



The experience of the relaxation of UK (England) legislation to allow more efficient roll-out of communications infrastructure.

A Report prepared for



by

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Executive Summary

In 2012, recognising the importance of superfast broadband in fostering growth and improving international competitiveness, the UK Government investigated ways to increase the speed of the infrastructure rollout, and improve their international standing for the availability of superfast broadband.

One area that was identified as a key issue delaying the rollout of superfast broadband was the issue of consent by local government authorities. The existing system was becoming counterproductive and uneconomic. Whilst the licencing and regulatory framework for communications is centralised through the UK Government and OFCOM, prior to 2013, in many areas, carriers wishing to build new infrastructure required individual planning consents from local planning authorities (LPAs). LPAs are cities or other public authority areas that have jurisdiction over certain public and private property. Such consents are required for poles and cabinets within certain high amenity areas in the UK such as Conservations Areas, National Parks and AONBs (which cover a large part of the country – for example, the Conservation Areas constitute 85% of the area found in the London Borough of Kensington and Chelsea). The consent procedures were impeding these rollout plans with delay, expenditure and uncertainty.

To resolve these issues, the Government proposed to remove planning controls for poles and cabinets and replace these controls with a notification system which already existed in other high amenity areas. In other words, the entire country would become a LPA notice rather than a LPA consent regime. In parallel, a Code of Practice for the good siting and design of such poles and cabinets was produced. The Code of Practice was drafted and negotiated with a number of stakeholders including the Planning Officers Society (representing LPAs), National Parks, and telecom providers including the two largest wireline providers, BT group and Virgin Media.

These proposals were put out to consultation. The vast majority of respondents were concerned about the environmental impacts (landscape and heritage), lack of community involvement and loss of income for LPAs. Despite this, the Government pressed on with the changes in 2013. Importantly a ‘sunset clause’ was put in place, meaning changes would expire after 5 years with the previous controls reinstated – this, alongside the Code of Practice, gave some assurances to those opposed to the changes.

Over the course of the last 5 years, this new system has been working during the rapid deployment of new infrastructure. Due to both the success of the new working practices and the further rollout required to reach the most rural of places, the Government sought to dispense with the ‘sunset clause’ and make the changes permanent. It did so in 2018 after consultation with the same group of stakeholders as in 2013 – the response was overwhelmingly positive this time.

1. BACKGROUND

1.1 Whilst the delivery of fixed-line broadband is being undertaken by the private sector, primarily by British Telecommunications (BT) and Virgin Media, the UK Government has taken a keen interest in this delivery. This is through Broadband Delivery UK (BDUK), who work within the Department of Culture, Media & Sport (DCMS), a UK Government Department.

1.2 The UK Government has been supportive of ensuring that the highest proportion of the UK population can benefit from access the broadband, preferably superfast broadband through the model of Fibre-to-the-cabinet (FTTC), although there are some (urban) areas which benefit from Fibre-to-the-premises (FTTP) superfast broadband. This Government support is predicated on understanding both the benefits which access to superfast broadband brings the wider economy, as well as the issues and costs associated with developing superfast broadband infrastructure in remote rural areas and areas of high amenity, such as National Parks, Areas of Outstanding Natural Beauty (AONBs) and Conservation Areas. UK Government has targeted 97% population coverage by 2020.

1.3 Development, of all kinds, is governed in the UK though a number of different legislative and regulatory instruments. For the telecommunications industry and any physical infrastructure, the main legislative provisions, for the purposes of this paper, are as follows:

Primary Legislation

- The Telecommunications Act 1984
- The Communications Act 2003
- The Town and Country Planning Act 1990

Secondary Legislation

- Electronic Communications Code (Conditions and Restrictions) Regulations 2003¹
- Town and Country Planning (General Permitted Development) (England) Order 2015²

Whilst bringing rights to the industry, this legislation also brings responsibilities and obligations.

1.4 Through control over legislation, Government has an important role to play in the climate within which communications infrastructure is deployed. Due to the economic consensus³ over the importance of communications in the modern world, there is also a general political consensus in the UK that having access to advanced communications networks is vital for both social and economic well-being. This includes tackling the digital-divide both geographically and socially. As intervention in the former is more tangible and measurable, this has been a priority of Government and is the focus of this short report.

