



Overview & Scrutiny Business Panel

Decision made by Executive Director of Corporate Resources

Report title: Full Fibre Broadband for Lewisham Residents

Date: 17th June 2022

Key decision: Yes

Class: Part 1

Ward(s) affected: All

Contributors: Joseph Chambers (Public Digital Lead)

Outline and recommendations

This report sets out a proposal to grant non-exclusive wayleaves (access agreements) to providers of communication and broadband services to Council-owned residential properties in order to support digital inclusion, communications, networking, leisure and learning opportunities.

The committee are recommended to:

Approve the process for obtaining non-exclusive wayleave agreements between Council with broadband operators in order to deliver full-fibre to Lewisham's social housing portfolio.

“It is recommended that under Section 100 (A)(4) of the Local Government Act 1972, the public be excluded from the meeting during discussion of this item because it involves the likely disclosure of exempt information as defined in paragraphs 3, 4 and 5 of part 1 of Schedule 12A of the Act as set out below and the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The header says this is a Class 1 public report – commercially sensitive information only should be on Part 2 so the report needs to be split into two parts.

Timeline of engagement and decision-making

- Jan 2022 – Cross-council Director level internal meeting – approval for proposed process for working with fibre providers
- June 2022 – Internal sign off from Lewisham Council departments for (legal, finance, housing, public realm)
- July 2022 – Republish fibre broadband toolkit and expression of interest
- August 2022 – Application review
- August 2022 – Notify successful operators
- September 2022 – Wayleave contract negotiation
- October 2022 – Wayleave completed and signed by all parties
- November 2022 – Fibre broadband rollout begins

1. Summary

- 1.1. A wayleave is a property interest, needed in this case to allow the relevant cabling and associated apparatus to be installed. This report sets out the benefits of improving digital connectivity in the borough and recommends wayleaves be granted to facilitate the deployment of fibre broadband.
- 1.2. Agreeing wayleaves with broadband providers will enable provision of new internet services to Council-owned residential housing. Delivering fibre broadband is a vital step in the council's digital strategy and will enable tenants and leaseholders to benefit from improved connectivity infrastructure through lower rates for fibre and the improved internet speeds this can bring.
- 1.3. The agreements will be based on the City of London master wayleave agreement template but with appropriate modifications to ensure the Council's interests are sufficiently protected.
- 1.4. Following government regulation outlined in the Electronic Communications Code (2022), agreeing wayleaves with providers should be a cost-neutral process. In addition to an upfront fee of £10,000 for each provider, LBL will charge a fee in a pay-per-premises model, thereby recouping costs for staff time in managing the fibre broadband project. Total estimated revenue generated to between £200,000 and £250,000 (depending on number of providers that agree wayleaves and total number of housing units connected).

2. Recommendations

- 2.1. It is recommended that the Mayor and Cabinet:
 - 2.1.1. Agree to approve the process for engaging with broadband providers and establishing wayleave agreements to deliver full-fibre broadband to Lewisham residents.

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3. Policy Context

- 3.1. The contents of this concession report are consistent with the Council's Corporate Strategy 2018-2022. It supports 'Creating an inclusive Lewisham', specifically the 'need to continue to ensure that everyone in Lewisham has equitable access to the support and services they need' and the aim of Achieving better outcomes for people.
- 3.2. Guidance published by the Department for Digital, Culture, Media & Sport (DCMS) paves the way for "a clear and transparent process for industry and government". Lewisham Council has developed a [Digital Infrastructure Toolkit](#) on the basis of the DCMS guidance and has adopted a non-exclusive, open access approach to Telecommunication Operators.
- 3.3. The Mayor and London Councils agreed to the [Digital Access for All mission](#) as part of the London Recovery Programme. Actions for this mission include a commitment to improve full fibre coverage, identify and eliminate not-spots starting with social housing.

