

Appendix A

Broadband Scrutiny Review

This report sets out the findings of the Task and Finish Group jointly established by EDDC and SSDC to look into the issue of providing rural access to Superfast Broadband via the Connecting Devon and Somerset Project.

The report will briefly outline the background to this topic and the review methodology used, before drawing a series of conclusions.

Review Background:

Connecting Devon and Somerset Joint Task and Finish Group

The issue of rural broadband now has a high national profile, thanks mainly to a report recently published by the Public Accounts Select Committee <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpublicacc/474/47402.htm>

This report mainly focuses on the impact of BT having been awarded all the Rural Broadband contracts and the inherent lack of competition and transparency in the process.

The guiding principles of the Rural Broadband project are to provide superfast broadband to 90% of the country and 100% by 2020, and these objectives should be welcomed and celebrated. However well-intentioned the project may be, there are concerns with how Connecting Devon and Somerset (CDS) are implementing it. The CDS project involves over £90 million of tax-payers money and as such members felt that the issue warranted thorough and detailed Scrutiny.

Nationally, concerns have been raised about the openness and transparency of Broadband UK (BDUK) and the various regional models and this issue should form the primary focus of this review.

Background

The BDUK aims to provide 90% of UK households with superfast broadband by 2016 – it is important to note that this 90% is based on population not geographical location. There are concerns that this means in reality, the project is essentially becoming an urban broadband connection project as opposed to the intended outcome of improved rural connections.

A particular issue for EDDC and SSDC was the use of Non-Disclosure Agreements (NDA) by the Connecting Devon and Somerset Project Team. The CDS team asked all Devon and Somerset local authorities to sign a NDA – signing such an agreement would essentially mean that EDDC and SSDC officers and members could attend meetings and briefings with BT as the CDS service provider, but would be prevented from sharing any information with other members, officers or the public. A decision was taken by EDDC and SSDC not to sign the agreement as doing so did not sit comfortably with our established principles of openness and transparency. It was felt that signing such a document would undermine the democratic accountability of the both us as local authorities and the wider CDS project. This decision not to sign the NDA, has nonetheless disadvantaged both authorities as the project has progressed.

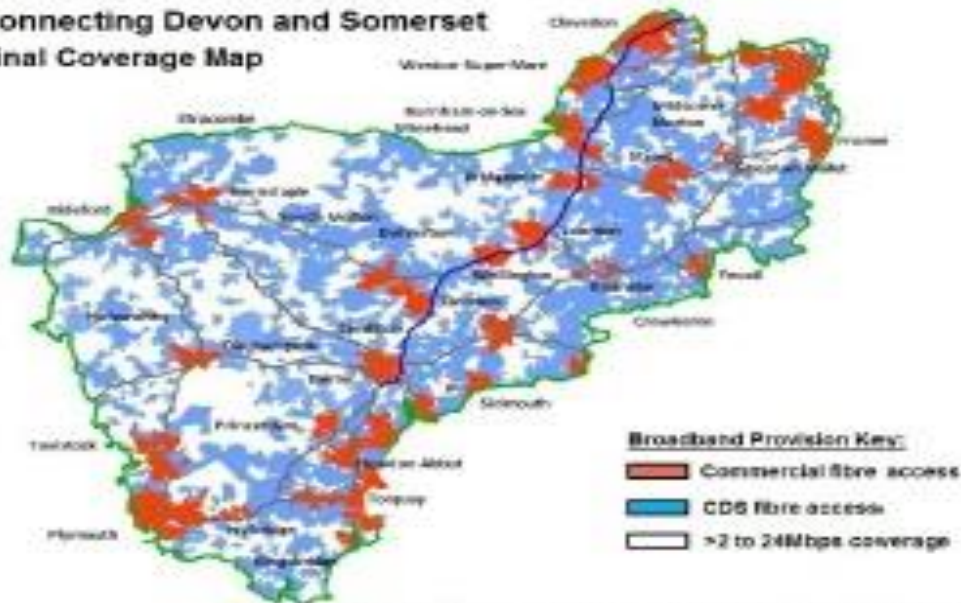
In the initial stages of the project, the Economic Development officers at SSDC put a considerable amount of effort into supporting the CDS project, they actively encouraged all sectors of the community to register their demand for superfast broadband and provided detailed mapping data to the CDS project team. This complex work was undertaken in the belief that the district council would remain an active partner in the CDS project, promoting the needs of EDDC and SSDC communities and businesses, in fact, we were held as a best practice example of how to effectively engage with the rural broadband programme. At no stage was it stated that future involvement in the project would be dependent on signing the NDA. The decision not to sign the NDA effectively ended meaningful two way dialogue between our authorities and the CDS project team. As local authorities, EDDC and SSDC positively embraced the principles of providing superfast broadband to our rural communities and publically supported the project – we are now not in a position to either further the needs of our residents or respond to queries.

