



REPORT of DIRECTOR OF STRATEGY, PERFORMANCE AND GOVERNANCE

**to
COUNCIL
21 NOVEMBER 2019**

SUPERFAST ESSEX UPDATE

1. PURPOSE OF THE REPORT

- 1.1 To present to the Council an update on Superfast Broadband and status of the outstanding deployment investment payment owed to Superfast Essex.

2. RECOMMENDATION

That the £45,000 monies outstanding be paid to Superfast Essex as per the resolution of the Council at its Statutory Annual meeting in May 2016.

3. SUMMARY OF KEY ISSUES

3.1 Background on Superfast Essex

- 3.1.1 Superfast Essex is the County's broadband improvement programme, co-ordinated by Essex County Council, and part of the Governments national Superfast Britain programme. The overall objective is to enable as many homes and businesses as possible to access superfast broadband to enable economic growth and enhance residents' quality of life.
- 3.1.2 Superfast Essex, which delivers the Superfast Essex Broadband Programme, operates under the BDUK Framework, a single-supplier framework set up by the Department for Culture, Media and Sports (DCMS).
- 3.1.3 To determine the areas eligible for investment and to ensure that the public funding is spent only to supplement the planned commercial roll out of high-speed broadband, Essex County Council (ECC) requests all known broadband network operators, including BT and Virgin Media as well as wireless and other broadband technology operators, to submit a list of postcodes that their network covers in Essex. Providers need to evidence that their network meets the European Union (EU) guidelines for Next Generation Access (NGA) broadband, which is kind of the EU code for superfast broadband. Suppliers are asked to provide the number of premises for each post code:
- that are currently capable of receiving superfast broadband via the supplier's service;

- where the supplier plans to make superfast broadband available within three years.
- 3.1.4 Under EU State Aid regulations, any areas where there is no existing NGA coverage and none planned within the next three years can be declared as areas of Market Failure, and are therefore eligible for public subsidy. Put in other words, these Market Failure areas are the post codes where Superfast Essex is legally allowed to invest. In State Aid jargon, these post codes are also known as “NGA White” post codes.
- 3.2 **Details of the agreement for funding between Maldon District Council (MDC) and ECC**
- 3.2.1 In 2014 Maldon District Council agreed in principle to provide funding of £90,994 to Phase 2a of the Superfast Essex programme, following a resolution of the Finance and Corporate Services Committee in its meeting of 29 July 2014 (Minute No. 301 refers). However, this was subsequently renegotiated with Essex County Council.
- 3.2.2 Phase 2a was to bring the number of connected premises up to 92% of premises in the District, if a contribution was made by Maldon District Council and to be significantly enhanced by the BDUK funding and supplier funding. Approximately 930 premises were identified to be connected under this next phase. A table showing the premises that would benefit specifically as a result of the MDC funding, as agreed at that time, is presented in **APPENDIX 1**.
- 3.2.3 Following renegotiation with Essex County Council in April 2016, Maldon District Council agreed to contribute £45,000, paid over three years of the duration of Phase 2a, as part of the Essex wide programme. This agreement was formalised by Maldon District Council through both the Planning & Licensing and Finance & Corporate Services Committees in April 2016, and at the Statutory Annual meeting of the Council in May 2016.

Minute 1185 – Superfast Broadband in the Maldon District

RESOLVED

- (vii) that a capital contribution of £45,000 (paid over three years of the duration of phase 2a (i.e. Phase 2a for the whole of the Essex wide programme) that is required for funding Phase 2a of the Essex Superfast Broadband Programme, be agreed.

RESOLVED

- (viii) that subject to the above decisions, the Minutes of the meeting of the Finance and Corporate Services Committee held on 19 April 2016, be adopted.
- 3.2.4 This contribution has not yet been transferred to Essex County Council and a meeting was subsequently arranged with Essex County Council in June 2018 to establish progress and to seek clarity on the trigger points for payment of the agreed funding. This led to a further report to Council in November 2018.

3.2.5 Concerns about rollout and speeds, specifically in rural areas were discussed by members of the Council in November 2018, and at that Council a further resolution was agreed:

3.2.6 **RESOLVED**

- i) that the Council agrees to a contribution of £45,000 to fund faster rollout of superfast broadband by Essex County Council but subject to:
 - a) the delivery of superfast broadband availability by 31 December 2019 to all premises notified to Maldon District Council by Essex County Council in recent communications;
 - b) Maldon District reaching the 94% coverage level indicated by Essex County Council by 31 December 2020;
 - c) 30mb/s speeds (or 24 mb/s for relevant early stage premises already completed) actually being delivered in all premises where coverage has been committed and service taken up - to be assessed by random sampling of some premises and any other information provided to the council by end users.
- ii) that the Director of Resources in consultation with the Chairman of Finance and Corporate Services Committee and the Chairman or Vice-Chairman of the Planning and Licensing Committee be given delegated authority to agree a contract with Essex County Council incorporating the above service commitments and such other operational terms as appropriate.

