



Department
for Environment
Food & Rural Affairs

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Our ref: RFI 7134

Date: 20 January 2015

Dear [REDACTED]

REQUEST FOR INFORMATION: Fibre GarDen's application and supporting documentation for RDPE grant funding, and any considerations of: "over-building"; alternative cost effective solutions; Next Generation Access technologies; and the effect on other broadband providers/unfair competition.

Thank you for your request for information, which we received on 18 December 2014, about Fibre GarDen's application for RDPE funding. As you know we have handled your request under the Freedom of Information Act 2000 (FOIA). Following careful consideration, we have decided not to disclose some of this information.

The application form and supporting documentation are being withheld as this information falls under the exemption in section 43 of the FOIA which relates to confidentiality of commercial or industrial information. Under section 43 a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

This information is deemed to fall under the exemption in section 43 of the FOIA because the application and supporting documents do not currently relate to an open or ongoing project. This decision is based on the fact that no public funding through the Rural Community Broadband Fund (RCBF) has yet to be drawn down and the project remains subject to the satisfaction of outstanding funding conditions prior to commencement. In applying this exemption we have had to balance the public interest in withholding the information against the public interest in disclosure.

We recognise that there is a public interest in disclosure of information concerning the grant application to promote openness, accountability and transparency in government, and indeed when Rural Development Programme for England (RDPE) grant formal offers are completed (the funding programme of which RCBF is part), the amount of RDPE investment which has been awarded becomes publicly available information.

On the other hand, there is a strong public interest in withholding the application and supporting documents at this time because this project is awaiting decisions on two conditions of funding being satisfied prior to commencement. Depending on the outcome of these two conditions the project may not proceed with public funding. This would put the project in the same commercial arena as other providers not in receipt of public funding and on this basis it is not in the public interest to release details of the project, which contains the business plan, as this could give competitors an unfair advantage.



Therefore we have concluded that, in all the circumstances of the case, the application form and supporting documentation should be withheld at this time.

Regarding the four questions you raised in your correspondence of 18 December 2014 and the follow up question which we received 8 January 2015, this is not information which is held for us to consider under the FOIA, however we have provided the responses below as routine correspondence.

1. *Prior to the acceptance of the application for the grant made by those running the Fibre GarDen project, was there any consideration of whether the Fibre GarDen project would involve “over-building” the network installed by Kencomp Internet?*

The Fibre Garden project applied for public funding through RCBF. The Fund requires a state aid approval to be received prior to any contract for funding being issued. In order to complete the state aid application, the project followed the guidance from Broadband Delivery UK (BDUK). This requires a public consultation process to be undertaken that ensures other suppliers, local residents and businesses have the opportunity to understand the scope of the project and raise any queries or challenges regarding the project and its build area.

Fibre Garden undertook their public consultation from 12 December 2012, for a one month period, as stipulated. The consultation paperwork, including detailed information about the project and maps showing the proposed coverage area, were made available on the project website and no challenges on coverage area were received. This process confirms the broadband state aid status of the area, in this case as Next Generation Access (NGA) white.

Following this process, on 2 March 2013, Fibre Garden published their Invitation to Tender (ITT) on the community website, direct to bidders who had previously stated an interest and via social media. The window for bids closed on 28 April 2013 and Fibre Garden confirmed ITS as their preferred bidder on 1 December 2013. The procurement identified that a Fibre to the Premises (FTTP) network was an affordable solution, with the business model demonstrating that the installation cost to users would be within the £200 threshold, as required by the National Broadband Scheme (NBS) affordability criteria. Fibre Garden also issued its share offer via the project website, which included details of the scope and mapping of the project, in September 2013.

2. *In relation to the implementation of the Fibre GarDen project in Dentdale, was any consideration given as to whether there was a more cost effective solution (for example a fixed wireless system)?*

It was for bidders responding to the ITT to specify the technical solution, which could include any qualifying NGA technology. It is a requirement that the amount of aid needed for a project will be part of the selection criteria, to ensure that an affordable solution is identified for provision of superfast broadband within an area. The process is overseen by BDUK and a full review is undertaken prior to approval of state aid. The FTTP solution has been confirmed as affordable and within the operating criteria for the Fund.

