

Decision maker:	Cabinet member environment, economy and skills
Meeting date:	Wednesday, 18 December 2019
Title of report:	Fastershire Broadband Terms of Extension 2019
Report by:	Assistant Director Corporate Support

Classification

Open

Decision type

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

(All Wards);

Purpose and summary

To approve changes to the council's existing broadband delivery contracts with Gigaclear to expand their scope in terms of the level of public subsidy and the number of eligible premises that would be reached with full fibre broadband.

Agreeing this change will release an extra £1.8m of existing subsidy to leverage no less than £956k private sector investment and will provide an extra 5,486 premises with full fibre broadband across the two counties of which 872 are currently incapable of accessing superfast broadband. The timescales relating to the current contracts were previously extended through a

cabinet member decision in March 2019.

To date 90% of premises in Herefordshire can access a superfast broadband service, from a starting point of the Fastershire programme of 0.6% premises in 2012. Fastershire is a partnership between Herefordshire Council (as the lead partner) and Gloucestershire County Council, with capital match funding from national government and other sources. The programme uses public funding to create a broadband network where commercial providers are not investing, as a way of residents and businesses taking advantage of the digital connectivity.

Recommendation(s)

That:

- (a) £1.8m of additional subsidy is used to extend the scope of the Gigaclear contracts (subject to state aid approval), in order to extend the full fibre broadband network to no less than 5,485 extra premises of which at least 872 premises do not currently receive superfast broadband; and**
- (b) The Assistant Director Corporate Support be authorised to take all operational decisions necessary to implement the above recommendation.**

Alternative options

- 1. The council could opt to reject the terms of additional premises at the costed model. This extension of contract in the parameters of the procurement is an effective way of reaching premises not currently able to access a broadband network. The terms also mean additional investment by Gigaclear of £956k bringing ultrafast broadband to Herefordshire and Gloucestershire. By rejecting the terms, this private sector leverage will not be forthcoming and 872 hard to reach premises will not benefit from improved connectivity.
- 2. The council could run an additional procurement to reach additional premises. However, with the National Broadband Scheme now lapsed, it would be unable to do so until 2022/23 which has an impact on procurement of local broadband schemes. It is also very unlikely that a better value for money proposition would be available via a new procurement exercise based on previous experience. The recommendation would be based on extension of the current contract so the contract terms would follow through with extended number of premises.

Key considerations

- 3. Herefordshire Council has worked in partnership with Gloucestershire County Council for seven years to improve broadband availability across the two counties in order to enable businesses, communities and individual households to become more connected – with business more productive, competitive and sustainable in supporting the wider economy.
- 4. Known as the Fastershire project, the emphasis of the programme has been to extend the reach of high speed broadband deep into rural areas. Fastershire acts as a conduit for public subsidy to provide gap funding to private sector suppliers to deliver broadband infrastructure to areas that have proved to be commercially unviable. Herefordshire Council is the lead partner.
- 5. The recently updated [Fastershire Broadband Strategy](#) includes 5 stages which can be described as follows:

- Stage 1: Commercial coverage without public sector funding where considered by the private sector worthy of return on investment
 - Stage 2: Initial major contract with BT
 - Stage 3: Significant lot based contracts with Gigaclear and Openreach
 - Stage 4: Granular approaches including cluster contracts (Airband), plus direct grants to businesses.
 - Stage 5: Community Broadband Grant to meet premises that do not have access to a superfast broadband service or committed to receive it via existing contracts.
6. Stage one is an ongoing process, stage two is complete and stages three and four are being delivered concurrently.
 7. Stages two and three are funded by a combination of Herefordshire Council, Gloucestershire County Council, national government and private sector match funding. Stage 4 is primarily EU funded.
 8. Stage 5 to be implemented from March 2020 utilising local authority capital funding.
 9. To date the coverage of superfast broadband (30Mbps and above) in the county has reached 90% of premises but upon the conclusion of the contracts that are currently being deployed, the coverage is expected to top out at 97% of premises. For Herefordshire this is from a base of 0.6% superfast coverage in 2012 (the national figure at the same period was 67%); with Herefordshire premises having access to 20.61% full fibre coverage compared to the national average of 9.60% (ref: figure publically available from www.thinkbroadband.com).
 10. Gigaclear are running 4 separate contracts for the project. These are as follows;
 - 2/3c – south Herefordshire and Gloucestershire (west of the River Severn)
 - 3d – north Gloucestershire
 - 3e – south Gloucestershire
 - 4 – north Herefordshire
 11. The recommendation will see an increase in premises in Herefordshire based on the following table:

