

Agenda Item No: 11
Report To: Cabinet
Date of Meeting: 30th July 2020



Report Title: Adoption of the Fibre to the Premises Supplementary Planning Document (SPD)

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Portfolio Holder Cllr. Shorter
Portfolio Holder for: Planning & Development

Summary:

The report introduces a proposal to adopt a Supplementary Planning Document (SPD) entitled 'Fibre to the Premises' to provide advice and guidance for applications relevant to adopted Local Plan Policy EMP6 (*Promotion of Fibre to the Premises (FTTP)*) for the purposes of decision-making on planning applications.

The draft document was presented to the May 2020 Local Plan & Planning Policy Task Group which agreed to the recommendation to Cabinet and Full Council adoption.

This report summarises the comments received following the Council's consultation on the draft Fibre to the Premises SPD and details the recommended response

The report seeks the Cabinet's approval to adopt the Fibre to the Premises Supplementary Planning Document.

Key Decision: NO

Significantly Affected Wards: Borough wide

Recommendations: **The Cabinet is recommended to:-**

- I. Notes the responses to the representations received and changes made to the SPD contained within Appendix 1 to this report and approve the final version of the SPD contained within Appendix 2 to this report;**
- II. Recommend to Full Council the adoption of the Fibre to the Premises Supplementary Planning Document.**

Policy Overview: Local Plan policy EMP6 is important in the consideration of applications for new residential and employment development in the borough. The Supplementary Planning Document (SPD) contained within this report clarify the details required as part of the EMP6 policy. The SPD will, when adopted, be used as a material consideration when assessing planning applications.

Financial Implications:	There are no financial implications. Once adopted, the contents of the SPD will have more weight in planning terms.
Legal Implications:	None, other than the standard process for adopting SPD.
Equalities Impact Assessment:	See Attached
Data Protection Impact Assessment:	None
Risk Assessment (Risk Appetite Statement):	None.
Sustainability Implications:	The promotion of Fibre to the Premises in new-build developments will help to futureproof the availability of superfast broadband across the borough and delivery of sustainable infrastructure to help promoting working from home.
Other Material Implications:	None.
Exempt from Publication:	NO
Background Papers:	Appendix 1: Responses to consultation Appendix 2: Fibre to the Premises (FTTP) SPD
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Report Title: Adoption of the Fibre to the Premises Supplementary Planning Document (SPD)

Introduction and Background

1. The Ashford Local Plan 2030 (adopted 2019) includes Policy EMP6 'Promotion of Fibre to the Premises (FTTP)'. The primary purpose of Policy EMP6 is to require qualifying residential and employment development to deliver FTTP.
2. A supplementary planning document (SPD) was drafted to provide further details on the requirements of Policy EMP6. This SPD provides further guidance to applicants on the specific, but does not seek to alter or introduce new policy requirements.
3. To be clear, the SPD also does not endorse broadband provider companies and or influence the providers that the residents may choose to use. This is beyond the scope of the planning system.

Proposal

4. This Cabinet report outlines the responses made during the formal public consultation on the draft Fibre to the Premises (FTTP) SPD; it sets out the Council's response to these representations and details the changes that have been made to the draft SPD.
5. This report recommends to Cabinet that the SPD in this report is recommended to Full Council for adoption.

Equalities Impact Assessment

6. An equalities impact assessment is appended to the report. No significant issues require attention.

Consultation Planned or Undertaken

7. The draft SPD went out for public consultation over an 8 week period between 6th March and 1st May 2020. A total of 7 representations were received.
8. Appendix 1 to this report summarises the representations received and the response to the issues raised, including any proposed minor amendments.
9. The responses to the draft SPD and the minor changes were considered and agreed by the Local Plan & Planning Policy Task Group on the 27th May 2020.

COVID-19

10. Members should note that COVID-19 became a prominent issue during the consultation period. However, the consultation had been held for 3 weeks before the lockdown restrictions started.
11. The low response rate (7 representations) of the consultation undoubtedly reflects this issue and many potential responders may have been dealing with other issues during this period.
12. However, it is worth noting that this is to a degree countered by the 8 week consultation period, which is 4 weeks longer than the period required through the Regulations.
13. The focus from Government to keep progressing despite the current climate, and the benefits that the document will deliver, suggests that the Council can continue with the progress of the SPD. The likely outcome from this SPD is that there will be an expansion of the Borough's fibre network, leading to more secure and reliable broadband. The COVID-19 outbreak shows how important this will be in the future.

Other Options Considered

14. Other options for providing this guidance include relying on the broad guidance outlined in the NPPF, or to not produce an SPD to support the policy. Whilst these approaches will continue to deliver FTTP, the draft SPD will provide advice and guidance for developers to implement suitable FTTP in schemes.
15. The Government is currently also in the process of developing policy regarding Fibre provision in new development. The production of the SPD was to dovetail with the national consultation to improve broadband across the country. Delays in the Government's consultations has resulted in the SPD being produced prior to government policies on FTTP.
16. Whilst other options have been considered, the SPD is recommended to enable the Council to provide details on the Policy EMP6 to aid delivery of FTTP to qualifying development schemes in the borough.

Reasons for Supporting Option Recommended

17. This SPD document will provide additional details on the adopted Policy EMP6 (*Promotion of Fibre to the Premises (FTTP)*). This will help to increase compliance of planning applications with the policy and increase the delivery of FTTP within the borough.
18. The adoption of the draft SPD will enable the full weight of the guidance contained to be used as a material consideration in the determination of planning applications.

Next Steps in Process

19. If the Cabinet approves the SPD, the next step will be the formal adoption of the 'Fibre to the Premises (FTTP)' SPD at Full Council on 15th October.
20. As Ashford are the first Council to be producing an SPD of this nature, the SPD itself recognises the potential need for regular review, to reflect changes in government advice and legislation. Therefore any significant changes in the marketplace or government advice can be reflected in updates to the SPD.

Conclusion

21. The approval of the draft SPD with the amendments proposed, will provide applicants with useful advice to assist them in submitting successful applications. It will also provide decision makers with guidance on how to evaluate proposals for FTTP qualifying development and will help to futureproof the availability of superfast broadband across the borough.
22. The approval of the changes to the SPD will improve the clarity of the document and ensure that it is utilised to its best effect, with the agreement of key actors, once adopted.

Portfolio Holder's Views (Cllr. Shorter)

23. Awaiting comments.

Contact and Email

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Appendix 1: Responses to SPD representations

Respondent	Comment	Officer Response	Officer's Proposed Change
Cllr Knowles	FTTP is needed to future proof developments within the borough for all new manners of future technology. The current COVID19 crisis has highlighted the requirement for video conferencing for medical use and for staying in contact with friends and family.	We support the comments.	None.
G Coleman	Irrespective of government guidelines, in light of current and future technology advances, if Ashford is to remain a destination of choice for both business & residential the council should ideally aim for 100MB connectivity along with insisting that 5G technology be rolled out with existing & new developments in both zone A & zone B (which should really be amalgamated into one zone). There is no reason that this should not be achievable or add any additional cost to implementation, if you insist on it. With regard to zone C, this should aim for a minimum of 60Mb, where not possible then emphasis should be on 5G connectivity as a minimum.	We have noted the comments, however the scope of the SPD is limited to Policy EMP6 and the details within the policy. An SPD does not propose alterations to the adopted policy, and therefore the SPD does not address other elements or technologies, such as 5G. We accept that technologies continually advance and that there may be a need to adapt at a future point. Speed considerations and 5G will form part of a wider strategy for the Council's future consideration, but the focus of the SPD will be limited to FTTP.	None.
Highways England	Dear Sirs Thank you for consulting Highways England on 9 March regarding the above, seeking a response no later than 1 May 2020. Highways England has been appointed by the Secretary of State for Transport as strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the strategic road network (SRN). The SRN is a critical national asset and as such Highways England works to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and	We note the comments made by Highways England and propose minor changes to the document. This will include an element in the Highways section of the SPD to explain the information raised in this representation, see change 3.	Change 3: Insert new paragraph (paragraph 60). <u>Highways England is the highway authority, traffic authority and street authority for the strategic road network (SRN). Highways England will be concerned with proposals that have the potential to impact on the safe and efficient operation of the SRN, in this case the M20 and</u>

