TalkTalk response to DCMS consultation on New Build Developments: Delivering gigabit-capable connections
December 2018

Overview

We welcome the Government's engagement on connectivity in new build developments and are pleased to respond to its proposals. We support the Government's ambition in this area and believe the policy outlined, involving a duty to connect with an agreed cap on both operator and developer costs, could drive an improvement in gigabit connectivity in new build developments. However, our view is that further industry engagement and consultation is required to develop and fully understand the impact of these proposals before any new legislation is introduced.

Our response to proposals

We support DCMS' goal to ensure all new build developments are served by gigabit-capable networks. At present, an increasing number of new builds gain these connections, but this is not always the case, and DCMS's conclusions in the consultation document generally align with our own assessment. We agree that this constitutes a form of market failure, as it is in the interests of operators, developers and – ultimately – home owners to have these connections. Any of the alternative options – ADSL lines or superfast connections – are irrational choices in the context of the Government's stated ambition to have national full fibre coverage by 2033. Therefore, we think Government intervention is appropriate.

We agree with the Government's assessment that developers should have overall responsibility for ensuring gigabit capable connections and contribute to the cost of this infrastructure. Developers stand to benefit from the infrastructure as it makes the developments more attractive, and they also can pass the costs onto home owner, who will benefit from having better connectivity. Our view is that developers and operators need to work collaboratively together to deliver on the Government's ambition and that effective collaboration is a good outcome for both sides.

Current situation

In November, TalkTalk announced the creation of a new company, FibreNation, which sits within the wider TalkTalk group and will deploy full fibre connections to 3 million homes. We are currently rolling out the FibreNation network in York, where will we connect 55,000 premises in total, and will extend our network to Harrogate, Knaresborough and Ripon over the next 24 months, and we remain in active negotiations with additional areas. FibreNation is a wholesale provider to both TalkTalk and Sky, with 30-40% market share in York and both will sell services from the new extended network.

As a start-up network provider with ambitions to scale roll-out, we recognise the opportunities which new build developments can offer network operators. However, we take the following factors into account when assessing the business case for network deployment to new build sites:

- Cost of deployment including the cost to connect to the backhaul;

- Commercial terms to be agreed with developer including developer charges and/or cost; contributions; and the choice and governance of contractors;
- Potential payback (taking account of potential customer volumes and indicative timeframes to connect);
- Operational costs;
- Resource capacity.

At present our assessment of the main barriers to connecting new builds is developers' unwillingness to contribute to the cost of connection in sites that fall outside operators' standard business case. We welcome DCMS' identification of this as a problem and willingness to engage with both the home-building and telecommunications industries on this issue.

Duty to connect

Any policy should address this central problem without placing additional burdens on network operators and incentivise developers to reach mutually acceptable terms. Therefore, we support these proposals existing as a backstop to cover those cases where commercial terms are not able to be reached. We make the following points regarding its operation:

- The policy must recognise the essential considerations of any network operators, as described above, and the constraints these may play on their capacity to connect sites. Network planning is a considerable task for operators, with each connection assessed in terms of its economic merit. These conditions would need to be met for us to reach commercial terms with a developer to connect a new build:
    - positive business case;
    - early engagement;
    - no punitive charges by developer;
    - agreement on use of contractors;
    - sufficient capacity;
    - timeframes align with other build plans.

  The policy should not result in operators being required to downgrade other network build areas in order to serve new builds. Rather, developers should be sufficiently incentivised to engage early in the process, contribute financially and agree acceptable terms so that this circumstance does not arise.

- DCMS' policy design needs to take account of the situation of network providers of all sizes to support effective competition. Careful analysis is needed to avoid unintended consequences which could undermine the policy objective – for example, mitigation is needed against the possibility for cost inflation throughout the duty to connect process.

- In addition, we believe the Government needs to provide further information and consult with industry on some operational features of any new regime, including:
    - How costs would be scrutinised at different stages;

- How the "closest network" would be established;
- How the policy will be enforced;
- Conditions placed on duty to connect.

At present, we are prioritising our activities to address existing residential areas within our current and target build areas, with a focus on residential areas and multi dwelling units (MDUs). We are not yet at the stage of maturity that includes a tailored new build offer comparable to those provided by more established network operators such as Openreach and Virgin Media. However, we would consider serving this market in the future, and believe that the initiatives outlined here – a requirement to consult with two operators and a duty to connect – make it more likely that we would enter this market, provided that the policy meets the terms we outline in this response. As stated above, we consider that more consultation is needed to refine the proposals and give operators the necessary level of certainty.

