

Virgin Media: consultation response

New Build Developments: Delivering “gigabit-capable” connections

Introduction and Summary

Digital communications are a modern necessity and considered by homeowners to be the fourth utility. We know that broadband speeds are now a significant factor in attracting people to live in an area, and that one in five UK residents seeks to sort out their broadband access before water supply.¹ In fact, research shows that 62% of potential home buyers consider broadband speeds as important as having an extra bedroom.² It is only right therefore that broadband should be placed front and centre of new build developments (NBD) and we welcome the opportunity to respond to this consultation.

Virgin Media is working with developers on voluntary agreements to provide our network services. [Redacted]

Virgin Media’s ability to serve NBDs is also an important part of the ambition of our network expansion plan, Project Lightning. [Redacted]

Despite this, Government recognises in the Future Telecoms Infrastructure Review (FTIR) that *“connectivity to new build developments is not as good as it should be.”*³ This assessment is borne out by data from Ofcom’s Connected Nations report showing that 8% of new residential premises constructed between April 2017 and January 2018 are connected to a solely based copper network (ADSL).⁴ Across ADSL connection types, the ‘peak time’ mean average speed is 7.8Mbps. Virgin Media’s average download speed at ‘peak time’ is 53.8Mbps at our lowest speed tier, and at our highest is 348.3Mbps.⁵ It is important that new build homes are not left behind.

In Virgin Media’s experience, there is a mixed picture as to the willingness of developers to make provision for the best quality broadband infrastructure, and yet Virgin Media has the capacity and ambition to deliver “gigabit-capable” speeds to more NBDs if given the opportunity. We estimate that our NBD footprint could be increased by up to 50% under the right conditions.

As it stands, there are circumstances that hamper network builders from gaining access to NBDs to provide “gigabit-capable” connections:

¹ Vodafone UK 2016 research as reported in Cable.co.uk, 8th April 2016, <https://www.cable.co.uk/news/broadband-more-important-than-water-or-gas-for-brits-moving-home-700001456/>

² Hyperoptic UK 2017 research as reported in Cable.co.uk, 26th April 2016, <https://www.cable.co.uk/news/survey-reveals-importance-of-broadband-to-brits-moving-home-700001485/>

³ DCMS, Future Telecoms Infrastructure Review, January 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/732496/Future_Telecoms_Infrastructure_Review.pdf, p. 30.

⁴ DCMS Impact Assessment, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752146/New_Build_Developments_Impact_Assessment_FINAL.pdf, p. 19.

⁵ <https://www.virginmedia.com/shop/broadband/speeds.html>

- **Developers treat broadband as an afterthought, and approach Virgin Media too late for us to be able to deploy our network.** These estates are left in the broadband slow-lane; with only one in three new homes having access to even a superfast connection (>30Mbps).⁶
- **Developers choose to install the cheapest and easiest broadband solution at the expense of customer choice.**
- **An increasing number of developers pursue exclusivity agreements which lock out all other network operators from serving the NBD.** This has obvious implications for consumer choice and the benefits that network competition brings.

We agree with the DCMS that reform is needed to nudge developers to prioritise broadband connectivity and choice for their NBDs, and that the ambition to ensure every NBD has access to a “gigabit-capable” connection is the right one.

Virgin Media is concerned that DCMS’ policy proposal could fall short of meeting this ambition. We make a number of comments and suggestions in our submission to ensure that all connections to new homes are “gigabit-capable”, and to hold developers to account if they choose not to provide choice to new homeowners. In summary:

- **The consultation with at least two network providers must be meaningful.** Gating criteria which define which network providers are considered in scope should apply to ensure the consultation process is genuinely competitive.
- **The NBD model should go further to mandate that a developer must allow more than one independent network provider on site if it is commercially viable to do so.** Competition between end-to-end networks is considered to be the ‘gold standard’, and we believe new homeowners should have access to the benefits this can deliver.
- **The ‘simple connectivity plan’ should sit within the planning system.** It is our view that the planning system can act as a critical enabler of the rollout of “gigabit-capable” networks, without adding an onerous burden onto developers or putting house building at risk, as developers are incentivised to make provision for the best quality infrastructure.
- **We propose an alternative ‘duty to connect’ model which better ensures that marginal NBDs will get gigabit-capable connectivity.** The current proposal risks operators seeking to avoid tendering for some sites where the cost per premises passed is prohibitive.