Respondent	Comment	Officer Response	Officer's Proposed Change
	<p>integrity. Highways England will be concerned with proposals that have the potential to impact on the safe and efficient operation of the SRN, in this case the M20 and A2070 in the vicinity of Ashford Borough.</p> <p>We note the contents of the draft SPD.</p> <p>For the sake of clarity and avoidance of doubt, we would suggest including text in the final document regarding any works that could affect the SRN.</p> <p>Any activity on the SRN falls in the realms of New Roads and Street Works Act (NRSWA) and Traffic Management Act (TMA) and any works promotor will need to abide by these. In particular there are restrictions with regards motorways and other special roads. Even works on adjacent land may be restricted; for example, in order to avoid any distraction or danger for travellers by virtue of the installation, use or maintenance of fibre related equipment. Therefore, works promoters are advised to contact Highways England at the earliest opportunity to ensure that any proposed works that could affect the SRN are acceptable and deliverable both in principle and in practice.</p> <p>We hope that these comments assist and look forward to receiving a final version of the SPD.</p>		<p><u>A2070 in the vicinity of Ashford Borough. Any activity on the SRN falls in the realms of New Roads and Street Works Act (NRSWA) and Traffic Management Act (TMA) and any works promotor will need to abide by these. In particular there are restrictions with regards motorways and other special roads. Even works on adjacent land may be restricted. For more information please visit the Highways England website or contact Highways England (tel: 0300 123 5000, email: info@highwaysengland.co.uk)</u></p>
Cllr Burgess	<p>Please could the responsibility of the maintenance of the network be added to the SPD.</p> <p>Also compatibility of systems between different suppliers to ensure usefulness by users and equipment suppliers.</p>	<p>We note the comments, however these matters cannot be addressed in the limited scope of the SPD. The responsibility of the maintenance and compatibility of the fibre network is not addressed within policy EMP6 and therefore not within the scope of the SPD.</p>	<p>None.</p>
Smeeth Parish Council	<p>Good morning</p> <p>Smeeth Parish Council welcomes the opportunity to comment on this document and is supportive of the</p>	<p>We note the comments.</p>	<p>None.</p>

Respondent	Comment	Officer Response	Officer's Proposed Change
	initiative to secure advanced and high quality communication infrastructure in new build developments.		
BUUK	<p>Thank you for the opportunity to respond to your Fibre to the Premises Supplementary Planning Document. Due to the text box limitation on the portal questionnaire form, I have provided the text below via email as recommended by the Council's website. Whilst being supportive of the aspirations there are a number of points that we would bring to your attention and hence the reason for identifying an objection.</p> <p>General statement BUUK has been building Open Access FTTP fibre networks supporting Gigabit services at new build sites via its Group companies, GTC, Metropolitan and Power On Connections for more than 10 years, this includes many sites in the Ashford Area. BUUK agrees with Ashford's aspirations for ensuring all new developments are connected to a full fibre infrastructure for broadband and telecoms services. In line with recent DCMS publications these services should, wherever practically possible, provide gigabit services to the new properties from day one of occupation.</p> <p>Statement 24 There are a significant number of active telecoms infrastructure providers operating throughout the UK, including the South East of England. It appears inappropriate for the Council, which is subject to public procurement rules, to be signposting potential new build developers to specific service providers. We would suggest that you either refer to all potential suppliers of fibre infrastructure to new homes or do not mention any at all. It is for the individual developers to assess the market and make their choices based on a range of</p>	<p>We note the comments made and welcome BUUK's support of the overall aims of the SPD. Our comments are as follows:</p> <p>Statement 24 We note BUUK's position and will include their contacts on the provider list, see change 5. This list currently contains providers that are already active within the borough and will be able to provide engagement with the developers. It should be noted that this is not an exhaustive list and does not exclude other providers from engaging and working in the area. We propose to include a paragraph to state that the Council does not endorse the companies mentioned in the table and that developers should assess the market before choosing a developer, see change 6. We are also proposing to set up a 'live' list of suppliers on our website to ensure that all providers which wish to be made visible can be contacted. We propose to also remove paragraph 24 which references Openreach and other named providers, see change 1.</p> <p>Statement 52d The aim of the SPD is to encourage earlier engagement between developers and providers for FTTP in the planning of new-</p>	<p>Change 5: Section 7 Table: Insert new row on table Provider – BUUK</p> <p>Table Contents:</p> <p>BUUK Ltd https://www.buuk.co.uk/contact-us 0135 924 0363</p> <p>Change 6: Insert new paragraph 65.</p> <p><u>Ashford Borough Council does not endorse the companies mentioned above and would suggest developers assess the whole market and make their own decision. Other companies are available however the list above are companies that are in contact with the council or are operating in or near the Ashford borough. If a provider wishes to be added to this list we will be maintaining an up to date list of registered providers on the council's</u></p>

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	<p>commercial and service-based criteria.</p> <p>Statement 52 - Item (d) often the FTTP provider is not contracted until on or around the time planning approval has been granted. This is because developers do not want to make a contractual commitment to infrastructure providers before they have certainty that the scheme is going to progress.</p> <p>Therefore, at this stage, it is not necessary to provide a detailed layout and network design.</p> <p>Whilst general non site specific FTTP network architecture can be provided, the detailed site designs are unlikely to have been completed at this point. This in no way diminishes the assurance that the chosen provider will be installing gigabit capable fibre only infrastructure and in time to facilitate live connectivity at the point the new owner moves into their property. The developer will work closely with its chosen provider to ensure infrastructure is installed to create minimal aesthetic impact and to ensure the most efficient installation. An alternative approach could be for the developer to provide pre-defined planning assurances that aligns with the objectives of the finalised SPD, therefore committing the developer to meeting key planning FTTH attributes such as gigabit capability and the deployment of an open access network that will enable customer choice. This simple approach would also provide the council with the assurance that its SPD strategy would be followed for all new developments.</p> <p>Statement 57 Similar to above – the level of detail specific to the site may not have been designed at the preplanning stage of the process. Generic elements of the design can be provided ie – sites of a certain size may require a single</p>	<p>build developments. We note BUUK's concern of the current situation, however the ambition of the SPD is to ensure that developers engage with providers at earlier stages to ensure FTTP is delivered. We have made provision for different levels of information required at outline or full application stages to reflect the flexible nature of planning developments. Statement 53 explains that a detailed layout may not be needed at outline stage and Statement 54 explains that the level of detail required at each stage would be similar to other utilities. No changes are proposed in response to this comment.</p> <p>Statement 57 Please see the comments above. Furthermore, it should be noted that as part of the planning process, if providers and developers consider the submitted information commercially sensitive, they are entitled to request the information is redacted from the public. The council will consider these requests and will seek its own legal advice on a case by case basis. This point is set out in Statement 56 which explains that confidentiality is respected, however evidence of early engagement and discussion is what the council will require at a minimum. No changes are proposed in response to this comment.</p> <p>Statement 62 The Streetworks Toolkit cover page has</p>	<p><u>website here.</u></p> <p>Change 1: Deletion of paragraph 24.</p> <p>Openreach is a prominent provider of FTTP for new build premises, connecting 70% of developments. Openreach provides free FTTP to developments of more than 20 premises. For new build developments under 20 premises, Openreach has published a rate card to provide transparency over the costs per premises. Operators such as Virgin Media and Hyperoptic also provide FTTP connectivity to a significant number of new build developments, and there are many other alternative operators who offer FTTP connectivity solutions for new build developments.</p> <p>Change 4 Figure 8: Insert new text</p> <p><u>The Government's Streetworks Tool kit front cover</u></p>

Respondent	Comment	Officer Response	Officer's Proposed Change
	<p>cabinet located within the site boundary. Alternatively, for larger sites equipment may be accommodated in other shared infrastructure that is being installed on the site to facilitate other utility infrastructure e.g. electrical sub station building.</p> <p>Whilst general network routing and standard fittings attached to buildings can be provided at an early stage on a generic basis – detailed designs will not have been completed. Type of duct and chamber networks being deployed underground are not relevant to the overall provision of gigabit capable FTTP networks. On the basis this network is being installed to meet the overarching FTTP and gigabit capable pre-requisite – we would be keen to understand the basis for Ashford Council requiring detailed plans of the infrastructure architecture at the pre-planning stage and what would the criteria be for accepting or rejecting a planning application based on the details outlined in statement 57.</p> <p>Statement 62 Same comment as Statement 24.</p>	<p>been included for guidance. We will make sure the image is outlined and referenced to avoid doubt, see change 4.</p>	
<p>Kent County Council</p>	<p>Thank you for consulting Kent County Council (KCC) on the Fibre to the Premises Supplementary Planning Document (SPD).</p> <p>The County Council supports the ongoing commitment from Ashford Borough Council to ensure that new dwellings and employment units are delivered with fibre-to-the-premise (FTTP) broadband.</p> <p>The work that Ashford Borough Council has undertaken has been invaluable in demonstrating to Government the regulatory gaps that have enabled new homes to be completed without adequate broadband (i.e. connectivity that does not meet either current or future needs).</p>	<p>We note the comments.</p> <p>Regarding the Government Support comments – we will propose minor changes to the SPD. We will include a disclaimer in the SPD text to set out the funding mentioned, which had been included to show the commitment from Government, is not targeted at new-build developments. See change 2.</p> <p>Regarding the comments about the alignment of Policy EMP6/ SPD and the Government process – this has been noted and we will review the content of the</p>	<p>Change 2: Insert new sentence at end of paragraph 26.</p> <p>It should be noted that these funds are not available for new-build developments but do evidence the Government's commitment to FTTP roll-out.</p>

