

Committees:	Dates:	Item no.
Streets and Walkways Sub-Committee Projects Sub-Committee	24/07/2017 18/07/2017	
Subject: 10 Fenchurch Avenue S278 Highway and Public Realm Improvements	Gateway 3/4/5 - Authority to Start Work	Public
Report of: Director of the Built Environment		For Decision

Summary

Dashboard

- Project Status: Green
- Timeline: Gateway 5 – Construction expected to commence in October 2017
- Estimated project cost: Evaluation & design - £80,000; Construction - £541,308
- Spend to date: £23,360 of approved evaluation & design budget of £80,000 (as at 31 May 2017)
- Overall project risk: Green

The new building has been constructed in a way that does not allow for an adequate public highway depth in a number of areas. Amending the constructed building is not an option, so officers have negotiated a position of mutual benefit to the City and the developer.

Progress to date

On 30 March 2012 planning permission was granted for an office and retail development on land bounded by Fenchurch Street, Fen Court, Fenchurch Avenue and Billiter Street. The development is officially known as 10 Fenchurch Avenue and its location is illustrated in Appendix 1.

A Gateway 1 & 2 project proposal was approved at Projects Sub-Committee (6 May 2015). This approval enabled the City to enter into an agreement under Section 278 of the Highways Act 1980 which in turn permitted the developer to start construction of the development. The Projects Sub-Committee resolved that the project proceed to Gateway 3/4 via the Regular process.

The development creates a new building footprint and a new pedestrian footway through the centre of the site, both of which involve the stopping up of existing highway and the creation of new public highway. A Stopping Up Order has been approved. There are now three key areas to consider that are a departure from standard City practice:

- There are several areas of footway within the new public highway that do not have a sufficient depth of at least 1.2 metres to below ground structures.
- The developer has proposed security-rated bollards are placed on the public highway.
- The developer has formally requested permission for its contractor rather than the City's (which is usual practice) to construct the new footway through the centre of the site.

The City and the developer have now met on several occasions to work towards a

resolution to these matters. This report includes an overview of the implications of adopting public highway with an insufficient footway depth, the options available to the City as highway authority, and makes recommendations to the Committee. The report also seeks authority to start the Section 278 enabling works to accommodate the new building on the public highway network. The proposed works involve an upgrade of footway materials on the existing public highway, the paving of the new public highway, changes to a vehicle crossover, the introduction of security-rated bollards and an enhanced pedestrian route on Billiter Street. The developer has asked that the Section 278 works take place between October 2107 and January 2018 which is deliverable if the proposals are approved before the August recess.

Background information

The three key areas of concern relating to the new development are summarised in more detail below.

Insufficient highway depth

The City's standard requirement is that all public highway construction requires a minimum depth of 1.2 metres with no basement or obstructions within this space. The reason for this requirement is to not fetter the City's discretion to undertake future changes to the highway, to accommodate new drainage if necessary and to allow for the right of utilities to put their plant under the highway. It has become apparent that this requirement would not be met for a substantial proportion of the areas to be adopted as new public highway. As a result, a series of meetings have been held with the developer to rectify the situation. The issue has been identified in two specific areas:

- the new footway through the centre of the site has been constructed to a depth of less than 1.2 metres between the surface and the basement.
- most of the concrete retaining wall that supported the original building along the highway boundary has not been removed, providing an obstruction within the new footway around the perimeter of the site that does not allow for a minimum 1.2 metre footway depth.

In response to the officer concerns above, the developer was advised that the Stopping Up Order states that the newly dedicated highway areas should be provided "to the satisfaction of the City". The developer/owner was therefore asked to do whatever sub-surface works were necessary to ensure that the dedicated highway areas "provide a minimum of 1.2 metre footway depth".

The developer continued construction with the non-compliant public highway remaining in place. In February 2017, a report was submitted to the City explaining the developer's design approach and the implications of changing what had been constructed to provide the 1.2m standard. In relation to the perimeter of the building, the report stated that in order to maintain continuity of support to the highway, the new building structure was developed to integrate with the existing retaining wall. This approach was taken to minimise potential ground movement, which would adversely affect the surrounding highway, existing buildings and services infrastructure. In relation to the new pedestrian footpath through the site the report stated: "The structural design... required (the footpath) to cater for the significant change of level between Fenchurch Street and Fenchurch Avenue, whilst maintaining adequate space below to accommodate cycle and car parking."