Q1. Do you have any further evidence on the state of new build connectivity in the UK?

Virgin Media agrees with Government’s observation that too often developments are built which do not provide the infrastructure required for “gigabit-capable” networks. Further, very few NBDs in the UK provide a choice between networks for residents living on the estates. It is our experience that this is precipitated by a number of behaviours on the part of some (but not all) developers. We set out our observations in more detail below.

⁶ DCMS Impact Assessment, p. 18.

At present we still see incidents across the UK where enabling “gigabit-capable” broadband is not considered a necessity by the developer when planning for the new homes. In fact, a survey by Cable.co.uk last year found that most of the UK’s top 20 housebuilders either would not, or could not, say how many homes built by them in the past year had access to even superfast broadband.⁷ [Redacted]

Additionally, many developers continue to rely on Openreach (OR) provision as the legacy provider. This trend is exacerbated by the voluntary agreement between OR and the Home-Builders-Federation (HBF), which will see OR provide FTTP to NBDs of 30 or more dwellings, at no cost to the developer. This represents approximately 53,900 new build homes in the UK, which equates to 33% of all NBDs constructed between April 2017 and January 2018, according to Ofcom data.⁸ This means for many developers they know they can rely on OR provision, which they view as the easiest and cheapest option for their site. [Redacted]

Virgin Media is also aware of a growing trend in exclusivity agreements being signed between developers and a single network operator, locking out other network operators. Such agreements obviously limit consumer choice. We highlight a few examples of situations below which we believe demonstrate a case for action:

[Redacted]

Likewise, we have concerns about the rise in one-stop-shop utility providers, such as GTC, who offer to provide integrated infrastructure for NBDs on the condition that they get exclusivity rights. If granted by the developer, this means only Internet-Service-Providers (ISPs) using GTC’s network will be available on site, again constraining competition and choice. We cite below a few recent examples below where choice for residents living in new developments will be restricted.

[Redacted]

The above circumstances hamper Virgin Media’s ambition to serve a wider proportion of NBDs in the UK. In 2018, [Redacted] requests from developers for Virgin Media’s services submitted via our new development portal, were later cancelled by developers. This represents [Redacted] dwellings. We suspect that many of the cancellations were consequent upon the agreement of exclusivity arrangements.

Q2. Do you have any further information or evidence to suggest that the costs developers would incur under the proposed policy would prevent homes being built?

Developers often wrongly perceive that making provision for multiple networks will add additional cost or slow down construction. HBF’s response to Ashford Council’s new EMP6 policy, which stipulates that proposals for qualifying development in the urban area of Ashford must deliver FTTP and a choice in networks for residents, is telling. They describe

Cable.co.uk research, April 2017, <https://www.cable.co.uk/news/investigation-why-broadband-in-britains-new-builds-is-so-dreadful-only-1-in-20-homebuilders-is-confident-its-even-available-700001726/>

⁸ DCMS Impact Assessment, pp. 31-32.

the new policy as “*in effect a Grampian⁹ condition...as providing fibre is not within the applicant’s direct control.*”¹⁰

Virgin Media has invested heavily in our infrastructure proposition for an NBD. There is no time or cost burden posed to the developer by allowing our network on their site:

- We have a streamlined new-build portal for developers, including technical guidance and a straightforward site request form.
- For large national developers, we are able to offer a hand-held sales process, delivered through our New Homebuilders Desk. This means we take responsibility for managing the process from the initial first contact with the developer, right through to the install, and follow-up post installation.
- We provide a dedicated liaison officer to act as a point of contact for the plans, progress, materials, and any issues for each site.
- Crucially, we ensure that the provision of our infrastructure into a new development does not impose any additional costs on the developer. At worst, it is cost-neutral for the developer. [Redacted]

Q3. Do you have any comments on the proposal for a ‘simple connectivity’ plan that developers must demonstrate to Local Authorities that they have consulted with at least two network providers?