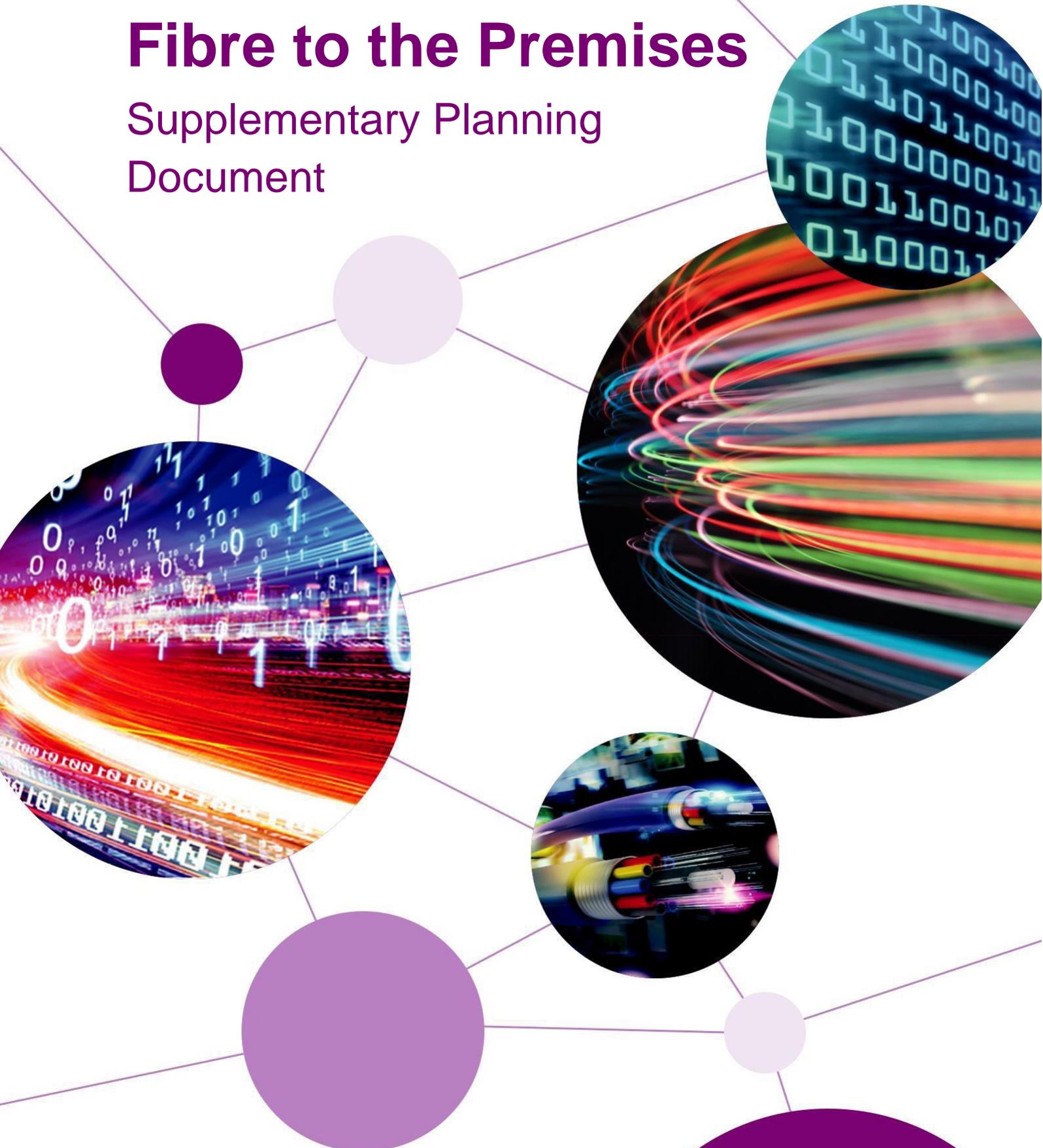
Respondent	Comment	Officer Response	Officer's Proposed Change
	<p>The County Council notes the reference made in the SPD to the recent Government announcement on its intention to legislate to ensure that all new build homes are installed with gigabit broadband from the outset¹. The Government's response to the "New Build developments: Delivering gigabit-capable connections" consultation (March 2020) outlines the final policy proposal, which includes the intention to amend Building Regulations 2010 to mandate FTTP-ready infrastructure in new-build premises². The Government has secured commitments from network operators to work with housing developers to provide gigabit-capable connectivity to all new build developments across the UK, including both developers and operators contributing to the costs of connection.</p> <p>The County Council supports the emphasis placed within the SPD on the need for good communication and engagement with FTTP providers, which is particularly important in the early stages of the planning process. KCC agrees with the proposed approach for broadband exclusivity clauses or agreements to be discouraged, as this restricts choice for new homeowners and tenants.</p> <p>In respect of the SPD section on Government Support, paragraph 26 sets out the financial support available from Government. The County Council would like to clarify that the financial support provided by the Government is not targeted towards new homes.</p> <p>The County Council recommends that there is a need to consider how the Government's new cost thresholds for gigabit capable connection for new builds will accord with the thresholds set out under Policy EMP6, which are based on scheme size and geographical location. There will also be a need to ensure that the FTTP</p>	<p>SPD when the changes to the Government process have been implemented. No changes to the SPD are proposed.</p> <p>Regarding the Heritage Statement comments – we note KCC's concern. However, it is noted that as part of the planning process, where a heritage asset is identified, a heritage statement or study will be produced and this will note any impact of FTTP, similar to other utilities. No changes to the SPD are proposed.</p>	

Respondent	Comment	Officer Response	Officer's Proposed Change
	<p>statement process is aligned with the connectivity plan process, as proposed by the Government. This includes where reasons are stated for exemption and specification requirements for alternatives where FTTP is deemed not viable.</p> <p>In respect of heritage conservation considerations, the installation of fibre connectivity has the potential to impact significantly on the historic environment in the following ways for both new and existing properties:</p> <ul style="list-style-type: none"> • The installation of the necessary cable trenches can impact on archaeological remains. This is well understood; and utility companies usually consult KCC's Heritage Conservation team on the possible impacts of their proposals, amending them when necessary or providing for recording of archaeological remains where the proposals cannot be amended; • The insertion of cables into buildings can impact their historic fabric. This can affect both Listed and non-Listed buildings; and • The infrastructure for providing fibre connectivity can impact on the setting of heritage assets, whether Listed Buildings, archaeological monuments or Conservation Areas. <p>To minimise such impacts, it is essential that applicants take account of any heritage assets when developing their proposals. This assessment should be carried out before the development proposals are finalised and planning applications submitted. The results of the assessment should be included in the Heritage Statement required under paragraph 189 of the National Planning Policy Framework (NPPF) and referred to in the FTTP Statement.</p> <p>It should also be noted that, in some cases, fieldwork</p>		

Respondent	Comment	Officer Response	Officer's Proposed Change
	<p>could be required to assess the impact of the proposals. KCC recommends that where heritage assets are identified as being likely to be impacted by the proposals, KCC Heritage Conservation is consulted to advise on appropriate ways to minimise those impacts.</p> <p>Where the proposals involve Listed or historic buildings, KCC would also advise that the applicant should consult Historic England's online guidance³.</p>		

Fibre to the Premises

Supplementary Planning Document



Adopted October 2020

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Section 1 – Introduction

Purpose of the Supplementary Planning Document (SPD)

1. A Supplementary Planning Document (SPD) provides further guidance to applicants on specific policies within a Local Plan. It does not seek to alter or introduce new policy requirements and is focused on setting out how applications comply with a Local Plan policy.
2. This SPD provides further guidance on Policy EMP6 ‘Fibre to the Premises’ (FTTP) of the council’s Local Plan 2030 (adopted Feb 2019). For ease of reference, the actual policy is replicated below (see section 3). Applicants must have regard to the reasoned justification contained in the Local Plan that supports Policy EMP6 (see paragraphs 7.31 to 7.48 of the Local Plan 2030).
3. The primary driver of Policy EMP6 is to deliver as much FTTP enabled development in the borough as possible. In doing so, advanced and high quality communication infrastructure will be expanded in the local area
4. Ashford Borough Council has long recognised the importance of high speed broadband and its benefits. In 2008, local planning policy required developments to be supported by adequate ducting arrangements to facilitate high speed broadband technology. This has been successful in delivering a connected network around the town of Ashford.
5. The council now requires that the market is further tested, by focussing on FTTP technology. This technology is recognised as a ‘Next Generation Access’ technology and will effectively futureproof the borough and attract further investment. FTTP is already a key market driver; developers, occupiers and employers will require ever more fast and stable connections.
6. This document contains concise details to encourage applicants to engage with relevant stakeholders early in the planning process so that FTTP enabled development is delivered. It is not suggesting that developers become providers of FTTP.
7. Communication and engagement with FTTP providers is vital, particularly in early stages of the planning process. The council has ongoing engagement with these providers and operators for the formulation of Policy EMP6 and this SPD. Useful contact information for providers is provided in Section 7 of this SPD.

Who is the SPD for?

8. This SPD is to guide applicants to the evidence required for a planning application to ensure that the requirements in Policy EMP6 have been met.