The report stated that the potential implications of retrospective works to provide a 1.2 metre structure-free zone are, in the opinion of the developer, “significant.” These included:

- demolition of constructed elements and subsequent reconstruction of the perimeter structural arrangements.
- the impact on the new Nat West bank unit of undertaking the changes, potentially requiring it to stop trading.
- significant changes and a major re-design to the completed works, resulting in less usable space in the area below the central footway.

The report added: “Notwithstanding the potential financial impact, of more concern and consequence is that of programme. The extent and scope of change to the as built structure would result in the building not achieving the intended completion date (of February 2018), which would be a fundamental problem to the incoming tenant, M&G, achieving their established and set relocation agenda”. In its conclusion, the report stated: “We acknowledge that we have progressed with the as constructed works in advance of receiving the City’s formal approval of our AIP (Approval in Principle) submission, we now request a further meeting with the City, following your review of the report to agree between us the best way to proceed and regularise any legal agreements required”. It should be noted that the developer still requires approval of their AIP submission from the City Surveyor’s department, as well as the approval of the City as highway authority.

The developer’s report was considered by an officer group comprising representatives from Legal, City Surveyors, Highways and City Transportation, after which a meeting was held with the developer and their representatives on 28 March 2017. The concerns raised by the officer group are summarised below:

- Around the perimeter of the building, the constraint from having the original building structure at a depth less than 1.2m is the effect it could have on any future utility installations and management of this by the City. The structure forms part of the proposed building and would possibly require protecting with obligation falling to the City.
- To protect the structure, the whole perimeter of the building may have to be declared as a Street with Special Engineering Difficulty (SSED) to highlight the presence of structure before allowing any utility to carry out the works in the close proximity.
- The depth to pave in the central passageway is very limited and may need to be declared as a SSED. The pavement levels will have to match the slab levels underneath.
- The depth of the adoption will be above the waterproofing and will need to be defined in a legal agreement.
- The drainage for surface water run-off will need to go to the building basement and managed by the developer with step in rights.
- Utilities will not be able to install their apparatus in the central passageway.
- The vehicular access to the central passageway will be limited due to a weight limit which will impact on how the City can maintain the public highway. For example, future maintenance of the paving will have to be carried out by hand digging.

Hostile Vehicle Mitigation (HVM) measures on the public highway

On 5 November 2015, the City approved the details of security measures pursuant to condition 13 of the development's planning permission. Condition 13 required that: "The development shall incorporate such measures as necessary within the site to resist structural damage arising from an attack with a road vehicle or a road vehicle borne explosive device, details of which must be submitted to and approved in writing before any works thereby affected are begun."

The approved HVM measures were developed following discussions between the City, a City of London Police Counter Terrorism Security Advisor (CTSA) and the developer's security consultant. Following the submission of draft proposals that showed security bollards on the public highway, the consultants were advised by the City that the developer "needs to implement some sort of protection within either the fabric of the building, inside the curtilage of the site or both." This presented a challenge at either end of the new central passageway and officers subsequently agreed as part of the condition 13 discharge that security bollards on the public highway would be acceptable in order to protect the central passageway from a hostile vehicle attack.

Construction of central passageway

The developer has made a formal request for its contractor to carry out the public footway works in the central passageway area which will be new public highway. As this is a departure from standard City practice, the developer has submitted a justification to support its request.

Assessment of options

Insufficient highway depth

The City's expectation, as expressed in the stopping up Order, is that areas which are dedicated as public highway should be provided "to the satisfaction of the City", and in the context of the new footway areas this means a footway depth of a minimum of 1.2 metres. The developer has informed the City that it cannot meet this requirement due to the effect this would have on the construction, the impact on existing and future occupiers of the site and the costs involved.

The options that have been considered by the internal officer team include:

1. The new highway areas are maintained by the City as highway authority. The central passageway is designated a SSED and information plates are fixed in the footway around the perimeter of the site to advise of the shallow depth.
2. The new footway areas continue to be public highway but under Section 180 of the Highways Act 1980, the developer is required to assume responsibility for maintenance and upkeep of the newly-dedicated areas in perpetuity. The Highways Act also gives the City power to undertake any works necessary to keep the highway areas in good condition and recover any reasonably incurred costs from the owner/developer.
3. The developer is formally instructed to undertake remedial works to ensure that all areas of public highway have been constructed to the satisfaction of the City, i.e. a minimum footway depth of 1.2 metres. If the developer is unable to comply with this instruction, the stopping up Order could be rendered invalid and the developer would be considered guilty of trespass anywhere where they have built of land that was to be stopped up.

