



# Digital Infrastructure Toolkit



**Guidance Note**

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## Introduction

1. This guidance document is part of the Digital Infrastructure Toolkit and sits alongside the “Standardised Wayleave Agreement”. The Toolkit comprises:
  - this Guidance Note
  - Key Steps Flow Chart
  - the Standardised Wayleave Agreement for existing and new buildings
  - Key Personnel Contact Sheet
  - model Risk Assessment and Method Statement (RAMS)
2. The Toolkit is available free of charge and, initially, will be available on the websites of the City of London, the Royal Institution of Chartered Surveyors, Mayor of London, Central London Forward, London Councils, Wired Score.
3. This Guidance Note offers digital communications operators, landlords and tenants advice on the key steps which need to be taken to agree wayleave documents in a timely manner. Overall, the Toolkit:
  - establishes a common approach
  - promotes a best practice approach to the provision of information which operators and tenants should follow when submitting a wayleave request.
  - streamlines the process of agreeing wayleaves, and avoid delays to the delivery of digital infrastructure services.
  - saves all parties time and money, and expedites delivery of broadband services.
4. This Guidance Note should be read alongside the Wayleave Agreement. The wayleave contains explanatory footnotes which provide technical information on the clauses.

## Background – What is a Wayleave?

5. When a fixed or wireless digital infrastructure communications operator wishes to connect to and install their equipment and cabling within a privately owned building, it must obtain the right to do so from the building owner. This right usually takes the form of a ‘wayleave’.
6. A wayleave is an agreement whereby a building owner essentially grants a licence to a communications operator for the right to install, access and maintain telecommunications cables and other associated equipment within the building.

## Background – Owner Occupied and Multi Occupied Buildings

7. In an owner occupied building the process is usually relatively straightforward where the agreement is essentially between two parties, the communications operator and their client, the building owner.
8. The situation becomes much more complicated in multi-occupied commercial office buildings where the wayleave is a requirement of the landlord to allow operators the access

and space they need to provide a service to their ultimate client, the tenant. The lack of a commonly used 'standardised wayleave' document is a major barrier to the timely deployment of fixed line or wireless telecommunications and digital data network services infrastructure, 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.

9. This problem is more acute in the larger cities where there are numerous communications operators' networks and a significant concentration of multi-let commercial buildings.

### The Need for a Wayleave

10. When considering installing telecommunications services at a property, tenants may well assume that the process is as simple as signing up with their chosen provider(s) and arranging for the connection to be made. There is a generally accepted, informal, principle that no tenant should be unreasonably denied access to telecommunication services. The initial expectation may be of a smooth and uncomplicated process. However, the reality is often very different as many tenants will have discovered when, for example, trying to make access arrangements with their landlord only to find themselves faced with unforeseen costs and delays.
11. Although a tenant will usually have the right under its lease to connect into an external data network outside of the building and to run cabling through the landlord's risers and other common part areas, this right is subject to the consent of the landlord by licence. Even if the lease does not refer to consent being required for cabling as such, a landlord will consider that such works require permission for alterations covering the works being carried out in the tenant's demise, if any, and the areas of the building not demised to the tenant (shared intake chambers, communal telecommunication rooms, basement areas and risers etc.) or both.
12. Landlords need to keep track of what has been installed in the building and where it is located for estate management and good housekeeping purposes. Landlords usually work on the basis that at the end of a tenant's lease they want the areas a tenant has occupied or used under licence to be returned to them in the original (or agreed) condition as free of equipment and cables as possible. Therefore, clear provisions for removal and reinstatement will be a key part of the granting of consent to tenant installations.
13. The process of obtaining landlord consent and the production of a wayleave agreement will result in all parties incurring costs. Under a lease agreement the tenant will usually be liable for the landlord's legal and management costs, as well as its own, and possibly also those of the telecommunication service provider. So, it is important to establish at the outset the likely level of cost involved and how it will be allocated.
14. The central function of a wayleave is to establish the basis of the relationship between the landlord and the communications operator for the telecommunications equipment and cabling to be installed and to remain in the building to provide service to a tenant or customer, together with ongoing access rights for operation, repair and maintenance. The key steps needed to secure a wayleave are shown in the Wayleave Process Flowchart included in this guidance document.

## Standardising the wayleave process

15. The City of London Corporation's role as a promoter and supporter of the Square Mile and London as a centre for business gives it an unrivalled view of issues affecting the Capital's international competitiveness. It was clear that the delays associated with digital infrastructure were harming London's business offer – whether to the 13,000 SMEs in the City or the global banks and other major businesses headquartered there.
16. The City Corporation decided to take up the challenge of creating a new and improved way of handling digital infrastructure installations. It drove the project, involving operators, landlords, developers, tenants, developers and others engaged in the sector. Technical assistance was provided by the City of London Law Society; the process was facilitated using the British Standards Institution's expertise in developing consensus driven documents and Central London Forward assisted in gaining the support of central London Boroughs. The process included extensive consultation with the full range of property interests and across the telecoms industry.

