

	ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER
Title	Enabling Digital Infrastructure – Approval of Wayleave Agreement for Gigabit Broadband Installation (Reference CF0003)
Report of	Director of Growth
Wards	All
Status	Public
Enclosures	None
Officer Contact Details	Stephen McDonald, Director of Growth Stephen.mcdonald@barnet.gov.uk Adam Driscoll, Commissioning Lead, Growth Adam.driscoll@barnet.gov.uk

Summary

Pursuant to Decision Item 10 'Enabling Digital Infrastructure', at Housing and Growth Committee on Monday 14th September 2020, the Committee delegated authority to the Director of Growth to enter into overarching commercial agreements for the implementation of broadband infrastructure.

This report follows the previous approval of a Wayleave Framework Agreement that agreed terms for the submission and approval of wayleaves relating to the supply of broadband infrastructure. In addition, it included approval for the future delegation of decisions regarding wayleave agreements to any Director, Assistant Director or Head of Service with relevant responsibility for housing.

This delegated report confirms the approval to sign a wayleave with Community Fibre Limited for the installation of Gigabit Broadband services in the following areas:

- (i) Longford Court (ward: Hendon), and adjacent addresses:
 - o 1-24 ASHWOOD HOUSE (NW4 2BD)

- 1-27 MIDFORD HOUSE (NW4 2BG)
- 1-42 ROCKFIELD HOUSE (NW4 2BH)
- 1-45 LISSELTON HOUSE (NW4 2BJ)
- 1-21 ACREFIELD HOUSE (NW4 2BL)
- 1-128 LONGFORD COURT (NW4 2BY)
- 1-46 BELL COURT (NW4 2BT)

Decisions

Approve the signing of a Wayleave Agreement with Community Fibre Limited in relation to the installation of gigabit broadband services across the following locations:

1. Longford Court (ward: Hendon), and adjacent addresses:

- **1-24 ASHWOOD HOUSE (NW4 2BD)**
- **1-27 MIDFORD HOUSE (NW4 2BG)**
- **1-42 ROCKFIELD HOUSE (NW4 2BH)**
- **1-45 LISSELTON HOUSE (NW4 2BJ)**
- **1-21 ACREFIELD HOUSE (NW4 2BL)**
- **1-128 LONGFORD COURT (NW4 2BY)**
- **1-46 BELL COURT (NW4 2BT)**

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 individual wayleave agreements with operators 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 operators.
- 1.3 The decision taken under delegated powers: 'Enabling Digital Infrastructure – Wayleave Framework Agreement with Community Fibre Limited' dated 18/01/2021 approved the signing of a Wayleave Framework Agreement. This agreed the process and terms that shall apply to the signing of Wayleaves for all of the council's housing stock with this operator.
- 1.4 In addition the delegated report in 1.3 also delegated '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.'

1.5 This report addresses the submission of relevant method statements for housing stock covered under the terms of the Wayleave Framework Agreement. A request for the granting of a Wayleave includes method statements for the following locations:

- (i) Longford Court (ward: Hendon), and adjacent addresses:
 - 1-24 ASHWOOD HOUSE (NW4 2BD)
 - 1-27 MIDFORD HOUSE (NW4 2BG)
 - 1-42 ROCKFIELD HOUSE (NW4 2BH)
 - 1-45 LISSELTON HOUSE (NW4 2BJ)
 - 1-21 ACREFIELD HOUSE (NW4 2BL)
 - 1-128 LONGFORD COURT (NW4 2BY)
 - 1-46 BELL COURT (NW4 2BT)

2. REASONS FOR RECOMMENDATIONS

2.1 The granting of a wayleave to the operator named in this report recognises compliance with the terms of the signed Wayleave Framework Agreement.

2.2 Barnet Homes have reviewed and approved the requisite method statement and related materials for each named area. Appropriate due diligence has been completed and therefore all steps necessary to be taken before the granting of a licence to access and undertake works within the identified locations, have been taken.

2.3 Submission of arrangements for the payment of the relevant Wayleave Fee have been received and agreed.

2.4 The original tests set by committee, and addressed through the Wayleave Framework Agreement, continue to be met by the operator:

2.4.1 **Work in partnership to ensure more comprehensive area-wide rollout.**

2.4.2 **Set out a minimum 2-3-year plan for investment and commit to deliver it.**

2.4.3 **Commit to a minimum additional 'social value' benefit per dwelling.**

2.4.4 **Be a considerate partner and meet expected standards.**

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 If the council declined to sign the wayleave at this stage, then it would represent a breach of trust with the operator as they have submitted the required materials in accordance with the signed Wayleave Framework Agreement. This could result in dispute over the terms of the framework agreement and the continued delivery of the additional social value and other benefits agreed, including payment of the wayleave fee.