The main concern for our communities is identifying what is known as the 'final 10%' – those households/ properties that will not be covered by the CDS project. This lack of information is having a significant impact. In SSDC there have been several instances of businesses contacting our Economic Development teams to ask if and when their broadband connectivity will be improved as the current poor Broadband provision was having a negative impact on their businesses. Knowledge of when they would be upgraded, or if indeed they would fall into the 'final 10%' would influence their future business decisions.

CDS have argued that they don't want to publish information in a piecemeal fashion, and want to wait until they have completed all survey work before publishing a detailed coverage map. To some extent, this position has been challenged by Maria Miller MP, the Secretary of State for Culture and Media. She wrote to all local authority Chief Executives on 19th July asking for coverage information to be published stating that, "... *this information will help other broadband projects to fill in gaps in coverage...*".

CDS initially produced a more detailed coverage map (below)

Connecting Devon and Somerset Final Coverage Map



Created using OSM from OS Open Space – © Crown copyright and database rights 2011 Ordnance Survey

Understanding the map:

The map shows a preliminary estimate of the likely broadband coverage resulting from the Connecting Devon and Somerset Programme's investment. The maps are indicative and should not be relied on or otherwise treated as a guarantee of current or future provision.

There are a number of things to be aware of when interpreting the map:

- It is not necessarily the case that all premises within an upgraded area will receive an upgrade – different premises within that area may be served by different infrastructure.
- Although an area may be served by upgraded infrastructure, the distance to this infrastructure from any particular premises in that area may mean that speeds for those premises are below 'superfast' levels of 24 Mbps.
- The modelling which informed the maps is based upon a number of assumptions which may change following a detailed on the ground assessment of local conditions. Before commencing work on an identified area, BT will conduct a planning survey and design study. Any issues encountered during this stage may result in changes to the roll-out plan.
- Since the project was approved in January 2013, Openreach has been working on survey work to improve the accuracy of the rollout. Changes to the map are therefore expected and these will be published at six-month intervals.
- Other funding streams have been announced by the government and applications will or have already been made to these to extend coverage beyond the areas shown.

However, this map is not detailed enough to provide communities and business with relevant information. By contrast, the Connecting Dorset project produced an interactive map, allowing residents to find out coverage proposals down to individual post codes.

Finding out which areas fall into the 'final 10%' was considered crucial by members of the Task and Finish Group. There have been three rounds of DEFRA funding available to support communities within the 'final 10%' to source alternative solutions such as satellite broadband or 4G technology. In order to access this funding, communities were asked to submit expressions of interest based on a 'strong indication' that their area would fall into the 'final 10%'. The final round of funding closed on 17th June and obviously, Devon and Somerset communities were disadvantaged by the refusal of CDS to state which communities they anticipated would fall into the 'final 10%'. Other BDUK projects have successfully caveated along the lines of....*this information may be subject to change based on the more detailed findings of our survey work and should therefore be treated as indicative until final confirmation is published...*

By being outside of the process by virtue of not signing the NDA, EEDC and SSDC were effectively outside of the Connecting Devon and Somerset Process and could not influence any part of the roll out programme, even though the CDS team were using the significant amount of data we supplied to them in the early stages. Despite us supplying this data, we were now not in a position to help interpret it, thus not enabling us to make the best case for our residents.

The whole premise for this project was to provide fibre optic broadband to rural communities where it would not otherwise have been commercially viable to do so. The project is heavily publically subsidised and there is little evidence publically available, that this money is not being used to fund work that BT would have done anyway, providing superfast broadband to the most populated rural communities.