3.2.7 An SLA agreement was drafted but NOT signed by both parties and furthermore not implemented, Superfast Essex contended that the conditions were unreasonable and inconsistent with the original agreement for the £45,000 contribution.

3.3 **Delivery to date**

3.3.1 Superfast Essex Phase 2a delivery has progressed and is on course to be completed ahead of time by December this year and is set to reach more premises than planned. Indeed, under Phase 2a Superfast Essex have already enabled 4,369 premises in Maldon District to access superfast broadband (124 more than the original target) with a further 586 still to be completed during this year. Based on the interactive map on the SFE website, these include the 930 premises identified in **APPENDIX 1**.

3.3.2 The Superfast Essex Coverage Report: August 2019, included as **APPENDIX 2**, states that current Superfast broadband service is available to 26,474 premises in Maldon District. This includes residential and commercial properties, a coverage of some 91%. In total a further 1,605 premises are planned to be completed in this phase.

3.3.3 The total target coverage by 2021 (commercial and residential) was previously forecasted at 94%, this is now forecasted at a higher percentage of 96.2% surpassing the original coverage target for December 2020. This will leave 1106 premises unserved in the District.

3.3.4 These figures are taken from the official superfast Essex coverage figures, which are submitted to BDUK, as part of the monitoring of the national roll-out of superfast broadband. BT delivery under the BDUK contracts is subject to a rigorous milestone delivery assurance process.

- Superfast Essex receive detailed engineering reports, network diagrams, test reports, available speed reports and subscriber take-up reports among other documentation.
- This is reviewed and assured by the ECC team and in parallel by the central BDUK team. Only when ECC are satisfied with the evidence do they issue the milestone achievement certificates, which then form the basis of payment claims - which are also comprehensively assured in a similar way.

3.4 Whilst coverage levels in Maldon District are currently at 91%, according to Superfast Essex figures, reports received from residents and businesses indicate that expected broadband speeds may not be experienced in the field. We are more likely to hear from dissatisfied residents and businesses, so these views may not be representative, but we are aware of a number of potential reasons for the perception that delivery of broadband in rural areas is not meeting expectations.

3.5 Coverage figures provided by Superfast Essex do not guarantee that full speeds are being experienced across the area technically covered. Superfast broadband is provided by FTTC technology with fibre optic cables to specific points (cabinets, colloquially referred to as green boxes). Connections from cabinets to homes and businesses are provided by conventional copper wires. Broadband speeds drop significantly when transmitted over copper wire and the effect is magnified over greater distances. The cabinets also have a maximum capacity, so not all customers may be connected if the demand outstrips the available supply. Finally, the customers have to opt in to the faster broadband service and this may be provided at additional cost, so not all customers take up the available faster service.

3.6 The actual take-up of superfast broadband provision by Internet Service Providers is also monitored, although this is separate to the roll-out figures. In effect Superfast Essex provide the infrastructure and Internet service providers then provide services to individual properties. The target take-up for the programme is 50%.

3.7 To maintain milestone payments for the above delivery programme Essex County Council now urgently requests payment of the remaining agreed Maldon contribution of £45,000.

4. CONCLUSION

4.1 The Superfast Essex Programme has reported short term target delivery figures which are met, and longer term roll out figures that are on track and likely to be surpassed, this includes the 930 premises originally identified to benefit from this funding.

- It is the responsibility of the end user to conduct speed tests if they believe they are not receiving the speeds expected, not the role of the Council. These contracts are between the service provider and the user.
 - If an end user is unhappy with both the speeds and service they are receiving, they are within their rights to report it to their broadband service provider.
 - Without an SLA being in place, the Council is not able to hold Superfast Essex to specific service related conditions, over and above the roll-out to 4,245 premises (including the 930 identified), which has now been exceeded.
- 4.2 Payment of the outstanding amount is now stated as essential by Superfast Essex Programme to allow the project to continue.
- 4.3 Whilst there may be capacity issues in the network as take-up increases, it is evident from the roll-out figures (assured by BDUK) that the coverage by number of properties as agreed at the outset of the MDC / Superfast Essex agreement has been reached.

5. IMPLICATIONS

- (i) **Impact on Customers** – Refusal of MDC to pay may impact on the further roll-out of the programme to residences in the District, however it should also be noted that there may be ongoing issues in achieving the full speeds quoted for all properties in the roll-out area.
- (ii) **Impact on Equalities** – None.
- (iii) **Impact on Risk** – The Council is at risk of Essex County Council taking legal action against the Council for non-payment. The Council has entered into an agreement to match funding in 2014 and if the Council now refuses to make payment then given the value of the agreement, there is a potential for legal action to be taken.
- (iv) **Impact on Resources (financial)** – If payment is not made and legal action is pursued there would be additional legal costs in defending the claim with a risk if any defence was unsuccessful of paying the legal costs of Essex County Council in addition to our own.
- (v) **Impact on Resources (human)** – None.
- (vi) **Impact on the Environment** – None.

Background Papers:

November 2018 Council Report and Minutes.

Enquiries to:

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