

SURREY COUNTY COUNCIL**CABINET****DATE: 13 DECEMBER 2016****REPORT OF: MR PETER MARTIN, DEPUTY LEADER****LEAD OFFICER: TREVOR PUGH, STRATEGIC DIRECTOR FOR ENVIRONMENT AND INFRASTRUCTURE****SUBJECT: INVESTMENT OF PROGRAMME FUNDING TO FURTHER EXTEND SUPERFAST BROADBAND INFRASTRUCTURE TO SURREY PREMISES - PART 1****SUMMARY OF ISSUE:**

Surrey County Council's investment in fibre broadband infrastructure over the past four years through the contract with BT has had a very significant impact on the well-being and economic prosperity of thousands of residents and businesses around the county. All of the contractual targets in the main phase of the contract have been achieved.

In 2012, commercial broadband providers advised that current and future fibre broadband rollout plans excluded approximately 20% of Surrey premises. Now, as a result of the County's investment into broadband infrastructure, more than 96% of all Surrey premises are able to access fibre download speeds of 15mbps or above. According to Think Broadband, Surrey county council is currently the best connected county in England.

Due to the County's very successful demand stimulation campaigns, take-up of the fibre broadband services by residents and businesses is significantly higher than projected in the contract finance model resulting in additional clawback funding flowing into the contract. BT have offered Surrey County Council an advance against this clawback funding of £3.8 million, known as 'Gainshare'.

Achieving a very high level of broadband availability throughout the county remains a priority for the council and is something that supports the council's strategic goals. This report proposes to utilise this Gainshare funding for the deployment of additional Next Generation Access (NGA) broadband infrastructure, using the existing BT contract, to as many of the remaining 15,300 Surrey premises as possible that are not included in any commercial plans and are unable to access fast broadband speeds.

RECOMMENDATIONS:

It is recommended that Cabinet:

1. Approves the investment of State Aid approved funds that have been generated by the contract with BT to further the deployment of Next Generation Access (NGA) broadband infrastructure within a revised

Intervention Area.

2. Delegates final approval for the investment of contract funds to the Strategic Director for Environment and Infrastructure in consultation with the Deputy Leader.
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REASON FOR RECOMMENDATIONS:

Utilising available funding within the existing contract with BT enables the county council to proceed with the deployment of additional broadband infrastructure, providing high speed broadband to as many of the remaining 15,300 premises as possible.

The recommendation requires no new capital expenditure as the funding is generated wholly through the existing contract and higher than modelled take up of fibre broadband services in Surrey county council's original Intervention Area. This funding is already State aid approved and can be used immediately through the existing contract with BT.

DETAILS:

Background

1. Five years ago, Surrey County Council determined that the Superfast Broadband Project was a Corporate priority in the 'One County, One Team' Corporate Strategy 2012-2017: "We want to ensure that all Surrey's businesses, households and community organisations can gain access to Superfast Broadband."
2. The investment in broadband technology continues to be a priority and underpins the County's Corporate Strategy 2015-2020 strategic priorities of Wellbeing, Economic prosperity and Resident Experience.
3. The need for fast broadband services by Surrey residents and businesses has increasingly become a necessity rather than a preference for operating a business, working from home, accessing educational material, utilising local and national government services, shopping on-line and accessing other TV and digital services. Surrey County Council's investment in fibre broadband infrastructure over the past four years through the contract with BT has had a very significant impact on the well-being and economic prosperity of thousands of residents and businesses around the county.
4. In 2012 Surrey County Council intervened to address a large gap in commercial fibre broadband rollout plans. These commercial plans indicated that approximately 20% of Surrey residents and businesses were not included in any current or future rollout plans. Surrey County Council allocated £20 million capital funding to fibre broadband infrastructure which was approved by full Council in the Medium Term Financial Plan (MFTP) on 7 February 2012. A further £1.3 million was allocated from Broadband Delivery UK (BDUK) the Government's broadband deployment agency. This was in addition to BT's Capital and Revenue expenditure.