Scrutiny objectives

As with all Scrutiny reviews the work of this Task and Finish Group needed maintain a strong focus on some key points. Nationally there are high level discussions on the nature of the procurement process used by BDUK and whilst it was agreed that the Task and Finish Group should keep a watching brief on this issue, members agreed that this review should focus on the following specific questions:

- The validity of the Non-Disclosure Agreement – bearing in mind the recent call for openness and transparency from the Secretary of State responsible for this project. **I have written to her office asking for her view on the use of NDA's and her comments will be reported to the Task and Finish Group.**
- How do we ensure that SSDC and EDDC are positively engaged in the roll out process in the future, with no restricted access to information beyond usual arrangements.
- How can we identify the final 10% as a matter of urgency and what can EDDC and SSDC do to actively support those communities which fall into this category?

The priority for this Task and Finish had to be finding out how to gain access to relevant and timely information and identifying the final 10% as a matter of urgency – this is what will be of the greatest benefit to our communities.

If appropriate, the Task and Finish Group can then go on to look at lessons that could/should be learnt from the CDS project experience.

Review methodology / process

A series of meetings were held to progress this review (the minutes of which are attached as appendices to this report).

In addition to the formal meetings a considerable amount of research was conducted which contributed to the following conclusions:

Conclusions

It may appear that after considering this issue for some considerable time, this Task and Finish report does not contain many substantial recommendations, but this would be to underestimate the dynamic nature of the Connecting Devon and Somerset project.

The frustrations and difficulties faced by members on this Task and Finish Group characterise those faced by communities seeking to influence the delivery of the programme.

This Task and Finish Group was established with the aim of seeking to ensure that the delivery of the CDS project met the needs and expectations of communities in both South Somerset and East Devon. From the outset, we were aware of the constraints represented by the Non-disclosure Agreement, but members of the T&F adopted an approach of looking for pragmatic ways forward rather than looking to revisit the issue of the appropriateness of such an agreement in connection with a public funded project. From the outset, those conducting this review were keen to adopt a positive approach, looking to secure the best possible outcome for their residents.

Members have involved the community at all stages of this review and it quickly became apparent that there was some genuine (and well informed) concern amongst certain communities.

Whilst members of the T&F may have sought to set aside the issue of the NDA in the interest of securing the best possible outcome for residents, over the course of their meetings with the public, it became clear that the issue of openness and transparency or (the perceived lack thereof) within the CDS project was an overriding concern amongst communities. Concluding this matter, members adopted a 'we are where we are' attitude to the issue of the EDDC/SSDC decision not to sign the NDA. Members agree with the stance taken over the NDA compromising democratic accountability and are disappointed to note that despite assurances that our not signing the NDA would in no way disadvantage our residents, the subsequent exclusion of EDDC and SSDC from discussions led to precisely that.

This was all the more disappointing given the fact that officers at both authorities gave a considerable amount of time and effort in the early stages of the project to determine local demand and to promote the project and at no point did CDS mention that continued involvement in the delivery phase of the project would be dependent on the signing of an unduly restrictive NDA. Pragmatically, both authorities would have been better placed to influence the delivery of the CDS if they had signed the agreement, and members of this review feel that future stages of this project and indeed any similar projects in the future should allow such a situation to arise again – local authorities deal with highly confidential and commercially sensitive information on a regular basis and have mechanisms in place to ensure this – NDA's have no place in a democratic process.

The issue was raised with representatives from the CDS Project team (*as referenced in the minutes from meeting*) but the position remained intractable.

Other work going on at the same time – various FOI requests meant that the CDS project team could defend a position of not releasing any of the information we requested pending the outcome of the Information Commissioner's assessment. There were also several other discussions taking place between other members of the Council and CDS which made co-ordination of effort and avoiding duplication increasingly difficult.

The primary outcome of this Task and Finish Exercise should be a recognition of where the project to date has been less than successful (effective communication both between CDS and partners organisations and communities) and the undue influence given to a private sector business delivering a publically funded project. The recognition of these shortcomings must be translated into better partnering arrangements and agreements for future stages of superfast broadband delivery projects across Devon and Somerset.