	Current contract white premises*	Additional white premises*	Original commercial premises**	Additional commercial premises**	Total additional premises
Herefordshire	8,744	258	21,535	865	1,123

*white premise – not receiving or scheduled to access 30Mbps or above

**commercial premises – using Gigaclear's own investment

12. To date Gigaclear have delivered 1,109 premises that are ready to order a service and before the end of the year there are additional premises will be able to order as a number of cabinets are "lit". Gigaclear have been hampered by a number of issues in delivery emanating in part from their dependency on backhaul provision and wayleave grantors. These are third parties over which they have had limited influence. In addition Gigaclear have had to develop and grow as an organisation which has had an impact on delivery. The decision in March 2019 allowed Gigaclear to extend its time scales subject to additional premises being modelled for inclusion in the contracts. This decision is the result of the conclusion of that caveat.

13. The decision made by the cabinet member on the [17 March 2019](#) included a series of recommendations as below:
- Recommendation: an additional public subsidy of up to 10% of the original contract value (£1.86m) available from the existing capital allocation to leverage a minimum £1.85m extra private sector investment in order to extend the full fibre broadband network to no less than 4,663 extra premises of which at least 679 premises do not currently receive superfast broadband.
Update: the additional subsidy value has slightly reduced to £1.8m. Through a revised business model by Gigaclear the number of additional premises has markedly increased to 5,485 extra premises of which at least 872 premises do not currently receive superfast broadband. However, the level of investment offered by the company is lower than anticipated at £956k to account for the lower viability of the additional premises. The subsidy per white premise value is better than had been anticipated based on Herefordshire and Gloucestershire combined total:
Original estimate: £1.86m for 679 white premises = £2,739
Actual: £1.8m for 872 white premises = £2,060
 - Recommendation: Embedding a new communication protocol outlined in paragraph 18 into the contract change.
Update: this was previously agreed.
 - Recommendation: Ensuring that 'community 215' covering premises in Newland (Gloucestershire) is delivered by the end of June 2020.
Update: this was previously agreed.
 - Recommendation: The contract changes are only agreed based on the 25% milestone for Lot 3d being claimed before April 2019.
Update: no change and achieved.
 - Recommendation: Approve revised Fastershire Vision as set out in para 19.
Update: revised vision included in the updated Fastershire strategy via decision made in November 2019.

Community impact

14. The Fastershire project aims to improve the opportunities for citizens across the two counties to make use of digital connectivity where supporting education and learning, accessing services, enhancing employment opportunities, supporting preventative health or addressing well-being by tackling isolation. Connectivity also has a key role in the sustainability of rural communities by helping rurally based businesses to be viable and competitive as well as ensuring people living in rural communities have access to the same broadband services as those in more populated areas.
15. Digital access has a role to play in addressing issues of isolation and access to services for citizens, specifically in rural areas, and is increasingly being used as a tool to address health issues. Without further superfast deployment, there will be a digital divide between those with access to superfast broadband and those with USC (Universal Service Commitment as set by the Government at 2Mbps) specifically as USC over time will not be enough to satisfy future demands.
16. The further delivery will support the following objectives and actions in the corporate plan:
- a. Priority: Support the growth of our economy.

- b. Measure: Support economic growth and connectivity.
- 17. Understanding Herefordshire outlines Digital Inclusion issues and outlines the findings of the Governments Digital Inclusion Strategy 2014 and more up to date figures from the Office for National statistics (ONS) ([link](#)).