5. All of the contractual speeds and coverage targets relating to the main phase of the programme have been achieved resulting in more than 86,000 additional Surrey premises covered by fibre infrastructure.
6. As a result of Surrey County Council's investment and in conjunction with commercial rollouts, the County's recent State Aid public consultation has indicated that 96% of all Surrey premises can now access fibre download speeds of 15mbps or above.
7. According to ThinkBroadband, an independent broadband news and information website, Surrey is currently the best connected county in England with the highest percentage of premises able to obtain download speeds of 15 Mbps and 24Mbps, and the lowest percentage of premises with speeds below both 2Mbps and 10Mbps.
8. Surrey County Council's contract with BT includes a clawback mechanism which generates additional funding that flows into a joint investment fund when take-up of fibre broadband services in the Intervention Area is higher than originally modelled over the term of the contract.
9. Due to the County's very successful demand stimulation campaigns, take-up of fibre broadband services by residents and businesses in the 2012 Intervention Area is significantly higher than projected in the contract finance model. It is the clear intention of the contract that the Council and BT will reinvest any and all Clawback in further network expansion.
10. BT have offered Surrey County Council an advance of £3.8 million on the clawback funding which is known as 'Gainshare'.
11. There are still 15,300 premises in Surrey that are unable to access Next Generation Access (NGA) fibre broadband services of 15mbps download speeds or above and are not included in any commercial rollout plans.
12. Residents in these properties are contacting the county council, Borough/District and Town/Parish councillors and Surrey MPs on a regular basis highlighting their concerns and advising of the impact of slow broadband speeds on their lives, economic growth and wellbeing.
13. There are various options that these residents and businesses can consider for improved broadband speeds. They can investigate satellite, wireless or mobile services which may provide improved speeds; self-fund a private leased line; register interest in a fibre connection with Virgin Media's 'cable-my-street', a mechanism for assessing where there is sufficient demand to justify private investment; or coordinate and help self-fund a community initiative.
14. In the past four years, the Government has also intervened to try and improve broadband provision. **The Universal Service Commitment (USC)** is being delivered by BDUK's Better Broadband Scheme which will finish at the end of 2017. Residents and businesses in Surrey that are currently unable to access download speeds of 2mbps or above can apply for a voucher from BDUK which can be used towards the cost of satellite infrastructure or used as part payment in a BT Community Fibre Partnership.

15. Beyond that a broadband **Universal Service Obligation (USO)** is being developed that will give people the legal right to request a connection to broadband with a minimum download speed of 10 Mbps by 2020. The Department for Culture, Media and Sport (DCMS) has commissioned Ofcom to provide technical analysis and recommendations to support the design of the broadband USO by the end of 2016.

Proposal

16. The County Council's proposal is to use the Gainshare funding of £3.8 million to extend fibre infrastructure even further into Surrey to as many of the 15,300 premises as possible utilising the State Aid assured funding within the existing BT contract.
17. This funding does not require any new capital investment by the county council. The County Council has now received State Aid approval to use this Gainshare funding through the existing contract with BT within a revised Intervention Area. It offers the benefit of proceeding with additional broadband infrastructure deployment as soon as possible, without further procurement.
18. The County Council requested BT to model solutions to maximise the number of premises that might benefit from further County Council investment. These premises will be connected to the fibre network using a combination of different technologies; Fibre to the Cabinet (FTTC), either new cabinets or by connecting to an existing nearby fibre enabled cabinet, Fibre to the Premise (FTTP) or Fibre to the Remote Node (FTTRN).
19. Upon completion of the additional deployment, the programme team will be disbanded and the programme hibernated until 2022. From late 2018, existing Surrey County Council resources will be utilised to manage any ongoing contractual requirements, complaints and enquiries and then close the contract in 2022.

