

London Borough of Enfield

Operational Report

Report of **Peter George (Programme Director – Meridian Water)**

Subject: **Delivery of Post Completion Works at Silvermere Drive**

Ward **Upper Edmonton**

Director: **Sarah Cary (Executive Director - Place)**

Key Decision: **5232**

Purpose of Report

1. The purpose of this report is to progress the construction of a new access road within Meridian Water, in order to discharge the conditions associated with the agreement to purchase the Stonehill site from HSBC Bank Pension Fund in June 2017.
2. These works have been included in the Meridian Water capital allocation and programme and this report seeks authority to commence the works.

Proposal(s)

3. It is recommended that the Executive Director - Place:
 - Approves and authorises the expenditure for delivering the new access road in Meridian Water and discharging the contractual obligation in the sale agreement pertaining to the acquisition of Stonehill Business Park in June 2017. Details of the expenditure are contained in the Confidential Appendix.
 - Notes that the works will be carried out by the Council's retained highways term contractor, "Marlborough Highways", who were appointed in January 2021 subject to a previous authority report.

Reason for Proposal(s)

4. The reasons for this proposal are two-fold:
 - It allows the Council to fulfil its contractual obligations as highlighted above.
 - These road works, which include widening of the road and resurfacing, will improve the overall quality of the roads in question. This is of greater significance as Silvermere Drive is being considered for re-

activation in 2021/2. Furthermore, these road works would also improve access to the Hastingwood site, which has recently come into the Council's ownership.

Relevance to the Council's Corporate Plan

5. This report relates to the following aspects of the Corporate Plan:

- **Good homes in well-connected neighbourhoods**

The delivery of the subject access road, in conjunction with the re-opening of Silvermere Drive, would improve the East-West connectivity across the East Bank of the River Lea Navigation. This would support meanwhile uses and employment opportunities thereby promoting the overall Meridian Water Regeneration Scheme, including housing delivery of the western side of the River Lea Navigation.

- **Build our local economy to create a thriving place**

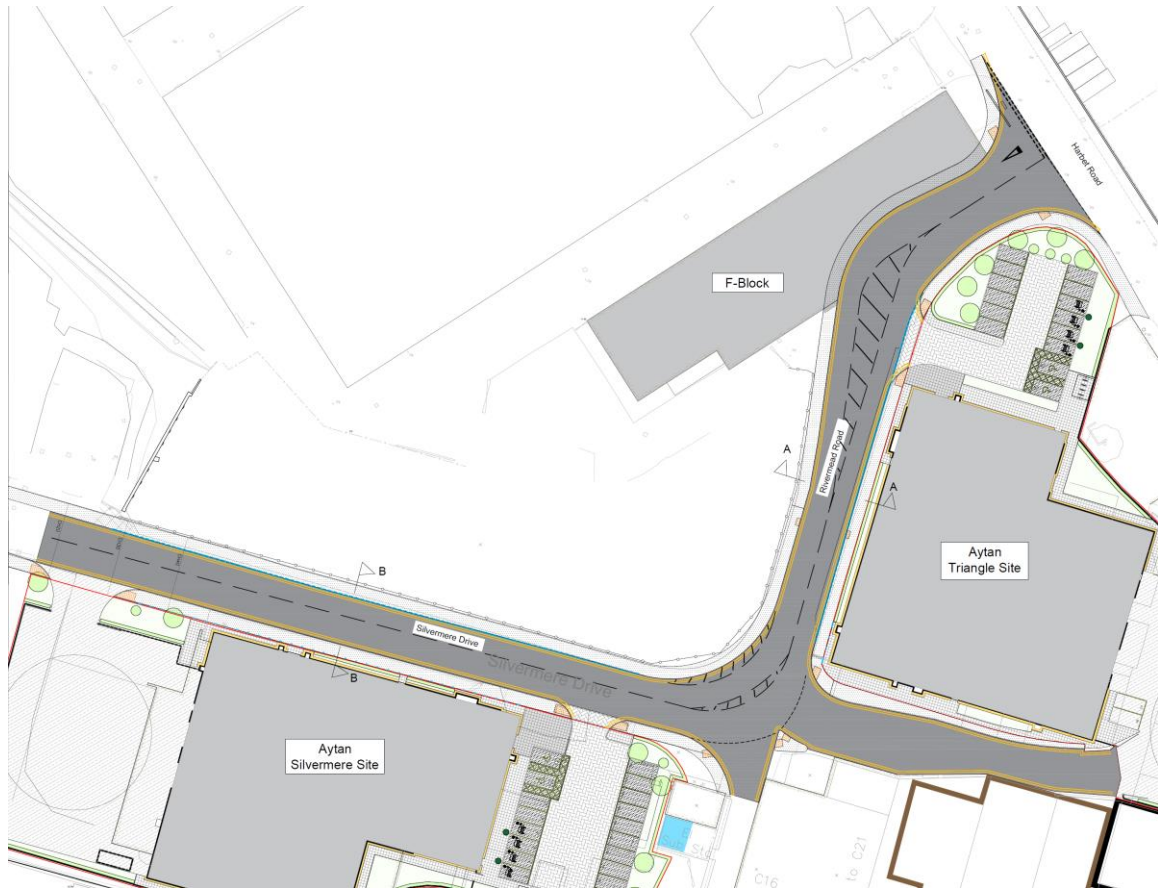
The Council's vision for Meridian Water is to create a vibrant and truly mixed-use environment with thousands of new jobs and facilities. The Aytan Family's development will deliver 52,000 sq ft of industrial use buildings for their fashion and clothing business, which would have a positive impact on this objective by facilitating the growth of a skilled creative industry and boost employment opportunities at Meridian Water and the borough.