## Explanatory Note on the Standardised Wayleave Agreement

17. The wayleave provides
  - a consensus driven standard document that meets the requirements of the property and telecommunications industries
  - a standardised format and form of legal drafting that avoids the need to create individually negotiated agreements.
  - clarity of the individual accountability of all parties for the work being undertaken
18. It is hoped that in time the use of this standard document will speed up the of agreeing and granting wayleave agreements allowing a faster and more co-ordinated approach to the installation of services in commercial buildings which in turn should reduce the impact on surrounding public highway. All parties should save costs. It is anticipated that some parties will be able to complete more deals by virtue of the faster turn-around made possible by this agreement.
19. The Standardised Wayleave Agreement is primarily targeted at simplifying the agreement of legal consents in multi-occupied commercial buildings. The standard template has been drafted, however, to make the tenant party to the Agreement and it expires on the termination of the service or on their lease ending.
20. It is not intended to cover telecommunications apparatus being used or shared between multiple parties or for installations across land external to the building owned by the property owner. The document relates to individual tenant fixed line and wireless (not mobile) telecommunication service connections and does not extend to cover public network infrastructure apparatus.

## Landlords and Managing Agents: Key Issues

21. The landlord (and where appropriate any superior landlord) is necessarily a party to any Wayleave Agreement covering the installation of telecommunications equipment and cabling by any digital infrastructure provider.
22. Landlords and their managing agents need to exercise control over installations in their buildings.
23. Consequently the key issues for landlords revolve around property rights and the ability to manage the building to the benefit of all occupiers whilst not restricting the ability to make alterations or its readiness for sale or redevelopment. The Standardised Wayleave Agreement:
  - includes lift and shift arrangements to enable the landlord to have telecommunications equipment and cabling relocated if required (Clause 7)
  - requires proper labelling of the cables, ducts and other apparatus, plans of cabling routes and photographs of the final installation for record purposes (Clause 4)
  - covers the provisions for access to operate, repair and maintain the installations (Clause 3)
  - requires consent to be sought by the telecommunications operator to alter or add to their installations (Clause 3)
  - provides clear direction on termination rights and assignment (Clause 10)
  - does not allow a tenant's successors in title to have the benefit of the Agreement without consent (Clause 9)
  - details the extent of indemnities arising from or relating to the installations (Clause 11)
  - provides a process for resolving disputes (Clause 12)
24. The key function of the Wayleave Agreement from a landlord's perspective is to provide a mechanism to control the telecommunications installations into and within the property which is particularly important where the number of entry points, equipment space and riser space is limited and to ensure that there is a full audit trail in place for readiness for sale purposes.

## Telecommunications Operators: Key Issues

25. The key action for fixed line telecommunications operators are as follows:
  - provide in good time your customer, the tenant, with all the relevant information needed to enable them to gain consent from the landlord for the installations
  - provide proper labelling of the installations, plans of cabling routes and photographs of the final installation for record purposes
  - include necessary access provisions for the operation, repair and maintenance of your installations
  - consult with your legal advisors for advice on the process and to assist with agreement of the Standardised Wayleave Agreement
  - produce a Risk Assessment and Method Statement (RAMS); describing the work to be undertaken, Health & Safety management procedures, risk assessments and competency documentation, with appendices showing photographs and cable routes of

permitted apparatus. An example of a model RAMS is included with this Toolkit but every installation needs to be individually considered and cover any building specific requirements required by the landlord.

26. The key benefit for fixed line telecommunications operators is that the Standardised Wayleave Agreement should reduce the time needed to obtain landlord consent for their installations and limit the legal costs incurred in drafting individual negotiated agreements for every building they install their equipment in.

### Tenant: Key Steps

27. To ensure that the telecommunications service is installed quickly and without problems it is important to clearly establish the landlord's requirements at the start of the process. The key steps are:

- begin the process immediately after signing the Lease. Lead in times for new telecommunication service connections can take several months. Even using the standardised wayleave, the landlord and their solicitors will require some time to process a Wayleave Agreement and to obtain the technical information in relation to the equipment and cabling to be installed from the tenants chosen service provider
- take the time to fully understand the requirements of the lease and communicate them to the chosen telecommunication operator(s). You should find specific rights with regards to connection to existing telecommunication services or to bring a new service into the building detailed within your lease
- in new build: agree the location for equipment and cabling routes as part of fit-out licencing process and produce drawings that can be appended to the Wayleave Agreement, see Wayleave Schedule 2 & Clause 1.7
- in existing buildings: agree with building manager/facilities manager the location and route of cabling
- fully understand the landlord's requirements in terms of the supporting documentation required to enable consent to the installations to be granted and a Wayleave Agreement to be put in place. This will include:
  - equipment descriptions
  - equipment specifications
  - equipment locations
  - proposed cabling routes
  - details of any structural works
  - health and safety requirements
  - permits to work,
  - risk assessments and method statements – this Toolkit provides you with a standard model
- establish and budget for the costs involved which may include charges passed on by the landlord incurred by external consultants instructed to review the proposed installations, as well as their standard administration or managing agent's fee

- consult with legal advisors for advice and guidance on the process and to assist with the negotiation and agreement on the final terms of the Wayleave Agreement should there be a need for the tenant to be a party to the agreement between the landlord and fixed line / wireless digital telecommunications infrastructure provider

### **Endorsement of the Standardised Wayleave Agreement**

The Standardised Wayleave Agreement has been produced by the City of London Corporation. Technical expertise was provided by the Land Law Committee of the City of London Law Society. In conjunction with the property and telecoms industries, the following trade associations and organisations gave invaluable support to the project:

British Property Federation

British Land

British Standards Institution

Broadband Stakeholders Group

Brookfield

BT Openreach

City Property Association

Central London Forward

CTIL

Department of Culture Media and Sport

Derwent London

Grosvenor Estates

Great Twelve Livery Companies

Independent Networks Cooperative Association

Internet Service Providers Association

Land Securities

Level 3

M&G

Mayor of London

O2

Royal Institution of Chartered Surveyors Telecoms Forum

Savills

Verizon



Vodafone

Westminster Property Association

Wired Score