed on Communication Providers to cover the reasonable costs incurred by the landlord or their agent in granting a wayleave and managing the installation.
- Lack of space for apparatus. Many cable routes and building risers are already full of old copper cabling. In the past Communication Providers who have stopped providing service to a building have failed in their obligation to remove their apparatus. This means there simply is not the capacity for new cables to be installed. Recommendation: Ground Access should only be granted once for a particular piece of land. The Communications Provider seeking a warrant should provide the court with the reference offer they will use to enable other Communication Providers to install their own fibre-optic cables within the apparatus being installed under warrant. DCMS and / or OFCOM will need to provide guidance to the court on what a reasonable reference offer should include. If multiple Communication Providers apply for a warrant for the same piece of Ground at the same time then the Communication Provider with the lowest cost reference offer should be awarded the warrant.
- Lack of knowledge. Often landlords are unaware of the obligations placed upon them by current legislation, there is often confusion about who within their organisation, and who within the tenancy chain has the right to approve a wayleave. Landlord's professional advisors might advise landlords against signing a wayleave and provide methods to delay or avoid signing. Recommendation: Communication Providers and UK Government should run a campaign that builds awareness amongst the UK's landlords about the benefits of a FTTH/P solution before making further changes to legislation which will cause a period of uncertainty and market instability.

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The Future Telecommunications Infrastructure Review emphasised the importance of developing a competitive market in telecommunications and only using regulation where the market has failed.

Research commissioned by DCMS shows that Spain has achieved a high Compound Annual Growth Rate of 45.3% in Fibre to the Premises (FTTP) connections between 2011 and 2016. The report concludes that the regulations that have facilitated this growth are:

- Regulated access to the physical infrastructure of incumbent Communication Providers. Which is already in place in the UK.
- An obligation on landlords to install duct networks and colocation space that allows several Communication Providers to collocate equipment and blow cables to each flat.
- Putting in place a lean procedure for getting the necessary permits from local authorities and premises' owners.

Recommendation: Instead of placing an obligation on landlords to grant **Building Access** to multiple operators to install their own infrastructure within buildings, which brings numerous health and safety complications, place an obligation on landlords of multi-dwelling units and commercial properties to install duct networks within their properties that allow several Communication Providers to blow cables to each property unit and a colocation space that Communication Providers are allowed to access.

2. 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?

WLB do not have the expertise to fully comment on this question but would broadly argue that placing an obligation on Building landlords risks undermining the existing negotiated access agreements of alternative Communication Providers who have already invested in developing positive relationships with those Building landlords.

The uncertainty created whilst new obligations are consulted on, implemented and then understood will delay negotiated agreements and delay the roll-out of full fibre networks in the UK.

Uncertainty with the future regulatory framework does not lend itself to the market stability and investor certainty that the FTIR called for. Even if DCMS achieves its ambition to implement the changes in the 2020 parliamentary session this will create at least 12 months of uncertainty. However the previous change indicates that the uncertainty could last much longer.

This uncertainty would occur at a time just when the full fibre roll out programmes need to accelerate in order to meet the Government's full fibre ambitions.

Recommendation [Repeated]: Communication Providers and UK Government should run a campaign that builds awareness amongst the UK's landlords about the benefits of a Fibre to the Home solution before making further changes to legislation which will cause a period of uncertainty and market instability.

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?

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Although it may be reasonable for a court to grant Ground Access to install apparatus across land that is outside a building, we are not yet convinced of the appropriateness of Building Access being granted to install apparatus into or onto a Building due to the Health & Safety co-operation required from the landlord.

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? If not, how much time would be appropriate?

According to Community Fibre, one of our partners, landlords have told them that the term 'absent landlord' is confusing, as it is already used in the property industry to refer to a landlord that does not live at the property. Another terminology should perhaps be used.

Two months does seem sensible period of time for Ground Access, but as mentioned in the previous question, warranted access for Building Access may generate issues relating to health and safety.

Recommendation: The Government should set a deadline in early 2019 for all landowning public bodies to sign a master wayleave with two or more FTTH/P Communications Provider by the end of January 2020. DCMS can facilitate this process by publishing a template Master Wayleave Agreement that public bodies can sign and confirming to them that they do not need to undertake a procurement process in order to sign a wayleave with a Communications Provider.

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?

Ground Access

The operator would need to provide the court with evidence that they had used Land Registry data to establish the name and registered address of the Landowner and appropriate notifications, as per the templates defined by OFCOM, had been sent to the landowner's registered address. The court will need to satisfy itself that the works proposed by the Operator will not present any Health & Safety risks.

The system will be inefficient if multiple Communication Providers all seek Ground Access to the same land on different occasions. The UK should follow Spain's example and ensure that apparatus installed under warrant is capable of supporting fibre-optic connections from multiple Communication Providers thereby encouraging infrastructure competition.