Broader policy environment

The policy design needs to take full account of Ofcom's physical infrastructure access (PIA) remedy which requires Openreach to improve is duct and pole access (DPA) product. Where Openreach connects a new build site, we expect the passive infrastructure to be adopted and made available on the Openreach portal for use by other operators as defined under the DPA Reference Offer, which is due to be revised by 1 April 2019 to fulfil the regulatory requirements. We also anticipate that defining the 'closest networks' for the purposes of the 'duty to connect' will need to take account of the availability of Openreach DPA, as well as different network operators' footprints. However, as discussed below, any individual operator may only be subject to the duty to connect when it is economically viable to serve the new build site following the developers' contribution and reaching acceptable terms.

More generally, we welcome leadership from Government to make the case for digital connectivity in new builds. As discussed earlier, collaborative engagement is the most effective route to delivering improved infrastructure. The Government has an important role to engage support housebuilders and convey the benefits of better connectivity to support collaboration.

In addition, further action to include requirements for gigabit capability within building regulations should also be pursued, and the opportunity for streamlining standards to support the delivery of gigabit connections should be explored. We consider other ways to incentivise early engagement between operators and developers in our answer to 5.c

We also recognise there is a role for operators to collaborate with developers to help promote the Government's policy ambitions. For example, operators could share information about connectivity alongside developer marketing communications to promote its importance to potential customers. We support this type of collaboration and would welcome any best practice advice or guidance from Government as to how to make it effective.

Consultation questions and responses

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

We agree with the Government's assessment that some developers are unwilling to contribute to the costs of digital infrastructure. In our experience, many developers see it as an opportunity to make unreasonable requests of operators.

Our experience to date in York includes deploying to four separate buildings that comprise of 140 units in total. We have faced the following challenges in reaching agreements to connect:

- Initial requirement to use the developer's Mechanical & Electrical sub-contractors to lay our fibre, which would have increased the price far in excess of market rates. For example, the developer wanted to charge £200+ per unit for laying our fibre when the market rate would be £50-£100 per unit. Ultimately, we managed to reach agreement with the developer to use our sub-contractors following intervention from the end client.
- For large schemes, the developer will also charge for the installation of ducts and chambers, which again is likely to be far in excess of reasonable rates.
- Risk of developer/freeholder asking for excessive fees for the administration of wayleaves.

These factors have resulted in us deciding against connecting certain sites as the high costs – once weighed against our upfront costs in terms of materials, fibre blowing, testing and customer install costs – made the sites economically unviable, despite otherwise being viable sites and after considerable engagement with developers.

On an operational level, we also struggle to communicate effectively with developers. In some cases, we do not receive enough notice of build plans and will be invited to lay fibre in a very short timeframe. This leads to unnecessary confusion, which could be avoided with earlier engagement to share build plans and timeframes.

Our assessment is that new build developments, especially new settlements, present challenges due to the significant time lag between the initial scoping of sites, then planning and building developments, to the point when residents move in. This lag is due to the various stages of the planning process that developers are required to go through. Within this timeframe, it is likely that changes will take place that would affect our network design, plans and deployment – for example, our deployment moving on to new areas. Connecting new areas requires repeated allocation of time, money and resources to the project over multiple years, prior to generating any revenue from paying customers on our networks. This entails a significant commitment from operators who need to have as much certainty as possible and confidence in achieving the required network penetration to ensure payback.

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 do not have any additional evidence, yet we consider that developers should be able to pass on any additional costs (as described in our answer to Question 4.c) and therefore the proposed policy should not prevent homes being built.

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?

We support the requirement on developers to submit connectivity plans to local authorities, provided the information required does not place an unreasonable burden on network operators and developers. Requiring this information would encourage early engagement between developers and operators and produce an agreed way of working.

Involving the local authority at this stage could improve its understanding of the importance of digital connectivity and the need to incorporate it into its local planning regimes. In addition, we hope that by submitting the plan to the local authority, it will engage constructively with both the developer and the operator – for example in its approach any potential street works which are required to connect the site to the backhaul. Agreements on these matters should be discussed and included in the connectivity plan.

It is important that operators' commercial confidence regarding costs and methodology is respected, in line with standard practice, and that also commercially sensitive information disclosed to the developer at this stage is not published in the connectivity plan. All plans should be agreed by the operator before being submitted to the local authority.

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?

Yes, we agree that this is the optimum time to build infrastructure required to connect to gigabit-capable networks.