Section 2 – Background context

The benefits of FTTP to residents, businesses and developers

9. The government has implemented a Universal Service Obligation. This gives every household and business the right to request a broadband connection of at least 10 Mbps. Providing superfast broadband in new developments will provide further benefits and opportunities.
10. **Demand and expectations are high and rising:** Quality and speed of internet connections is important to property buyers and this is expected to rise as smart home technology continues to develop. The Clutton's Home Ownership Aspirations Survey 2018 found that apart from budgets and planned purchasing timelines, 84% of those surveyed said that high speed broadband was the most important specification when deciding on their new home. Furthermore research carried out by the Federation of Small Businesses (FSB) shows that 94% of small business owners rate a reliable broadband connection as critical to the success of their business.
11. **Fibre rollout is speeding up:** Thousands more UK homes and business will get connected to the network next year. Internet service operators will be looking to establish more connections, by working alongside land and housing associations, to meet the government's target of 100% gigabit connectivity to residential premises by 2025.
12. **Broadband could have an impact on property values:** Buying a new home is a large investment and broadband speeds often form part of that decision. ISPreview.co.uk conducted a poll in July 2018 which found 54.7% of readers would reject a house if it couldn't deliver their desired broadband speed, and 33% require speeds over 100 Mbps. Housesimple's May 2019 study claimed that "ultra-slow" broadband speeds (under 1 Mbps) could knock 24% off the value of the property.
13. Both surveys highlight that as the quality of national broadband networks has improved, the expectations for our desired internet performance of a new property have also increased.
14. Broadband remains a marketable element in property sales. The quality of the broadband speeds and connections can influence how quickly developers can sell both residential and commercial properties.
15. An issue that arises with new build developments and broadband is 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 minimal or no choice in provider options.

16. The government is taking steps to promote and legislate, where appropriate, that all new build developments are connected with full fibre. This will provide homeowners the choice of provider. 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%¹. 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.
17. As suggested in the government's Future Telecoms Infrastructure Review², the council would welcome evidence that negotiations have been undertaken with multiple providers to incorporate more than one network into the development. This will then give residents and businesses in new build developments more choice for broadband providers. This is also in line with policy ideas being proposed in the Department for Digital, Culture, Media and Sport (DCMS) "New Build Developments: Delivering gigabit-capable connections" consultation document³.
18. Fast, dependable broadband is essential for residents to benefit from online services, and for businesses to operate and reach their customers. It also contributes to the vibrancy of an area, in terms of both economic growth and social inclusion.
19. Ashford has been ahead of the national agenda in terms of the expansion of high speed broadband. As a result of the council's forward-thinking policies, in the past nine years superfast coverage (>24 Mbps) in the borough has increased from 52.6% of properties to 92.1%. Mean download speeds for the area have also increased from 2.8 Mbps in 2010 to 32.8 Mbps in 2019 and mean upload speeds increasing from 0.4 Mbps to 6.9 Mbps.
20. Whilst these figures demonstrate large improvements in broadband from this pro-active approach, there is still much more to do. The national picture shows that in the UK 96.1% of properties are connected to superfast broadband (>24 Mbps). In Kent 95.4% of properties are connected with some East Kent authorities having a better coverage than Ashford. With more than 13,500 dwellings due to be built in the borough over the next 11 years, together with many commercial premises, we must ensure that as many as

¹ Ofcom, The Communications Market (2019). <https://www.ofcom.org.uk/research-and-data/multi-sector-research/cmr/interactive-data>, 17 February 2020

² Future Telecoms Infrastructure Review (2018). <https://www.gov.uk/government/publications/future-telecoms-infrastructure-review>, 4 March 2020

³ New Build Developments: Delivering gigabit-capable connections consultation (2018). <https://www.gov.uk/government/consultations/new-build-developments-delivering-gigabit-capable-connections>, 4 March 2020

possible of these developments have access to superfast broadband. The council considers that FTTP is an essential infrastructure for both residential and commercial properties and wants superfast coverage to increase over this Local Plan period.

21. Although Ashford is making great improvements in the provision of FTTP, we understand that there are also instances where superfast broadband installation will not be possible for a number of reasons. This has been reflected in Policy EMP6 and we have given more detail in this document.

National Context

22. **Fast rising coverage:** FTTP deployment in the UK is increasing. 10% of premises in early 2020 were covered compared with 2.8% in 2017. In the borough, FTTP coverage is 3% in early 2020 compared with 0.5% in 2017⁴.
23. New-build developments are increasingly being built with FTTP connectivity. Nationwide, 78% of new-build premises were provided with FTTP in the first quarter of 2019, an increase from 70% in 2018 (see Figure 1). In the South East, more than 80% of new-build premises were provided with FTTP connectivity⁵.

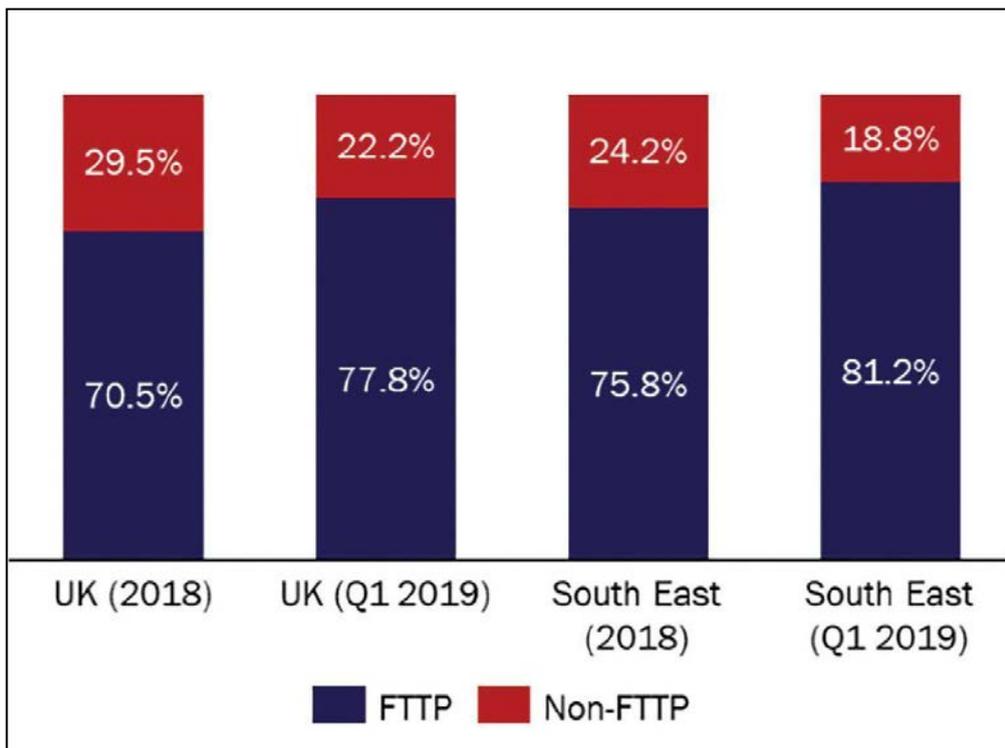


Figure 1 FTTP coverage in new-build developments [Source: ThinkBroadband, 2019]

⁴ <https://labs.thinkbroadband.com/local/E07000105>

⁵ <https://www.thinkbroadband.com/news/8583-new-build-premises-superfast-coverage-still-behind-uk-average>

24. **Growing investment:** The current wave of deployment is being driven by increasing levels of private investment in FTTP, which has grown rapidly in the last three years. Openreach is targeting four million premises to have FTTP availability by 2021 and 15 (space) million premises by 2025. It is currently deploying FTTP at a rate of approximately 26,000 premises per week. Virgin Media is part way through the roll-out of a hybrid cable/FTTP network extension covering four million premises by 2020, and has also announced plans to upgrade its existing network to DOCSIS3.1 by the end of 2021 – proving gigabit speeds across its footprint. Alternative operators (not including Openreach and Virgin Media) are also deploying FTTP networks, and have announced potential deployment plans that, when combined may cover more than 12 (space) million premises over the next few years.

Government Support

25. **Financial support:** The UK government is increasingly supportive of full fibre, and is providing both financial and regulatory support to help meet its ambition of full gigabit coverage of residential premises by 2025. The DCMS has committed £5 (space) billion to support an “outside in” deployment of FTTP in areas unlikely to be commercially viable, and is also providing funding for FTTP via schemes such as the Local Full Fibre Networks and Rural Gigabit Connectivity programmes and a Gigabit voucher scheme. It should be noted that these funds are not available for new-build developments but do evidence the Government’s commitment to FTTP roll-out.

26. **Regulatory and policy support:** Ofcom is considering regulatory changes to promote full fibre investment. Ofcom has worked with Openreach to improve access to Openreach’s duct and pole network (Physical Infrastructure Access or PIA) and facilitate new infrastructure deployment. The DCMS also consulted on three proposals to promote full-fibre connectivity in new-build developments:

- Cost-sharing between developers and operators for FTTP infrastructure
- A “duty to connect” for network operators
- Amendments to the Building Regulations to mandate FTTP-ready infrastructure in new-build premises.

⁶ <https://telecoms.com/501763/openreach-decides-to-connect-more-new-builds-on-the-house/>

27. The consultation closed in December 2019, and the responses are being processed. The Queen’s Speech in December 2019 contained a commitment by the government to introduce legislation on both new-build connectivity and gigabit-capable connectivity including:

- Mending legislation so that all new build homes are required to have the infrastructure to support gigabit capable connections.
- Requiring developers to work with broadband companies to install gigabit capable connections in virtually all new build homes, up to a cost cap⁷.

28. The Ministry of Housing, Communities and Local Government has updated the National Planning Policy Framework (NPPF) in 2019 to suggest that all planning polices and decisions should support the expansion of telecoms networks – including full fibre broadband⁸. Irrespective of ongoing central government initiatives, local authorities are empowered to develop local planning regulations which are supportive of full-fibre deployment – including for new-build developments. A number of local authorities are also considering a similar approach to Ashford Borough Council.