¹ Known hereafter as 'the Code'

² Known hereafter as 'the GPDO' – the relevant section is Part 16. Before recent amendments this was Part 24 of the GPDO 1995 and it was this earlier legislation which was subject to the 2013 changes

³ For example, UK Broadband Impact Study – Baseline Report – Jan 2014

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/274633/UK_Broadband_Impact_Study_-_Baseline_Report_-_Jan_2014_-_Final.pdf

2 PROBLEMS IDENTIFIED: PRIOR APPROVAL BY LOCAL PLANNING AUTHORITIES FOR THE DEPLOYMENT OF TELECOMMUNICATIONS FACILITIES SLOWED THE ROLLOUT OF SUPERFAST BROADBAND AND INCREASED DEPLOYMENT COSTS

- 2.1 Broadband roll out in the UK from 2000 to 2012 was significant and saw superfast broadband availability grow to 45%⁴. However, there remained obstacles in the way to achieving greater population and geographic coverage. Simplifying access to land for deployment of infrastructure was seen as a way to achieve an increase in this coverage. As Code Operators, broadband providers such as BT already have rights under the legislation set out above. This includes, for example, the ability to install and maintain apparatus on the public highway⁵ meaning that legal agreements are therefore not required with private landowners - this greatly facilitates deployment. However, restrictions to these powers do apply.
- 2.2 Under the Code, subject to some exceptions, all new “lines” had to be installed underground. In addition, through restrictions set out in the GPDO, the deployment of overhead lines (and poles) and streetside broadband cabinets, whilst considered as permitted development were, in certain designated areas (Article 2(3)⁶ land) still subject to the Prior Approval of the local planning authority (LPA). LPAs are cities or other public authority areas that have jurisdiction over certain public and private property. Prior Approval takes 56 days; is subject to consultation with community groups; attracts a fee; and, importantly, can be refused by the LPA. In non-designated areas, the Code and GPDO allowed (and allows) such development to be deployed with only a notification to the LPA.
- 2.3 The focus of the Government therefore became making amendments to the Code and GPDO to allow apparatus to be installed in virtually all areas of the UK, irrespective of designations, without the need for any approval from the LPA. This did not come about in isolation however and lobbying by the likes of BT was instrumental in achieving the proposed changes. As an example, the London Borough of Kensington and Chelsea, where around 85% of the land area is designated as Conservation Area, 86 out of 108 applications for streetside cabinets were refused⁷. Whilst there was a right of appeal, it could take 6-8 months for an outcome plus the not inconsiderable professional fees required to undertake such appeals. Examples such as this were brought before the DCMS and helped make the case for looking at a relaxation of the legislation.
- 2.4 However, the main driver for change was an acknowledgement that even with the pace of roll-out, there were going to be areas where it was uneconomic to deliver superfast broadband. This would mean Government intervention in terms of direct subsidies - the Government made funds available⁸ to help ensure that their 90% population coverage for superfast broadband was

⁴ Using the Government definition of 24Mbps

⁵ Public Road in Scotland

⁶ Previously known as Article 1(5) land – includes Conservation Areas, areas of outstanding natural beauty (AONB), the Broads, National Parks, World Heritage Sites, area specified under Wildlife and Countryside Act 1981

⁷ <https://www.ispreview.co.uk/index.php/2013/03/kensington-and-chelsea-uk-reverse-earlier-refusal-of-bt-fttc-cabinets.html>

⁸ The Governments broadband intervention is in three phases with the first two providing £530m and £230m respectively. Phase 3 is now under way
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/418567/UK_Next_Generation_Network_Infrastructure_Deployment_Plan_March_15.pdf

achievable. In looking at the overall framework, it seems obvious that when one branch of government is working for a specific outcome another branch of government should not be frustrating this work. Because 80% of the costs of bringing superfast broadband to any given area is in the civil engineering and associated professional works, reducing these costs - both in direct monetary terms through subsidy and indirectly through reduced timescales was seen as an essential element in accelerating deployment and boosting investment.

Moves to fast-track the roll-out of superfast broadband - essential to the UK's economic future - are to be announced today by Culture Secretary Maria Miller.