4. Background

- 4.1. Following other London Boroughs, London Borough of Lewisham has been seeking to improve the quality and capacity of its digital connections. As the capabilities of digital technologies have increased, so has the demand for reliable, affordable and high quality internet connections. Covid-19 further highlighted the important role of internet infrastructure and the significant reliance society places upon it.
- 4.2. The availability of high quality internet access and related communications is an ever more important consideration as technology develops. Parts of the borough are not well-served at present with pockets of poor connectivity. This is mainly for historic technical reasons but the opportunity exists to address the problem and improve connections for work, leisure, domestic and learning purposes for our residents, including "working from home" needs.
- 4.3. At the moment the majority of London can receive superfast internet through copper connections to their homes. This is called Fibre to the Cabinet (FTTC). This is where a fibre cable goes from telephone exchanges to a roadside cabinet and then a copper cable connects the homes to that cabinet. Copper is suboptimal for delivering data as it 'leaks' signal. The speeds it can achieve, up to 80Mbps download and much less for upload, are significantly slower than with fibre. Many London properties have access to cable connections, or DOCSIS which give them greater speeds of up to 1Gbps download but limited upload speeds for consumers. These cable networks use high quality copper to connect a home to a cabinet. There are a very small number of providers of cable infrastructure. Around 41% of London have access to full fibre, or Fibre to the Premise (FTTP). This is where you have a fibre connection all the way to the property. This has in theory unlimited speeds, as well as the option to have higher upload rates. There are a wide range of operators offering full fibre. For more information about broadband basics see [Ofcom's advice for consumers](#).
- 4.4. By the end of 2021, full fibre availability stood at 31% of homes across the country, with London averaging 36% and accounting for 14% of all national FTTP build. Lewisham's full fibre coverage stood at 29.8% with approximately 41,000 premises connected. This ranks it as 17th in London for most connected with FTTP. Cable coverage stood at 67.8% with around 95,000 premises connected, ranking 30th in London for most connected. Lewisham has around 3000 premises which are on copper only lines and unable to receive >30Mbps, ranking 9th for the most number of not spots in London. In 2021 Lewisham ranked 26th in London for the number of premise covered with full fibre, putting Lewisham five least attractive boroughs for full fibre investment.

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Figure 1 Lewisham premises unable to access 30Mbit/s service



Figure 2 Lewisham premises that are able to order a full fibre service (+1Gbps)



Figure 3 Lewisham premises that are able to order a cable service (up to 1Gbps)



Figure 4 Lewisham premises that are able to order a superfast service (up to 80Mbps)

For more information about Lewisham's digital connectivity coverage see the [Connected London map](#).

- 4.5. A wayleave is a contractual agreement between a landowner or landlord and a telecoms operator. This agreement enables the provider to have access rights to land/and or property to install, maintain or repair telecoms apparatus. In London, we have five major operators deploying full fibre broadband. Openreach, Virgin Media, G.Network, Community Fibre and Hyperoptic. All operators seek and rely on wayleave agreements with large landlords to maximise their deployments far and wide within boroughs to reach as many customers as possible to ensure a return on investment. An individual wayleave agreement covers a single building, a master agreement can include multiple buildings. The benefits of a master agreement for operators includes the ability to reduce legal costs and provide them with a certainty on where they can build without desirable buildings being missed out.
- 4.6. There is enthusiasm on the part of internet providers to extend networks across the Borough and initial discussions with a number of providers to date have led to a suggested basis of operation in which wayleaves for connection would be granted on a non-exclusive basis and providers would be expected to supply social and economic benefits (social value contribution), directly or indirectly. These are expected to include

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the following (may vary per provider and is not guaranteed):