⁷ <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8392>

⁸

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810197/NPPF_Feb_2019_revised.pdf

Section 3 – Guidance on EMP6 Requirements

29. Policy EMP6 contains a number of requirements. For ease of reference, it is replicated below⁹:

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.

Figure 2 Policy EMP6 from Ashford Local Plan 2030

⁹ Regard is also needed to the reasoned justification that supports this policy as contained within paragraphs 7.31 to 7.48 of the council's Local Plan 2030 (Feb 2019).

What is meant by FTTP?

30. FTTP is where the entire line of connectivity is fibre from the exchange, all the way to the building or premises (the dwelling or place of employment). Please see diagram below.

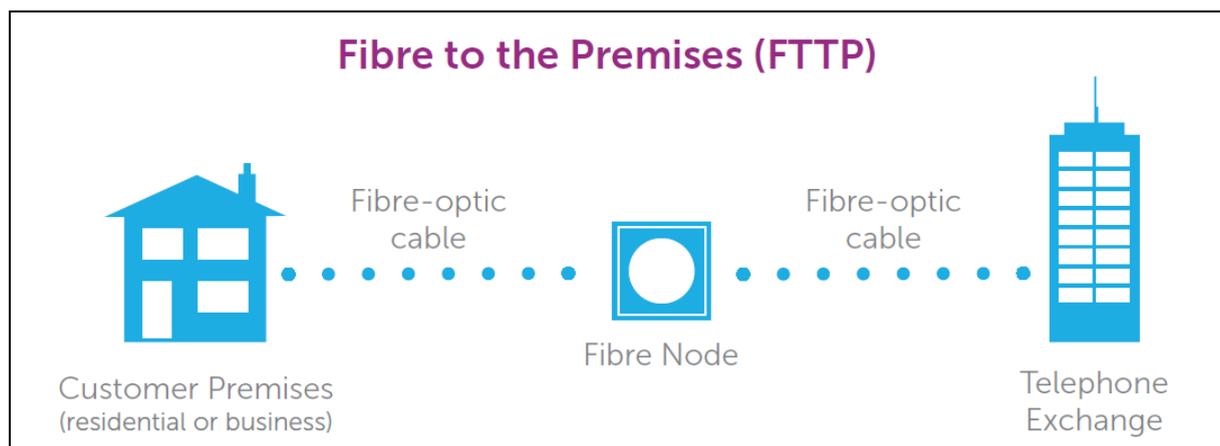


Figure 3 Diagram explaining FTTP

What is meant by 'qualifying development'?

31. 'Qualifying development' for the purpose of Policy EMP6 is:

- All schemes promoting residential or employment development 'in' or 'adjoining' the town of Ashford, or
- All residential schemes of 10 or more dwellings in the 'remaining parts of the borough', or
- All employment schemes promoting 10 or more full time jobs or equivalent in the 'remaining parts of the borough'.

32. Therefore a scheme for one dwelling or a scheme that delivers one additional full-time job, 'in' or 'adjoining' the town of Ashford will be required to comply with the requirements in Policy EMP6.

33. In the 'remaining parts of the borough'; this is limited to only those residential developments of 10 or more dwellings or employment developments that would yield 10 or more full time jobs or full time equivalent (FTE).

34. The FTE jobs can be determined by using the information contained in the Employment Densities Guide 3rd edition (2015), produced by the Homes and Communities Agency. Below is the main matrix identifying the number of square metre (sqm) per 1 FTE job. The document provides further guidance on employment densities however it is not readily available from the government so the council can help applicants in this respect.

Use Class	Sub-Category	Sub-Sector	Density (sqm)	Notes
B1a Offices	General Office	Corporate	13	NIA
		Professional Services	12	NIA
		Public Sector	12	NIA
		TMT	11	NIA
		Finance & Insurance	10	NIA
	Call Centres		8	NIA
B1b	R&D Space		40-60	NIA lower densities will be achieved in units with higher provision of shared or communal spaces
B1c	Light Industrial		47	NIA
B2	Industrial & Manufacturing		36	GIA
B8	Storage & Distribution	National Distribution Centre	95	GEA
		Regional Distribution Centre	77	GEA
		'Final Mile' Distribution Centre	70	GEA
Mixed B Class	Small Business Workspace	Incubator	30-60	B1a, B1b – the density will relate to balance between spaces, as the share of B1a increases so too will employment densities.
		Maker Spaces	15-40	B1c, B2, B8 - Difference between 'planned space' density and utilisation due to membership model
		Studio	20-40	B1c, B8
		Co-Working	10-15	B1a - Difference between 'planned space' density and utilisation due to membership model
		Managed Workspace	12-47	B1a, b, c
B8 / Sul Generis	Data Centres	Wholesale	200-950	
		Wholesale Dark Site	440-1,400	
		Co-location Facility	180-540	
A1	Retail	High Street	15-20	NIA
		Foodstore	15-20	NIA
		Retail Warehouse	90	NIA
A2	Finance & Professional Services		16	NIA
A3	Restaurants & Cafes		15-20	NIA
C1	Hotels	Limited Service / Budget	1 per 5 beds	FTE per bed
		Mid-scale	1 per 3 beds	FTE per bed
		Upscale	1 per 2 beds	FTE per bed
		Luxury	1 per 1 bed	FTE per bed
D2	Fitness Centres	Budget	100	GIA
		Mid Market	65	GIA – both types tend to generate between 40-50 jobs per gym
		Family		
	Cinema		200	GIA
	Visitor & Cultural Attractions		30-300	The diversity of the cultural attraction sector means a very wide range exists
Amusement & Entertainment Centres		70	Potential range of 20-100sqm	

Figure 4 Employment Density Guide 3rd edition Matrix, Homes & Communities Agency (2015).
GEA - Gross External Area. GIA - Gross Internal Area. NIA - Net Internal Area.

How do I determine if the proposal is located ‘in’ or ‘adjoining’ Ashford or the ‘remaining parts of the borough’?

35. At the time of drafting this SPD, the built confines for the town of Ashford have not been drawn on a map base. As such, there is no spatial area defined to help the planning applicant, or the decision maker. In such circumstances a degree of pragmatism is needed.
36. To make this process simpler for the applicant and decision maker, the SPD proposes to utilise the zones of the Affordable Housing Viability Areas map, as identified under Policy HOU1 of the Local Plan 2030.
37. Therefore, for the purposes of Policy EMP6, all application sites that fall within **zones A and B** (see figure 5) will be considered as being ‘in’ or ‘adjoining’ Ashford. All application sites that fall within **zone C** (see map below) will be considered as being in the ‘remaining parts of the borough’.