Equality duty

- 18. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (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.
- 19. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. Our providers will be made aware of their contractual requirements in regards to equality legislation.
 - 20. It is estimated that 7% of people aged 16 and over in Herefordshire last used the internet over three months ago, or have never used the internet; down from 20% in 2013 and not significantly different to the West Midlands region or the United Kingdom as a whole (ONS, 2019). In terms of the protected characteristics the most significant impact is on "age" where older residents are less likely to be internet users which could cause digital exclusion. In terms of actions to support the equality duty:
 - a. Infrastructure: continue with the roll out of fast broadband to everyone's household that needs it to ensure equal access of availability.
 - b. Age: encourage take up by older people through courses and classes based on the fact that as people get older they are less likely to take advantage of broadband.
 - c. Cost: that free wi-fi continues to be available including in the network of libraries where there are public access PCs.
 - d. Services: that services provided by the council are easy to access and navigate on the local authority webpages.
 - e. Communities: self-run community schemes operate with support (financial and advice) from the local authority.

Resource implications

21. Herefordshire's capital programme element covered by Herefordshire Council, and Gloucestershire by Gloucestershire County Council with match funding by national government via branch of DCMS called BDUK (Broadband Delivery UK).
22. Revenue costs are split between Herefordshire Council and Gloucestershire County Council.
23. The additional funding required to subsidise the extra coverage has already been approved for the Fastershire budget via the capital programmes and is identified with the table below.

Contract	Funder	Contracted	Extra Subsidy
Stage 3.2/3.3c Herefordshire	BDUK	3,220,680	0
Stage 3.2/3.3c Herefordshire	HCC	1,761,847	0
Stage 3.2/3.3c Gloucestershire	BDUK	2,549,413	0
Stage 3.2/3.3c Gloucestershire	GCC	2,549,413	709,755
Stage 3.2/3.3c Gloucestershire	EAFRD	0	298,380
Gigaclear Lot 2/3c Contract Total		10,081,353	1,008,135
Stage 3.3d	BDUK	936,275	0
Stage 3.3d	GCC	936,275	185,365
Gigaclear Lot 3d Contract Total		1,872,550	185,365
Stage 3.3e	BDUK	1,554,167	0
Stage 3.3e	GCC	618,581	217,276
Gigaclear Lot 3e Contract Total		2,172,748	217,276
Stage 3.4	BDUK	2,705,070	0
Stage 3.4	HCC	1,752,122	385,692
Gigaclear Lot 4 Contract Total		4,457,192	385,692

24. State Aid requirements mean that there is a 10% cap on contract extension. The recommendation represents an increase of 9.67%.
25. The extension of the contracts will also impact the profiled draw down of the funding allocated to Fastershire. A revised set of project finance models have been generated including a new draw down profile. Gigaclear is only paid on a delivery basis meeting particular requirements and evidence of spend.

Legal implications

26. Broadband delivery is not a statutory function of the council, but the general power of competence is available under the Localism Action 2011 to enable councils to conduct the project as set out in this report.
27. State aid is any advantage granted by public authorities through state resources on a selective basis in any organisations that could potentially distort competition and trade in the European Union. The council must take account of the European Commission's State Aid and competition regulations. Funding for broadband projects would give rise to state aid as the funding is from or through State resources therefore it will confer a selective advantage on the supplier appointed to deliver the broadband project. State aid requirements allow for 10% extension in expenditure of public sector funds.

28. The Public Contracts Regulations 2015 provide clarity about the extent to which a contract can be amended after award without the need to re-advertise in the OJEU.
29. Regulation 72 of the 2015 Regulations states that a contract may change without re-advertisement in OJEU where it is a minor change that does not affect the nature of the contract and does not exceed the relevant threshold and does not exceed 10% (services or supplies) of the initial value. The variation is within the 10% limit and therefore does not breach the procurement regulations.
30. The contract will be sealed by legal services under delegated powers.

Risk management

31. **Risks as outlined below:**

Risk / opportunity	Mitigation
Gigaclear unable to deliver on additional premises.	Despite the slow progress to date, there is little risk that Gigaclear as an organisation lack the capacity to deliver a larger contract. Alongside the change request is a demonstrable increase in their own financial and staff resource to make the new plan achievable.
The later milestones could mean the Council is unable to defray the BDUK funds that have been aligned to the contracts by the BDUK spend deadline.	Seek to modulate the BDUK / Local Authority to ensure the maximum BDUK spend can be drawn down as early as possible.
The delays adversely impact the local economy and the communities' ability to take advantage of high speed connectivity.	Gigaclear's full fibre remains world leading and despite the delays, much of rural Herefordshire and Gloucestershire will get provision well before the government's target of 2033.
Continued delays impact Fastershire's ability to communicate the current position to the community. This presents a reputational risk for the project as well as the Council as its sponsor.	The new communications obligations will increase the ability of Fastershire to communicate progress to communities in a timely and efficient manner. It will also reduce the scope for mis-information to be communicated between the partners.

