

# Superfast Broadband

**Cabinet**

**Date: 10<sup>th</sup> February 2016**

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Author:	Cabinet Member for Corporate, Customer and Digital Services and Board Director, Resources
Wards:	All
Locality Affected:	All
Parishes Affected:	All

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## **1. Purpose and Reasons**

- 1.1 This report responds to Motions agreed by Council in March 2015 and November 2015 related to Superfast Broadband (Council Minutes 96 2014/15 and 48 2015/16 refer).
- 1.2 Improving access to Superfast Broadband across the Borough will contribute towards the Council's vision for Swindon, and particularly priority two; Offer education opportunities that lead to the right skills and right jobs in the right places.

## **2. Recommendations**

Cabinet is recommended:

- 2.1 To note the contents of the report and confirm its support for the existing contract with UK Broadband Networks (UKBN) as the best available means of securing Superfast Broadband coverage for the Borough of Swindon;
- 2.2 To agree that £0.5m budget previously allocated for Superfast Broadband from the New Homes Bonus remains available for use on this purpose.
- 2.3 To request that the Cabinet Member for Corporate, Customer and Digital Services report the outcome of this report to the next meeting of Council.

## **3. Detail**

- 3.1 At the Council meeting on 26<sup>th</sup> March 2015, Councillor Toby Elliott moved and Councillor Oliver Donachie seconded the following motion that was debated and agreed;

*"This Council notes:*

*A competitive OJEU tender process has been undertaken by Officers to secure Superfast Broadband in Swindon's BDUK intervention areas.*

*The recommendation to Cabinet on 18<sup>th</sup> March 2015 was to accept a 4G LTE proposal to ensure that 99.4% of Swindon can receive Superfast Broadband.*

*A 4G LTE system for rural areas is the most cost effective and time effective way of bringing Superfast Broadband to 12,000 additional households.*

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*This Council requests that the Cabinet member for the Economy, regeneration and Skills prepares a report for Cabinet within 6 months to consider the potential for use of funds leftover from the Superfast Broadband scheme, out of New Homes Bonus monies, to enable urban intervention areas to be connected up to fibre optic Broadband, subject to State Aid rules.*

*This Council also asks that the Cabinet member for the Economy, Regeneration and Skills contact the new Secretary of State responsible for Superfast Broadband as soon as practicable after the General Election to see how Swindon could benefit from future rollout plans and that this is included in the report to Cabinet.”*

- 3.2 This was followed by a further Motion that Councillor Mary Martin moved and Councillor David Renard seconded, which was agreed at the 12<sup>th</sup> November 2015 Council meeting;

*“This Council:*

*Continues to support the UK Broadband Network’s (UKBN) 4G LTE wireless network rollout in the rural areas.*

*Notes recent statements by the North Swindon MP, Justin Tomlinson that he is in discussions with a commercial broadband provider in relation to the possible installation of fibre optic broadband across North Swindon.*

*Welcomes competition and notes that the provision of Government’s minimum standard of superfast broadband across the Borough to the intervention area is of benefit to residents.*

*Asks the Cabinet Member for Corporate, Customer and Digital Services to bring a report to Cabinet as a matter of urgency containing the information previously requested by Council, setting out how the Council has considered the potential for use of funds leftover from the Superfast Broadband scheme to enable urban intervention areas to be connected up to fibre optic Broadband, subject to state aid rules.”*

### Background

- 3.3 In 2012 Swindon Borough Council initially expressed an interest in participating in Phase 1 of the Government’s Superfast Broadband Extension Programme (originally referred to as Rural Broadband Programme) and entered into a joint procurement process with Wiltshire Council. This was the approach to market determined by the Government’s agency Broadband Delivery UK (BDUK), which has overall responsibility for the Programme. The two Councils followed the framework arrangement put in place by BDUK that resulted in a single bid being received from BT. Although Fujitsu was also on the BDUK framework that was in place at that time, all contracts let under this were secured by BT.

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- 3.4 Following the results of the tender process being received, Swindon Borough Council determined to withdraw from the contract, due to concerns about value for money. Wiltshire Council continued with the scheme, which is still in the process of being rolled out, at a much greater level of expense than originally envisaged and with different levels of coverage and timescales than originally suggested. BDUK subsequently advised the Council that Swindon was not the only urban area linked to a largely rural one that made such a decision for similar reasons.
- 3.5 Both before and subsequent to this process, Council Members and Officers met regularly with representatives of BT in an attempt to make the case for parts of North Swindon to receive an upgrade to broadband speeds at BT's own expense. Based on feedback from residents, it was felt that there would be sufficient demand in the area to justify a commercial decision by BT to invest in upgrading their infrastructure in this area. BT consistently stated that they had looked at the area and had no commercial plans for it. This continues to be BT's position.
- 3.6 The Council has also continued to engage positively with BDUK since withdrawing from Phase 1 of their programme in 2012/13. A BDUK representative indicated that Phase 2 of their programme would most likely offer a significantly better opportunity to increase coverage for areas such as Swindon, although the level of match funding needed would be significantly greater.

