

Agenda Item No: 4

Report to Overview and Scrutiny Committee

Local Plan Policy EMP6 – Promotion of Fibre to the Premises (FTTP)

The Overview and Scrutiny Committee is asked:

1. Note the contents of this report.
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Date of O&S meeting: Tuesday 10th March 2020

Chair of O&S Committee: Cllr Noel Ovenden

Relevant Portfolio(s): Cllr Neil Bell – Finance and IT (Broadband)

Summary: Response to a question from the last O&S Committee relating to Local Plan Policy EMP6 implementation. This report details how Policy EMP6 and the emerging relevant Supplementary Planning Document approaches so-called exclusivity deals.

Exempt from Publication: **NO**

Background Papers: **Local Plan – Policy EMP6**

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Report Title: Local Plan Policy EMP6 – Promotion of Fibre to the Premises (FTTP)

Introduction and Background

1. Following the provision in the Ashford Core Strategy for the delivery of telecommunication ducts as part of new developments, the Council lobbied both the Department for Digital, Culture, Media and Sport, and the Ministry of Housing, Communities & Local Government to provide the framework to establish a policy in the Local Plan to future proof telecommunications access for residents in new developments in the Borough.
2. Policy EMP6 is the first policy of its type in the country that conditions Fibre to the Premise (FTTP) to all new premises within or adjoining the urban area of Ashford, and all new development over 10 homes and 10 jobs in rural areas of the borough.
3. This policy was successfully justified through the Examination in Public on the Local Plan following objections from the House Builders Federation.
4. The EMP6 policy is attached as appendix A to this report
5. To support the implementation of EMP6 and early dialogue between developers and telecommunication providers, the Council has produced a draft Supplementary Planning Document (SPD) to guide applicants through this process. The SPD will be consulted on over the next few months and comments and changes to the document will then be considered and reported back to the Council before final approval of the document.

Choice of Broadband Providers.

6. A key challenge in considering the development of the EMP6 policy, was how the Council can promote choice of service providers for residents alongside the delivery of the FTTP infrastructure. Policy EMP6 cannot make it compulsory for developers to provide choice in broadband providers through the implementation of FTTP as this could be challenged as anti-competitive for providers of closed networks rather than open access networks, and also restricts the developer choice in operators they can partner with.
7. There is currently no legislation or regulations requiring network providers and developers to deliver open access networks and DCMS has postponed its plans to bring Planning legislation forward relating to FTTP installation on new developments. Also the Future Telecoms Infrastructure Review states:

“By contrast, ‘competition for the market’ models which seek to confer exclusivity rights on operators in prospectively competitive areas would be a departure from the current regulatory framework. This would require

significant legislative change to deliver, leading to implementation delays and impacting the pace of roll out. Meanwhile, the market would likely take a wait-and-see approach when deciding whether to invest, potentially freezing investment for a number of years.

The Council does not therefore have an avenue for enforcing an open access network but can work with developers and providers to attempt to influence their approach to exclusivity deals.

8. The draft SPD does however encourage developers to look at providing choice through the implementation of FTTP and the relevant section of the draft SPD is provided below:

“xv. A particular issue that arises with new build developments and broadband is the inclusion of so-called exclusivity clauses or agreements. These allow exclusive rights of access for a nominated provider to own and use the broadband infrastructure for a certain amount of time, leaving purchasers little to no choice in provider options.

“xvi. The Government is taking steps to promote and legislate that, where appropriate, all new build developments are connected with full fibre which offers choice at the retail level for homeowners. The market already provides competition at a retail level for consumers, with BT (incl. EE and Plusnet) accounting for 35% of fixed broadband connections, Sky 23%, Virgin Media 20% and TalkTalk 11%. Occasionally this market competition doesn't transpire to new developments if exclusivity rights are applied to one provider, restricting the choice for purchasers and tenants.

“xvii. As suggested in the Government's Future Telecoms Infrastructure Review, the Council would therefore welcome evidence that negotiations have been undertaken with multiple providers in order to incorporate more than one network, thereby giving residents and businesses in new build developments more variety. This is also in line with policy ideas being proposed in the DCMS “New Build Developments: Delivering gigabit-capable connections” consultation document.”

