

# Kent Wayleave Agreement Toolkit

For Multi Dwelling Unit's

Working Draft

***Supporting better broadband***



## **Disclaimer**

This disclaimer states that the information and resources supplied are up to date as of September 2024. We are not to be held responsible over inaccuracy of the information in this draft toolkit. The sole purpose of this draft toolkit is to provide guidance to organisations who are involved in work to connect housing that require wayleave agreements.

While every effort has been made to ensure the accuracy of this document, it is intended for general informational purposes only and does not constitute legal advice. For clarification or legal advice on how this impacts your organisation, please consult with your legal adviser.

## **1. Introduction**

Digital connectivity is essential. Increasingly, nearly every aspect of our lives requires a mobile or broadband connection, whether for learning new skills, running a business, managing health or staying connected with friends and family.

The UK Government has set a target for 85% of UK properties to have access to gigabit-capable broadband connections by 2025 and near universal gigabit coverage by 2030

To achieve this target, all types of housing – whether they are single dwelling targets, multiple dwelling units, social or market-led housing must be connected. However, connecting some types of housing will require operators to obtain a ‘wayleave’ before the necessary infrastructure and equipment can be installed.

### **1.1 Background – What is a Wayleave?**

A wayleave is a legal document that allows a telecom company to install fibre cables and related conduits, cabinets and access covers across the land and buildings owned by a council, housing association, or private landlord.

### **1.2 Background - Why is a Wayleave required?**

In owner-occupied buildings, the process is typically straight forward where the agreement is essentially between two parties, the communications operator and their client, the building owner.

The situation becomes much more complicated in multi-occupied buildings where the wayleave is a requirement of the landlord to allow operators the access they need to provide a service to tenants and individual flats. The lack of a commonly used ‘standardised wayleave’ document for non-metropolitan areas is a major barrier, with landlords and communications operators each using their own format of wayleave and having to negotiate from scratch in each case. Long delays are very common.

If these wayleaves cannot be obtained there is a high risk that these properties will not be upgraded by telecoms providers and residents will be left with poor connectivity moving forward.

## **2. Kent Wayleave Toolkit Draft Documents**

The Kent Wayleave Toolkit comprises the following documents:

### **2.1 Sample Expression of Interest (Appendix 1)**

The expression of interest is given to the telecom operators as they enquire about connecting to the landlord's property.

Operators should submit their Expression of Interest to the housing provider.

## **2.2 Sample Standard Wayleave Agreement (Appendix 2)**

Standard wayleaves have been successfully used by housing authorities in metropolitan areas e.g. London. They negate the need for housing authorities to have to use each operator's own wayleave template and can therefore speed up the process of getting wayleave agreements in place.

The Landlord Guidelines (Schedule 7 of the Draft Wayleave Agreement) is an important part of the agreement as it sets out the requirements around:

- communication between the parties (i.e. with tenants and landlord, timescales, project directory of contacts),
- the process to be followed,
- explicit guidance on areas, such as:
  - asbestos
  - fire stopping
  - Planning and building regulations
  - health and safety
- asset protection requirements such as how cables are run, wall penetrations undertaken, ground and roof works and how works are made good.

Detailed guidance is helpful for both parties as it makes the expectations clear to the operator so they can plan appropriately and likewise the landlord has communicated their needs and the telecom operator's expectations around communication.

## **2.3 Model Risk Assessment and Method Statement (RAMS)**

Once the Wayleave Agreement has been signed the Telecoms Operator must submit their Risk Assessment and Method Statement. **The works cannot start until this has been returned and the Landlord has granted access.**

An example of best practice is the City of London's template. Please see the link below:

<https://www.cityoflondon.gov.uk/assets/Business/model-risk-assessment.pdf>

## **2.4 Sample Key Personnel Contact Sheet (Appendix 3)**

Establishing a key personnel contact sheet allows for projects to proceed at pace and for issues to be quickly resolved.

## **2.5 Wayleave Process Flow Chart (Appendix 4)**

This flowchart sets out the key steps of the wayleave process.

Once the expression of interest has been signed, at the discretion of the landlord and/or housing authority, operators may start the site visits and submit installation

proposals before the Wayleave Agreement is signed. This will ultimately prevent delays whilst the legal discussions are taking place. For the avoidance of doubt, no installation work can commence before the wayleave agreement is in place.

### **3. Fees and associated costs**

The Electronic Communication Code legislation makes provisions for landlords to recoup the costs involved in establishing a wayleave agreement (see section 4.1)

In consideration of the Landlord's costs and expenses in preparing, negotiating and facilitating the Wayleave Agreement and associated works, some local authorities have requested that telecoms operators pay the Landlord a fee per unit as well as the following costs:

- Any and all title deed lookup costs.
- All reasonable legal costs associated with the wayleave agreement.

