

Openreach response to New Build Developments: Delivering gigabit-capable connections consultation

Openreach welcomes the opportunity to respond to this consultation.

To deliver against the Government's goal of nationwide full fibre coverage by 2033, it is critical that new builds do not come onto the housing market without full fibre connectivity. Without policy change in this area, additional new builds being sold without full fibre will ultimately add to the scale of what is already going to be a challenging target to achieve.

Openreach will play a key part in helping the Government to meet these ambitions. We are working to pass three million premises with full fibre connectivity by the end of 2020, and have the goal of passing 10 million premises by the mid-2020s. Meeting both of these goals has always been contingent on having a favourable policy and regulatory environment – so we see the work on new builds as being an essential component of enabling us to deliver.

The consultation is looking to provide the levers to enable the Government's ambition of full fibre by 2033 and it recognises the difficulty in connectivity on new sites. It also recognises the need for cost sharing due to the commercial impact of rolling out full fibre on smaller sites for infrastructure providers.

However, to really drive the change needed, the industry needs more levers than the ones identified, in particular we believe that legislation needs to mandate an open access fibre (gigabit capacity) working service to all premises on new sites rather than just mandating that the developer install the infrastructure and not the ability to provide a working service. We feel that the consultation should consider more fully the retail choice for the consumer and to utilise the existing PIA products as a way of providing greater infrastructure competition and to make these reciprocal.

Furthermore, we believe that the consultation could be strengthened by addressing the specification on internal wiring to ensure that the optimal experience and speed can be gained inside the property.

We are also concerned about the administrative burden on infrastructure providers and Local Authorities and we question whether the LA's will be able to fully enforce the proposed mandate of engaging with two infrastructure providers.

As recognised within the consultation document, Openreach is already delivering full fibre connectivity to many new housing developments. Before this consultation was launched, we were pleased to be able to introduce a new commercial proposition for smaller housing sites (sub-30 premises) in November. This built on our previous offer to install full fibre connectivity at our cost to developments of 30 premises and over.

We would like to see the reliability and speed benefits of full fibre brought to as many new builds as possible. Too many premises continue to be built without full fibre connectivity – largely due to the failure of developers to engage with us in a timely manner.

It is quicker and more efficient for us to provide full fibre during the residential build phase rather than having to go back at a later date – so the earlier this change is introduced, the more impactful it will be towards meeting the Government's ambition to reach every premise in the UK with full fibre by 2033.

Our new commercial proposition means that we assume most of the cost for delivering full fibre to almost every new build premise. The main challenge in our view is the need for the housing sector to engage with us at the earliest possible stage.

We welcome the Government's intention to introduce a legislative backstop to ensure that all new housing sites are provided with full fibre in future. We are however disappointed to see that this proposal doesn't mandate genuine full fibre to the premise infrastructure – instead physical infrastructure is defined as duct and chamber.

Building regulations need to mandate that optical fibre goes into the ground – otherwise the objective of this policy won't be met. A development could be compliant by simply deploying duct and then running copper cable through it, defeating the objective of the consultation and proposed changes

We agree that it is unreasonable to expect network operators to pay the full cost of fibre infrastructure build in new developments and welcome the approach being taken by DCMS that the network operator contribution should be in line with the historic costs of copper infrastructure. We are however concerned that the proposed cost allocations between operators and developers do not reflect existing commercial practices.

We fully agree that developers should be obligated to contribute to fibre infrastructure build costs and think that this can be recovered in house pricing should the developer so choose – especially as consumers increasingly will demand and factor into their decision-making, the availability of high quality digital infrastructure. However, the proposed cost thresholds again could cut across this.

Finally, we support the position that legislation may be required to ensure that new builds are provided with full fibre connectivity, and welcome such an approach. It is vitally important that this legislation is moved forwards as soon as possible – the more new builds which are built without full fibre at this point, the harder it will be for operators to meet the Chancellor's ambitious 2033 target.