Gating criteria should apply to the network providers invited to consult

We are concerned that in the absence of gating criteria which determine the eligibility of network providers invited to consult for a site, it is possible for a developer to ‘game’ the process. There is nothing to stop a developer informing the local authority that they have consulted two network providers, but only one of the network providers actually has a realistic prospect of connecting the site. For example, a developer planning an NBD in Aberdeen could approach BT and Virgin Media. BT has nearby network, but Virgin Media’s nearest hub site is 100 miles from the site. This consultation would not be meaningful as Virgin Media has no realistic prospect of serving the site and would therefore be forced to reject the developer’s approach.

This risk could be addressed by adding a gating criteria requiring the developer to evidence to the local authority that at least two providers in the consultation process have a ‘reasonable prospect of success’. It would be up to the local authority to judge this, but distance from the NBD site is one test they could apply. Alternatively, the obligation to ‘consult at least two network providers’ could be amended to specify that a developer ‘consult at least the two closest providers and do so in a meaningful and thorough way.’

The policy would allow NBDs to be built with a single network infrastructure even if multiple network provision is commercially viable

⁹ A “Grampian condition” is a **planning condition** attached to a decision notice that prevents the start of a development until off-site works have been completed on land not controlled by the applicant.

¹⁰ Comments in response to Ashford’s EMP6 policy, June 2016,
https://haveyoursay.ashford.gov.uk/consult.ti/local_plan_2030/viewCompoundDoc?docid=5867060&partid=6930100

In the forward to the Call for Evidence for the Future Telecoms Infrastructure Review (FTIR), the then-Secretary of State states *“we do not want to see a monopolistic market in these new technologies.”*¹¹ It is important that new build homes benefit from the same sentiment, or we run the risk of creating a second tier of housing stock with inferior digital capability. We note the Chairman of the Local Government Association’s People and Places Board (LGA) comment here, *“the standard of digital connectivity we provide to our new build homes should reflect our national ambition to roll out world-class digital infrastructure across the country.”*¹²

The FTIR sets out Government’s view that end-to-end network competition, where possible, is preferable to retail competition existing between ISPs. It reads: *“there are significant benefits to consumers from network competition, versus competition based on access on regulated terms to BT’s networks.”*¹³ This follows Ofcom’s conclusion, as set out in its Strategic Review of the Communications Market, that the availability of competing independent networks is the gold standard for broadband markets.¹⁴ Ofcom wrote *“the best driver for investment and innovation is network based competition... We believe competition between different networks is the best way to drive investment in high quality, innovative services for consumers”*. Government also recognises these benefits in the FTIR, describing how *“network competition provides alternative operators with full control over the services provided, allowing them to differentiate and provide customers with higher quality services. Incumbent network owners are forced to invest rapidly in order to avoid losing market share.”*¹⁵

In particular, Government is aware of the presence of infrastructure competition as an important factor in ensuring ‘future-proofed’ connections. Where more than one independent network operator is available on site, network builders are incentivised to upgrade network capacity in order to meet demand for increased bandwidth and attract customers to switch to their network. This is evidenced by research showing that, on average, incumbents invest 8% more of their revenues on network upgrade where there is strong cable penetration.¹⁶ DCMS’ consultation highlights its desire to see ‘future-proofed’ connectivity on NBDs. Only network builders are able, and have the incentive, to undertake improvements and upgrades to their network. Experience has shown that BT Openreach, the legacy supplier for NBDs, has been slow at revisiting old estates and improving capacity where they are the only network present on site.

Despite this, the obligation in the NBD model only goes so far as to oblige developers to consult at least two network providers. We are concerned that a developer could interpret DCMS’ proposal to the extent of only enabling *retail* (i.e., by suppliers using the Openreach network) competition for a site, even in the instance that more than one independent

¹¹ DCMS Call for Evidence, December 2017, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/669136/20171218_-_FTIR_call_for_evidence.pdf, p. 3

¹² Comments made in April 2018, <https://www.v3.co.uk/v3-uk/news/3029609/local-government-association-calls-on-government-to-require-housebuilders-to-provide-fibre-connections-to-new-homes-as-standard>
13 FTIR, p. 27

14 Ofcom, Digital Communications Market Review 2015.

15 FTIR, p. 27

16 Research by Solon Consultancy of Western European markets.

http://ec.europa.eu/dgs/secretariat_general/eu2020/docs/cable_europe_en.pdf, p. 25.

network infrastructure is possible. For example, we are aware of many NBDs where both BT/OR and Virgin Media could supply service, but the developer has only allowed one network at the time of site build. It is this situation that has led to the historic incidence of NBDs with poor speeds and no secondary network supplier. In many cases where the developer chooses only OR for their site, Virgin Media is able to supply the site but is 'rejected' on the grounds that the developer only wanted a single network operator. It is clear that this situation could have been avoided if the developer was obliged to promote end-to-end infrastructure competition.

