

	ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER
Title	Enabling Digital Infrastructure – Wayleave Framework Agreement with Community Fibre.
Report of	Director of Growth
Wards	All
Status	Public
Enclosures	Appendix 1 – Council estates included in the individual wayleave Appendix 2 – Checklist of the approval process
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Summary

Pursuant to Decision Item 10 ('Enabling Digital Infrastructure'), the Housing and Growth Committee on Monday 14th September 2020, delegated authority to the Director of Growth to finalise the terms of and enter into:

1. overarching commercial agreements for the implementation of improved broadband infrastructure, and
2. individual wayleave agreements with operators for the implementation of improved broadband infrastructure.

The attached Wayleave Framework Agreement has been signed and submitted by Community Fibre as an Ofcom registered operator who seeks to supply fibre/gigabit broadband connections to the tenants and leaseholders of the council's housing stock.

Officers have reviewed the submission and find this operator to be positively committed to the principles and expected standards set by members for enabling digital infrastructure investment in the borough. Assurance has been provided that all future works will be delivered in a way that meets expectations and therefore this Wayleave Framework Agreement with Community Fibre can proceed to be signed, and a partnership commenced, to unlock gigabit / fibre broadband services to the council's housing stock and wider residents and businesses in Barnet.

Decisions

- 1. Approve the signing of a Wayleave Framework Agreement with Community Fibre an operator of fibre/gigabit broadband connections whom is seeking to supply services to the council's housing stock.**
- 2. Delegate the signing and granting of individual wayleave agreements with operators for the implementation of improved broadband infrastructure, under the terms agreed within this Framework Agreement, to any Director, Assistant Director or Head of Service with a relevant responsibility for the Council's housing stock.**

1. WHY THIS REPORT IS NEEDED

- 1.1 The Committee Decision - Item 10 'Enabling Digital Infrastructure', at Housing and Growth Committee on Monday 14th September 2020, delegated authority to the Director of Growth to 'finalise the terms of and enter into overarching commercial agreements for the implementation of improved broadband infrastructure'.
- 1.2 The decision taken under delegated powers: 'Enabling Digital Infrastructure – Approval of Wayleave Framework Template Agreements' dated 11th December 2020 saw approval of a standard Wayleave Framework Agreement approved to manage the relationship between the council and broadband service providers.
- 1.3 This report addresses the second part of the committee delegation to '*enter into overarching commercial agreements for the implementation of improved broadband infrastructure*'. This report formally agrees to commence a partnership with Community Fibre as a registered fibre broadband operator that has demonstrated the requisite alignment with principles and a commitment to deliver quality workmanship and services necessary to be granted the right of access to the council's housing stock.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The Framework Agreement submitted has been completed in full and the commitments made are deemed to reflect a positive and collaborative approach to partnership and Community Fibre has agreed to all the terms and conditions, including installation in accordance with the guidance, as defined through the standard partnership agreement.

- 2.2 The Council especially welcomes the commitment to deliver in accordance with the principles set by members that have been made through the framework:
- 2.2.1 Up front commitment to deliver to 100% of the council's housing stock over an estimated period of 36 months.
 - 2.2.2 Commitments to minimise disturbance to residents and businesses have been made, including to ensure residents remain well informed, have clear lines of contact and complaint throughout the installation programme, and will see as little disruption to roads and pavements in the vicinity of their homes as possible.
 - 2.2.3 Clear commitments have been made to social, economic and environmental value through the Wayleave Framework Agreement that are welcomed and will bring additional benefit to the borough as a whole through the delivery of fibre/gigabit broadband supply; not least to secure wider borough rollout to households on the back of the investment agreed in the council's housing stock.
 - 2.2.4 Details of the specific CSR investment in social value are confidential, but the overall social value outcomes achieved through the wider wayleaves programme will be reported. For the purpose of determining approval of this framework, it is confirmed that Community Fibre has committed to at least the minimum expected investment in additional social benefit for the borough that was requested of operators benefitting from the grant of boroughwide rights of access through this framework.
 - 2.2.5 Commitment to support the council's costs through an agreed set of fees and charges has been made.
- 2.3 The proposed Wayleave Framework Agreement is therefore recommended for approval.
- 2.4 In deciding to sign this framework agreement, it is recognised that the tests set by committee have been met:
- 2.4.1 **Work in partnership to ensure more comprehensive area-wide rollout.** Paragraph 2.2.1 above confirms the extent of the commitment from the operator is sufficient to meet this test.
 - 2.4.2 **Set out a minimum 2-3-year plan for investment and commit to deliver it.** Paragraph 2.2.1 above confirms the period of the commitment from the operator is sufficient to meet this test.
 - 2.4.3 **Commit to a minimum additional 'social value' benefit per dwelling.** Paragraph 2.2.4 above confirms the additional commitment from the operator is sufficient to meet this test.
 - 2.4.4 **Be a considerate partner and meet expected standards.** Paragraph 2.2.2. above confirms the commitments to minimising disturbance. More broadly, the terms of the framework, the commitment to deliver in accordance with the guidance in Annex B, and the responses to the questionnaire, including those relating to installation, demonstrate a method and approach to the submission of