We do however have concerns about how this process will work in practice – without strengthening this policy, it runs the risk of not sufficiently incentivising developers to make sure that full fibre is delivered.

Our primary concerns are:

- **Our costs:** The consultation states that it is developers who are most likely to not want to make a financial contribution, which we also believe to be the case – however, setting caps at £1,000 for operators would put them at a financial disadvantage, and reduce the amount developers would be expected to co-fund. Setting the cap at £1,000 could remove the co-contribution principle which the consultation seeks to preserve.
- **Cost thresholds for smallest sites:** Our new commercial offer already gives substantial cost savings to developers – so in many ways, the telecoms sector is delivering. Therefore, if the cost thresholds were set as proposed the smallest sites would not benefit from full fibre as the cost of installation would not be covered by the developer's contribution.

- **Duty to connect:** A duty to connect could incentivise some developers to walk away from commercial negotiations, if developers felt they could get a better deal through invoking a duty to connect. It is also unclear from this consultation paper who would decide when a commercial negotiation has failed, and when the duty to connect provision could be triggered.
- **Registration of interest:** The proposed new process could result in significantly increased volumes of expressions of interest from developers – without necessarily resulting in registrations or orders for our services. The current proposal increases the potential administrative burdens which us, and other operators, would face, and would represent a significant increase in our costs. We would recommend that all infrastructure providers issue a rate card (similar to the one that we have published) so that all developers can conduct their own review on the cost of providing full fibre to their site. We would further recommend that infrastructure providers publish which communications providers (CP's) provide services over their network, thereby giving choice to the developer.
- **General arbitration of disputes:** Both for commercial discussions as above, but also for deciding who has the closest network. This information is not publicly available, and for smaller housebuilders, they will likely lack the capacity to find this information out themselves.
- **Role of local councils:** Local councils role in this process appears to be quite passive in terms of simply receiving information. We think they should have a more active role in making sure new builds have appropriate digital infrastructure provided and we hope that DCMS makes this clear in the publication of best practice.

The importance of this issue means we believe that the Government could go further to ensure that this goal is accomplished. We would like to see as many levers as possible brought to bear on developers to make sure that they engage in the process of delivering full fibre to their new sites.

1. Changes to **building regulations to mandate developers** to ensure all '**on-site' infrastructure is fully built prior to occupancy** and introduce **mandatory internal wiring standards** (data extensions) to ensure that fast broadband can be effectively utilised around the home
2. In order to strengthen the role of local authorities, we think **the planning regulations should be amended** to ensure that new builds are developed with **open access**, gigabyte capable, digital infrastructure. Local authorities need real powers to change developer behaviours.
3. Consumers benefit from retail as well as network competition, so it is important that they have **access to at least one open access network infrastructure**. Consumers should have access to better information before they buy a new build property about which network providers are available at that premise, with clear guidance about what this would mean for their retail choices. Consequently, we believe it should not be permitted for a closed access network infrastructure provider to seek an exclusive commercial arrangement with developers.
4. Changes to **the UK Finance certificate** (formerly CML) to ensure that broadband is connected before the house is able to be occupied (in common to other essential services such as electricity and water).

5. We would also suggest expanding the scope of this consultation to look at **business sites** such as business parks. For the UK to fully benefit from full fibre deployment, small businesses will need to have access to the best possible digital infrastructure. Including business parks within the scope of this policy would help make sure that they are able to benefit – increasing the economic impact of this policy.
6. Finally, we think that **all refurbishments or redevelopments of buildings should include the upgrading of digital infrastructure, specifically the installation of full-fibre**. This stipulation is particularly relevant to local authorities and housing associations which can provide homes in the city to thousands of people who should not be left behind. It may be necessary for the Government and/or local authorities, to provide financial incentives or tax breaks to help landlords upgrade their property, such investment could help unlock thousands of full-fibre connections and the socioeconomic benefits they would bring.