CONSULTATION:

20. The increasing need for and reliance on broadband during the past four years has ensured that the programme has and is continuing to generate significant interest across the county. Supported by a programme of marketing, communication and community engagement, the County Council has employed a wide range of media and on-line services in order to educate and manage expectations from elected representatives, members of the community and interested stakeholders on the rationale for the programme, timeframes for the roll-out, benefits of upgrading to the fibre network, expectations about speeds and coverage, clarification on the legal constraints of the contract as well as management of complaints and enquiries around all aspects of the programme.
21. In 2015 the county council undertook an Open Market Review (OMR) to understand and map the current and future availability of broadband in Surrey based on responses received from broadband infrastructure providers, including BT and Virgin Media.

22. In 2016, in line with guidance from BDUK, Surrey County Council undertook a State Aid Public Consultation. This consultation was limited to requesting feedback from broadband service providers, residents and businesses in Surrey on Surrey County Council's mapping of broadband coverage (that was based on the 2015 OMR) where they believed it was wrong. As well as publishing the consultation on the Superfast Surrey website, it was sent to Chief Executives, Surrey County Council Members, District and Borough Councillors, Parish Clerks, Residents' Associations, Surrey MPs, Service Providers as well as residents and businesses who had previously contacted the Superfast Surrey team to advise of slow broadband speeds or no fibre connection. In addition to receiving responses from infrastructure providers Surrey County Council received 369 (245 unique) public responses. All of the feedback was reviewed and where appropriate changes were made to the broadband coverage designation of the postcode in question before being submitted to BDUK for approval.
23. Residents and businesses in Surrey are aware of the programme's Clawback mechanism and the availability of Gainshare funding. This information has been made available as part of the State Aid Public Consultation. There is a strong expectation from local communities that Surrey County Council will utilise this Gainshare to deliver further fibre broadband infrastructure coverage.

RISK MANAGEMENT AND IMPLICATIONS:

24. Current modelling predicts that there will be sufficient clawback generated over the life of the contract to significantly exceed the Gainshare offer. There is therefore a low risk that the total contract clawback will be less than the £3.8 million of Gainshare offered by BT. The change control request includes a review mechanism and process to remove the risk of underfunding.
25. Surrey County Council has no financial liability for any infrastructure costs that exceed the amounts committed in the change control. The risk sits with BT.

Financial and Value for Money Implications

26. The contract with BT includes a Clawback mechanism that generates funds over the life of the contract subject to the level of take-up. It is the clear intention of the contract that the clawback funding is used for further expansion of the fibre broadband network.
27. As part of a national commitment by BT to return £129 million of clawback funding to Local Authorities ahead of schedule, BT have effectively offered Surrey County Council an 'advance' of £3.8 million, known as Gainshare.
28. Using Gainshare for the expansion of the fibre network is subject to the funding being considered lawful State Aid under European Commission guidelines and representing a Value For Money (VFM) investment in broadband infrastructure. The legality of using the £3.8 million of Gainshare has been confirmed by BDUK.
29. Surrey County Council will seek to maximise the impact of the investment by connecting the greatest number of premises to Superfast Broadband within the funding envelope as modelled by BT, up to the point where all of the

funding is utilised or until the cost of connection to premises no longer represents VFM. There is no absolute threshold for VFM as this is influenced by the ability of other service providers to potentially supply a comparable broadband service. It may therefore be necessary for Surrey County Council to liaise with BDUK during evaluation of BT's modelling.

Section 151 Officer Commentary

30. This further broadband infrastructure is being financed through funding generated as part of the contract with BT, due to the high level of broadband take-up. There is no additional cost to the County.
31. The Surrey County Council team costs for managing the contract are already included with the Capital Programme.

Legal Implications – Monitoring Officer

32. The County Council has a general power of competence under the Localism Act 2011 to do anything that individuals generally may do.
33. The contractual agreement that Surrey County Council has with BT is based upon a contract developed by Central Government (Department of Culture, Media and Sport) through BDUK for use on their broadband framework. The terms of this contract will be amended through the contractual change control process to incorporate the additional funding. The contract targets and finance model will be amended accordingly.
34. Surrey County Council has complied with BDUK advice and guidance in relation to State Aid regulations. In July 2016 BDUK assured Surrey county council's proposal for utilising the additional funding through the existing contract with BT in areas that included those previously identified in 2012 as part of commercial plans.