We suggest a developer is mandated to allow access to more than one network provider if it is commercially viable to do so. Commercially viable means it should pose only trivial additional cost to the developer to allow multiple networks. In short, if more than a single supplier is feasible for a site, this must be facilitated by the developer.¹⁷ If a developer decides to only allow one network infrastructure on site whilst a site is being built, it should be required to justify this to the local authority. Likewise, if a developer can evidence that they have approached at least two network operators and all but one network operator has rejected the site for commercial reasons, this would be justifiable.

'Gigabit-capability' should be stringently measured

The NBD model specifies that developers will be required to ensure homeowners have access to "gigabit-capable" connections. We support DCMS' decision not to specify that future NBD connections must be full-fibre, and that other technology types such as Virgin Media's Hybrid Fibre Coaxial (DOCSIS) are "gigabit-capable". We have previously shared the details of a number of live trials of DOCSIS 3.0 with DCMS, and we welcome its recognition in the consultation that DOCSIS can deliver the speeds that residents need, should mass market demand for gigabit download speeds emerge.

We believe further clarity is needed on the connection types that would be considered as "gigabit-capable". Virgin Media is aware of technical designs for "gigabit-capable" connections' which may not materialise once consumers' demands for higher speeds are evident. For example, in MDUs some providers opt for FTTP designs in which a gigabit-connection is only taken to the building and so cannot necessarily be supplied to each premises within. We suggest that such a solution should not be regarded as 'gigabit capable'. If Government is to seek a revision to the Building 'R' Regulations, which currently only specify superfast broadband, in order to align with the new NBD policy, the definition for "gigabit-capable" should be considered. At present, the regulations only require that all newly constructed buildings are *"equipped with a high-speed-ready-in-building physical infrastructure up to the network termination points"*, but not to the front door.¹⁸

The 'simple connectivity plan' should demonstrate how the chosen connection will be ready for first occupation

DCMS highlights the frustration felt by residents who move into their new homes only to find the broadband experience are not what they expected. Virgin Media shares this

¹⁷ We consider that the upper limit for the number of end-to-end networks a developer should reasonably allow on site should be two networks for a SDU (footway congestion is a limiting factor), or three networks for an MDU (risers are a limiting factor).

¹⁸ New Building (Amendment) Regulations 2016 came into effect on 1st January 2017

concern and believes it is important the connection is ready to use from day one of occupation. [Redacted] New research by Cable.co.uk has also found that people moving into new build homes are twice as likely to have to wait a month or more to have broadband installed than those moving into homes with previous owners.¹⁹

DCMS should consider if a condition of the ‘simple connectivity plan’ could require the developer to demonstrate how their chosen connection will be ready to use from day one of occupation. The NBD model proposes “keeping local authorities up to date throughout the process”, but we are concerned this fails to adequately hold the developer to account. We note Ashford Council’s EMP6 policy requires proposals for qualifying development to be supported by an FTTP statement. In addition to establishing how FTTP will be provided to serve the development, the statement also requires evidence to show how it will be available to occupants as soon as they have moved in.

The ‘simple connectivity plan’ should sit within the planning application process

We welcome DCMS’ proposal to provide telecommunication operators with nine months’ notice of a development as a step forward from current practice, where there is no established timeframe for consultation prior to site build. However, this does not bring broadband on par with other utilities when planning for a new development. This is despite Government choosing to describe broadband as the ‘fourth utility’.²⁰ Indeed, DCMS describes the ‘duty to connect’ provision as “analogous to the electricity regime”.