9. The Council is therefore seeking to support choice in broadband service providers without reducing investment into FTTP within the borough. This is being done through responding to government policy consultations, and through the advice provided within the draft SPD.

Conclusion

10. In addition to the draft SPD, the economic development team at Ashford Borough Council are looking to report back to Cabinet in May with the latest position on superfast broadband coverage and FTTP coverage within the borough and the next steps that the Council can take to promote greater investment in telecommunications infrastructure within the borough.

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New Employment Premises in the Countryside

- 7.30 New employment premises (i.e. not conversions) in the countryside (i.e. the areas not covered by Policy EMP1) will not be permitted unless exceptional circumstances can be demonstrated to set aside the normal presumption against such developments. Such circumstances may include the functional need for a countryside location, such as the processing of local agricultural products. New employment sites in the countryside will need to have regard to the need to protect countryside sites with specific landscape, biodiversity or historic qualities.

Policy EMP5 - New Employment Premises in the Countryside

Proposals for employment development on new sites in the countryside will not be permitted unless the following criteria can be met:-

- a) It is essential to be located in the countryside;**
- b) Development can be integrated sensitively into its context respecting the character of any important existing buildings, the landscape setting and sites of biodiversity value;**
- c) There would be no significant impact on the amenities of any neighbouring residential occupiers; and,**
- d) It can be demonstrated that the development will not generate a type or amount of traffic that would be inappropriate to the rural road network that serves it.**

Promoting of Fibre to the Premise (FTTP)

- 7.31 The e-technology sector is undergoing major changes and the Government - through Broadband Delivery UK⁶ - is supporting investment to:
- provide superfast broadband coverage to 90% of the UK by early 2016 and 95% by December 2017,
 - provide access to basic broadband (2Mbps) for all from December 2015,
 - explore options to provide superfast coverage to the hardest to reach parts of the UK.
- 7.32 At the local level, the availability, reliability and speed of broadband provision is now a key consideration for house buyers and many view it as essential as the standard utilities. Similarly, it is also a key concern for the business sector.
- 7.33 Planning policy can play a role in helping to achieve the transformation in broadband. The NPPF clearly recognises this and supports the delivery of advanced, high quality communications infrastructure and the expansion of high speed broadband where possible.
- 7.34 Ashford has long been ahead of the national agenda in this regard. In 2008, the Core Strategy took proactive steps to prioritise communications infrastructure by ensuring that duct space was provided for fibre cabling on each new development in the urban area. In the 8 years since this policy approach was developed the fibre network in Ashford has received significant private and public sector investment and the fibre footprint in the Ashford borough has spread significantly. All of Ashford's exchanges are now fibre enabled.

⁶ The Government department charged with delivering superfast broadband

- 7.35 The policy below builds upon this pioneering approach and challenges the market yet further to require fibre to the premise (FTTP) for most new developments. In doing so, the approach underpins one of the key principles of this Local Plan with regard to the utilisation, enhancement and expansion of existing infrastructure wherever possible.
- 7.36 FTTP is recognised by the Government and European Commission as a ‘Next Generation Access (NGA) technology’⁷ and have prioritised investment accordingly. While superfast speeds can be achieved on current generation copper networks it is widely accepted that NGA technologies should be prioritised. By seeking FTTP, the Council is aiming to provide a futureproof solution for broadband delivery within the Borough.
- 7.37 Adopting this approach will prevent the need for fibre retrofitting programmes in the future which has significant cost implications and often results in attaching fibre to existing copper networks resulting in a less than optimum solution when compared to new fibre networks being delivered.
- 7.38 In the urban area, where the fibre network now exists, the cost of installing FTTP in new developments is considered to be relatively small particularly during the build phase of the development. Any costs (above BCIS assumptions) must also be balanced with increased sales values that are likely to be achieved on account of fast and reliable broadband speeds being available. Based on these factors, policy EMP6 requires that all residential and employment development within or adjoining the urban area of Ashford, including on site allocations promoted in this Plan that adjoin the urban area of Ashford shall deliver FTTP
- 7.39 In the rural parts of the borough, there has been significant investment in rural broadband which has resulted in the fibre network stretching further into the rural area than ever before. As in the urban area this creates an opportunity for developments to utilise this asset to deliver FTTP in new developments.
- 7.40 However, the Council recognise that there can be more challenges in the rural area to the delivery of FTTP. With this in mind, the policy approach is to target development that is of a scale and/or type that will, in most circumstances, be able to deliver FTTP. For residential development, EMP6 shall apply to those schemes promoting 10 residential units or more in the rural area. For employment development (B classes), EMP6 shall apply to those schemes which provide 10 full time jobs or equivalent in the rural area. The assumption as to the number of jobs to be created should be based on the national Employment Densities Guide produced by Government.
- 7.41 However, developments that fall below these thresholds will, nevertheless, still be encouraged to provide FTTP to assist in ensuring that the Borough’s fibre network is delivered to its maximum capacity.
- 7.42 By implementing this policy approach, the Council is seeking to ensure that future developments remain at the forefront of advances in broadband technology, allowing Ashford to be a market leader and remain a highly attractive location for businesses and residents alike.

