

REPORT OF GROUP MANAGER GROWTH & ECONOMIC DEVELOPMENT

GIGABIT BROADBAND VOUCHER SCHEME – TOP-UP

Purpose of the Report

1. To recommend Nottinghamshire County Council participates in the Government's Gigabit Broadband Voucher Scheme by utilising the superfast broadband gainshare as a top-up.

Information

2. The demand-led Gigabit Broadband Voucher Scheme (GBVS) was first launched in March 2018 as part of the wider Local Full Fibre Networks (LFFN) programme aimed at stimulating commercial investment in gigabit capable networks and was intended to run until either 31 March 2021 or when its money ran out. Under the scheme applicants were offered up to £2,500 to help businesses and homes gain access to 1Gbps capable broadband connection (homes can only get £500 and up to 10 homes must participate for every 1 small to medium sized enterprise (SME)).
3. Beneficiaries to the scheme were asked to agree to a 12-month contract with their chosen ISP as part of the scheme's terms and conditions for speeds that were at least double what they could get before, provided they met the minimum threshold of 100Mbps (Megabits per second).
4. Much like previous broadband voucher schemes, the GBVS turned out to be hugely popular and exhausted its budget sooner than expected. As a result, gigabit-capable broadband connections have been provided to a total of 122 SMEs and 10 homes across Nottinghamshire.
5. The issued vouchers have a validity of 12 months, so whilst the scheme is closed to new applicants, connections from vouchers that have been issued but not yet connected, and their associated payments when the connection is live, will continue for a further 12 months. This is a demand led programme, so any unused part of our fund would remain with us. As a result, final numbers for the scheme will not be available until after Spring 2021.
6. If the proposed top-up scheme goes ahead, it will end in March next year. Building Digital UK (BDUK), part of Government delivering broadband networks to the nation, are prepared to flex or proceed at risk, but they will not agree to any new top up schemes that they can't announce in early September, hence the need to give them clarity around the Council's preferred course of action.

7. A further voucher "top up" option was offered to Nottinghamshire County Council by BDUK however, with a deadline of 24 July to express an interest. As it was non-binding, we did so.

The opportunity

8. Currently 13.66% premises in Nottinghamshire have access to Gigabit capable internet speeds broken down by area as follows:
- Ashfield 1.18%
 - Bassetlaw 21.73%
 - Broxtowe 3.43%
 - Gedling 42.80%
 - Mansfield 9.18%
 - Newark 5.68%
 - Rushcliffe 13.60%
9. The Government is now wishing to effectively top-up a renewed GBVS with additional funding (i.e. up to £7,000 for SME's and £3,000 for homes). This greater value of vouchers is intended to reflect the higher costs of deployment in rural areas.
10. Within Nottinghamshire there are 69,814 premises (5,552 businesses) that are classified as rural by the Department for Environment, Food & Rural Affairs (Defra) and that meet the current BDUK Gigabit Broadband Voucher Scheme eligibility criteria. The demand stimulation activity for the proposed top-up voucher scheme would specifically target the premises that are currently unable to receive Superfast broadband speeds (>24Mbps) - 8,435 premises (6,710 residential premises and 1,725 business premises - a ratio of 4:1).
11. Of these target premises, we would fund a voucher top-up for 345 residential premises and 65 business premises (in line with the 4:1 ratio) which equates to an estimated take-up of 5% of target premises and results in a total of 410 vouchers. We believe that this ratio is appropriate and achievable as these premises are the most in need due to the poor connectivity currently available to them, and as such would be likely to benefit most from the investment.
12. Whilst a new top-up voucher scheme will not be able to support every rural Nottinghamshire home and businesses without a superfast broadband connection (of at least 30 Mbps), it will work to support an additional 345 homes and 65 businesses with poor or no broadband connectivity.
13. Following our expression of interest, we have since been informed that the Department for Culture Media & Sport will be launching the latest top-up scheme in early September 2020. This means that BDUK require Nottinghamshire County Council to sign a formal letter committing it to delivering the programme on or before 1 September 2020. See **Appendix A** for a copy of the letter. (**Appendix B** for the Beneficiary Terms and Condition and **Appendix C** the Supplier Terms and Conditions which are both referenced on page 8 of the letter of agreement).
14. We have assurance from BDUK that the Nottinghamshire top up fund would only be available to increase the maximum value of vouchers in eligible parts of Nottinghamshire.

15. In order to bring the Scheme to life, there is a requirement to provide match funding. We recently proposed to the Derby, Derbyshire, Nottingham and Nottinghamshire Local Enterprise Partnership (D2N2 LEP) using the Ministry of Housing, Communities & Local Government (MHCLG) "shovel ready" finance to support the top up. This was not agreed by the LEP in our case (although was in Kent).

Other Options Considered

16. We have considered three options. The first being to use the gainshare from our original superfast broadband agreement (contract 1) with BT. A part of the existing State aid Exemption, this 'claw back' process requires BT to return part of the public investment when customer adoption of the new service passes beyond the 30% mark. Where this exceeds planned uptake, the local authority can claw-back excess profit and reinvest in additional infrastructure capability. This clawback mechanism operates for 7 years from the Full Service Commencement Date of the contract. The reinvestment of the gainshare is familiar to the Council, as we have approved this approach twice previously. The funding is intended to be reinvested to further improve network coverage and speeds. Alongside the civil engineering rollout, since 2011 we have allocated resources to ensure businesses and residents in fibre-enabled areas, are aware of the new digital service available to them. This investment has been highly successful, with take-up rates as at end of June 2020 of 70%.