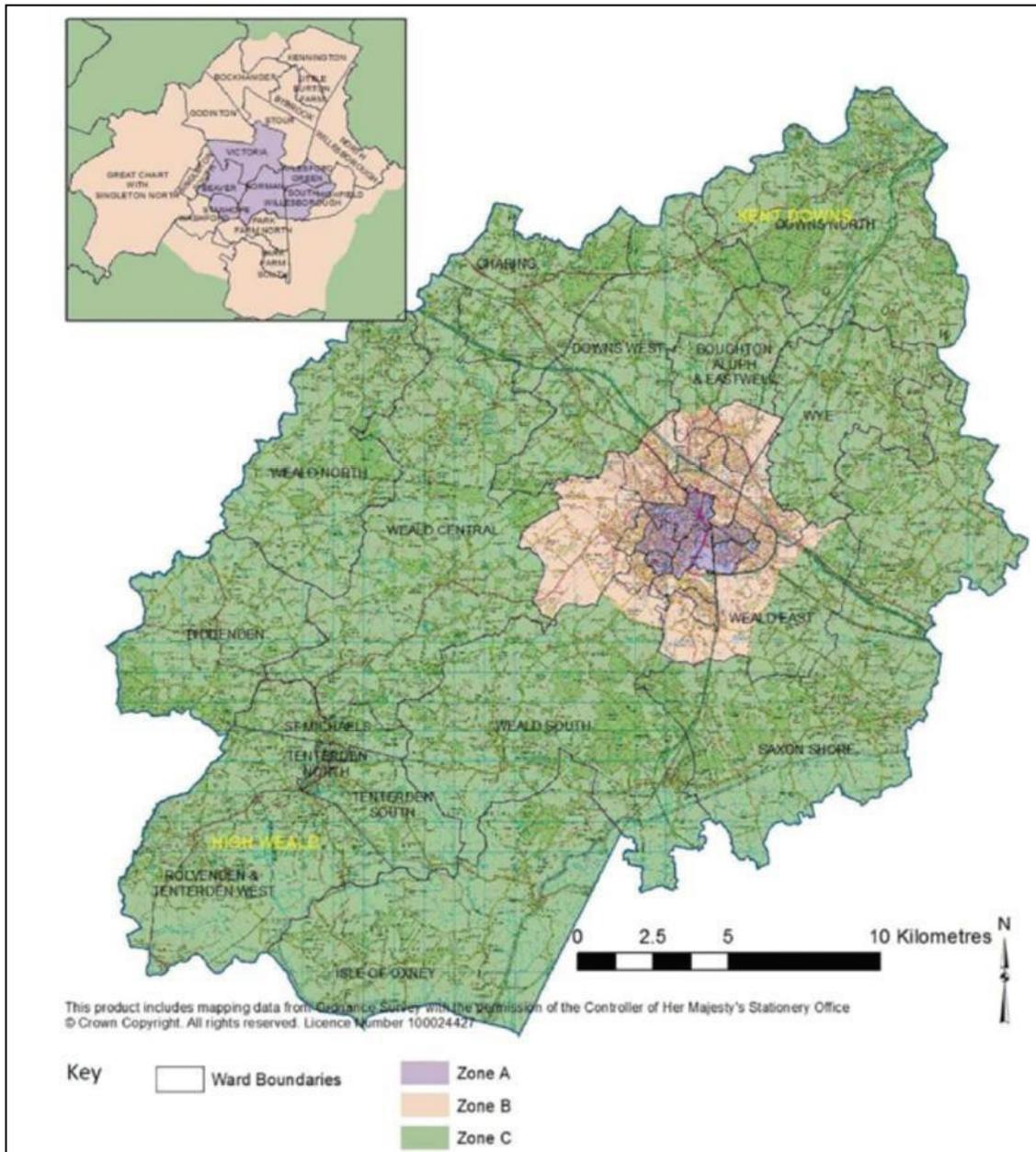


Figure 5 - Map derived from MAP2 of the Ashford Local Plan 2030: Affordable Housing Viability Areas

38. These zones were derived from a range of evidence relating to the local housing market, and are primarily used to help determine the council's affordable housing policy. The zones however also offer a simple and practical solution to helping to determine how Policy EMP6 should be applied, for two main reasons:

- i. Most of Ashford's existing fibre network is located within zones A and B. It houses all of the existing urban fibre enabled cabinets which have, in part, been delivered as result of the expansion of the town.
- ii. All of the 'Ashford Site Policies' in the Local Plan 2030 are located within zones A and B. All of these site allocations are required to

deliver FTTP. In doing so the existing urban fibre network will be enhanced or expanded. In this context, the large scale development of Chilmington Green (up to 5,750 homes and associated infrastructure) also falls within zones A and B.

39. In light of the above, all future planning applications coming forward in zones A and B will be in close proximity to both the existing and future fibre network in and around the town of Ashford, as well as existing cabinets (all of these are fully fibre enabled) and any expanded or new cabinets. It therefore follows that these sites should be treated as 'in' and 'adjoining' Ashford for the purpose of compliance with Policy EMP6.
40. Although the zones were derived for a separate purpose, it provides an opportunity to pragmatically and clearly define, on a map base, where the various components of Policy EMP6 apply.

What is an FTTP Statement?

41. An FTTP Statement is a document needed to support a planning application where a qualifying development is proposed. The Statements are required to demonstrate that the proposed development will be supported by FTTP at commencement. Please see section 4 of this SPD for what the FTTP Statement should cover.

What are the exceptions to the requirements of Policy EMP6 and how can they be justified?

42. Where FTTP cannot be delivered for a qualifying development, the applicant will be required to produce evidence justifying why. In line with Policy EMP6, these reasons will normally relate to issues surrounding viability, feasibility or the practicality of delivery, or a combination of these factors. Failure to demonstrate why non-compliance is justified may well result in the refusal of planning permission.
43. If non-compliance of policy EMP6 can be justified, varying levels of evidence will be required depending on the reasons FTTP cannot be delivered. For example, it could be that an appropriate physical trench cannot be dug, or that the scheme is too far from the nearest breakout point on the fibre network, or that there is an issue with the capacity of a nearby cabinet and this capacity cannot be increased. There may also be scenarios where operators or providers are unable to assist in the delivery of FTTP on a particular site.

44. Whatever the reason for non-compliance, the applicant is expected to produce thorough, transparent and robust evidence. Where appropriate, this should include non-commercially sensitive correspondence between the applicant and a provider.
45. If a viability case is being made, compliance with Policy IMP2 of the Local Plan 2030 is also required. Any viability case being made must be done so in a transparent way and will be rigorously tested by independent advisors, paid for by the applicant.

What is meant by ‘encouraged’ in relation to ‘other schemes’?

46. The council encourages all new development to be FTTP enabled. Doing so can only assist in delivering as full a fibre network across the borough as possible, while futureproofing and adding value to development. We encourage applicants for all schemes, including those that do not qualify for Policy EMP6, that deliver new residential or commercial premises across the borough, to evidence that superfast broadband connections have at least been considered. For schemes that do not qualify for Policy EMP6 we would anticipate evidence such as quotes from service providers, viability assessments and/or a statement explaining how broadband will be provided on the site.

Why is 24 Mbps the ‘fallback position’?

47. There is no single definition of superfast broadband. At the time of drafting policy EMP6 the UK government defined superfast broadband as download speeds of at least 24 Mbps. However, Ofcom and the EU define it as 30 Mbps. Given the advances in technology and the sector since Policy EMP6 was first drafted in 2017, the expectation now is that at least **30 Mbps** download speeds should be achieved as the fallback position, as opposed to the 24 Mbps speed stipulated in Policy EMP6. It is noted that recent BDUK contracts have adopted this speed as ‘superfast’ connectivity.

What is Next Generation Access?

48. Next-generation access (NGA) networks represent new, or upgraded, infrastructure which can provide superfast internet speeds. Ofcom defines two levels of service quality:
 - superfast broadband delivering a minimum download speed of 30 Mbit/s
 - ultrafast broadband delivering a minimum download speed of 300 Mbit/s

49. The UK government is basing its connectivity ambitions around a third definition – gigabit capable networks. Any NGA network that can deliver at least 1 Gbit/s connectivity meets the definition of a gigabit capable network. In Ashford, as in much of the UK, the way forward for delivering NGA superfast broadband is expected to be primarily via FTTP networks.

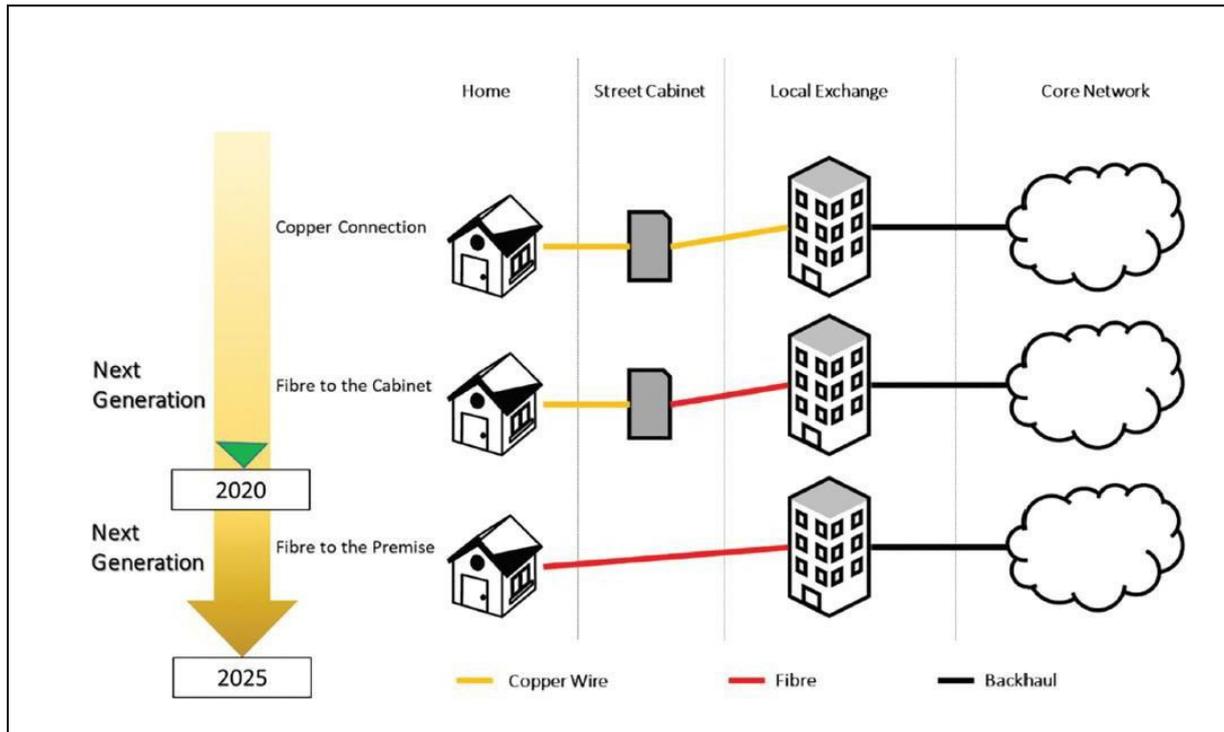


Figure 6 Cable connections over time based on Ofcom diagram

50. Fixed Wireless Access (FWA) can be considered as an alternative solution to FTTP and traditional fixed broadband services. FWA requires a fibre or wireless backhaul connection to a transmitter, which then uses a wireless link for the final connection to a home or business. This approach avoids the cost of installing a fibre connection into the building for the “last mile”. Ashford Borough Council would consider this as an alternative where FTTP is deemed to be unviable.