It is important to note that all providers will work to a maximum cost per premise when connecting properties under their own investment programmes. If costs exceed these thresholds, there is a risk that the property will drop out of these upgrade programmes and would then require a public subsidy to connect. The Department of Science, Innovation and Technology (who oversee the rollout of digital infrastructure) have stated that local authorities should support the rollout of broadband infrastructure wherever possible to minimise the risk of new areas of market failure emerging. Further information on their 'barrier busting' policies and workstreams can be found via the following link. [Barrier Busting Task Force: next steps - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/barrier-busting-task-force-next-steps)

In addition, whilst **housing authorities can recover reasonable costs under the provisions within the Electronic Communications Code, legal advice should be sought as requested fees deemed excessive by operators could be challenged within an upper land tribunal.**

### **4. Wayleave Legislation – The Essentials**

New legislation has strengthened the rights of telecoms providers to gain access to private and publicly owned property. It is important to note that failure to abide by this legislation can result in telecoms providers starting legal proceedings against landlords and housing authorities.

#### **4.1 Digital Economy Act 2017 / “The Code” of Practice**

Most frequently referred to as “The Code” the Digital Economy Act 2017 defines electronic communication services as essential services and provides the legal ability for telecom providers to place their equipment on land and buildings owned by private individuals and organisations.

In order to improve the speed of broadband and percentage of properties connected to the infrastructure, Section 4: The Electronic Communication Code (The Code), has increased operators rights to install equipment on private land. In essence, it

allows the operators to acquire the rights (wayleave agreements) to land in order for cabling and relevant cabinets to be installed.

The Code also sets out the way for fair consideration i.e. a one of payment or annual payment for the use of the land and compensation i.e. for a loss incurred such as a reduction in property value. The 2017 amendment to The Code also makes it explicit that landowners are not to profit from the installation of infrastructure that the public will benefit from i.e. social and economic benefit to the area.

As a result, the fees paid for wayleave agreements have been significantly reduced. There is a lack of transparency on what is the commercial rate paid for a wayleave to MDU and this of course varies depending on the nature of the property in question

It is also important that landlords and housing authorities consider the benefits that full fibre connectivity brings to both their tenants and housing stock. In addition, any [provider with Code Rights](#) can seek a wayleave under this legislation. This means that landlords are not able to restrict access to just one or two telecoms providers under exclusive concession agreements. Failure to grant access to an operator with code powers can result in legal action being taken against the landlord under the Electronic Communications Code.

#### **4.2 Telecommunications Infrastructure (Leasehold Property) Act 2021**

Telecom companies can gain access to properties if a tenant wishes to connect to the network and despite attempts to contact the landlord, the telecom provider has received no response.

To summarise, this legislation will allow telecom companies to serve notice on landlords and gain access to premises without the landlord's consent.

This can happen when:

- a) 3 notices are issued to the landowner and the telecom provider has received no response; and
- b) a leaseholder within the property ('lessee in occupation') has requested a service to be provided; and
- c) the operator is unable to provide the service to the leaseholder without gaining rights from the landowner.

The telecom provider then makes a Part 4A application to the First-tier Tribunal to acquire interim Code rights to the property.

Legislation can be reviewed here: [Telecommunications Infrastructure \(Leasehold Property\) Act 2021 \(legislation.gov.uk\)](#)

### **Frequently Asked Questions**

## **1. Who are the main providers rolling out gigabit-capable broadband networks across Kent?**

To date, City Fibre, Gigaclear, Netomnia, Openreach, Trooli and Virgin Media have been investing in new full fibre networks to provide gigabit-capable broadband connections across Kent. It is important to note that the availability of each providers network varies, geographically. To date, Netomnia and Openreach have demonstrated most interest in connecting flats or multiple dwelling units as they have dedicated wayleave teams.

## **2. Can I restrict access to just one provider?**

The Electronic Communication Code legislation states that any provider with code powers has a legal right to request access although market economics makes it unusual for more than several providers to do so.

## **3. What happens if I don't respond?**

To ensure digital inclusivity, it is really important that all types of housing benefit from these new full fibre gigabit-capable connections.

If you fail to respond, there is a risk that providers may initiate legal action under the legislation set out in section 4. There is also a risk that they might just move on and not include your building for upgrade! There is currently no government funded programme available to retrofit connections into multiple-dwelling units where landlords have been unresponsive and there is a risk that landlords may need to fund any installation costs moving forward.