Under DCMS’ new model, broadband is still treated differently during the planning stages of an NBD. As Figure 1 shows, for utilities such as water, gas and electrics, DCLG guidance sets out an expectation for developers to contact the companies to check the capacity of their networks and to discuss their requirements (such as location, size and expected timescales) before they have planning consent.²¹ The fact that this dialogue occurs prior to planning consent has several important implications:

- 1) It enables and supports the planning of utility networks.
- 2) It enables utility companies to understand as early as possible the feasibility and cost estimate for any new infrastructure required to support the new site.
- 3) It acts as a crucial incentive for the developer to agree commercial terms with the utility companies that will serve the site. This is because, if following the notification of a proposed NBD a Distribution Network Operator assesses that current capacity will be insufficient to support the new site, the cost of any new or upgrade to infrastructure must be met by the developer.

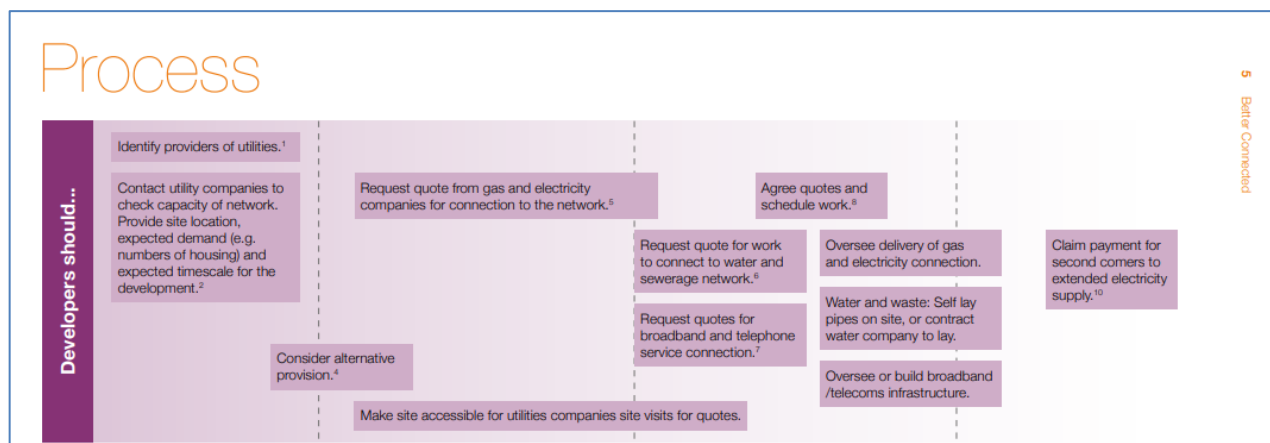
19 Cable.co.uk, April 2017, <https://www.cable.co.uk/news/investigation-why-broadband-in-britains-new-builds-is-so-dreadful-only-1-in-20-homebuilders-is-confident-its-even-available-700001726/>

20 Government’s ‘Digital Strategy’, March 2017, – ‘broadband and mobile must be treated as the fourth utility’.
<https://www.gov.uk/government/publications/uk-digital-strategy/1-connectivity-building-world-class-digital-infrastructure-for-the-uk>

21

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/389772/Better_Connected_Dec14_2.PDF

Figure 1²²



Virgin Media understands that DCMS believes it would prove “too difficult” to include broadband connectivity as part of the planning process. We believe it is a missed opportunity not to have the ‘simple connectivity plan’ as a condition of planning approval. Virgin Media has repeatedly pressed, for example through the National Planning Policy Framework (NPPF) consulted on earlier this year, that developers should be mandated through the planning system to provision for multiple network operators. The revised NPPF did not go this far. The new draft of the NPPF includes guidance to help councils encourage developers to provide FTTP connections, stating that planning applications “*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.*” We are beginning to see some of the ambition of the NPPF filter through to local authorities as they enter consultation for their local plans, for example with Ashford and Northumberland Councils. However it remains at a local authority’s discretion on how proactive an approach they adopt when reviewing their local plans. Crucially, the NPPF does not give them powers to hold developers to account.

If the obligation on the developer comes after planning permission has already been granted, it is not clear what enforcement or sanctions are available to a local authority to promote compliance. We are concerned that DCMS’ objective to ensure all NBD tenants have access to a “gigabit-capable” connection rests only on a behavioural ‘nudge’ to developers.