HVM measures on the public highway

The central passageway will create a valuable, new pedestrian link between Fenchurch Street and Fenchurch Avenue. The need to provide some form of HVM protection to the central passageway is acknowledged by the City and security-rated bollards are considered the only practicable option at this location due to the constraints of the footway widths on Fenchurch Street/Avenue.

Construction of central passageway

Whilst it is a departure from standard City practice, the officer team has concluded that it makes logistical sense for the developer's own contractors to construct the central passageway. Any formal agreement would be subject to highway authority approval of the final construction designs and the proposed choice of contractors to carry out the works (this work is currently under way). Moreover, the Section 106 agreement states that if the public footpath works are "not carried out and completed to the reasonable satisfaction of the Director of the Built Environment...then the City may enter and carry out and complete the works and charge the cost thereof to the Developer." A second Section 278 agreement would contain a provision to cover the cost of highway supervision/inspection fees.

Proposed way forward

The City and developer have been working towards a resolution based on option 1 above. To mitigate the consequences of adopting and maintaining the sub-standard public highway, the developer has agreed to fund an enhanced package of Section 278 highway works. This includes extensive Yorkstone re-paving on the streets around the new development, the creation of a new public space on Billiter Street with seating, tree planting, the introduction of HVM bollards at either end of the central passageway and cycle parking and improved pedestrian routes between Fenchurch Street and Fenchurch Avenue. The proposals are shown in the General Arrangement drawing (appendix 1).

It is further proposed that the City and the developer enter into a legal agreement to:

- Ensure that when the new building is demolished, the structure under the highway should also be demolished.
- Define the physical depth of adoption of public highway within the central passageway.

The proposed pedestrian and public realm improvements on Billiter Street will necessitate the permanent removal of the motorcycle bays that were at this location prior to the start of construction in spring 2016. To mitigate the impact of their removal during the construction phase, additional motorcycle parking was made available at four motorcycle bays within the wider area and it is proposed that this arrangement continues.

The detailed design and cost estimates for the highway works have now been produced and are included in this report. It is proposed that Members approve these elements, and give authority for the highway works to be implemented.

The first Section 278 Agreement for the evaluation and design stage of the project was signed in February 2016. A second Section 278 Agreement, for the implementation of the highway works, is to be signed with the developer on

approval of the recommendations in this report. Works will not commence until funding has been received from the developer.

Recommendations

It is recommended that Members:

- Approve the implementation of the Section 278 highway works with an estimated total cost of £541,308 as listed in the design summary in the main report and shown in the General Arrangement drawing (appendix 1);
- Approve the adoption of the new areas of public highway created as part of the development despite it not meeting the City standards;
- Approve the proposal for the developer’s own contractors to construct the central passageway;
- Note the central passageway may need to be designated as a Street of Special Engineering Difficulty;
- Delegate authority for any adjustments between elements of the approved budget to the Director of the Built Environment in conjunction with the Chamberlain’s Head of Finance provided the total approved budget of £541,308 is not exceeded;
- Authorise Officers to seek relevant regulatory and statutory consents, orders and approvals as may be required to progress and implement the scheme (e.g. traffic orders); and
- Agree that the commencement of the Section 278 works be dependent upon full funding being first received from the developer.

Main Report

<p>1. Design summary</p>	<p>The design for the Section 278 works has been developed in close partnership with the developer. The new development will result in the newly adopted public highway being to a standard that would not normally be acceptable to the City; principally because much of it will not have a 1.2 metre structure-free area. By way of mitigation, the developer has agreed to fund an enhanced package of Section 278 works. The highway design is shown in the General Arrangement drawing in Appendix 1 and includes:</p> <ul style="list-style-type: none"> • Wider footways around the perimeter of the site on Fenchurch Street, Billiter Street, Fenchurch Avenue and Fen Court; • A new passageway between Fenchurch Street and Fenchurch Avenue; • An improved pedestrian environment on Billiter Street including a new public space at its southern end, resulting in the removal of the motorcycle bays; • The introduction of York stone paving around the development and in the central passageway; • New cycle parking, seating and tree planting; • The introduction of HVM security-rated bollards at either end of the central passageway.
<p>2. Delivery team</p>	<p>Project management and stakeholder engagement will be provided by the project team within City Transportation.</p> <p>Highway construction works will be delivered by the City’s Highway Term Contractor (J.B.Riney & Co. Limited) with construction supervision undertaken in-house by City</p>