planning packages / method statements, and the wider rollout programme that is considered sufficient to meet this test.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 Alternatives were explored and rejected in the September Committee Report and the delegated decision of 11th December 2020. The only alternative would be not to sign the framework, but this option is not recommended as Community Fibre has submitted a complete wayleave framework agreement and met all expected commitments.

4. POST DECISION IMPLEMENTATION

- 4.1 A 'pilot phase' scheme will be used as the first 'planning package' or 'method statement' documentation under this Wayleave Framework Agreement. As the example package for the framework questionnaire that was submitted by Community Fibre related to part of the council's estate, this will be the initial wayleave to be signed in relation to this framework. As noted in the delegated decision, the handling of this will be used to establish working arrangements within the partnership.
- 4.2 A Digital Inclusion Programme is being developed in partnership with Barnet Homes, and the opportunities to build upon the social benefit commitments through this framework will be realised. As noted in paragraph 2.2.4 the outcomes of the social benefit investments will be reviewed and reported at this programme level.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The September 2020 Housing and Growth Committee Report demonstrated the corporate strategies informing the Digital Infrastructure programme and how they applied to the Wayleaves Project.
- 5.1.2 The 5 key principles that are specified in Annex A – Project Principles have been appropriately responded to in the submitted framework.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 Paragraph 5.3.2 of the September Committee Report requirement for cost recovery translated into Annex E where the operator has made an appropriate commitment to paying the Wayleave Fee alongside each planning package submission they make.
- 5.2.2 Matters of resourcing and funding were addressed at a programme level through the delegated powers report dated 11 December 2020.
- 5.2.3 The rollout extent and pace commitments made through this framework agreement, and noted in paragraph 2.2.1 above, mean that Community Fibre is expected to be entitled to claim the 25% discount against the headline wayleave fee, and this will be

monitored on an ongoing basis.

5.3 Social Value

- 5.3.1 In accordance with paragraph 5.3.2. of the September committee report and paragraph 5.3.3 and 5.3.4 of the delegated decision on 11th December 2020, the wayleave framework submitted for signing has met or exceeded the expected commitment to additional social value, and this is demonstrated through Annex E and Annex G.