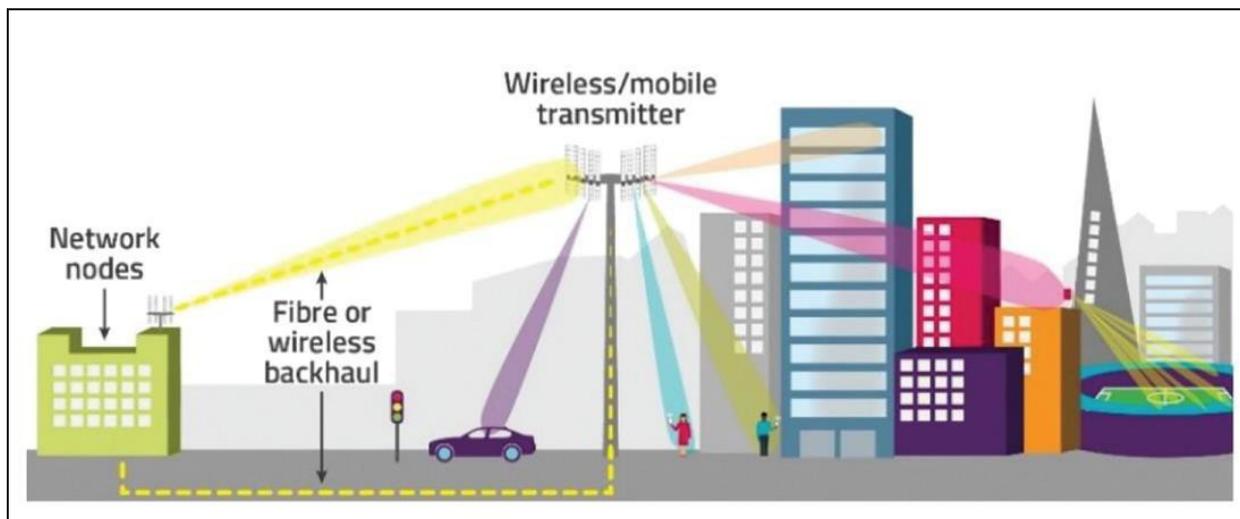


Figure 7 Schematic of FWA, Ofcom Connected Nations 2018

Section 4 – FTTP Statements

What is the purpose of FTTP Statements?

51. The main purpose of an FTTP Statement is to give the decision maker as much certainty as possible that qualifying developments will comply with Policy EMP6. The Statement should be provided as a standalone document. Statements will be expected to demonstrate:
- a) That appropriate and early discussion has been had with the telecom providers in relation to serving the development with FTTP,
 - b) That either the proposed development can be connected to existing infrastructure or that additional infrastructure is needed and how this will be provided,
 - c) That the infrastructure needed to enable FTTP will be available and in place, prior to occupation¹⁰,
 - d) How FTTP will be delivered in terms of the layout, design, connectivity to the cabinet and to the buildings proposed on-site.

What information is required at outline stage?

52. An FTTP statement is required at outline planning stage. It is accepted however, given the nature of an outline application, that it might contain less details in terms of specific implementation dates of FTTP from a provider, and/or might not include detailed layout information.
53. However, the FTTP statement for an outline application must provide enough information to satisfy the decision maker that Policy EMP6 will be complied with, or that non-compliance is justified. In this regard, the expectation is that the information provided should be similar to the level that is supplied to support other utility infrastructure, such as mains drainage of the supply of water.
54. In addition, planning conditions or obligations will be applied to outline consent to ensure that the necessary and remaining details to be covered in subsequent FTTP Statements is provided at reserved matters stage. Some example conditions are provided in section 6, as a guide.

¹⁰ The council's preference is that FTTP is delivered in such a way that provides a competitive choice, or that this choice will be available after an initial term has been passed. However the council accept that this can only be an aspiration as it is beyond the scope of the planning system.

What about confidentiality with telecom providers?

55. The council accepts that on some occasions, the detailed discussions between the telecom providers will need to be private, especially where correspondence is of a commercial nature. However, the minimum expectation is for an applicant to show that suitable liaison and discussion has been held with a number of providers and this has occurred early in the process.

What design and layout detail is needed?

56. In terms of fibre installation, the following issues should be addressed within the Statements, or as part of the application itself. It might be useful to provide such information in the form of a layout plan of the site. Issues to be addressed include:

- Type, size and likely location of the cabinet to be installed,
- The type of fibre/data cabling to be used and examples of the fittings to be attached to the building(s),
- Indicative fibre cabling routing through the site and beyond,
- The extent and type of external cabling,
- The extent and type of external ducting and chambers,
- How the infrastructure is to be delivered in terms of the phasing of the scheme and completion to conform to intended first occupancy date.

Section 5 – Example planning conditions

57. Planning conditions will be applied. Below are two examples of what applicants should expect:

Example 1:

Prior to the first occupation of the dwelling/s hereby permitted OR Prior to the first occupation of the dwelling/s in land forming phase _____, an FTTP Statement shall have been submitted to and approved by the local planning authority in writing for the installation of a high speed wholly FTTP connection to the development hereby approved, unless otherwise agreed in writing by the local planning authority (where supported by evidence detailing reasonable endeavours to secure the provision of FTTP and alternative provisions that been made in the absence of FTTP).

Thereafter, the infrastructure shall be laid out in accordance with the approved details and be available for use on the first occupation of any of the dwellings hereby approved.

Reason: To ensure that the new development in Ashford is provided with high quality broadband services enhancing Ashford as an attractive location in accordance with Policy EMP6 of the Ashford Local Plan 2030.

Example 2:

Prior to the first occupation of the premises, an FTTP Statement shall have been submitted to and approved by the local planning authority in writing for the installation of a high speed wholly FTTP connection to the development hereby approved.

Thereafter, the infrastructure shall be laid out in accordance with the approved details at the same time as other services during the construction process and be available for use on the first occupation of the building unless otherwise agreed in writing by the local planning authority (where supported by evidence detailing reasonable endeavours to secure the provision of FTTP and alternative provisions that been made in the absence of FTTP).

Reason: To ensure that the new development in Ashford is provided with high quality broadband services enhancing Ashford as an attractive location in accordance with Policy EMP6 of the Ashford Local Plan 2030.

Section 6 – Highways

58. The DCMS Digital Connectivity Portal provides a good level of guidance relating to street works and how local authorities/highways authorities and developers/operators can work in partnership. The Street Works Toolkit found in the Digital Connectivity Portal aims to improve consistency and thereby trust, promote collaboration and complement legislation.
59. Highways England is the highway authority, traffic authority and street authority for the strategic road network (SRN). Highways England will be concerned with proposals that have the potential to impact on the safe and efficient operation of the SRN, in this case the M20 and A2070 in the vicinity of Ashford Borough. Any activity on the SRN falls in the realms of New Roads and Street Works Act (NRSWA) and Traffic Management Act (TMA) and any works promotor will need to abide by these. In particular there are restrictions with regards motorways and other special roads. Even works on adjacent land may be restricted. For more information please visit the [Highways England website](#) or contact Highways England (tel: 0300 123 5000, email: info@highwaysengland.co.uk)
60. There is a lot of emphasis on the need for providers, developers and local authorities to engage at an early stage in order to identify the standards expected, plan appropriately and ensure the efficient deployment of networks.
61. Please refer to the Street Works Toolkit on the Digital Connectivity Portal: www.gov.uk/guidance/digital-connectivity-portal.



Figure 8
The Government's Streetworks Toolkit front cover

Section 7 – Useful contacts and information

62. The expectation will be that the applicant will have made contact with FTTP providers. Some key contacts are provided below:

Provider	Website	Telephone
Openreach ¹¹	https://www.openreach.com/fibre-broadband/fibre-for-developers/registering-your-site	
Virgin Media	https://www.virginmedia.com/lightning/network-expansion/property-developers	0800 408 088
Hyperoptic	https://www.hyperoptic.com/property/	0333 332 1111
City Fibre	https://www.cityfibre.com/contact-us/	0800 083 6160
Trooli ¹²	https://www.trooli.com/help/	0800 358 7680
BUUK Ltd	https://www.bu-uk.co.uk/contact-us	0135 924 0363

63. Some providers have specific guidance for property developers that can be downloaded for information. Please use the contact details above to access these.

64. Ashford Borough Council does not endorse the companies mentioned above and would suggest developers assess the whole market and make their own decision. Other companies are available however the list above are companies that are in contact with the council or are operating in or near the Ashford borough. If a provider wishes to be added to this list we will be maintaining an up to date list of registered providers on the council's website here.

¹¹ You may register your development site on their website

¹² While not active in the Ashford borough at the time of writing, *Trooli* are a Kent-based provider worth contacting

Section 8 – The need to monitor and review

65. The council recognises that the e-technology sector is a rapidly changing environment, where innovations occur on a regular basis. Government policy is also evolving all the time, as it tries to keep pace.
66. It therefore needs to be recognised that government policy could be introduced, even in the short term, which would supersede the guidance contained in this SPD.
67. Given this context, the council will continually monitor the sector and any changes to national policy or legislation. If a revision to this SPD is necessary, the council will progress alterations as soon as reasonably practical to do so.