### Superfast Broadband Extension Programme – Phase 2

- 3.7 Details of Phase 2 and the grant allocations were announced by BDUK in Spring 2014. The Council was advised informally by BDUK that they believed Swindon's allocation of £1.5m, subject to match funding being identified, would be sufficient to increase Superfast Broadband coverage to at least 95% of premises in the Borough.
- 3.8 Cabinet considered a report at its meeting on 24<sup>th</sup> June 2014 that requested the full match funding be set aside to support the scheme and proposed an open tender process be entered into. This was an alternative to the other option presented in the report of contracting through the BDUK framework, that would inevitably result in an arrangement with BT. In order to best evidence value for money, Cabinet agreed to undertake an EU compliant open market process (Cabinet Minute 8, 2014/15 refers).
- 3.9 The results of this process were presented to Cabinet in March 2015, when the decision was taken to enter into the current arrangement with UK Broadband Networks (Cabinet Minute 72, 2014/15 refers). An alternative option of ceasing the open tender process at that time and negotiating a contract with BT through the BDUK framework was considered and rejected by Cabinet, due to the negative impact this would have on the rural areas of the Borough which would lose out relative to the potential coverage offered by the UKBN proposal.

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- 3.10 The motion that is the subject of this report was put to Council immediately after Cabinet's decision, prompted by the strong views of a number of Councillors and residents and the local Member of Parliament that a fibre optic solution would be most appropriate for the more densely populated areas of North Swindon. While this preference for fibre was recognised in the March 2015 Cabinet report, it is important to note that the solution proposed by UKBN was certified as fit for purpose both in a detailed Technical Assessment undertaken by external experts engaged to assist the Council in reviewing submissions and also separately by BDUK.
- 3.11 Since the contract was awarded to UKBN, the Council's efforts have focussed on working with them to develop and deliver their solution in line with the expected timeline of Summer 2016. We have received assistance in this from BDUK, who are particularly interested in Swindon as they recognise that the type of solution being delivered here is most likely to be used to fulfil the needs of the premises in the country that are highly unlikely to receive fibre optic, due to its prohibitive costs in rural areas.
- 3.12 Various contacts have been made by the Council and the local Member of Parliament with Ed Vaizey, the Minister responsible for the Superfast broadband Extension Programme. The Minister has publicly supported Swindon's approach to the programme.
- 3.13 In terms of securing a fibre solution for parts of the Borough, this is allowed for in the UKBN proposal. They acknowledge that wireless technology will be unable to cope if demand in an area is around 50% of properties and, under the terms of their contract with the Council, they would need to install fibre optic cables at their own cost in order to continue to achieve the required Superfast speeds to all households. As such, the current contract for Superfast Broadband already presents an opportunity to meet the desire expressed in the Council motion.
- 3.14 Should the Council seek to respond to the March 2015 motion through another route, two factors would need to be considered, compliance with the European Union's State Aid rules and the potential financial and reputational risk of being seen to work against its contracted supplier UKBN.

### State Aid

- 3.15 State Aid rules stipulate that the amount of public funding that can be given to a commercial organisation without going through a tender process is restricted to a maximum of €200,000 (currently around £154,000) over a three year period. Given that it will cost several million pounds to introduce fibre optic cables across a large part of North Swindon, the Council has limited ability to support any such development financially. It should be noted that State Aid rules apply to any expenditure by public bodies, regardless of the source of the funding to be used.

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- 3.16 The UK Government, through BDUK, had to seek special permission from the European Union and go through a tender process to introduce the framework through which BT are being contracted to deliver most elements of Phases 1 and 2 of the Superfast Broadband Extension Programme. This framework expired at the end of June 2015 and has not been replaced. There is therefore no national arrangement at this time that could be used to secure alternative provision to the UKBN proposal.
- 3.17 It is believed that BDUK may negotiate and introduce a further framework in the future, but the details or timing of this are currently unknown. At this time there would be no alternative but to enter into another open procurement process if the Council is to make a significant contribution to another solution.