A swathe of red tape holding up the delivery of broadband infrastructure is to be swept away, clearing the way for the UK to have the fastest broadband of any major European country.

"Superfast broadband is vital to secure our country's future - to kick start economic growth and create jobs," said Maria Miller. "We are putting in the essential infrastructure that will make UK businesses competitive, and sweeping away the red tape that is a barrier to economic recovery.

"The Government means business and we are determined to cut through the bureaucracy that is holding us back."

Prime Minister David Cameron said superfast broadband is "an essential building block of a growing economy, so we are cutting the red tape".

The above is taken from the press release from September 7 2012 which announced the steps the Government were hoping to take⁹.

⁹ <https://www.gov.uk/government/news/fastest-broadband-in-europe-delivering-infrastructure-to-boost-uk-businesses--2>

3 THE PROPOSED SOLUTION: THE UK GOVERNMENT PROPOSED A TEMPORARY FIVE-YEAR MORATORIUM ON PRIOR APPROVAL REQUIREMENTS AND IMPLEMENTATION OF A NOTICE REGIME – AGAINST CONSIDERABLE OPPOSITION

3.1 The ‘red tape’ the Government was talking about removing was, essentially, small sections of the two pieces of legislation listed and discussed above, those being:

- Electronic Communications Code (Conditions and Restrictions) Regulations 2003
- Town and Country Planning (General Permitted Development) (England) 2015

3.2 The proposed solution would be to *temporarily* treat the development proposals as though they were not in the designated areas which would then mean that a notification process was followed, rather than an approval process - in addition, a voluntary Code of Practice was proposed. In essence the existing legislation, combined, required all cabling to be underground (i.e. no poles) in designated areas and all cabinets to go through an approval and consent process with the LPA in those same designated areas – the new solution would remove this requirement. Before being able to make amendments to remove these approval requirements, the Government undertook two consultation exercises on the proposed amendments to both pieces of legislation.

3.3 The two consultation exercises were public however certain interested stakeholders were specifically targeted for their views. These include the industry itself, amenity bodies, local planning authorities and local community groups amongst others. As would be expected, the industry supported the proposed changes. In terms of the other stakeholders, the consultation responses threw up a number of issues with some *significant* opposition to the planned changes. Some of the organisations consulted who raised issues, and their responses, quoted where applicable, are set out below.

Organisation	Organisational Purpose	Organisation’s Comments
LPA (various)	These are generally city or district Councils which have the statutory responsibility for producing plans and determining planning applications. Whilst democratically controlled, planning officers who work for the Council are professionals. National Parks tend to be their own LPA	<ul style="list-style-type: none"> • Concerned about visual impact on designated areas • Concerned about work load and lack of income • Concerned about lack of accountability • Notification did not adequately compensate for the loss of the prior approval procedure • There was no obligation to act on the feedback from consultees • The list of consultees was too limited and should include civic and heritage bodies
LPA – Sheffield City Council	Sheffield City Council control planning within their city boundaries	<ul style="list-style-type: none"> • <i>“Allowing overhead cables would be particularly damaging to Conservation Areas, Heritage Assets, Listed Buildings and</i>

		<i>National Parks. However it is also considered that it would be harmful to non-designated areas and in combination with other infrastructure would lead to over proliferation of service paraphernalia”</i>
Planning Officers Society	Umbrella organisation consisting of professional planners from across all LPAs	<ul style="list-style-type: none"> • <i>“the proposal will result in a loss of income for local planning authorities but will still generate work as planning staff will still be required to provide advice to telecommunications operators on the siting of equipment. The proposal will, therefore, place an increased burden on local planning authorities at a time when budgets are squeezed and staff numbers are being reduced”</i>
National Parks England	Umbrella organisation for England’s 7 National Parks	<ul style="list-style-type: none"> • <i>“Maintenance of the high quality landscape is central to the future economies of the National Parks (including the Broads) and great care is required to ensure that the landscape is not harmed with the next phases of telecommunication development.”</i>
Friends of the Lake District	Amenity group (charity) who involve themselves in the protection of the Lake District National Park’s environment.	<ul style="list-style-type: none"> • Concerned that up to 32,500 new poles would be required across National Parks and AONBs in England • Concerned over impact on the landscape of the Lake District
Parish Councils (various)	A local ‘community’ or town council with democratic accountability and a statutory consultee on planning applications in their area.	<ul style="list-style-type: none"> • Cost savings would be prioritised over best practice • Impact on the character of local areas
Historic Towns Forum	A national organisation which seeks to protect heritage assets within towns through dialogue with LPAs etc.	<ul style="list-style-type: none"> • <i>“this does not seem to be balanced against the cost to the environment. The proposal does not seem to be consistent with the Government’s commitment to localism, in the sense of local control over important decisions. The implications of the proposed changes are that local authorities will be rendered powerless in matters affecting some of our most important and sensitive places”.</i>