During the construction phase, digital infrastructure deployment can be co-ordinated with the wider civil engineering works. This coordination will reduce costs to operators and developers by ensuring less disruption – for example, removing the need to dig up roads more than once – and is also less likely to encounter delays. In addition, developers can plan infrastructure deployment alongside other onsite works in the most resource efficient way. For example, many developers take a phased approach to new developments, with different plots built and sold at different times over a period of

several years. Developers will have greater oversight of this process and therefore can look to plan onsite infrastructure which best meets both its current and future plans.

It will also deliver a better customer experience as residents will face less disruption and have the appropriate infrastructure from when they move in, rather than experiencing frustrating delays due to the need for further engineering works.

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

New builds offer operators the chance to run fibre directly into the premise allowing for simply customer installation, possibly even self-install. The specifications should allow customers to be connected from the day they move into the premise with no gap in service due to the need for a further engineer visit.

Our broad view is that physical infrastructure should:

- Meet the requirements of Part R of the building regulations;
- Limit duct runs to a depth of 350mm beneath the proposed external ground level;
- The duct shall be no greater than 15mm from the finished wall surface;
- The duct shall protrude no more 75mm from the finished ground level;
- The duct opening must be covered, preventing the ingress of debris;
- The premise duct will join the distribution using a sweeper;
- The distribution duct should be 110mm in diameter;
- FW2 boxes should be place every 450 metres.

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 agree that developers are best placed to deploy the necessary infrastructure, for the reasons outlined in our response to question 4 (a). However, our view is that payment terms are subject to commercial negotiations and therefore operators and developers should have some flexibility in how to allocate costs.

We welcome the principle of developers contributing to the costs of infrastructure as it seems reasonable that they should be required to cover some costs. As identified in the consultation document, developers have more scope to mitigate the costs associated with infrastructure deployment, with the ability to either absorb the costs directly or pass them on to home buyers. In addition, developers stand to benefit from the premium placed on good in-home connectivity, with gigabit capable connections likely to be valued by potential purchasers. The Redrow survey referred to in the consultation document shows that high speed broadband was ranked second among the most important community features in an area.

However, our view is that it is important that network operators retain ownership of the on-site infrastructure. If the developer was to own the infrastructure, operators face being charged ongoing

rental charges. In addition, developer ownership would create confusion around responsibility for ongoing maintenance of the infrastructure and responsibility for blockages/ compensation claims. These considerations would be overly complex, and operators would be unlikely to agree to connect any such premises.

Therefore, we believe the optimal outcome for both developer and operator is that the network operator supplies the developer with the necessary infrastructure, and then the developer installs the infrastructure alongside its own civil engineering schemes. As an operator, we recognise that this entails labour costs on the part of the operator and would expect to contribute to cover these costs. As discussed before, however, developers have sought to charge us excessive amounts at this stage. We think any costs incurred here should be reasonable and in line with current market rates, and would welcome any views about how Government action could help keep these costs within reasonable limits.

If the new legislation required developers to contribute to infrastructure costs, one option is to require developers to waive fees normally charged to operators at this stage, to cover the cost of installation. However, we are concerned that this approach could lead to developers seeking to pass these costs onto operators in some other form, or seeking ownership rights. Any future legislation should be clear that any monetary contribution from developers does not entail ownership rights.

Overall, our view is that payment terms should be subject to commercial negotiations and therefore beyond the scope of the legislation. We would welcome further discussions with DCMS on the question of payment and ownership due to the complexity of these issues.

Q5. (a) Do you agree that developers should have to engage with at least two network operators who can provide gigabit-capable connections to the development?

Yes, we welcome this proposal from Government to require developers to engage with at least two network operators which can provide gigabit-capable connections to the development.

We support this requirement because we believe it could would encourage more transparency in the relationships between developers and operators, and therefore could have a positive impact on competition between network operators. At present, there is little transparency surrounding these negotiations and agreements, which favours developers and larger operators, many of which may have pre-existing relationships based on developments in other areas. In the Future Telecommunications Infrastructure Review, the Government committed to support the growth of alternative infrastructure providers, as it concluded that network-level competition is necessary if the Government is to achieve its target of national FTTP coverage by 2033. Our view is there are a range of necessary interventions to help encourage and support emerging network competition, including ensuring a more level playing field between different operators when it comes to connecting new builds. Therefore, we support this requirement.

However, the legislation should make clear that operators should be able to turn down the invitation to bid if they wish. Smaller operators may not have sufficient capacity or expertise to connect a new build development, for the reasons we discuss in our response to question 1. Therefore, the requirement should be on operators to engage with multiple operators but should allow operators to decline a request to provide connectivity, and only require developers to demonstrate that they have sought to engage multiple operators.