3. You are also aware that bidders are only entitled to receive state aid in respect of technologies that are classed as Next Generation Access technologies. Are you able to provide details as to how the Fibre GarDen project meets this requirement?

As part of the RCBF appraisal process, the project has been reviewed by both Defra and BDUK and confirmed as offering a NGA technology solution for the provision of superfast broadband in Dentdale and Garsdale. The solution will provide a 100% fibre optic cable to all properties and businesses within the target area. Initial speeds will be 100 Mbps, future proofed for a Gbps service.

4. In applying the grant eligibility criteria, was any consideration given as to whether the Fibre GarDen project would affect other broadband providers, in particular whether the award of a grant to the Fibre GarDen project could potentially create unfair competition?

As outlined in question 1 above, the state aid application process requires an applicant to have undertaken a public consultation exercise to ensure that those suppliers currently active, or with intention to be active in an area, have the opportunity of putting forward their comments on the proposal and clarifying the nature of their existing service, at an early stage.

5. When BDUK first set criteria for NGA networks wireless technologies were excluded and hence the Fibre Garden proposal would have been the only qualifying NGA solution for Garsdale. Since then BDUK have accepted that certain wireless technologies do qualify as NGA. Our network in Garsdale would pass the NGA test. We read from the Fibre Garden Blog that they are now considering introducing wireless links into their network (see attached). This no longer makes it a pure fibre network and therefore to all intents and purposes is no different to our network – surely this no longer qualifies for state aid?

At the outset of the RCBF process, fixed wireless technologies were not included as an eligible superfast solution. This was on the basis of guidance prepared by the EU. The UK Government, through BDUK, has been advocating for the widening of eligible solutions in order to address the needs in the final 10% areas. The rules were changed in 2013 to allow fixed wireless solutions, but only where the supplier could commit to upgrading to a fibre solution when an agreed set of economic criteria were met.

Fibre Garden was the only community based application to the RCBF for the Garsdale and Sedbergh Area. In December 2012, when the project issued its public consultation, no suppliers came forward to raise concerns about the introduction of a NGA network within the target area. As a result of this, and following due process, a state aid award was issued for the building of a fibre network to provide superfast broadband services (at an installation cost to users within the £200 threshold, as required by the National Broadband Scheme (NBS) affordability criteria).

The fact that Fibre Garden is providing a secondary backhaul solution based on wireless provision does not preclude them from receiving public funding. The project plans relate to a 100% fibre solution that has been delayed due to issues beyond the project's control. The intention remains to provide 100% fibre optic service and therefore fulfils the requirements of the EU broadband guidance.

In keeping with the spirit and effect of the FOIA, and in keeping with the government's Transparency Agenda, all information is assumed to be releasable to the public unless exempt. Therefore, the information released to you will now be published on www.gov.uk together with any related information that will provide a key to its wider context. Please note that this will not include your personal data.

I attach Annex A, which explains the copyright that applies to the information being released to you. I also attach Annex B giving contact details should you be unhappy with the service you have received. If you have any queries about this letter please contact the address below.

Yours sincerely,


Defra FOIA and EIRs Team
InformationRequests@defra.gsi.gov.uk

Annex A

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Annex B

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If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 18 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to [REDACTED] Head of Information Standards, Area 4D, Nobel House, 17 Smith Square, London, SW1P 3JR (email: requestforinfo@defra.gsi.gov.uk) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our [website](#).

If you are not content with the outcome of the internal review, section 50 of the FOIA and regulation 18 of the EIRs gives you the right to apply directly to the Information Commissioner for a decision. Please note that generally the Information Commissioner cannot make a decision unless you have first exhausted Defra's own complaints procedure. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
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