Equalities and Diversity

35. Under section 149 of the Equality Act 2010, in making this decision, the Cabinet must comply with its public equality duty which requires it to have due regards to the need to:
 - I. Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
 - II. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
 - III. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
36. Surrey County Council has considered whether decisions taken around the use of available funding will have a positive or negative impact on residents or staff, particularly those sharing protected characteristics. Surrey County Council has considered both direct and indirect discrimination but in light of no negative impacts being identified, an Equalities Impact Assessment has not been completed.

37. The Superfast Surrey Broadband Programme is an all-encompassing programme to install fibre broadband infrastructure to as many residents and businesses in Surrey as possible that are in areas of market failure, in accordance with the European Commission State Aid funding regulations. The programme does not target any one group in Surrey but is focused on extending the fibre network as far as possible within the constraints of project funding and VFM.
38. 96% of Surrey residents and businesses can already access fibre broadband download speeds of 15mbps or more. Whilst some of the remaining 4% of premises are still included in current or future commercial fibre rollout plans, there are 15,300 premises that are not. While the remaining residents and businesses can still access broadband either via standard (adsl) services or by alternate satellite, mobile or wireless technologies, many understand the potential benefits of fibre infrastructure and are keen to know if they will benefit from further public subsidy funding.
39. It is recognised that only a proportion of the 15,300 premises in the New Intervention Area will benefit from additional deployment using the Gainshare funding. Once the outcomes are known and decisions taken on any further deployment, Surrey County Council will email all Members from Surrey County Council, Borough / District and Town / Parish as well as other interested stakeholders. Surrey County Council will request their assistance in bringing the information contained in the email to the attention of their communities through their own communications channels. Information regarding the new deployment plan and the options available for those premises not included in the plan will also be uploaded to the Superfast Surrey website. Surrey County Council is also proposing to work with the SightforSurrey team to ensure that visually impaired and deaf residents are not excluded from these communications.

WHAT HAPPENS NEXT:

40. In early 2017 Surrey County Council will utilise the change control mechanism in the existing contract with BT to incorporate the allocated funding, revise the contract finance model and set new delivery targets associated with the additional funding.
41. The new broadband delivery plan will be communicated to all Stakeholders via the Superfast Surrey website, e-mail and presentations to local Parish councils as necessary as well as through SightforSurrey.
42. BT have indicated that the new programme could commence in Q1 2017/18 (April 2017) and would be completed in Q3 2018/19 (December 2018).
43. The Superfast Surrey programme team will monitor delivery of the infrastructure, providing updates to the impacted communities.

Contact Officer:

Graham Cook, Programme Manager, Superfast Surrey, Tel 07816 060457

Consulted:

Broadband Delivery UK (BDUK)

Surrey County Council Legal Services
Surrey County Council Finance
Surrey County Council Investment Panel
Surrey County Council Strategic Director, Environment and Infrastructure
Surrey County Council Economic, Prosperity, Environment and Highways Board
Surrey County Council Investment Panel
Surrey County Council residents and businesses (via State Aid Public Consultation)
Broadband Infrastructure Providers (via State Aid Public Consultation)

Details of those who have been informed of the issue.

All Councillors (Surrey County Council and Borough/District), Parish Clerks, Residents Associations, MPs, interested stakeholders have been kept up to date with eNewsletters on the status of the Superfast Surrey programme.

Annexes:

- Part 2 report and Annex - Investment of programme funding to further Superfast Broadband Infrastructure within a revised Intervention Area and Investment Panel Report

Sources/background papers:

- 2016 Surrey County Council State Aid Public Consultation
 - Surrey County Council NGA Map
 - Surrey County Council NGA Postcodes
 - Economic Prosperity Environment and Highways Board December 2016 - Superfast Surrey Report
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