- Financial contribution to a digital inclusion community pot run by LBL
 - Free connections for community spaces
 - Discounted fibre packages for residents
 - Employment and apprenticeships – direct employment opportunities and targeted recruitment
 - Digital Champion support – volunteering, digital skills training, providing access to resources
- 4.7. It is proposed to grant a Master wayleave to each supplier on a pay-per-premises model, in conjunction with an upfront fee. The benefits of this model include an overall agreement, which reduces legal costs and time instead of approaching individual wayleaves for each site. This is the model followed by the majority of London Boroughs.
- 4.8. The Digital Economy Act 2017 brings in new rights for providers to demand wayleaves and prohibits the old position that landowners could effectively ransom the provision of services. The reformed Code is intended to support investment in infrastructure, which will help ensure UK consumers have the digital communications coverage and connectivity they need.
- 4.9. It is envisaged that the granting of non-exclusive wayleaves for Council owned residential properties in the borough to multiple broadband providers will assist in the promotion and improvement of the economic and social well-being of the borough. In acting as a facilitator rather than a blocker to the applications from providers, it is anticipated that the Council will be able to attract, promote and retain interest from and competition between providers who currently operate or are looking for the opportunity to operate in the borough and which it is hoped will result in reduced costs for end use customers. It is considered that the benefits arising from the scheme will significantly exceed any financial consideration it might have been possible to secure. Based on comparisons to other boroughs who have put multi-site wayleaves in place, the Connected London team in the Greater London Authority estimate that Lewisham could see a 45% increase in the number of properties connected with full fibre infrastructure.
- 4.10. Other options considered:
- 4.11. **Not proceeding:** this would fail to implement the Digital Strategy (*forthcoming*) and hold back connectivity to residents and our ability to increase digital inclusion.
- 4.12. **Seeking to lever a greater value charge for wayleaves:** this may have the effect of either discouraging providers and consequently jeopardising opportunity to promote digital inclusion and the associated social and economic benefits this would bring to the Borough, or result in the providers seeking to exercise their statutory rights under the Code and seeking a court order to impose an agreement on the Council for the rights they seek. Charges for the pay-per-unit/premises model from LBL are to ensure a neutral cost process and were calculated through market engagement, discussions with consultants working in the digital infrastructure space in London and discussions with other London Boroughs and Central London Forward (CLF).

5. Main body

- 5.1. It is proposed to engage with providers on a non-exclusive basis in order that the Council can facilitate access in return for the wider availability of services and social benefits. Residents will then have the opportunity to buy services which would include

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low cost alternatives. Where possible this will include low cost options and/or those not requiring credit checks. Apart from free services to some of its own properties the Council would not directly receive the service.

- 5.2. Arrangements will be made with providers to secure the provision of social benefits as far as is possible given the requirements of the legislation.
- 5.3. Further consents such as Highways licences will need to be obtained by providers but are outside the scope of the proposed wayleave agreements. It is expected that providers will use existing ducting infrastructure, however where necessary all permits will be sought via the usual process. The purpose of the wayleave agreement is to entitle providers to install and retain cabling and associated apparatus from the boundary of an estate adjoining the highway to the property.
- 5.4. The Electronic Communications Code included within the Digital Economy Act 2017 allows providers to seek a Court order for access to install electronic communications apparatus over private land and buildings. This does not preclude the making of a charge but it is limited to the market value of the relevant access on the basis of being granted under a Court order.
- 5.5. It is proposed to seek recovery of the Council's costs from providers including staff time in dealing with this matter as far as is possible through the pay-per-premises model. Staff time will be required to deal with plans and legal documentation related to individual estates and areas being targeted for new broadband provision following the grant of master agreements.
- 5.6. The pay-per-premises model is planned to be charged at £10 per premises (each housing unit). In addition to this charge, there will be a £10,000 upfront fee to cover staff time from LBL in setting up wayleave agreements. This fee was calculated through initial market engagement, discussion with consultants working within the digital infrastructure space in London and through discussions with other London Boroughs. Project management to deliver fibre broadband and legal support in managing wayleaves will be externally sourced with costs passed over to the fibre broadband provider. Social value contributions from fibre providers are encouraged and will be discussed in each wayleave negotiation.
- 5.7. By installing new cabling in the Borough, it will also be possible to improve connections for residents and businesses in the locality. The choice of provider will be improved. Enhanced connectivity will be available, including fibre optic cables direct to each property depending on the provider and subscription package.
- 5.8. As part of the provision of social benefits, free internet access is expected to be provided in community hubs/community halls and common areas of social housing, which will be nominated by LBL, Lewisham Homes and Pinnacle Group.
- 5.9. Following the roll-out of this programme to residential properties managed by Lewisham Homes and Pinnacle Group, providers and registered housing providers operating in the borough will be encouraged to work together in order to expand high-quality broadband to an even greater number of residents.
- 5.10. Fire safety is an important consideration in giving access to providers - the Council will seek to ensure sufficient and necessary obligations are levied on providers to uphold these standards throughout the deployment process.
- 5.11. A further provision of the Electronic Communications Code 2017 (contained within the Digital Economy Act 2017) (the Code) is that if agreement cannot be reached between parties, a provider has the right to apply to court for an order imposing an agreement which gives effect to the code right sought by the provider. If a court decides to make such an order, a landowner is powerless to resist the relevant right(s) being imposed on it.