We appreciate that DCMS has looked at some of these other proposals in the past. As our FTTP deployment continues to ramp up, we do need to see as many different levers as possible used to change developer behaviour – so we urge DCMS to be ambitious and take action to meaningfully change the incentives underpinning developer behaviour.

Q1. Do you have any further evidence on the state of New Build Development connectivity in the UK?

Our new proposition for smaller sites is an important development in terms of providing connectivity to new build developments. We launched this offer for all new sites registrations from 1 November 2018.

This offer builds on our previous efforts to improve connectivity for new build sites. In February 2016 we introduced a proposition in conjunction with the Home Builders Federation (HBF) and supported by DCMS so that all new housing developments registered with Openreach from that point would receive fibre broadband, with Openreach funding the infrastructure completely where it were commercially viable and offering a co-funding option with developers where it were not. This was based largely on Fibre to the Cabinet (FTTC) technology, with sites of 250+ premises receiving Fibre to the Premises (FTTP) infrastructure wholly funded by Openreach. In May 2016 we reduced the threshold for FTTP to sites of 100+ premises (wholly funded by Openreach) and then in November 2016 we further reduced the threshold for FTTP to sites of 30+ premises.

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

We recognise the importance of increasing supply of new homes, and agree that it is important that Government policy does not hinder this goal.

At the same time, the Chancellor has set out an ambitious vision for the UK in terms of expanding full fibre, and rising consumer demand means that it will be cheaper and more cost effective to make sure that all new homes are built with full fibre capability. It will be more challenging to meet the Chancellor's goal if new build homes continue to come onto the market without full fibre connectivity.

Our new proposition, alongside our offer to connect sites of over 30 premises, means that there are now very limited costs for developers, and free full fibre connectivity for larger sites.

This means there should be little pass-through costs to consumers. We agree with the consultation that the primary challenge comes from developers not being willing to pay higher costs to provide full fibre connections – our hope is that our price reductions will change the market and drive better behaviour from the housing sector.

Beyond this, as the consultation makes clear, there is good evidence that consumers increasingly demand access to digital infrastructure – and see access to the internet as a basic utility rather than a nice to have. Developers should look to engage in this market through using enhanced digital connectivity as a sales point. As above, the cost per premise is now, even for smaller sites, negligible compared to the overall costs of purchasing a new build property – both as a raw figure and as a percentage of the selling point. The average cost of a home in September 2018 was £232,554.

London School of Economics research suggests that increasing available speeds can influence house pricing by 1-3%. Home builders will benefit from this, so the economic value of faster broadband should fall to the house pricing and therefore it's right to share these costs with developers.

We are also working with developers more closely to resolve service issues and educate them about new technology.

Q3. We propose that developers would be obliged to provide a simple connectivity plan for their developments to LAs. This plan would demonstrate that developers had consulted with at least two network providers to provide gigabit-capable networks and inform LAs when a site is connected. Do you have any comments on this proposal for a connectivity plan?

The biggest challenge which we face when it comes to connecting new build premises is a lack of advance engagement from housing developers. For us to carry out the necessary advance work, and make sure that we're able to complete our work prior to site completion, we ideally need nine months' notice from developers, so it is positive that this is recognised within the proposals.

However, our experience is that developers will often want to contact us before purchasing land. The proposed new process could also increase administrative burdens for us, and other operators, through having large numbers of prospective developments seeking to contact us in order to tick a box saying they had consulted two different operators.

This would increase costs, as it would likely necessitate an increase in the number of headcount we employ to deal with this increase. In effect, we'd ideally want to only provide quotes where a firmer expression of interest had been generated by developers.

Local authorities could be a helpful partner in terms of changing developer behaviour. However, the proposals within this consultation do not make full use of local authority powers to do so.

The flowchart in the consultation suggests that at three different points, developers will need to 'inform' local authorities about their connectivity plan, and to confirm what technology was ultimately used. It is unclear in the consultation document what the role of the local authority would be beyond passively receiving this information.

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We think local authorities should be empowered to pressure developers to include full fibre connectivity as part of the planning process. At the moment, we do not believe that the existing process would achieve this – and think more clarity is required on the following points.