⁷ Next Generation Access Networks: wired access networks which consist wholly or in part of optical elements and which are capable of delivering broadband access services with enhanced characteristics (such as higher throughput) as compared to those provided over already existing copper networks.’ Commission Recommendation 2010/572/EU of 20 September 2010 on regulated access to Next Generation Access Networks (NGA)

This aspiration is a central component of the Council's Five Year Corporate Plan.

- 7.43 However, in order to be consistent with the provisions in the NPPF, the Council recognise that there may be schemes that come forward which cannot be consistent with policy EMP6. In such cases, evidence will be needed from the applicant to demonstrate that a departure from policy is justified. Such evidence could include (but is not limited to) issues of viability, the ability to dig the appropriate physical trench and proximity to the nearest breakout point on the fibre network. They may also be circumstances where the operators themselves have concluded that servicing the site is not practical.
- 7.44 Where a FTTP solution is not deemed possible provision of technologies capable of providing speeds in excess of 24Mbps should be delivered instead.

Implementation

- 7.45 The intention of Policy EMP6 is not to require developers to deliver FTTP solutions themselves. Instead, it focuses on the need to conduct early dialogue with telecom providers in order to best understand what their infrastructure specifications are and how these can be accommodated as part of the new development.
- 7.46 To facilitate this, the Council requires that an application for a qualifying development is supported by an "FTTP Statement". This will provide details of dialogue with the telecom operators and establish how FTTP will be provided to serve the development and that it will be engaged upon first occupation. This statement will need to be agreed between the applicant and the Council and it is likely that conditions will be applied to any subsequent permission, to ensure that FTTP will be secured as envisaged by the statement.
- 7.47 For outline proposals, the "FTTP Statement" may be more limited on specific details relating to the imminent implementation of FTTP. In these circumstances, a commitment to supply the specific details at a later date, including how and when the telecom operators will be consulted, will need to be provided and agreed by the Council.
- 7.48 More detailed guidance about the implementation of EMP6 will be provided through a future SPD.

Policy EMP6 - Promotion of Fibre to the Premises (FTTP)

The Council considers that FTTP is essential infrastructure and vital to the delivery of sustainable development. Therefore, all qualifying development shall deliver FTTP. Qualifying development includes:

- **All residential and employment schemes proposed in, or adjoining, the urban area of Ashford, including on those sites allocated in this Local Plan on the periphery of the urban area of Ashford,**
- **Residential schemes promoting 10 dwellings or more in the remaining parts of the Borough,**
- **Employment schemes promoting 10 or more jobs (FTE) in the remaining parts of the Borough.**

Proposals for qualifying development will be required to be supported by an FTTP Statement, to be agreed by the Council. This statement will establish how FTTP will be provided to serve the development and that it will be engaged at first occupation.

Exceptions to the approach outlined above could be justified in circumstances where it is not practical, viable or feasible to deliver FTTP. In such cases, evidence will be needed from the applicant to demonstrate that a departure from policy is justified.

For other residential and employment schemes, FTTP will be encouraged by the Council as a means of expanding the local fibre network.

Where FTTP is not delivered, non-Next Generation Access technologies that can provide speeds in excess of 24Mbps should be provided as an alternative.