5.4 Legal and Constitutional References

- 5.4.1 As noted in paragraph 1.1, Housing and Growth Committee resolved on 14th September 2020, under Item 10, to delegate authority to the Director of Growth to *'enter into overarching commercial agreements for the implementation of improved broadband infrastructure'* and this DPR fulfils that delegation.
- 5.4.2 Under Article 10.5 of the council's constitution Chief Officers have delegated authority to make decisions in accordance with the powers delegated (see Article 9) and other Officers under the Schemes of Delegation maintained by Chief Officers and published on the council's website. A written report will be necessary as the nature of the Wayleave decision grants a licence. Following signing of this DPR the Deputy Chief Executive's Scheme of Delegation will be updated accordingly to sub-delegate the signing and granting of individual wayleave agreements with operators for the implementation of improved broadband infrastructure Wayleaves, under the terms agreed within this Framework Agreement, to any Director, Assistant Director or Head of Service with a relevant responsibility for the Council's housing stock.
- 5.4.3 The Council has ensured this Framework complies with the Electronic Communication Code (ECC) that states the Council must undertake a standard and fair approach when working with Broadband Operators. The submission of this Framework by Community Fibre represents the acknowledgement that the framework meets the expectations of the Code and DCMS.
- 5.4.4 As per the Electronic Communications Code as set out in the Communications Act 2003, amended by the Digital Economy Act 2017, financial terms have been agreed on a consensual basis with the party involved.
- 5.4.5 The council enters into this overarching wayleave framework agreement and the subsequent wayleave agreements through general powers, including but not limited to the Digital Economy Act 2017 and the ECC, the general power of competence in section 1 of the Localism Act 2011, and section 111 of the Local Government Act 1972 giving local authorities the power to do anything "which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions".
- 5.4.6 Public procurement rules do not apply as this wayleave framework relates to the granting of Code Rights (as defined in the ECC).

5.5 Risk Management

- 5.5.1 The risk of *cherry picking, and locations ending up left out*, has been addressed through the commitments made within the framework, specifically Annex E.
- 5.5.2 The risk of *the implications of one provider's programme, or even Barnet Homes works programmes, on the programme of another service provider* will be mitigated through a coordinated approach to working together agreed through the framework.
- 5.5.3 The risk of *disruption on the road network and to public footpaths through the laying of new or replacement ducts* will be mitigated through measures set out in Annex E.

5.6 Equalities and Diversity

- 5.6.1 The Wayleave Framework Agreement creates tools and terms to protect equalities and diversity, as discussed in paragraphs 5.6.1 – 5.6.3 of the delegated report dated 11th December 2020. The operator's approach to delivery is recognised to meet expected commitments to equalities and diversity, including through communications, approach and policies.

5.7 Corporate Parenting

- 5.7.1 As noted in the Committee Report and delegated decision, the impact on looked after children or care leavers will be at worst be none, and at best could provide indirect benefit through the additional social value benefits secured through this framework.

5.8 Consultation and Engagement

- 5.8.1 The resident and business communication plan and templates of all communication materials to be used as part of the rollout programme were reviewed and agreed.

5.9 Insight

- 5.9.1 None.

6. BACKGROUND PAPERS

- 6.1 Decision Taken under Delegated Powers – 11th December 2020: Enabling Investment in Digital Infrastructure – [Approval of Wayleave Framework Agreement](#).
- 6.2 Housing and Growth Committee – 14 September 2020 – Item 10: Enabling Investment in Digital Infrastructure. [Enabling Investment in Digital Infrastructure PDF 837 KB \(moderngov.co.uk\)](#)
- 6.3 Policy and Resources Committee – 11 December 2018 – Item Eight: Corporate Plan 2019 – 24, Business Planning, Medium Term Financial Strategy 2019/24 and Draft Budget for 2019/20 - <https://barnet.moderngov.co.uk/documents/s50139/Corporate%20Plan%202019-24%20Business%20Planning%20Medium%20Term%20Financial%20Strategy%20201924%20and%20Draft%20Budget%20.pdf>
- 5.2 Policy and Resources Committee – 5 October 2016 – Item 10: Customer Transformation Programme – <https://barnet.moderngov.co.uk/documents/s34906/Appendix%20B%20Digital%20Inclusion%20Strategy.pdf>
- 5.3 Housing and Growth Committee – 27 January 2020 – Item 16: Growth Strategy - <https://barnet.moderngov.co.uk/documents/s57407/Growth%20Strategy.pdf>

7. DECISION TAKER'S STATEMENT

- 7.1 *I have the required powers to make the decision documented in this report. I am responsible for the report's content and am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision-making framework of the organisation which includes Constitution, Scheme of Delegation, Budget and Policy Framework and Legal issues including Equalities obligations. The decision is compliant with the principles of decision making in Article 10 of the constitution.*



Stephen McDonald

Director of Growth

18/01/2021