17. Fortuitously, the third take-up review was triggered on 30 June 2020. The exact amount of gainshare and associated interest is £1,316,497.52, however this needs to be divided between the Council and BDUK based on the Funding Investment Ratio (42.6% for BDUK and 57.4% for Nottinghamshire County Council). This means we could consider reinvesting our £750,000 (approximately) gainshare proportion to complement the Government's proposals. BDUK would require a variation to the grant funding agreement under contract 1 if the Council wished to use the gainshare resources for anything else but broadband delivery.

18. The second option gives the potential for us to invest a small proportion of our gainshare of £250k and keep the remainder of the gainshare £500k to help support other economic growth schemes. We discounted this option because the impact locally, given the expense in connecting the hardest to reach properties means the impact would be negligible. However, according to the terms and condition of the grant funding agreement between BDUK and the Council, use of the expenditure must be for the furtherance of project objectives.

19. The third option is for us to decline to reinvest any of the gainshare in the new "top-up" voucher scheme for now and retain all the gainshare monies from all superfast broadband contracts until there is a further funding agreement with BDUK in terms of the retention or use of any clawback monies (see paragraph 16). This option relies on the telecommunications market to resolve the residual problems of next generation broadband connectivity across the County. The last Open Market Review we undertook specified that the telecommunications industry has no plans to serve most of the remaining properties in Nottinghamshire, many of whom are struggling with poor or limited internet connection. Nottinghamshire has the best superfast broadband coverage for an upper tier authority in the East Midlands. This third option, effectively a 'do nothing' for 7 years, which will compromise this vanguard position and will negatively affect both the County's economic advantage and our ability to digitise future service delivery.

20. Having received legal advice on the key issues, risks and State aid implications (summarised at paras 21 and 22 below) the preferred and recommended option is number one.
21. Legal advice on the key issues, risks and State aid implications has been taken and the Council does not regard the content of the Letter of Agreement or accompanying documents as being unduly onerous to the Council or the end-users. The provision of capital support to a broadband provider in order to enable it to develop an infrastructure could cause issues in State Aid terms, but the design of this scheme whereby individual recipients receive a Voucher, means that no single recipient is likely to be subject to unlawful State Aid, because:
- the recipient will, in many cases, be a private individual; or
 - the aid received by a qualifying SME business is unlikely to exceed 200,000 Euro over a rolling 3-year period.
22. In any event, because the recipient is required to certify that it does not exceed the de minimis requirement, the Scheme should be self-policing in order to avoid the possibility of unlawful State Aid being provided inadvertently. There are alternative exemptions which may apply, but these would need to be looked at in one-off situations pertaining to each SME. Consequently, the legal and state aid risks of signing up to this scheme are considered acceptable.

Reasons for Recommendations

23. As outlined in paragraph 13, failure to sign the formal letter of agreement by 1 September 2020 immovable deadline will mean we are unable to participate in the GBV and this opportunity lost. Hence the requirement for this report to be considered under the Council's urgency procedures.
24. Commitment 11 of the Council Plan centres on Nottinghamshire being a well-connected County. We have committed to continuing to improve broadband services by completing the roll-out of superfast broadband enabling the next generation of fixed and mobile digital connectivity. Participating in the GBVS enables us to deliver on what we promised we would do.
25. Due to the heavy reliance on digital connectivity in respect of a post COVID-19 world, participation in the GBVS would be one of our immediate responses to economic recovery in the County.

Statutory and Policy Implications

26. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Financial Implications

27. We are already in receipt of the £1,316,497.52 gainshare. As explained in paragraph 16, we propose to use £750,000 of that. The remainder of the gainshare totals £560,800 (i.e. 42.6%) will be returned to BDUK once the process has been agreed, for them to reinvest (along with their other funds) in our Nottinghamshire GBVS. This will arrive at an equal pound for pound match funding package for the County.

28. The total value of these vouchers based on the maximum voucher amount being claimed would be £1,500,000 (£750,000 funded by the BDUK Gigabit Broadband Voucher Scheme and £750,000 funded by the Nottinghamshire top-up scheme). This would give an average voucher value of £3,634.15 across the 410 vouchers (including £1,817.07 for Nottinghamshire County Council's top up contribution).

29. This is a demand led programme, so any unused part of our fund would remain with us.

RECOMMENDATIONS

An urgent decision is required which cannot wait until the next meeting of Policy Committee. It is therefore proposed that:

- 1) The Chief Executive agrees to the use of all the £750,000 gainshare from our original superfast broadband agreement (contract 1) with BT, to complement the Government's proposals for a Gigabit Broadband Voucher Scheme - Top-up, targeting properties classified as rural, hamlets and isolated dwellings
- 2) Delegated authority is given to Nottinghamshire County Council's Section 151 Officer, to sign the formal letter of agreement with DCMS committing the Council to delivering the programme
- 3) A report will be presented to 30 September 2020 Policy Committee outlining the decision taken.

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Constitutional Comments (EP 27/08/20)

30. The recommendations fall within the remit of Chief Executive in accordance with option C of the Procedure for taking Urgent Decisions as contained in the Constitution.

Financial Comments (KP 26/08/20)

31. As set out in the report, the contract 1 funding agreement requires the gainshare to be spent on broadband delivery and the proposed GBVS scheme is an appropriate use of the funding. The Nottinghamshire County Council element of the gainshare will fully fund the proposed voucher scheme. A budget for the gainshare income and the voucher funding costs will need to be set up and approved in line with Financial Regulations.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- *Digital Connectivity in Nottinghamshire*, report to Policy Committee on 18 March 2020

Electoral Divisions and Members Affected

- All