If it is ultimately not possible for the developer obligation to sit within the planning process, we suggest DCMS could empower local authorities to take a retrospective view on developers’ compliance with the ‘simple connectivity plan’ for future planning applications. A local authority could make clear to an uncooperative developer that their failure to ensure

22 DCLG, ‘Better Connected’, December 2014, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/389772/Better_Connected_Dec14_2.PDF

“gigabit-capability” for their site will be taken into consideration for any future planning applications. A ‘name and shame’ regime, akin to the Government’s approach to the gender pay-gap, for developers that do not provide an appropriate plan could also be considered.

Q4.

A) Do you agree with the assumption that deploying the necessary infrastructure to deliver “gigabit-capable” networks is best achieved when the site is being built?

The best opportunity to install a “gigabit-capable” network is during a site’s construction. In the event that a developer fails to allow network operators access at the point at which other utilities are installed, the best worst-case scenario is that we are able to dig up the streets at a later date to lay our fibre. This causes disruption and scars to the physical landscape. The reality is however, that very often retrospective installation of our network is not feasible due to restrictions placed on reinstatement and the legal status of new build estates, which means Virgin Media must wait until the site is adopted:

- Developers are reluctant to allow Virgin Media on site once a development is built, or almost built, because of the physical scars on footpaths caused by retrospective build. This can result in the local authority subsequently not adopting the road.²³
- Virgin Media can wait for the roads to be adopted to then deploy our network however typically NBDs take anywhere from two to seven years to be adopted.
- During site build Section 58 restrictions are often imposed by a local authority on a new build area. This restriction prevents us from digging up the newly resurfaced footpaths for a period of up to five years.

B) What technical specifications should the physical infrastructure (ducts etc) have?

There is a common misconception in local authority planning departments that providing ducts under roads in developments is enough to ensure broadband provision in the future. Unfortunately, this is not the case. Networks are planned and built in a specific way, and without consultation with Virgin Media a developer is unlikely to install a ducting that meet our network needs. In addition, there is often a lack of clarity over who owns, and has the obligation to maintain the ducts. This can cause issues over rights of access to repair, as well as what terms are imposed on the use of the ducts. The technical specifications for any on-site infrastructure should be agreed between an operator and a developer on a site by site basis during commercial negotiations.

C) Do you agree that developers should deploy, and pay for, the necessary infrastructure from the in-building connections to the boundary edge of the development?

We address this question as part of our answer to Question 2, where we outline the current practice of a rebate to the developer to fund and build the in-site infrastructure.

²³ To note, a developer is required to pay a financial bond to a local authority when agreeing planning permission, which is not refunded until the roads are adopted. Developers do not want to risk or delay the adoption process.

Q5.

A) Do you agree that developers should have to engage with at least two network operators?

Virgin Media welcomes DCMS' proposal that multiple network providers are consulted at an early stage in a site's development. Earlier in our response (Question 3), we outline our concerns about ensuring the consultation is meaningful. We believe that if Government really wants to see a choice in independent network operators present on NBDs, the proposal to engage with at least two network operators needs to go further and mandate developers to allow more than one network on site if commercially viable.

In addition, we are concerned that the NBD model would permit exclusivity agreements where an operator supplies services to an NBD on the condition that all other providers are locked out. A developer could facilitate a competitive consultation, but still proceed with the decision to let only one independent network operator on site. Exclusivity agreements are not in the interest of consumers and should be barred from the 'simple connectivity plan'. Customers are often not well served by exclusivity agreements. For example, GTC presents a narrow product choice from a limited group of suppliers. *ISP Preview* reviewed GTC's network in November 2018, and concluded that "*each provider tends to offer a near identical choice of packages.*"²⁴ We are aware of numerous incidents where residents living on NBDs subject to exclusivity agreements have complained of the lack of ISP choice from mainstream and recognisable providers.²⁵ Further, often these ISPs are only able to offer broadband products, which limits consumer choice to take a bundle of communication services from a single provider, including television. Ofcom recognises that consumers are increasingly taking a bundle of communication services from a single provider and that the average bundle price is 24% lower than an equivalent price for individual services.²⁶

B) What further measures could we consider to promote the availability of networks from multiple providers at an early stage to minimise costs and disruption?