3.4 There were mixed responses in relation to the proposed temporary nature, i.e. the 5-year sunset clause, with respect to the Government’s proposed changes. This garnered more support than the relaxation *per se*, however still attracted more than double the disagreement with the proposition

than agreement (56% of respondents disagreed, 25% agreed and 19% offered no response). Some of the issues identified included; the concern that any injury to amenity would happen in the first 5 years and any such infrastructure deployed would be permanent; that with a time limit in place providers would rush to deploy leading to rushed (and hence poor) siting decisions; and that the time period should be shorter to allow for review.

3.5 The strength of opposition to both the proposals and their temporary nature can perhaps best be judged by the Historic Town Forum summary below:

The unregulated provision of broadband apparatus in protected areas is potentially a very serious threat to their significance. It is reasonable to assume that, subject to as yet unknown technological change, any infrastructure rolled out over five years will be permanent and could have an enduring adverse impact. If the Government's targets are met most of the infrastructure will be installed in that period and the reintroduction of regulations in five years will have little effect. This notwithstanding, the HTF takes that view that the reintroduction of regulations will be difficult after such a long period – though the consequences of deregulation may be so disastrous that there is a big appetite for it!

3.6 Overall, both the Code and GPDO consultations raised very similar issues and had similar responses with roughly the same level of objection to both - around 75%. There was a clear delineation between those supporting the proposals - industry and some national bodies with economic development interests - and those objecting - LPAs, national amenity bodies and stakeholders with a more local focus.

If the Government were to introduce the proposals, it would be doing so despite the results of the consultation.

4 RESPONSE: IMPLEMENTATION AND THE CREATION OF POLE AND CABINET SITING GUIDELINES

4.1 The Government's response to the consultations, despite the level of objections, was to carry out the proposed changes. This involved framing legislative amendments and then enacting. This was carried out in Spring 2013. The changes were made by the following Statutory Instruments (SIs)

- The Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2013 – SI 2013 No. 1403
- The Town and Country Planning (General Permitted Development) (amendment) (England) Order 2013 – SI 2013 No. 1101

These two amendment orders allowed for poles and cabinets to be deployed across all areas of the UK (other than SSSIs¹⁰) through the simpler Notification procedure.

4.2 However, importantly, some of the objections raised to the proposed changes resonated with Government and as part of the mitigation against potential impacts, the Government had already proposed the new Code of Practice. This was also published in June 2013 to work alongside the newly enacted legislative amendments. The Code of Practice was drafted and agreed by parties from across the stakeholder spectrum¹¹.

4.3 The Code of Practice's two main sections (Section 4 and 5) deal with the practice and protocol for both cabinets and new poles. The consultation with the LPA and/or any other relevant statutory body, as proscribed in the Code, should mean that a minimum of poorly sited poles or cabinets go through the process without being 'flagged'. The aim is, of course, to ensure the providers (and their agents) get the siting correct the first time by following the guidance. The following lists are some examples of the protocols which should be followed for both types of infrastructure.