4. POST DECISION IMPLEMENTATION

- 4.1 The relevant phases covered by the terms of this Wayleave are expected to commence on site in 12/04/2021 and be delivered in accordance with the proposed programme set out in each Method Statement. Overall progress against the wider delivery programme continues to be monitored on a regular basis through the arrangements agreed through the Wayleave Framework Agreement.
- 4.2 Communication with residents and stakeholders is a key area addressed under the terms of the Wayleave Framework Agreement. Residents and stakeholders benefitting from, and potentially affected by, the programme of work agreed in this wayleave will be notified of the works properly, and supported to deal with any issues arising, in accordance with the terms agreed through the signed Wayleave Framework Agreement.
- 4.3 The installation in the areas covered by the terms of this Wayleave are affecting the multi dwelling units as highlighted in the Method statements in the Wayleave (Schedule 6) and Community Fibre will instal their service to the single dwelling units(SDU) at later stage of the rollout as per their Framework agreement. SDU does not require Wayleaves to provide the access to the services.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 Alignment of corporate priorities and performance is addressed under previous decisions relating to the signing off of the terms of the Wayleave Framework Agreement.

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

- 5.2.1 Payment of the relevant Wayleave Fee is income to the council and has been agreed with the operator and invoiced. The amount was determined by the number of units securing approval under this wayleave and is in line with the terms of the framework.
- 5.2.2 There are no matters of procurement, staffing, IT, Property or Sustainability relevant to this wayleave that are not already addressed through the Wayleave Framework Agreement.

5.3 Social Value

- 5.3.1 The terms of the signed Wayleave Framework Agreement relating to social, economic and environmental value continue to be met.

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 delegate authority to the Director of Growth to ‘finalise the terms of and enter into individual wayleave agreements with operators for the implementation of improved broadband infrastructure’, and this DPR fulfils that delegation.
- 5.4.2 As noted in paragraph 1.4, additionally the decision taken under delegated powers: ‘Enabling Digital Infrastructure – Wayleave Framework Agreement with Community Fibre Limited’ dated 18/01/2021 also delegated “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.”
- 5.4.3 The Council has ensured this Wayleave complies with the Electronic Communication Code (ECC), which states the Council must undertake a standard and fair approach when working with Broadband Operators. Furthermore, and as noted in previous reports, public procurement rules do not apply as this wayleave relates to the granting of Code Rights (as defined in the ECC).
- 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. This was agreed under the terms of the Wayleave Framework Agreement.
- 5.4.5 The council seeks to enter into this wayleave 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”.

5.5 Risk Management

- 5.5.1 The Method Statement supplied aligns with the expected standards agreed through the Wayleave Framework Agreement. From a risk management perspective these cover Health and Safety, as well as Fire Safety matters. Due diligence has been undertaken by Barnet Homes, in consultation with its third-party advisors where appropriate, to confirm that the Method Statements presented are a sound proposal for delivery of the works.
- 5.5.2 Ongoing programme management and coordination by the council between operators, and also Barnet Homes and its own contractors, will ensure the safety of employees and residents by overseeing the various timetables for works and actively managing conflicts.
- 5.5.3 The risk of *disruption on the road network and to public footpaths through the laying of new or replacement ducts* continues to be mitigated through the measures set out in Annex E of the Wayleave Framework Agreement. Additionally, the potential for frustration with disruptions continues to be managed through effective measures for communication with, and receiving feedback from, residents and stakeholders.

5.6 Equalities and Diversity

5.6.1 The delegated reports agreeing the Wayleave Framework Agreement addressed equalities and diversity matters and emphasised the value of ensuring communications and engagement with local stakeholders is mindful of the implications of the roll out programme on those with protected characteristics.

5.7 Corporate Parenting

5.7.1 As noted previously, the changes will have no direct impact on looked after children or care leavers, except where they happen to live within the council estate and may open up positive opportunities for those young people.

5.8 Consultation and Engagement

5.8.1 A resident and business communication plan has been adopted for the Wayleaves Programme and all communication materials from the operator to be used in the rollout programme have been reviewed and agreed, and officers are confident in the approach proposed to engagement with residents and businesses.

5.9 Insight

5.9.1 The Method Statements supplied and agreed have drawn upon appropriate insight.

6. BACKGROUND PAPERS

6.1 Decision Taken under Delegated Powers – 18/01/2021 – Enabling Digital Infrastructure – Wayleave Framework Agreement with Community Fibre Limited:
<https://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=7578>

6.2 Decision Taken under Delegated Powers – 11th December 2020 - Enabling Investment in Digital Infrastructure – Approval of Wayleave Framework Agreement -
<https://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=7568>

6.3 Housing and Growth Committee – 14 September 2020 – Item 10: Enabling Investment in Digital Infrastructure. [Enabling Investment in Digital Infrastructure PDF 837 KB \(moderngov.co.uk\)](#)

6.4 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>

6.5 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>

- 6.6 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.*

Officer: Stephen McDonald, Director of Growth

Dated: 31/03/21