

Cabinet Member Briefing Note

Agreements for the use of Council owned land and buildings by telecommunication and related industry suppliers for Gigabit Capable Broadband Infrastructure

To: Cabinet Member for Commercialisation, Education, and Skills

Date: 22nd March 2021

Author: Chief Executive

Wards: All

Parishes Affected: All

1. Purpose and Reasons

1.1 This report seeks authority for the Council to enter into wayleave with telecommunication and related industry suppliers for access and use of its land and buildings for Gigabit Broadband Infrastructure.

1.2 The report is necessary so that:

1.2.1 The Council can support network providers to install the infrastructure for gigabit broadband and in turn they can facilitate access for residents and businesses.

1.2.2 The Cabinet Member for Commercialisation, Education and Skills notes the resource implications of this proposal.

1.3 The provision of Gigabit Capable Broadband is central to Priority One within the Council's Vision for Swindon; "to improve Infrastructure and housing to support a growing, low carbon economy". It is also a means to facilitate greater access to education (the main aspect of Priority Two) and to other online resources (key to Priority Four)

2. Recommended Action to be taken by Officers under Delegated Powers

Recommended that the Cabinet Member agrees to:

2.1 The Head of Property Assets, in consultation with the Chief Legal Officer, the Director of Housing and relevant ward councillors, exercising his delegated authority (Paragraph 43 of the Council's Scheme of Delegations, Part 8 of the Constitution) to grant wayleave to telecommunication and related industry suppliers for the use of Council owned land and buildings for Gigabit Capable Broadband Infrastructure. All legal agreements granted will be on such terms and conditions as are required by the Head of Property Assets and the Chief Legal Officer in order to protect the Council's interests. Wayleaves granted under

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this process shall not extend to allow the installation of hardware not directly associated with the provision of Gigabit Capable Broadband Infrastructure.

3. Detail

- 3.1 There are currently several suppliers of fibre infrastructure in Swindon. To date two of these suppliers, OpenReach and CityFibre have requested the use of Council owned land and buildings for installations of the infrastructure needed to facilitate their plans to expand fibre broadband coverage and provide fibre infrastructure to Swindon residents and businesses. The deployment of this infrastructure will allow Gigabit Capable Broadband to be procured by residents and businesses from a range of internet service providers (ISP).
- 3.2 The proposed installation of fibre infrastructure involves work taking place on Council owned land or buildings and the permanent locating of cables and/or equipment. This requires some form of access permission and agreement for the ongoing use. The anticipated number of locations needing to be utilised and the complexity of the process of applying for access rights represents a considerable time and resource cost to the suppliers and to the Council.
- 3.3 It is not currently known how many other telecommunication or related industry suppliers will request the use of Council owned land and buildings for their own infrastructure deployment and it is not proposed that this is restricted to any provider. However, it is anticipated that once the first provider's infrastructure is installed in each location other providers will be able to utilise this (via separate sharing agreements) rather than install additional cabling and/or equipment on Council land and buildings.
- 3.4 A significant part of the fibre infrastructure deployment will be within the borough adopted highways (being any part of the verge, footway or carriageway within the borough boundary that is maintained at the public expense). There is already legislation that defines the rights and obligations under the Highways Act 1980 and applications for the use of adopted highways by telecommunications or related industry suppliers with regard to this aspect of the infrastructure deployment will be progressed in accordance with these terms and conditions.
- 3.5 However, where fibre infrastructure deployment is needed on the non-adopted highways to individual properties, and this crosses Council owned land and buildings, then separate wayleave would need to be granted. It may also be necessary for the

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infrastructure to extend into the building itself where it is subdivided into multiple dwellings units (such buildings are referred to as MDU's) so that separate connection points can be installed in communal areas, in utility service ducts, or on the exterior surface of the building. This will be adjacent to (but not inside) individual dwellings. When the householder enters into a contract with an ISP to provide a broadband service that ISP will then arrange for the connection from inside the dwelling to the fibre infrastructure.