Cabinets

- Cabinets should be green (BS 14 C 40) or black (not matt black) or a colour otherwise agreed with the LPA (based on surroundings)
- If being sited in front of a number of properties, it should be located at the vertical boundary of two properties
- Locations adjacent to Listed Buildings or Scheduled Monuments should be avoided
- Cabinets should not be sited at prominent locations at junctions or bends in the highway
- Cabinets should not be located immediately adjacent to manhole covers
- Cabinets should avoid obstruction of existing pedestrian and vehicular access to properties and public or private rights of way

Poles

- Where possible poles should be located a minimum of 500mm from the kerb or verge edge
- Site notices should be placed as close to the proposed pole location as possible identifying the provider and contact details

¹⁰ Site of Special Scientific Interest – see glossary

¹¹ These bodies were Planning Officer's society, National Parks England, BT, Virgin Media, UK Competitive Telecoms Association and English Heritage

- Consideration should be given to access to the pole for maintenance be that by a ladder or an elevating platform/cherry picker
- Poles at junctions must not obscure nameplates and comply with visibility and line of sight requirements

4.4 The Code of Practice also puts in place a review mechanism to ensure compliance. This was an integral part of the overall changes as the Code of Practice was, and is, a voluntary code. It underwent its only revision in 2016 to take account of legislative changes to the GPDO in 2015 (amended again in 2016) as well as some other minor changes.

5 OUTCOMES: INDUSTRY AND STAKEHOLDERS WORKED WITH THE NEW NOTIFICATION PROCEDURE – THE CHANGES WERE SO SUCCESSFUL THAT THE NOTICE REGIME WAS MADE PERMANENT IN 2018

5.1 The legislative changes discussed above came into effect over 5 years ago along with the new Code of Practice. In this time superfast broadband availability has increased from 75% of UK premises to 95%, as of February 2018. Government expects this to be 97% by the end of 2020¹². However, the remaining premises are generally the most difficult to reach either because of their very rural nature or because of the idiosyncrasies of using FTTC as the basis of the broadband rollout in the UK. The Culture Media and Sport Select Committee noting this in relation to FTTC in 2016 stated:

One consequence of BDUK's and BT's rapid rollout is that the programme appears to have tackled the easier-to-reach premises first and has not delivered coverage to whole areas as such. This has left a patchwork of premises that have not been reached, and much uncertainty among local residents as to whether or not they will be connected or receive improved speeds and in turn has been compounded by repeated failure by BT to give accurate information on timing of deployment to consumers. Many counted as covered still appear unlikely to receive superfast speeds owing to the poor quality or length of the copper lines¹³

5.2 Therefore, there remains considerable work to do in reaching the final percentages of the UK. On that basis, the Government, in 2016 was minded to extend the temporary period the permitted development rights applied (GPDO) and to remove the 'sunset clause' (the Code).

5.3 Therefore, the DCMS undertook another consultation/impact assessment exercise which looked at the experiences and outcomes of the changes. In Spring 2016, they issued a 'call-for-evidence' to look specifically at two aspects of the changes introduced, those being; the impacts on deployment and cost savings; and the experience in terms of siting and design of the infrastructure deployment. A number of organisations were asked for their experiences including some stakeholders not involved previously including The Countryside Alliance and the Country Land and Business Association.

The outcomes of the relaxations have been overwhelmingly positive – this is both in terms of the cost reductions/deployment and the generally good siting practice.

Deployment and cost savings

5.4 It is worth quoting the impact assessment itself which states that:

Communication providers have confirmed that to date the changes made in 2013 have lowered their costs, given them greater certainty about investment plans and speeded up deployment. Importantly they argue that they will be even more important in the future as public and commercial broadband investment programmes address the challenges of connecting rural and hard to reach areas requiring network extensions

Only BT provided *actual* figures to the DCMS and those figures were then extrapolated to provide an industry-wide figure¹⁴. Between Spring 2013 and early summer 2016 BT estimate that their

¹² Telecommunications is a reserved matter; however the devolved administrations have their own targets and initiatives. For example Scotland has a target of reaching 100% of premises with 30Mbps by 2021 through the R100 program <https://www.gov.scot/publications/digital-scotland-reaching-100-programme/pages/1/>

¹³ <https://publications.parliament.uk/pa/cm201617/cmselect/cmcomeds/147/147.pdf>

¹⁴ Taking BT and Virgin together assuming Virgin utilised the relaxed regime at the same rate as BT

“approximate saving to date have been £1.4m on poles and £250,000 on cabinets, totalling £1.65m; this has been reinvested in the programme”

- 5.5 Notwithstanding some issues surrounding methodology, the total benefit to industry and total NPV was calculated at £4.76m (price base 2016, base year 2018 over 10 years). However, these direct monetised benefits are only a small part of a bigger picture. Referenced above, the Broadband Impact Study published in 2013 for the DCMS estimated that “the availability and exploitation of faster broadband will lead to a net annual GVA impact of about £14 billion by 2024, through enhancing the productivity of broadband-using firms”.