- Will they (local authorities) have the ability to force developers to include digital connectivity within the planning permission process e.g. refusing consent?
- Would they have the option of rejecting a connectivity plan if they do not see it being sufficient?
- Will central Government offer guidance to local authorities to make sure they follow best practice?

Duty to connect

The other question we have about this element of the proposal is the duty to connect.

This presumes that developers will have a) notified operators with sufficient time that a new development is being built and b) that developers will operate in good faith when it comes to negotiating. It is unclear at what point it would be deemed that commercial negotiations have failed, and indeed which party would be able to declare this.

Where good commercial relationships exist, as is the case with most of the housing sector, the process outlined in the flowchart would work well. The challenge will be where negotiations go poorly, and this is where significantly more detail will be required.

It is not clear how a housing developer would know which two operators have the closest network to the site, which will make it challenging for them to invoke the duty to connect on the right party.

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?

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

Building regulations

We believe that Government should amend Part R of Building Regulations to mandate that all new and refurbished developments “should have a connection to the property” rather than simple ‘should be able to connect’.

We think that failing to amend Part R of the Building Regulations is a missed opportunity. We would urge the Government to look at this again and to re-examine whether this step should be taken.

In particular, Section 1.3. and 1.4 of Part R should be amended:

- 1.3** The requirement is to provide only the **in-building physical infrastructure**, from the service provider’s **access point** to the occupier’s **network termination point**. Multi-dwelling buildings must be equipped with a common **access point** capable of serving all the dwellings within the building.
- 1.4** It is not a requirement to provide any network cabling or equipment, or any in-building infrastructure that extends internally beyond the **network termination point**. Nor is it a requirement to provide any external or site-wide infrastructure beyond the **access point**. The developer and broadband service provider should agree who will install such external infrastructure.

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Under these regulations, in theory, direct in ground cable can be trialled and the developer is under no obligation currently to do anything outside the property or with regard to internal wiring beyond the NTP.

In Building Wiring Standards:

The speed of the service available to the consumer is not always determined by the physical infrastructure to the home - it is often the internal wiring that determines the perceived performance of the network within the home.

A lack of hard-wired data extensions within a home will mean that the customer is reliant on wireless, the performance of which can be significantly impaired by building materials (such as dense insulation, foil backed plasterboard, structural metalwork, etc.) and location of the customer's router/hub.

It is critical to the user experience that the internal wiring supports the speed that the customer buys from their communications provider. Developers often 'hide' the fibre infrastructure equipment under the stairs and do not provide RG45 data points or CAT5/6 wiring; this has the impact of requiring customer routers to be located close by the access point into the home, thereby significantly reducing Wi-Fi penetration round the house, reducing the internal speeds considerably and worsening the user experience.

To address this, we recommend that MHCLG should also mandate internal wiring guidance/standards (British Standards Institution Code of Practice on the 'Design and installation of telecommunication and broadcast infrastructure with the home') to ensure fixed data outlets are installed. This clearly sets out the range of cables needed to allow services into the home, as well as how to carry services around the home.

(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?

Q5a) Do you agree that developers should have to engage with at least two network operators who can provide gigabit-capable connections to the development?

The duty to connect proposal could also represent a challenge for smaller housebuilders who may find it harder to identify which networks are closest to their site. This could create burdens on the smaller side of the housing sector.

As discussed below, we think it is more important that consumers have a multitude of retail options available to them – so would argue that if two operators are contacted, it is vital that they are both open access networks.

(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?

Ultimately, consumers are more likely to want their property to have access to a range of retail providers rather than having access to competing networks.

At present home owners are unable to choose the technology provided by the developer. The developer also has no obligation to tell the customer who the infrastructure provider is nor what their subsequent choice of communication/service provider will be as a result of this.