Recommendation [Repeated]: Ground Access should only be granted once for a particular piece of land. The Communications Provider seeking a warrant should provide the court with the reference offer they will use to enable other Communication Providers to install their own fibre-optic cables within the apparatus being installed under warrant. DCMS and / or OFCOM will need to provide guidance to the court on what a reasonable reference offer should include. If multiple Communication Providers apply for a warrant for the same piece of Ground at the same time then the Communication Provider with the cheapest reference offer should be awarded the warrant.

Building Access

As previously described we do not think a court would be able to grant Building Access due to the Health & Safety liabilities it would need to assume in granting that access.

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Community Fibre's existing works on multi-dwelling units (MDUs) has shown that the landlord plays a critical coordination role whilst works are taking place for example:

- Providing asbestos management reports. Community Fibre has adjusted its cabling designs in a significant number of installations due to the information provided by the landlord in its asbestos management reports.
- Coordination with other works taking place on site and importantly identifying who is the nominated Principal Contractor for a site under the Construction (Design & Management) Regulations. These regulations effectively prevent two Communication Providers working on the same site at the same time and so the court would need a method to decide which Communication Provider should get Principal Contractor status. Work has been suspended with one Local Authority for a number of months because the Local Authority has been unwilling to take on this coordination role.
- Provides floor plans for the buildings, where available, which importantly show where other services are installed so the installation can be designed to avoid disruption to existing services.
- Provides Fire Risk Assessments and details of the fire compartmentalisation built into the structure. Community Fibre have come across examples of both older and newly built MDUs that have had defects in their fire compartmentalisation structures prior to our work starting. Community Fibre have reported these back to the landlord for rectification. How would the court deal with such a scenario?
- Facilitate resident engagement activities to ensure all residents and resident/ business associations are aware of the planned works.

To ensure that the court was able to meet its Health & Safety duties it would need to take on these coordination activities normally undertaken by the Landlord. It would need to obtain information including:

Before works begin:

1. The methods by which the operator plans to install its apparatus and in particular how it will gain access to secure areas such as basements, plant rooms, risers and rooftops to survey and install its apparatus.
2. Fire Risk Assessment for the building carried out by a competent person confirming that the methods proposed by the operator will not compromise the fire protection systems within the building.
3. A Refurbishment / Asbestos survey of the building (if constructed pre-2000) to ensure no asbestos containing materials will be disturbed by the works.
4. Confirmation that the operator has the relevant level of liability insurance to cover any damage that may be caused to the building
5. Proof that the workforce that will be used for the works are properly qualified and accredited.
6. Detailed design document, risk assessments and method statements from the operator to ensure quality of a full fibre installation works is appropriate.
7. Checks that no other building services will be impacted by the works.
8. Communications plan to engage with tenants to ensure they are also kept safe and informed during the installation works.
9. Ensure that works are not taking place alongside other works as this creates additional health and safety issues. A principal contractor would be required to oversee multiple installations at

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the same time. This is an issue seen today in Southwark Council where Community Fibre and Hyperoptic are installing alongside each other.

Review during the build:

Spot checks to ensure the installation is aligning to the designs and that health and safety regulations are being adhered to.

Verification post build:

Checking the quality of the work, health and safety has been adhered to, and all firestopping has been done to the standards required.

It would be difficult for a court process to manage all of this without the landlord's involvement. This is the main reason we do not believe that warranted Building Access is possible without unacceptable risks being taken.

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

No - a request for Ground Access should be dependent on a request by a tenant for a communications service.

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 landlord?

Yes - we agree that Ground Access granted by the court should remain in place until such a time that a negotiated agreement is signed between the Communication Provider and landlord. It is important that the Ground Access granted by the court includes provisions for the Operator to continue to access the Ground so they can maintain their apparatus until such a time that a negotiated agreement is signed.

If the landlord has plans to redevelop the land in such a way that would require the termination of the temporary court access then the landlord should provide the court with 18 months' notice of the need to terminate the court order.

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

We suspect that this would very much depend on the reasons why the landlord has failed to respond to the wayleave requests.

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

We do see an issue where multiple Communication Providers seek access to the same piece of Ground to install apparatus. Such a scenario is inefficient and causes unnecessary disruption to the landlord and their tenants. There are also Health & Safety issues if multiple Communication Provider's are working on the same piece of Ground at the same time.

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Please do not hesitate to contact us directly if we can expand on any of the points above.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Andrew Dakers', with a stylized flourish at the end.

Andrew Dakers

Chief Executive

andrew.dakers@westlondon.com | M: +44 (0)7788 116159

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Company limited by guarantee, registered in England number: 02934029
VAT registration number: 674069512