32. The risks will be managed at a service level.

Consultees

33. Consultation with Gloucestershire County Council as partner authority is in agreement with this approach. Also BDUK as funder in principle agreement but subject to their assurance process.
34. Political group consultation circulated on 19 November 2019. The comments received support the proposed extension and apply conditions to deliver the extension.

Appendices

None

Background papers

None

Glossary

Acronym / Term	Full Title	Description
BDUK	Building Digital (Broadband Delivery) UK	An arm of the Department for Culture Media and Sport tasked with funding Local Authorities to improve broadband coverage
EAFRD	European Agricultural Fund for Rural Development	European Funding targeted at measures to improve economic productivity in rural areas
Clawback		Funding that has been invested by the public sector in gap funding contracts that is returned by suppliers once the viability of the delivery is proven to be greater than had been anticipated
CPPP	Cost Per Passed Premise	Can mean either the total cost of deployment or the element of the total cost that requires public subsidy divided by the number of premises that will be reached by the infrastructure
ERDF	European Regional Development Fund	European Funding targeted at measures to improve economic productivity
FTTC	Fibre to the Cabinet	Where fibre is deployed between the exchange and a green cabinet with the final connection relying on the existing copper connection
FTTP	Fibre to the Premise	Where fibre is deployed to a node within close proximity to a premise and which is connected to a premise with fibre once a service is ordered
FTIR	Future Telecoms Infrastructure Review	Government Policy vis a vis the expansion of digital connectivity.
Full Fibre		Gbps+ capable Requires building over previously funded FTTC to achieve 100% Unclear where the market failure exists
Gbps	Gigabit Per Second	Measure of Broadband Speed. Often used as an interchangeable term with Full Fibre as Full Fibre is capable of transferring synchronous Gigabit speeds. However, it is not the only technology capable of this and therefore the link should be treated with caution
GBVS	Gigabit Voucher Scheme	Voucher worth £2,500 offered by BDUK to upgrade to Gbps capability
Grey premise		A property that can access speeds >30Mbps from one or more suppliers.

JCS	Joint Core Strategy area	Area covering Gloucester, Cheltenham and parts of Tewkesbury district
LEP	Local Enterprise Partnership	Body which coordinates economic development activity
LFFN	Local Full Fibre Network	BDUK scheme focused on urban areas to encourage Full Fibre delivery
Mbps	Megabits Per Second	Measure of Broadband Speed usually used to express download capability
MGBG	Marches and Gloucestershire Business Broadband Grant	Grant scheme using ERDF funding and managed by Herefordshire Council offering grants to businesses in the LEP areas of the Marches and Gloucestershire to improve their connectivity
NGA	Next Generation Access	Term denoting superfast broadband with specific characteristics.
OMR	Open Market Review	A consultation of private operators to understand the extent of commercial plans
OJEU	Official Journal of European Union	Platform on which major public sector contracts must be advertised to ensure fair and open access by the market.
RCBF	Rural Community Broadband Fund	DEFRA funding scheme to address shortfall in coverage in rural areas
RFS	Ready for Service	The point at which a premise is recognised by suppliers as being able to order broadband services
RGC	Rural Gigabit Connectivity	BDUK initiative focusing on schools as a pilot for a later 'outside in approach'
Superfast		Broadband connection with the capability of achieving >30mbps Download / >5Mbps Upload
USC	Universal Service Commitment	Central Government's commitment that everyone should be able to access a 2Mbps Service
USO	Universal Service Obligation	Obligation placed on Openreach by Central Government to provide a >10Mbps service to every premise from 2020.
White premise		Property that following an OMR is proven to be without access to superfast broadband and / or is not planned to be upgraded to superfast broadband in the forthcoming 3 years.