Virgin Media considers that the most effective action that Government could take is to address the incentives of a developer to consider adequately the broadband requirements of their new estate. We outline in our response to Question 3 our view that this can best be done by making planning approval conditional on evidence that the developer has planned for "gigabit-capable" connectivity.

Government could also encourage local authorities to speed up their adoption processes, enabling a telecommunications operator to begin work on an NBD sooner than the current experience of two to seven years following site build. We are now beginning to see isolated examples of best practice. [Redacted]. We appreciate this is only relevant for historic NBDs that have been connected with poor speeds.

24 *ISP Preview*, November 2018, <https://www.ispreview.co.uk/index.php/2018/11/breeztel-joins-gtc-ftth-broadband-network-for-new-build-uk-homes.html>

25 For example, Charlton Hayes development in South Gloucestershire, where residents can only get 'Seethelight's 300Mbps service. <https://www.ispreview.co.uk/index.php/2014/08/new-housing-estate-locals-complain-ftth-broadband-isp-monopoly.html>

26 Ofcom: Pricing trends for communications services in the UK, May 2018, https://www.ofcom.org.uk/__data/assets/pdf_file/0030/113898/pricing-report-2018.pdf

Q6. Under the ‘duty to connect’ backstop, taking £3,000 as the suggested aggregated cost cap per premise, do you agree with the proposal for how costs should be divided between developer and operator? (£2,000 developer, £1,000 operator).

Q7. What information and evidence can you provide to help refine the ‘in sites’ policy design choice – aggregated cost cap or number of premises?

We address Question 6 and 7 together. Virgin Media objects to the aggregated cost cap per premises passed approach proposed by DCMS (and we propose a different approach below). If this approach is adopted, Virgin Media would be obliged to provide connectivity to premises that would otherwise not meet our investment thresholds and we would therefore not extend our network to serve. An operator should not be compelled to spend private capital to connect premises that are uneconomical.

[Redacted]

[Redacted]

[Redacted]

Q8.

A) Do you agree that developers should have the overall responsibility to ensure gigabit connectivity for their developments (allowing for the fact that they can oblige operators to connect using the ‘duty to connect’ provision).

Yes. It is at the discretion of a developer to allow access to a broadband provider for a new development.

B) How would this policy affect small housebuilders?

Virgin Media do not have comments.

Q9. Do you have comments on the proposed legislative approach? Do you have an alternative solution that would deliver gigabit-connectivity to NBDs? It is not clear how the NBD model will be arbitrated

Virgin Media is concerned that in the absence of clarity on how the process will be arbitrated, it is possible that the intervention could be ineffective. We seek further clarification from DCMS on a number of points:

- Who will oversee or arbitrate the competitive tender process? Is it up to the developer to judge which network providers will be invited to tender – we highlighted concerns earlier in our response about ensuring the consultation is meaningful.
- Who (and at what point) will deem that commercial negotiations have failed, and instruct the developer to invoke the ‘duty to connect’ provision? To address this, we consider that DCMS should propose some safeguards to ensure operators are given the maximum opportunity to agree commercial terms before the backstop is enacted.
- The ‘duty to connect’ backstop obliges the two ‘closest’ network operators to quote for the site. It is not clear how the two ‘nearest’ sites will be measured, or who will be arbitrating this process. We think significant network presence is a reasonable

reference point. For example, a Virgin Media head-end, fibre spine, or fibre-tail. Conversely, stranded plant or ducting should be exempt. Virgin Media submits that clarifications should be added to the face of the proposal.

- What process does DCMS envision in the case of a dispute? Will developers or operators have recourse to a tribunal process as part of the 'duty to connect' provision?

