



Be sure of your connections

Helen Garthwaite and **Claire Haynes** consider broadband challenges for the next generation of buildings

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When carrying out a construction or refurbishment project, the property industry now recognises the importance of considering broadband connectivity at the outset. Marketability, value and rental income are likely to decline for both residential and commercial buildings if there is limited connectivity. This is a concern both for landlords and for occupiers who need premises that can be used by businesses.

Funders are sinking debt into buildings so capital value and rental income must be

protected to ensure a return on investment; meanwhile, developers must provide buildings that are fit for purpose and comply with all requisite standards. Modern and flexible electronic communications cabling and infrastructure is thus needed to meet the long-term needs of building owners and users.

Legislative framework

It is widely acknowledged that the Electronic Communications Code (the code) needs a substantial overhaul. It is struggling to support the efficient roll-out of superfast broadband infrastructure and the sophisticated relationship between electronic communications network operators and site providers.

The coalition government took initial steps to reform

the code by launching a consultation, a response to which is awaited. There was further good news in July 2015 when the government published its productivity plan, *Fixing the foundations: creating a more prosperous nation* (<http://bit.ly/1eMOSUd>), in which it commits to:

- introduce legislation to reform the code during the first session of this parliament
- roll out superfast broadband of at least 24 Mbps to 95% of UK households and businesses by 2017 in line with the European Commission's Digital Agenda, which sets targets for broadband speeds and coverage.

The EU Broadband Cost Reduction Directive

Directive 2014/61/EU sets out measures to enable and

reduce the costs of deploying high-speed electronic communications networks, as well as to improve buildings' internal infrastructure.

Legislation implementing the directive's measures must be in place this year, and at the end of November 2015, the government issued two separate consultations: the first on implementation, and the second specifically addressing use of Building Regulations to include minimum requirements for the internal broadband infrastructure of buildings.

Where building permits are submitted after 31 December 2016, the directive provides for all new buildings or those subject to major renovation to be equipped with infrastructure that allows users to connect to high-speed electronic communications networks.

New multi-occupancy buildings or those subject to major works are to be equipped with an access point, by which a telecommunications provider may access the building's internal infrastructure. Developers are asked to ensure that empty ducts are provided to the access point for every occupier; the

- costs of installing high-speed infrastructure and ducting are incrementally lower during construction than retrofitting.

The directive permits EU member states to develop a voluntary 'broadband-ready' label to promote the high-speed readiness of buildings, which has considerable cost-saving potential for owners and occupiers. The label can be given both to buildings equipped with infrastructure and access points complying with the directive's standards.

After implementation in the UK, we anticipate that the standards for compliance with the label will be set out in construction documentation. In time, they will become a warranted standard on completion of construction projects. It will be interesting to see how this situation develops, and whether different standards are adopted for buildings with varying user needs.

The code

Overall, the new draft code probably favours network operators; however, there are benefits for landowners.

- Under the existing code, problems can arise if a landowner requires removal of equipment and the operator does not cooperate. The new draft code gives landowners termination rights in circumstances that include redevelopment, and shifts the onus to the operator to serve a counter-notice, and to commence court proceedings within a fixed timeframe where removal of equipment is contested.
- There is currently a lack of clarity as to the protection operators acquire by way of code rights and, for commercial premises, security of tenure under the Landlord and Tenant Act 1954. Under the new draft code, the 1954 act does not apply to a tenancy where the primary purpose is to grant code rights or vice versa. This

should also make it easier for landowners and developers to procure removal of equipment for redevelopment.

- It allows assignment of code rights by site operators, which could help occupiers who wish to change their broadband supplier.

Crucially, the code increases the opportunities for operators to share and upgrade equipment without seeking landlord consent. Landowners will need to document the nature of rights granted in licences and wayleaves carefully if they wish to control who can operate at their premises, because the code favours operators in this respect.

Considerations for developers

Currently, the issue of electronic communications infrastructure is not always considered at heads of terms stage of a construction or refurbishment project. We expect this to change as the market responds to consumer demand and the new legislation takes effect.

Technological infrastructure should be considered at the outset of a construction project to ensure that the legal documents dovetail. The draft code offers increased opportunities for operators to share equipment, and legislation transposing the EU directive will further enhance the position of operators.

As a result, it will become essential for landlords to have a strategy relating to communications, especially for multi-occupancy buildings, and owners will need to ensure that they do not grant generic rights to install electronic communications ducting and equipment, because these will be exercised by tenants and operators. Care must be taken in licences and wayleave documentation to locate equipment in specific areas – for instance, in a plant room identified on a plan – as imprecise wording may allow the apparatus to be moved to an undesirable location.

We are seeing changes in specification requirements for buildings, driven by the need to avoid high retrofitting costs, disruption, impacts on sustainability and a limited choice of network supplier. There are distinctions between residential and office space, and increasingly technology-orientated businesses will have specific requirements. Occupiers need more equipment, so developers and landlords must increase cable and plant areas while maintaining as much useable space as possible; they should consider designating space to enable the installation of further equipment in future.

Futureproofing

There are inevitably time lags between developments

in technology and the enactment of legislation that creates a framework in which it can operate. Futureproofing buildings for cabling and technology infrastructure is becoming an ever more important consideration, so a long-term view should be taken on any construction or refurbishment project to enable it to meet the connectivity needs of tomorrow's users.

Landlords should develop a strategy, perhaps in consultation with key occupiers, to ensure that their buildings keep pace with technology. Failure to do so may impair buildings' flexibility, use and value in the future. ●

The information in this article was correct at the time of writing (January 2016).



Helen Garthwaite is Partner in the Construction team at Wedlake Bell
hgarthwaite@wedlakebell.com

Claire Haynes is Professional Support Lawyer in the Commercial Property team at Wedlake Bell
chaynes@wedlakebell.com



Related competencies include
Construction Technology and Environmental Services