Environmental Impacts

- 5.6 The stakeholders with an interest in protecting the environment raised very few issues at all and had few instances of complaints. The Planning Officers Society, which represents the planning officers from the LPAs who actually deal with the prior approval applications and notifications ‘on the ground’, reported that, conversely, they had received a number of complaints about lack of broadband coverage. Likewise, during the review of the Code of Practice, very few complaints were received, and most were in relation to poor or incorrect notification – however, bearing in mind the high volume of roll out this was seen by most as inevitable. The National Parks also reported that the Code appeared to be working well and that in their experience, the real issue for residents of the National Parks was an eagerness to receive superfast broadband connectivity at the earliest opportunity.

As a result of the consultation exercise and the positive experience since 2013, the Government made the changes to Part 16 and the Code permanent in Spring 2018

6 CONCLUSIONS

6.1 Governments are realising that communications networks are now essential to everyone's social and economic wellbeing. Further, access to high speed broadband, both fixed and mobile, is going to be the foundation of new types of business and activities which will drive the economy forward through the middle part of this century e.g. the Internet of Things (IoT) and connected & autonomous vehicles (CAVs), thereby increasing output and increasing productivity.

6.2 There is a rationale that for all of society to benefit from these enhanced productivity opportunities connectivity is key. Ease of infrastructure deployment has a central part to play in increasing this connectivity. Ensuring new infrastructure is in place quickly, and even before rival economies, is vital if geographic centres are going to attract investment and provide value-added employment opportunities in the near future.

A change in approach was required.

6.3 The UK experience demonstrates that with some small legislative and regulatory changes, real improvements in connectivity and increased investment can result. Often genuinely held beliefs can prove to be too pessimistic in terms of anticipated outcomes. If safeguards are in place through complementary measures, e.g. Code of Practice, then the 'system' can be freed up with the minimum of risk to local amenity or environment.

GLOSSARY OF UK TERMS

LPA – Local Planning Authority, the local statutory body where planning applications and prior approval are determined. Democratically controlled but functions undertaken by professional officers

GPDO – General permitted Development Order – Secondary legislation providing for general planning permissions for some type of development

Listed Building – buildings with historic, architectural or social significance. Statutorily protected through the Planning (Listed Buildings and Conservations Areas) Act 1990

Heritage Assets – overall name given to protected historic assets inc. Listed Buildings, Conservation Areas and Scheduled Monuments

National Park – an area of land designated for its character and beauty - statutorily protected through the National Parks and Access to the Countryside Act 1949 – where the Standford principle applies i.e. where there are two conflicting priorities then more weight should be given to conservation of the environment

Conservation Area – an area designated for its historic interest and where there is a cohesive pattern to development – statutorily protected through the Planning (Listed Buildings and Conservations Areas) Act 1990

SSSI – Site of Special Scientific Interest - A Site of Special Scientific Interest (SSSI) is a formal conservation designation for an area which is of particular interest because of its fauna, flora or geological or physiological features. It is very highly protected, usually through separate environmental legislation

AONB – Area of Outstanding Natural Beauty

Scottish Government – the devolved administration in Scotland who govern through the Scottish Parliament

OFCOM – Office of Communications

BDUK – Broadband Delivery UK

FTTC – Fibre to the cabinet

FTTP – Fibre to the premises

FTTH – Fibre to the home

DCMS – Department of Culture, Media and Sport

Code Operators – Network operators, or providers who have powers under the Electronic Communications Code

Parish Council – local elected body – statutory consultee for planning applications

ABOUT THE AUTHOR

Norman Gillan MRTPI has been a chartered planner for nearly 20 years and has worked across the UK for all major mobile and fixed-line operators undertaking planning assessments, planning applications and planning appeals. Other projects include working for both the DCMS and the Scottish Government looking at providing communications infrastructure to rural areas with no existing coverage. He has worked with the industry body to provide advice to LPAs on planning policy and to the various devolved Governments on planning legislation and policy.