There is a risk of dishonest quotes by telecommunication operators for the 'duty to connect' provision

In some situations a provider will be incentivised to 'bid high' to avoid having to provide service to an NBD that it views uneconomic to serve. For example,

- An NBD is planned in Ley Hill Buckinghamshire, near Chesham. It is in a rural location on green belt land and the site has fewer than 10 dwellings.
- The developer has been unable to reach commercial agreement with any operator to provide "gigabit-connectivity" to the site as the costs are prohibitive.
- Virgin Media and BT are selected as the two closest networks. Virgin Media has a fibre network three miles from the NBD, and BT has network 1.5 miles away.
- Virgin Media conducts a site survey and ascertains that the CPP would be £2,000. The high cost reflects the extensive dead dig required to reach the site. However, because of the site's small size, the expected revenue will be low. Additionally, we may not be the first mover as an ADSL connection is already available, and we cannot assume a higher than average take-up. Taking these site-specific variables into account, Virgin Media would need the CPP to be (say) £250 for us to meet the thresholds in our business case.
- In the face of such poor economics, Virgin Media do not want to connect the site to our network as we are unlikely to ever recoup our costs or make a return. Virgin Media knows BT's network is nearby.
- With no incentive to bid honestly, as the operator knows they could be obliged to contribute £1,000 to connect a premise irrespective of their business case, the temptation is to bid high to ensure that the other operator to be selected.

Virgin Media suggest that the 'duty to connect' model could be adjusted to change the incentives for the operators quoting to connect the site. In a revised model, there should be no defined contribution on the part of the operator. Faced with less financial exposure, an operator chosen to provide a cost estimate could evaluate the site based on its normal business parameters. An operator would calculate what it would cost to connect the site and how far this is at variance with what it needs to align with its business case. The operator could then 'bid' for the developer's contribution to make up the difference between the actual estimated CPP and the required CPP. In this way, competition could be built into the 'duty to connect' model. The potential supplier would have an incentive to bid honestly to undercut its rival and win business on which it believes that it can earn a return. The following illustrative example sets out how this model could work:

- An NBD is planned in Hampshire. It is in a rural location, and has 25 dwellings.
- The developer has been unable to reach commercial agreement with any operators to provide 'gigabit-connectivity'.

- Virgin Media and BT are selected as the two closest sites. Virgin Media has a fibre network 3 miles from the NBD and BT has network 2.5 miles away.
- Virgin Media conducts a site survey and ascertains that the CPP would be £1,500 to connect. The high cost reflects the extensive dead dig required to reach the site. However, because of the site's small size the revenue earned will be relatively low. Additionally, we may not be the first mover as an ADSL connection is already available, and so expected penetration may also be relatively low. Taking into account these site-specific variables, Virgin Media would need the CPP to be £700 for us to meet our business case.
- Virgin Media needs £800 contribution per premises (£1,500 - £700) from the developer in order to meet the total cost to connect. Virgin Media bids for £800 per premises worth of 'top up funds' from the developer.
- OR assesses the site based on its own business case. OR is aware Virgin Media also has network nearby, and will submit a bid. BT bids for £700 per premises worth of 'top up funds' from the developer.
- The developer considers both bids, and chooses the lowest cost provider i.e., the one that has bid for the lowest contribution. In this case OR wins the business.

Put simply, the situation is flipped from one in which an operator does not want the business as we could be obliged to connect a site that is uneconomic, to one where the supplier wants business provided it gets the top up contribution from the developer.

This revised model requires developers to make a financial contribution to the connection of their site to a "gigabit-capable" network, however this is also assumed in DCMS' proposed NBD model. Virgin Media considers that at a certain cost threshold, it would be unreasonable for a developer to 'top up' an operators bid. If this cost cap for the developer is reached, the model would proceed on the same basis as for DCMS' NBD model: alternative technologies will be considered that can provide at least a superfast connection.

- **Encouraging construction innovation should be considered**

It is important to acknowledge that DCMS' proposal does not address all of the dimensions of the resistance we observe from developers in allowing more than one network operator on site. In particular, developers face an increasing challenge with narrow footpaths and pressured space in service strips for utilities. This situation is exacerbated in the case of more than one network operator being present, as each independent network operator can have its own set of ducting and own chamber.

As a result of technological innovation, there is an opportunity for network operators to share in-site infrastructure in NBDs, which could help alleviate the pressure on in-site space for utilities. Virgin Media is in discussion with OR and a prominent national housebuilder about the potential for sharing chambers in footpaths. This is very much in the design stage, but taken to its conclusion, the developer could mandate that every one of its sites accommodates multiple networks through the provision of shared chambers.

The NBD model will not resolve this issue, and so Virgin Media would encourage DCMS to separately consider how construction innovation could help further its ultimate objective of seeing more choice in network availability in NBDs.



Virgin Media
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