In addition, as mentioned in our answer to question 3, it is important that commercial confidence is respected throughout the engagement process and subsequent disclosure to the local authority.

(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?

We believe that the planning process offers opportunities to promote the availability of networks from multiple providers at an early stage.

We welcomed the National Planning Policy Framework (NPPF) 2018 statement which recommended that "planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections" and that "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."[1] This is a welcome intervention from Government to encourage FTTP connections at a local level.

We support local authorities' steps to mandate fibre connections in new builds as we believe this is necessary to drive change amongst all operators, and therefore hope that many will follow the recommendation of the NPPF. We are encouraged to see some authorities beginning to incorporate this into their Local Plans – for example, Ashford Council's Local Plan requires all residential and employment developments within the Ashford urban area to enable FTTP.[2] There is some appropriate flexibility where FTTP connections would pose an unreasonable ask of developers and operators– for example, it recognises there are additional challenges in terms of the viability of provision in the rural area and therefore limits the FTTP requirement to residential developments over ten dwellings, while smaller developments will only be required to deploy it only where practical. We believe this approach should be encouraged and extended into other local authorities as this could deliver a significant improvement to new build connectivity.

We also support calls for an update of industry standards through a refresh of BSI PAS 2016:2010. There are more network operators actively building networks now than when the PAS 2016 was originally prepared, and therefore it is an appropriate time to consider whether it needs to be revised.

---

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/740441/National_Planning_Policy_Framework_web_accessible_version.pdf

[2] https://haveyoursay.ashford.gov.uk/consult.ti/local_plan_2030/viewCompoundDoc?docid=5867060&partid=6930100

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 do not support the £1k operator cost threshold as suggested in the consultation document (2.8). Based on our experience of connecting homes, this is too high and therefore could see operators incur costs above current market experience. Our view is that the cap should not exceed £500 per premise.

In addition, it is essential that the legislation clearly lays out what costs should be included within the per premise cap. Our view is that it should cover labour and materials costs, costs to connect to the backhaul and any charges incurred for access requirements e.g. wayleave arrangements. Further engagement between DCMS and the telecommunications industry will be required to consider how the cap could be calculated and the wider implications of setting a cap.

We note the Government's proposal to require the deployment of other technologies which can provide at least superfast connections, if the cost of connecting a site exceeds the developer threshold. We expect that this scenario is most likely to arise in relation to smaller and more remote developments. We question whether a superfast connection will be deliverable at a lower cost than full fibre at these sites as we would anticipate backhaul will account for a significant proportion of the costs. We suggest that cost analysis performed to support the implementation of the 10 Mbit/s Universal Service Obligation could be used to help to develop this aspect of the policy.

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?

We do not have a fixed view on this question. As it links to the wider "duty to connect" requirements, we believe it can only be answered once we have more clarity on how this policy would work and the cost considerations it would include; therefore, we believe further consultation between Government and industry is required.

It is important to consider that economic assessments of new build sites are not just made based on upfront costs, but also on likely penetration rates and revenue stream over subsequent years. This calculation would need to be included in any aggregated cost cap, and this could be both resource intensive and commercially sensitive. Therefore, it seems likely to us that a per premise basis would be an easier metric, but there is a risk that it would be too blunt an instrument.

Again, we stress that operators must have the flexibility to make economically rational decisions in line with their own business model. We note DCMS' expectations that consumers connected under a duty to connect "would pay a price in line with local norms and we would consider action if we were concerned about consumer harms". This would limit an operator's ability to recoup any excess

expenditure on a particular site, and therefore further reinforces the need for operators to be extend their network without incurring costs beyond expected payback.

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)?

Yes, we agree that it is appropriate that developers should have overall responsibility to ensure gigabit connectivity for their developments. Developers own the land and control the timetable for future roll-out. Even in those cases in which an operator may incur a duty to connect, it should remain the responsibility of the developer to ensure connectivity.

As discussed in previous answers, our view is that the implementation of the 'duty to connect' requires further consideration, in particular, how the duty will take account of operators' deployment roadmaps and overall resource capacity, to ensure that it does not limit operators' ability to fulfil their own network roll-out plans.

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 welcome the Government's commitment to legislation, if required. However, we believe further consultation with industry is required before legislation should be presented to Parliament. We expect that a legislative approach would mean that any reforms would not be implemented for at least two years, by which stage the FTTP market will have developed considerably, and it is important that any legislative approach is not outdated.