Equality Impact Assessment

1. An Equality Impact Assessment (EIA) is a document that summarises how the council has had due regard to the public sector equality duty (Equality Act 2010) in its decision-making. Although there is no legal duty to produce an EIA, the Council must have **due regard** to the equality duty and an EIA is recognised as the best method of fulfilling that duty. It can assist the Council in making a judgment as to whether a policy or other decision will have unintended negative consequences for certain people and help maximise the positive impacts of policy change. An EIA can lead to one of four consequences:

- (a) No major change – the policy or other decision is robust with no potential for discrimination or adverse impact. Opportunities to promote equality have been taken;
- (b) Adjust the policy or decision to remove barriers or better promote equality as identified in the EIA;
- (c) Continue the policy – if the EIA identifies potential for adverse impact, set out compelling justification for continuing;
- (d) Stop and remove the policy where actual or potential unlawful discrimination is identified.

Public sector equality duty

2. The Equality Act 2010 places a duty on the council, when exercising public functions, to have due regard to the need to:
- (a) Eliminate discrimination, harassment and victimisation;
 - (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it (ie tackling prejudice and promoting understanding between people from different groups).

3. These are known as the three aims of the general equality duty.

Protected characteristics

4. The Equality Act 2010 sets out nine protected characteristics for the purpose of the equality duty:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership*
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

*For marriage and civil partnership, only the first aim of the duty applies in relation to employment.

Due regard

5. Having 'due regard' is about using good equality information and analysis at the right time as part of decision-making procedures.
6. To 'have due regard' means that in making decisions and in its other day-to-day activities the council must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations. This can involve:
- removing or minimising disadvantages suffered by people due to their protected characteristics.
 - taking steps to meet the needs of people with certain protected characteristics when these are different from the needs of other people.
 - encouraging people with certain protected characteristics to participate in public life or in other activities where it is disproportionately low.
7. How much regard is 'due' will depend on the circumstances. The greater the

potential impact, the higher the regard required by the duty. Examples of functions and decisions likely to engage the duty include: policy decisions, budget decisions, public appointments, service provision, statutory discretion, decisions on individuals, employing staff and procurement of goods and services.

8. In terms of timing:

- Having 'due regard' should be considered at the inception of any decision or proposed policy or service development or change.
- Due regard should be considered throughout development of a decision. Notes shall be taken and kept on file as to how due regard has been had to the equality duty in research, meetings, project teams, consultations etc.
- The completion of the EIA is a way of effectively summarising this and it should inform final decision-making.

Armed Forces Community

9. As part of the council's commitment to the Armed Forces Community made through the signing of the Armed Forces Covenant the council's Cabinet agreed in November 2017 that potential impacts on the Armed Forces Community should be considered as part of the Equality Impact Assessment process.

10. Accordingly, due regard should also be had throughout the decision making process to potential impacts on the groups covered by the Armed Forces Covenant:

- Current serving members of the Armed Forces (both Regular and Reserve)
- Former serving members of the Armed Forces (both Regular and Reserve)
- The families of current and former Armed Forces personnel.

Case law principles

11. A number of principles have been established by the courts in relation to the equality duty and due regard:

- Decision-makers in public authorities must be aware of their duty to have 'due regard' to the equality duty and so EIA's must be attached to any relevant committee reports.
- Due regard is fulfilled before and at the time a particular policy is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.
- A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
- The duty is a non-delegable one. The duty will always remain the responsibility of the public authority.
- The duty is a continuing one so that it needs to be considered not only when a policy, for example, is being developed and agreed but also when it is implemented.
- It is good practice for those exercising public functions to keep an accurate record showing that they have actually considered the general duty and pondered relevant questions. Proper record keeping encourages transparency and will discipline those carrying out the relevant function to undertake the duty conscientiously.
- A public authority will need to consider whether it has sufficient information to assess the effects of the policy, or the way a function is being carried out, on the aims set out in the general equality duty.
- A public authority cannot avoid complying with the duty by claiming that it does not have enough resources to do so.

The Equality and Human Rights Commission has produced helpful guidance on "Meeting the Equality Duty in Policy and Decision-Making" (October 2014). It is available on the following link and report authors should read and follow this when developing or reporting on proposals for policy or

service development or change and other decisions likely to engage the equality duty. [Equality Duty in decision-making](#)

Lead officer:	Dan Carter
Decision maker:	Cabinet
Decision: <ul style="list-style-type: none"> • Policy, project, service, contract • Review, change, new, stop 	<ol style="list-style-type: none"> I. Notes the responses to the representations received and changes made to the SPD contained within Appendix 1 to this report and approve the final version of the SPD contained within Appendix 2 to this report; II. Recommend to Full Council the adoption of the Fibre to the Premises Supplementary Planning Document.
Date of decision: The date when the final decision is made. The EIA must be complete before this point and inform the final decision.	30 July 2020
Summary of the proposed decision: <ul style="list-style-type: none"> • Aims and objectives • Key actions • Expected outcomes • Who will be affected and how? • How many people will be affected? 	<p>The Ashford Local Plan 2030 (adopted 2019) includes Policy EMP6 ‘Promotion of Fibre to the Premise’. The primary purpose of Policy EMP6 is to require most new residential and employment development to be served by Fibre cabling, to the premise.</p> <p>A supplementary planning document (SPD) was drafted to provide further details on the requirements of Policy EMP6. An SPD provides further guidance to applicants on specific policies within a Local Plan and does not seek to alter or introduce new policy requirements.</p> <p>Adoption of the SPD will provide developers with advice and guidance to provide Fibre infrastructure in application and to support development management decisions.</p> <p>This SPD will have affect towards applicants of relevant planning application of the borough who qualify to the requirements of this policy.</p>
Information and research: <ul style="list-style-type: none"> • Outline the information and research that has informed the decision. • Include sources and key findings. 	The recommended decision has been informed by relevant planning legislation, namely Part 5 of The Town and Country Planning (Local Planning) (England) Regulations 2012.
Consultation: <ul style="list-style-type: none"> • What specific consultation has occurred on this decision? • What were the results of the consultation? • Did the consultation analysis reveal any difference in views across the protected characteristics? • What conclusions can be drawn from the analysis on how the decision will affect 	<p>Consultation was undertaken in accordance with The Town and Country Planning (Local Planning) (England) Regulations 2012. Consultation included advertisements across both electronic and traditional media.</p> <p>Consultees had the option of submitting comments in hard copy or online through the council’s designated consultation hub. Please refer to the accompanying consultation statement.</p>

people with different protected characteristics?		
<p>Assess the relevance of the decision to people with different protected characteristics and assess the impact of the decision on people with different protected characteristics.</p> <p>When assessing relevance and impact, make it clear who the assessment applies to within the protected characteristic category. For example, a decision may have high relevance for young people but low relevance for older people; it may have a positive impact on women but a neutral impact on men.</p>		
Protected characteristic	Relevance to Decision High/Medium/Low/None	Impact of Decision Positive (Major/Minor) Negative (Major/Minor) Neutral
<u>AGE</u> Elderly	Low	Neutral
Middle age	Low	Neutral
Young adult	Low	Neutral
Children	Low	Neutral
<u>DISABILITY</u> Physical	Low	Neutral
Mental	Low	Neutral
Sensory	Low	Neutral
<u>GENDER RE-ASSIGNMENT</u>	None	Neutral
<u>MARRIAGE/CIVIL PARTNERSHIP</u>	None	Neutral
<u>PREGNANCY/MATERNITY</u>	None	Neutral
<u>RACE</u>	None	Neutral
<u>RELIGION OR BELIEF</u>	None	Neutral
<u>SEX</u> Men	None	Neutral
Women	None	Neutral
<u>SEXUAL ORIENTATION</u>	None	Neutral
<u>ARMED FORCES COMMUNITY</u> Regular/Reserve personnel	None	Neutral
Former service personnel	None	Neutral

Service families	None	Neutral
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<p>Mitigating negative impact:</p> <p>Where any negative impact has been identified, outline the measures taken to mitigate against it.</p>	No negative impact identified.
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<p>Is the decision relevant to the aims of the equality duty?</p> <p>Guidance on the aims can be found in the EHRC's Essential Guide, alongside fuller PSED Technical Guidance.</p>	
Aim	Yes / No / N/A
1) Eliminate discrimination, harassment and victimisation	Yes
2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it	Yes
3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it	Yes

<p>Conclusion:</p> <ul style="list-style-type: none"> Consider how due regard has been had to the equality duty, from start to finish. There should be no unlawful discrimination arising from the decision (see guidance above). Advise on whether the proposal meets the aims of the equality duty or whether adjustments have been made or need to be made or whether any residual impacts are justified. How will monitoring of the policy, procedure or decision and its implementation be undertaken and reported? 	<p>The SPD provides extra details to qualifying development of the policy EMP6 for the provision of Fibre infrastructure. A comprehensive consultation process was undertaken with the community and key stakeholders, including developers. The consultation was advertised across electronic and traditional media types.</p> <p>The SPD enable positive planning for the area through the provision of infrastructure which is vital to the delivery of sustainable development.</p> <p>Adoption of these documents has development management implications and will impact decisions. These impacts are to be reviewed as part of the overall service review of development management and changes in government advice and policy.</p>
EIA completion date:	20/07/2020