- 3.6 CityFibre has requested a "Bulk Wayleave" agreement to expedite the process of agreeing access and use of Council owned land and buildings. This would involve a pre-agreed contract of generic terms and conditions for the use of all Council owned land and buildings with access to land and buildings only being given when route plans and health and safety documentation (RAMS) are agreed covering each location. (RAMS is the accepted abbreviation for "site specific Risk Assessment and Method Statement"; the collated pack of health and safety documentation for a piece of work within the construction industry).
- 3.7 In a similar fashion, OpenReach has requested a "Header Agreement" to define terms and conditions that could be subsequently applied to agreed locations. Land and building locations would then be added to an appendix of the legal agreement upon Council acceptance of route planning and RAMS.
- 3.8 The Council currently has arrangements in place with other suppliers.
- 3.8.1 An arrangement with UK Broadband Ltd, which is referred to as the "Master Site Agreement." This is for the provision of 4gLTE services via transmitters on the roof of Council buildings or via masts on open land. This agreement grants access subject to route planning and RAMS approval. In this case a list of sites was agreed at the time of the original document but with the provision for changes to this list by mutual agreement. This agreement expires on 4th March 2022.
- 3.8.2 An historic arrangement covering cable infrastructure made with NTL/TeleWest that allows access to Council owned land and buildings subject to RAMS approval. This arrangement was inherited by Virgin Media Ltd and continues until determined by either party.
- 3.9 At the date of this report there are no changes proposed to the current arrangements in place with these other suppliers. Entering into new wayleave or contractual agreements

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with new suppliers will add more competition in the market place and ensure that each supplier has equitable access for the use of Council owned land and buildings.

- 3.10 As well as supporting the Pledges that form the basis of the Council's Vision for Swindon, the deployment of Gigabit Broadband Infrastructure is key to meeting several of the Swindon and Wiltshire Local Enterprise Partnership's Strategic Objectives: Digital Capability, Skills and Talent, and Business Development.
- 3.11 The pandemic has accelerated the move towards flexible working with local businesses and the Council's own staff working from home where possible. This, along with the increasing move of services to online and cloud based digital platforms places an ever greater burden upon the capacity of the Wide Area Network available to residents and businesses. This burden can best be met by a Gigabit Broadband Infrastructure.
- 3.12 Central Government has released guidelines encouraging local authorities to support and facilitate the roll out of Gigabit Broadband Infrastructure where possible.

4. Alternative Options

- 4.1 The alternative option would be to retain the current processes whereby applications for Wayleaves and other contractual agreements are considered individually for each site and each supplier. This could involve a considerable additional workload as the number of applications over the next few years is likely to be greater than previously experienced. In essence, the work underway by the fibre infrastructure providers is similar in scale to the deployment of a new utility but with an ambitiously short timeline.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 There is no income to be generated as a result of the use of Council land and buildings for the proposals detailed in this report. The recently adopted Telecom Codes requires there to be a 'no network assumption' meaning that the value of the use of land and buildings is based upon the value to the landowner rather than the operator. Alternative uses that generate rent income for individual parcels of land and buildings for cables and/or equipment are unlikely to exist and therefore the equivalent comparable value and therefore consideration is nominal only. It is proposed that any wayleave or

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contractual agreement documented are therefore charged at a peppercorn or £1pa only.

- 5.2 There is no direct financial implication of this decision to the Council aside from the effect upon staff resources in the Legal, Property Asset and Property Management teams for documenting and managing the approval of the initial agreement and the individual land and building arrangements.
- 5.3 It is intended that each telecommunications or related industry supplier be asked to reimburse all costs, fees, disbursements and expenses incurred by the Council in relation to or incidental to every application made by them under the provisions of any wayleave or contractual agreement. These charges will need to be ring-fenced to cover the staff resources costs incurred by the Legal, Property Asset and Property Management teams.
- 5.4 There are no procurement implications as this report recommends an agreement for the use of land and buildings and the Council is not commissioning any services.