### Contract With UKBN

- 3.18 The Council offered and UKBN won in open competition the current contract to introduce Superfast Broadband to the intervention area defined through the BDUK process, which includes both North Swindon and the rural areas of the Borough. There was no option for the Council to separate these different elements and all potential bidders had to indicate how they would provide the maximum coverage across the whole intervention area in their submissions.
- 3.19 UKBN requested £1.9m (split evenly between BDUK and SBC) to increase Superfast Broadband coverage across the Borough to 99.4% of premises. This was lower than the sum available of £3m. In order to fulfil the contract, UKBN will be contributing significantly more than the public subsidy, on the basis of their expected revenues from selling the network to resident and businesses through a range of Internet Service Providers.
- 3.20 UKBN have explored with the Council a number of different approaches in response to feedback around the North Swindon area. Their modelling has shown that any significant departure from their optimum technical solution would have a material impact on their ability to secure the minimum level of coverage stipulated in the Council's procurement process, in line with BDUK's objective of reaching at least 95% of properties through Phase 2 of their national programme.
- 3.21 A reduced level of coverage would also mean that an additional public subsidy to the capital costs would be required, even though this would achieve a lower level of coverage. This would be as a result of UKBN's potential revenues to support capital investment reducing, if coverage was lower, for example due to some masts being moved to less than optimum locations.
- 3.22 Should the level of coverage fall below the minimum level stipulated in the contract and / or a higher level of public subsidy was required, the scheme would no longer be compliant with the bid submitted and would become unviable overall. Work to all areas would cease and the Council would then need to consider its position. In this scenario, the Council would have incurred significant



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costs, exposed itself to financial and reputational risk and have nothing to show in return.

- 3.23 If the contract were not to proceed for any reason other than failure of UKBN to deliver, which is not envisaged, and the Council were to be seen to enter into an arrangement with other providers for a scheme that would achieve the same outcome (albeit perhaps through a different technology), it is likely that UKBN would seek redress from the Council for any financial impact on their scheme. While the value of the Council's contribution to the scheme is £950k, the overall level of capital investment being undertaken is around £5m. UKBN's commercial model anticipates profit being achieved over a ten year operational period. The scale of any potential financial compensation UKBN may seek is unknown, but is likely to exceed the sum the Council has set aside for the project.
- 3.24 The message such an approach would send to potential investors in Swindon is also important to consider. The Council's reputation would most likely be damaged if it is seen to let a contract to one organisation through a tender process and subsequently support a competitor to introduce an alternative scheme in the same area. This would make it extremely difficult for the Council to attract any other potential investor in Superfast Broadband services in the Borough and would risk leaving coverage solely in the hands of the commercial market, which has to date demonstrated no firm interest in either the urban or rural areas of Swindon.

### Superfast Broadband Extension Programme Phase 3

- 3.25 It is unclear whether or at what point BDUK may introduce a third phase of their programme. Any future phases will again be focused on specific intervention areas determined through a methodology stipulated by BDUK which captures where no Superfast service exists or is set to come forward on a commercial basis in the next few years.
- 3.26 Given the current uncertainty around the BDUK framework and Superfast Broadband Extension Programme Phase 3, there would be no prospect of securing additional funding nor a different procurement route in the foreseeable future.
- 3.27 The Council could potentially undertake another open tender process for infrastructure for specific parts of the Borough, using all or part of the £0.5m remaining from its approved budget for this scheme. The only provider to express an interest last time was UKBN. Both of the two major providers currently operating in the Borough, BT and Virgin, declined to participate in the Council's process. This is BT's strategic position and not a position unique to Swindon. Given this and the potential reputational damage if the Council were to be seen to withdraw its support for the UKBN scheme, it is by no means certain that a different solution would come forward, even if the Council decided to tender again.

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## Next Steps

- 3.28 Given the information above, there is currently no easy answer to how the Council can secure the provision of fibre for parts of North Swindon. In order to secure the best possible return from its approved capital investment, it is proposed that efforts should remain focussed on securing delivery of the UKBN solution by Summer 2016. Beyond that point, further consideration can be given to how any real or perceived gaps in the market can be addressed. This may include seeking solutions for specific areas together with local residents or businesses, within the constraints of the State Aid rules detailed above.

## **4. Alternative Options**

- 4.1 The full range of options is set out in the body of the report.

## **5. Implications, Diversity Impact Assessment and Risk Management**

### Financial and Procurement Implications

- 5.1 There are no financial implications arising from this report.

### Legal and Human Rights Implications

- 5.2 All legal and human rights considerations have been taken fully into account in compiling this report. It is considered that the recommendations of this report are compatible with Convention rights.

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

- 5.3 Where there are such implications these have been reflected in the body of the report.

### Diversity Impact Assessment

- 5.4 No changes to current arrangements are proposed in this report.

### Risk Management

- 5.5 Risks and issues associated with possible courses of actions are summarised in the body of the report.

## **6. Consultees**

- 6.1 The Board Director, Resources (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

## **7. Background Papers**

- 7.1 None

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**8. Appendices**

8.1 None

**9. Key Decision/Decision in Cabinet Work Programme and Forward Plan**

9.1 This is a not a Key Decision but is included in the Cabinet Work Programme and Forward Plan.