

# **BIRMINGHAM CITY COUNCIL**

## **Small cell expression of interest guidance & response document**



### **1. Introduction**

Birmingham City Council is committed to supporting the rollout of future-proofed digital infrastructure in order to make the city a more attractive place to live, run a business and invest. We recognize that future-proofed Digital infrastructure is the backbone of a modern thriving economy driving productivity and spreading growth and in delivering effective and efficient public services. Covid-19 accelerated the adoption of digital services which are considered critical to level-up our economy to power economic and social recovery.

Birmingham City Council's ICT and digital strategy sets out our approach to supporting the rollout of full fibre broadband and wireless connectivity including 5G. We recognize the significant benefits that futureproofed digital infrastructure can bring to the city, its residents and businesses, contributing to our key priorities:

- Support people who need it most
- Create more opportunities for young people
- Generate local jobs and learning opportunities
- Grow our vital local business
- Stimulate vibrant high streets and communities.

As such, we are keen to maximise use of our assets and simplify processes and procedures to support the rollout. This includes making available our street furniture assets to Code Operators to support the rollout of small cell technologies on a non-exclusive open access basis.

### **2. Digital Infrastructure Guidance**

Guidance published by the Department for Digital, Culture, Media and Sport (DCMS) paves the way for "a clear and transparent process for industry and government". Birmingham City Council has developed this Digital Infrastructure Toolkit on the basis of the [DCMS guidance](#) and has adopted a non-exclusive, open access approach to Telecommunication Operators.

This toolkit provides:

- Guidance to Code Operators seeking to host 4G/5G Small Cells on Birmingham City Council's assets;
- Guidance on setting up an agreement between the Local Authority and the Code Operator;
- Standard Financial Terms; and
- Advice on the processes for Code operators to follow when considering siting digital communications infrastructure on Birmingham City Council's assets.

This Toolkit sets out the Council's guidance on November 2022. Code operators must satisfy themselves as to the accuracy of any information contained in it and otherwise provided by the Council. The Council may amend its guidance and the process to be followed at any time.

### **Electronic Communications Code**

This toolkit follows the electronic communications code as set out in Schedule 3A of the Communications Act 2003. The regulations support the Government's commitment to establish reliable mobile connectivity across the country, as well as supporting faster and cheaper deployment of the infrastructure. Read the [Electronic Communications Code](#).

## **3. Process**

### **Expression of Interest**

Birmingham City Council will consider proposals for the installation of 4G/5G Small Cells from Code Operators seeking to deploy their technology in Birmingham. Only Code Operators can apply.

Operators should submit an Expression of Interest (Annex 1) to:

Paul Laythorpe  
Birmingham City Council  
Email: [paul.laythorpe@birmingham.gov.uk](mailto:paul.laythorpe@birmingham.gov.uk)

### **Installation Information**

Ultimately the code operator will need to provide the Council with the following information:

- Scope of the project
- Deployment approach
- Technical information (technical information of the small cells to deploy, architecture)
- Identified/pre-selected assets
- Project Timelines
- Social impact

The council will facilitate the introduction to the asset maintenance provider which will be under a PFI in future. The Code Operator will be required to agree a scope of works and payment schedule with the maintenance provider prior to commencement of any works in relation to installation and maintenance of small cells on street assets (e.g. lamp columns).

This information will be shared with the planning and highways departments, who will review it and raise any potential concerns. If required, a workshop will be arranged with all the stakeholders to address potential issues or gain a better understanding of the proposed solution.

We are asking Code Operators to aim for 3 months to propose the design and 3 months to install. Land banking is not accepted.

### **Planning Regulations**

Proposals for 4G/5G small cell and cabinet sites outside Conservation Areas can be 'de minimus' or 'permitted development' under the Permitted Development Order. On this basis only a 28 day 'prior notification' need be submitted. Planning permission or prior approval is more likely to be required in Conservation Areas.

Birmingham City Council's Planning Department can be contacted via the Planning inbox ([planningandregenerationenquiries@birmingham.gov.uk](mailto:planningandregenerationenquiries@birmingham.gov.uk))

### **Legal Agreement**

Birmingham City Council's streetlighting assets are managed, operated and maintained by an external Highways Services Contractor (maintenance contractor).

An agreement to host infrastructure in Birmingham must be in writing to:

- Record the agreed terms between the Local Authority, the Contractor and the Operator.
- Ensure the interests of all parties are protected for the duration of the Agreement
- Takes into consideration other operators that will seek to host infrastructure in the city
- Help avoid disputes

Birmingham City Council reserves the right to reject any application if the Code Operator fails to prove that its solution is not preventing another Operator from hosting infrastructure in the same asset.

A subsequent Code Operator deploying a solution on a deployed asset must prove that the solution will not interfere with the previously deployed solution.

### **Financial Terms**

The Electronic Communications Code provides for two forms of remuneration: Consideration and Compensation.

#### **1. Consideration:**

Consideration is dealt with in paragraph 24 of the Code. Where a Tribunal is required to determine the consideration payable by an operator, their calculation must be based on: "an amount or amounts representing the market value of the agreement ... to confer or be bound by the code right", with "market value" for these purposes being assessed by reference to specific assumptions.

#### **2. Compensation:**

Compensation is dealt with in paragraph 25 of the Code and is intended to allow landowners to recover loss or damage that has been sustained or will be sustained

as a result of an agreement to host infrastructure on land or buildings. Typical matters which could be considered as compensation might include:

- Surveyors Fees;
- Legal expenses
- Access - e.g. Creation of management information system to handle enquiries for access;
- Disturbance - during the build and subsequently (maintenance visits); and
- Injurious Affection - reduction in land value as a consequence of granting the rights.
- Joint site surveys involving the Highways department

Note wayleaves, planning, legal and electric costs are additional.

### **3. Business Rates**

Departments, advisers, and operators should note that installation of infrastructure will create a separate assessment for business rates payable on the property/asset. Additional business rates consequently payable will be the responsibility of the operator.

#### **Birmingham City Council Rates**

In order to maintain openness and transparency, Birmingham has adopted a non-exclusive, open access approach for Telecommunication Operators seeking to deploy in Birmingham.

Birmingham has set the following standard financial terms for the deployment of 4G/5G Small Cells technology on its assets within the City:

- The Code Operator will cover all liabilities, expenses, costs (including but not limited to any solicitors' or other professionals' costs and expenses), claims, damages and losses related to installation, maintenance, upgrade and removal of small cells equipment.
- Payment per year per asset/site/lamppost deployment per Operator – as laid out in the licence agreement.
- A project coordination and setup fee will be payable (prior to contract) to the council per application which will cover the initial discussion, overall agreement and legal agreement. This will be payable when both the Council and the Supplier have agreed to proceed prior to detail discussions being held.

The length of the agreement is nominally 10 years which provides long term stability for the supplier and is an average of UK council best practice.

When an asset is not suitable to host telecoms infrastructure, the Code Operator will be given the option to upgrade the asset at its own cost, however this option must be approved by the highways and planning team.

If no installation work is carried out within 12 months of the license being allocated to a Code Operator, then the node licence will lapse.