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5.12. The City of London Corporation (with assistance from the City of London Law Society) has produced a standardised wayleave agreement which is a consensus driven document designed to meet the requirements of the property and telecommunications industries and which has been endorsed by the GLA. It is proposed that the Council adopts the City of London standardised wayleave agreement as the basis for its own template agreement but modified to reflect the council's specific requirements.

5.13. Timeline

Jan 2022 –Cross-council internal meeting – approval for proposed process for working with fibre providers

June 2022 – Internal sign off from Lewisham Council departments (legal, finance, housing, public realm) during digital infrastructure approach meeting

July 2022 – Republish fibre broadband toolkit and expression of interest

August 2022 – Application review

August 2022 – Notify successful operators

September 2022 – Wayleave contract negotiation

October 2022 – Wayleave completed and signed by all parties

November 2022 – Fibre broadband rollout begins

6. Financial implications

6.1. This report is seeking approval to grant non-exclusive wayleaves (access agreements) to providers of communication and broadband services to Council-owned residential properties.

6.2. All of the costs of the installation and liabilities arising are to be borne by the provider including set up costs incurred by the Council. Therefore this service will be at nil cost to the Council.

6.3. The initial set up and ongoing costs in respect of enabling this service (including legal fees) will be covered by existing IT & Digital budgets in the first instance and recovered through the fees collected from the providers as set out in this report.

Rough outline of potential financial implications – (income generation)

Year	No. of Fibre Broadband Providers delivered	Total initial payments received (£)	Units connected	£ x Units Total (£10 PPU) (£)	Total income returned (£)
Year 1	2	20000	3000	30000	50000
Year 2	1	10000	4000	40000	50000
Year 3	1	10000	6000	60000	70000
Year 4	1	10000	6116	61160	71160
Total	5	50000	19116*	191160	241160

*Assuming entire stocklist connected

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7. Legal implications

- 7.1. It is intended that the proposed wayleaves will each be granted for a nominal consideration of £1. S.123 of the Local Government Act 1972 (the Act) provides that except with the consent of the Secretary of State, a local authority shall not dispose of land (otherwise than by way of a short tenancy being a tenancy not exceeding seven years) at less than the best consideration that can be reasonably obtained. The Act does not indicate what amounts to a disposal of land but this will include the sale of its freehold interest, granting a lease or assigning any unexpired term on a lease and the granting of easements. It is not however clear whether the grant of a wayleave is caught by these provisions.
- 7.2. A standard form of wayleave is normally personal to the original contracting parties and would therefore amount to a licence. As such, it is doubtful whether such a wayleave would amount to disposal of land for the purposes of the Act. However, the Code grants rights to providers to share a wayleave agreement for electronic communications apparatus with another provider. As such, it is possible that the wayleave agreements the Council intends to enter into with providers may amount to an easement rather than a wayleave. If that is the case, the grant of the proposed wayleaves by the Council will be subject to the provisions of S.123 of the Act meaning that the Council need to be mindful of the statutory obligation not to dispose of an interest in land at less than the best consideration reasonably obtainable.
- 7.3. Under the Local Government Act 1972: General Disposal Consent (England) 2003, local authorities are given general consent to dispose of land (otherwise than by way of a short tenancy) where (a) the local authority considers that the purpose for which the land is to be disposed will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area and (b) the difference between the unrestricted value of the interest to be disposed of and the consideration accepted (the undervalue) is £2,000,000 or less. The general consent therefore provides local authorities with greater freedom than was previously the case to exercise discretion in the disposal of their land.
- 7.4. As detailed in section 4, it is considered that the proposed deployment of fibre broadband to the borough's social housing stock (particularly in relation to those parts of the borough which suffer from poor digital connectivity) would lead to the promotion and/or improvement of the economic, social and environmental wellbeing of the borough. The Council is entitled to rely upon the well-being criteria when contemplating disposals of land at less than best consideration reasonably obtainable. In addition, as indicated in paragraph 6.4, the unrestricted value of the proposed wayleave agreements will fall significantly below £2,000,000. As such, the risk to the Council being challenged that the grant of the proposed wayleaves for a nominal consideration of £1 does not comply with the best consideration requirements under S.123 of the Act (as referred to above) is considered to be low.
- 7.5. Consideration has been given in respect of whether the Public Contracts Regulations 2015 apply and in this instance, based on the fact that this is not the granting of a service and would not fall under the Roanne test that these do not apply.