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This can result in the homeowner being given no choice other than to accept one vertically integrated infrastructure and service provider, which means they cannot move provider at any point in the future even if they wanted to. We therefore think that greater transparency is required at the point of purchase on CP's available and the speed of the connection (and whether this is a contended network) so that homeowners can make an informed decision, especially as the lack of choice in the future could impact the value of the property, as we become more reliant on ultrafast speeds.

In order to address this we recommend:

- That planning consent needs a condition that at least one telecoms infrastructure be 'open access' and 'ultrafast' and this needs to be enforceable; some authorities have started to request this but when developers challenge this, it is not upheld.
- Furthermore a pre-condition of planning needs to stipulate that developer's point of sale marketing collateral contains explicit details of who the telecoms infrastructure provider is and which CP's homeowners can order service from. Section 1.13 of this consultation recognises that this is a problem – we think this would help to address this challenge.
- That Ofcom encourage communication providers (our wholesale customers) to consume ultrafast services from open access providers as this is a critical decision making factor for developers when deciding what technology to put into their new developments. Lack of CP choice on FTTP platforms is a major cause of dissatisfaction for home owners.

Q6. Taking £3,000 as a suggested aggregated cost cap per premise, do you agree with the proposed how should costs be divided between developer and operator?

We want to maintain the principle that the developer contributes for smaller sites. The co-funding model for smaller sites appears to be working well (based off the first month figures). We do not believe that it is fair for operators to assume the full costs of connecting a property on smaller sites in cases where a duty to connect has been invoked.

Developer contribution

Under the commercial model which we have now launched, we would require a developer contribution for sites of four or more premises which would fall under the proposed cap on developer contributions. This does, on average, mean that developments of one to three premises would require a developer contribution above the caps currently proposed.

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

Number of premises would be better – would reduce administrative burdens, as implementing a cost cap would imply that we would do bespoke costs for each site – which is impractical and would create unacceptable administrative burdens.

Q8. (a) Do you agree that developers should have the overall responsibility to ensure Gigabit connectivity for their developments (allowing for the fact that developers can oblige operators to connect using the 'duty to connect' provision).

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We agree that developers should have the overall responsibility to ensure this. We have made significant steps to reduce the costs for larger and smaller housebuilders, but need to see further action from housebuilders at this point to meet the Government's policy objectives. However, developers need support and help in making the right decisions for their potential customers and they should be mandated to provide an open access connectivity on all their sites.

(b) How would this policy affect small housebuilders?

As per the above, it could be more challenging for smaller housebuilders to identify which network is closest to the development.

Q9. Do you have any comments on the proposed legislative approach? Do you have an alternative solution that would deliver gigabit-capable connections to NBDs?

We are supportive of the legislative approach proposed. However, as highlighted throughout our response, there are additional measures we would like the Government to explore.

Beyond the proposals which we have made in this consultation, we think the Government could take the lead on prompting the finance sector to amend the certification process needed to get a mortgage. If primary legislation is being considered, then this could form the legislative vehicle to support a change to the mortgage certification process.

There is currently no obligation on the developer to physically provide a telecommunications connection to the home before occupiers move in, which often results in the communications infrastructure not being ready e.g. the duct or chambers have not been built.

While we are working hard with developers to change this situation, some do not see communications infrastructure as high a priority as gas, water and electricity and therefore give it lower priority during build. The impact of this is that customers can sometimes move into new homes without infrastructure being ready or can then need to pay for it themselves (which can also be impacted by the developers' own on-site readiness).

Therefore we recommend:

That telecoms infrastructure needs to be part of the UK Finance certification process to ensure it is installed before occupation of new premises i.e. extend the approvals process required by house buyers/resellers who need a mortgage (National House Builders Council or Professional Consultant certificates). Other utilities must be pre-installed to receive these certificates but currently not telecoms.

While there are cash buyers for new build properties, the majority of purchases are funded via mortgages. Putting this in place would provide a strong lever to incentivise developers to make sure they are able to sell a property – ultimately during the build process, they also will not be able to tell which, if any, properties would be bought with cash, meaning they will be incentivised to make sure all properties are sellable.