The next phase is already underway with the announcement on 25th February 2014 that the government was making an £250 million available to bring UK Superfast Broadband coverage up to 95% by the end of 2017. Members of the Task and Finish Group strongly recommend that those conducting any future discussions must be mindful of the need to ensure openness and transparency every step of the way. The next phase asks each local authority to contribute significant sums of money to secure central government match funding to deliver Superfast Broadband to the remaining 10%. Discussions to date bear worrying similarities to earlier stages of the project in that there is a lack of clarity/information forthcoming as to exact locations and delivery methods. Members of this Task and Finish Group strongly recommend that no decisions are taken by either authority about further involvement or potential financial contributions until there are robust agreements in place to ensure full democratic accountability and guaranteed local authority influence as to how the next phase of the project is delivered.

The Task and Finish Group also discussed the issue of Superfast Broadband and the local economy. Following their discussions members recommend that clarity is sort (and consequently communicated) as to the relationship between delivery Superfast Broadband to residential properties and delivering it to business properties.

The initial project aims and objectives from Broadband UK looked to address the inequality of access between rural and urban communities in an increasingly digital age. Whilst the need to provide good communication links for businesses is vital to rural economies, the BDUK project was always more about enabling community access and thus making a substantial contribution to addressing rural deprivation.

The next phase of the project Superfast Extension Programme (SEP) recognises that there remain some properties (in the final 10%) that present additional technical difficulties due to geographical location and that alternative technological solutions are required. Such alternative technologies exist and the SEP project looks to bring this new learning to the CDS project area.

There are legitimate concerns that urban areas have Superfast Broadband access issues that are impacting on SME's but it is the understanding of this T&F that the CDS project is designed to deliver vital communications to rural communities and the other options should be explored to support more urban SME's. Members ask for clarification on the use of public funds as represented by the SEP and CDS projects to provide a subsidised service for private enterprise. In urban areas, the infrastructure for SFB is there, but the market is structured in such a way that SME's can find the costs prohibitive. Members also seek clarification at the earliest opportunity as to whether the SSDC and/or EDDC elements of the £22.75 million can, under the terms of the SEP Government funding be redirected to an alternative provider outside of the Connecting Devon and Somerset programme.

The BDUK Project was, as far as members have been able to determine, intended to provide the actual infrastructure to rural areas rather than influence service provision in more urban areas. Members ask that this position is definitively clarified before progressing with future phases of the CDS Project.

One of the key objectives of this review was to encourage the CDS team to make the same information available to communities as their counterparts elsewhere in the Country. At the conclusion of the review, it is now possible for residents to obtain information down to 7 digit postcode level, and whilst this success cannot be solely attributed to this review, it should be noted nonetheless.

Whilst this review may have been characterised by frustration and disappointment that those charged with delivering a high value and high profile publically funded project have adopted a very narrow view of openness, accountability and transparency, the success of the project should not be diminished – more rural communities can now access what is widely concerned to a necessary part of modern living and thus, our rural communities are more sustainable than before. Members of this Task and Finish Group hope that by addressing some of the points raised in this report, the project will go on to deliver much needed outcomes, in a more publically acceptable manner.

Members request that all current and future work looking into all aspects of Superfast Broadband across both local authority areas are reported for consideration by Scrutiny members in both EDDC and SSDC as appropriate. Over the course of this review, members have developed an in-depth understanding of the complexities involved.

Recommendations

- 1. That clarification is sought, and reported to members, at the earliest opportunity as to whether the SSDC/EDDC element of the potential £22.75 million SEP funding can be redirected to an alternative provider outside of the Connecting Devon and Somerset Programme.**
- 2. That clarification is sought, and reported to members on the original objectives of the BDUK project...was it to provide improved access for rural residents to Superfast Broadband, in recognition of the fact that such access is now seen as essential in modern domestic and business life, or was it also to support cheaper provision to SME's in more urban areas? Members would also like to have the position on state aid to business clarified in relation to this point.**
- 3. That whatever decisions are taken corporately to address providing Superfast Broadband to 'the final 10%', there is a commitment to openness, transparency and accountability from all those involved and there will be no further use of Non-disclosure Agreements or similar.**