Legal and Human Rights Implications

- 5.5 The Chief Legal Officer will complete all legal documentation on such terms as are necessary in order to protect the Council's interests.
- 5.6 The report recommendation aims to streamline processes associated with the consideration of requests for Wayleave for the use of Council land and buildings by telecommunications or related industry suppliers.
- 5.7 Legal and Human Rights implications have been fully taken into account in the preparation of this report. It is considered that the recommendation of this report does not directly affect any Human Rights. However, it is intended to facilitate the roll out of Gigabit Broadband Infrastructure – not in itself a right but supportive of access to education, freedom of expression, etc.
- 5.8 All wayleave documented as a result of this report will restrict the use of Council land or buildings for receiving, transmitting and conveyance of communication infrastructure and the delivery, installation, commissioning and maintenance of cables and/or equipment along with compliance with all statutory obligations and requirements.

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Climate Change Impact

- 5.9 While the recommendations would not directly change the Council's carbon footprint, the programme of work that is to follow will facilitate the roll out of Gigabit Capable Broadband and this is generally regarded as likely to have a reducing effect upon the carbon footprint of businesses within the borough and of the Council.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.10 The deployment of Gigabit Capable Broadband infrastructure will generate considerable extra work for the Legal, Property Asset, Highways, and Property Maintenance teams within the Council even if the recommendation is accepted, for which there is no current identified staff resource. However, this recommendation is anticipated to reduce some of the burden expected to be placed upon these teams as much of the approval of wayleaves and contractual agreements will be dealt with together rather than individually.
- 5.11 Unless there is an increase in the staffing resource available to process applications, it is likely that there will be a delay to the roll out of the fibre infrastructure for the borough. It is proposed that all costs, fees, disbursements and expenses incurred by the Council and recharged to the suppliers as set out in paragraph 5.3 of this report are ring-fenced for the recruitment of the necessary staff resource. Any recruitment of new staff resources to support the recommendations in this report will be undertaken in accordance with the Council's adopted procedures.
- 5.12 Although the provision of wayleaves for Council property is separate to the infrastructure activities involving the highways and related areas, it should be noted that there will be a level of disruption resulting from those build works that will impact upon Swindon residents including Council tenants. Though some disruption is inevitable given the magnitude of the work and acceptable given the benefits that are anticipated, there is an expectation that the Council will exercise its influence upon the suppliers to minimise this disruption and sign up to such codes of conduct as cover these types of works.
- 5.13 In addition, it is intended to facilitate the roll out of Gigabit Capable Broadband, which will have positive implications with regard to flexible work arrangements for residents (including Council staff) and businesses based in the borough. It will also facilitate the dissemination of information and services related to health and social support.

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Diversity Impact Assessment

- 5.14 A full Diversity impact Assessment (DIA) has not been carried out as the recommendations propose no change in service provided or commissioned by the Council.
- 5.15 However, it is intended to facilitate the roll out of Gigabit Capable Broadband, which does have positive implications with regard to increased accessibility for a number of minority groups for instance people with sensory impairment or those who have mobility issues.

Risk Management

- 5.16 Risk management will not change based upon this recommendation.
- 5.17 Head of Property Assets be authorised to withhold access permission to individual sites if the Council is not satisfied with route planning or health and safety planning (RAMS).

6. Consultees

- 6.1 The Corporate Director of Finance and Assets (s151 officer) and Chief Legal Officer (Monitoring Officer) are consulted in respect of all reports.
- 6.2 Councillors Martyn, Williams, and Sumner have been consulted on the contents of this note.

7. Background Papers

- 7.1 None

8. Appendices

- 8.1 None

9. Declarations of Interest

- 9.1 Cabinet Members are reminded to consider whether they have any known interests in any of the matters referred to in this Briefing Note. If such an interest exists this should be declared to the Monitoring Officer (or Committee and Member Services Manager),

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and they should take no part in the consideration of the Briefing Note and should refer the Briefing Note to the Leader of the Council instead for consideration.

10. Sign-off

- 10.1 The Cabinet Member is requested to respond with 5 days of the date of this report (by 27th March 2021).
- 10.2 The Cabinet Member is requested to indicate one of the following responses to the Recommendations set out in Section 2 of this report:

[To be signed electronically but the signature will be redacted on the published version.]