8. Equalities implications

- 8.1. The council is committed to ensuring all of its residents are able to benefit from technological advancements. The integration of digital technology within our public infrastructure must not unfairly discriminate against any individual or group.
- 8.2. Fibre broadband providers are required to identify the social value of their planned deployment. Additional social value can come in the form of social tariffs, free Wi-Fi,

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local employment, digital skills training and wider resource support.

- 8.3. Any forthcoming decisions flagged in this concession report will take into account equalities impacts in accordance with LBL's policies and procedures.

9. Climate change and environmental implications

- 9.1. N/A

10. Crime and disorder implications

- 10.1. N/A

11. Health and wellbeing implications

- 11.1. Improved digital connectivity will increase digital inclusion within Lewisham. Increased digital inclusion has been directly attributed to improved mental health, physical health and wider well-being.
- 11.2. Improved digital connectivity has also been linked with improved economic productivity of local areas, the generation of new businesses, reduced unemployment within local labour markets, and savings for the Local Authority and improved cohesion within local communities.

12. Social Value implications

- 12.1. Fibre broadband providers are encouraged to provide an overview of all social value contributions to residents (See 4.6)

13. Background papers

- 13.1. Please include a list of papers, documents and reports that relate to the concession report's subject matter with hyperlinks if the documents are available on our website. These include;
- Lewisham Fibre Broadband Toolkit (available on request)
 - Lewisham Wayleave (available on request)

14. Glossary

- 14.1. [Link to Oxford English Dictionary here.](#)
- 14.2. See Section 7 – "Glossary" in the guidance for more information.

Term	Definition
Full fibre broadband	Fibre optic cabling used from the local exchange, all the way to the end-user premises, relying on no copper-based telephone lines
DOCSIS	Data over cable service interface specification (DOCSIS) is a standard for broadband cable transmission of IP data services. It defines an upstream and downstream channel to enable bidirectional communications between a cable modem termination system (CMTS) in the cable head end and a subscriber's cable modem (CM)
DCMS	UK Government Department for Digital, Culture, Media and Sport

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Term	Definition
FTTC	Fibre to the cabinet (FTTC) is a connectivity technology that is based on a combination of fibre optic cable and copper cable. The fibre optic cable is in place from the local telephone exchange to a distribution point (commonly called a roadside cabinet), hence the name fibre to the cabinet. From this distribution point a standard telephone line based on copper is then used to deliver the broadband connectivity.
FTTP	Fibre to the Premises (FTTP, or FTTH - Fibre to the Home) is a broadband technology that can provide very fast internet speeds. Fibre to the premises is full-fibre, meaning that the fibre broadband internet connection from the local exchange is connected to the router in your home

15. Report author(s) and contact

15.1. Joseph Chambers, Public Digital Lead, joseph.chambers@lewisham.gov.uk

16. Decision

I approve the recommendations in this report

Signed:



Kathy Freeman, Executive Director of Corporate Resources

Date: 20th June 2022

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