	Highway Engineers.																																																						
3. Programme and key dates	Authority to Start Work: August 2017 Section 278 Construction works: October 2017-January 2018.																																																						
4. Outstanding risks	<p>Overall project risk: Green</p> <p>a) Should the proposal to adopt sub-standard public highway be rejected by the - Committee, there may be delays to completion of the development;</p> <p>b) Should the proposal to install security-rated bollards on the public highway be rejected by the Committee, there may be implications for securing the central passageway from hostile vehicles;</p> <p>c) The sum of £50,000 for utility works is provisional and is subject to change until firm estimates have been received from utility companies. This presents a financial risk to the developer;</p> <p>d) Traffic orders cannot be predetermined and will need to be applied for and processed; there may be objections to the revocation of the motorcycle bays;</p> <p>e) Reputational risk if the development is delayed due to the highway works not being completed on time;</p> <p>f) Possible delays to commencing the highway works if the second Section 278 Agreement is delayed</p>																																																						
5. Budget	<p>The Section 278 works will be fully funded by the developer through a Section 278 Agreement. The table below shows the estimated total costs of the approved design:</p> <table border="1"> <thead> <tr> <th>Item</th> <th>Description</th> <th>Estimated Cost</th> </tr> </thead> <tbody> <tr> <td>Works Costs</td> <td>Highway Construction</td> <td></td> </tr> <tr> <td></td> <td>Preliminaries</td> <td>20,775</td> </tr> <tr> <td></td> <td>Fenchurch Street</td> <td>102,478</td> </tr> <tr> <td></td> <td>Fen Court</td> <td>88,347</td> </tr> <tr> <td></td> <td>Billiter Street</td> <td>130,488</td> </tr> <tr> <td></td> <td>Fenchurch Avenue</td> <td>44,627</td> </tr> <tr> <td></td> <td>Utility costs (provisional sum)</td> <td>50,000</td> </tr> <tr> <td></td> <td>Traffic Orders</td> <td>3,000</td> </tr> <tr> <td></td> <td>Trees</td> <td>3,879</td> </tr> <tr> <td></td> <td>Sub-Total</td> <td>£443,594</td> </tr> <tr> <td>Staff Costs</td> <td>City Transportation: Project Management/Engagement</td> <td>17,920</td> </tr> <tr> <td></td> <td>Highways: Quantity surveying and construction supervision</td> <td>68,544</td> </tr> <tr> <td></td> <td>City Public Realm: Project partner</td> <td>1,920</td> </tr> <tr> <td></td> <td>Open Spaces</td> <td>1,580</td> </tr> <tr> <td></td> <td>Sub-Total</td> <td>£89,964</td> </tr> <tr> <td>Maintenance</td> <td>Trees; five years after care</td> <td>7,750</td> </tr> <tr> <td>Section 278</td> <td>Estimated Total Costs</td> <td>£541,308</td> </tr> </tbody> </table>	Item	Description	Estimated Cost	Works Costs	Highway Construction			Preliminaries	20,775		Fenchurch Street	102,478		Fen Court	88,347		Billiter Street	130,488		Fenchurch Avenue	44,627		Utility costs (provisional sum)	50,000		Traffic Orders	3,000		Trees	3,879		Sub-Total	£443,594	Staff Costs	City Transportation: Project Management/Engagement	17,920		Highways: Quantity surveying and construction supervision	68,544		City Public Realm: Project partner	1,920		Open Spaces	1,580		Sub-Total	£89,964	Maintenance	Trees; five years after care	7,750	Section 278	Estimated Total Costs	£541,308
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6. Success criteria	a) Work with the developer to ensure timely delivery of high quality highway improvements which successfully integrate the development into the local highway network;																																																						

	b) Work with the developer to meet their desire for an enhanced public realm; c) Improved facilities for pedestrians and cyclists.
7. Progress reporting	Monthly updates to be provided via Project Vision and any project changes will be sought by exception via Issue Report to Spending and Projects Sub Committees

Appendices

Appendix 1	Section 278 Highway Works General Arrangement Drawing
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