Background

6. Meridian Water, located in the South East of Enfield, is a large regeneration programme being taken forward by Enfield Council as master developer.
7. As part of the land acquisition strategy, the Council purchased the Stonehill Site in June 2017 excluding two parcels of land comprising two and a half acres owned by the Aytan Family and marked in red on the plan below. These parcels are known as "The Triangle Site" (the more parcel bounded by Rivermead Road and Hastingwood Estate), and "The Silvermere Site" (the parcel bounded by Silvermere Drive and the former VOSA site).



8. The Sale Agreement with the former owner of Stonehill, HSBC, included a contractual obligation (Schedule 4 of the Agreement for Sale) to build an access road from Silvermere Drive to Rivermead Road to service the land owned by the Aytan Family, as well as bear the costs of providing the main surface and foul drainage, mains water, gas and electricity to this land. The plan below shows the access road and how it relates to the proposed development for which planning consent has been obtained by the landowners.



9. In 2017, the Aytan family secured a detailed planning permission on their land for delivery of 52,000 square foot of industrial building (17/02151/FUL). The landowners have now discharged the pre-commencement planning conditions relating to their planning permission.

10. The Council needs to undertake the works now because the contractual condition states that once planning permission has been secured, the Council needs to build the access road. The Council has submitted a programme to the Aytan family, which shows the road being built between October 2021 and April 2022. This accords with their programme to develop their site early in 2022.

11. The works will be undertaken by Marlborough Highways, who are the retained term contractor for Carriageway Recycling and Resurfacing. Marlborough were procured through a competitive tendering exercise carried out between December 2020 and January 2021 via Constructionline and the Council's e-Tendering portal. Marlborough Highways were awarded the contract which commenced on 1st April 2021 for a period of 2 years. A separate report has already given authority for the appointment of Marlborough Highways.

Main Considerations for the Council

12. The main consideration for the Council would be to fulfil its contractual obligations under Schedule 4 "Post-Completion Works" of the agreement for

sale in the purchase of Stonehill Business Park in 2017. The Schedule 4 "Post-Completion Works" confirms the Council's obligation to:

- a. The construction/re-configuration (as the case may be) of the Access Road;
- b. The installation or provision of mains surface water and foul drainage, mains water, gas and an electricity to the plot boundary or within the Property allowing the buyer [the Aytan Family] to properly connect into such service without encroaching any third party land or rights
- c. All such works to be in accordance with the Specification.

13. In order to facilitate the construction of the access road and to comply with the specifications, the demolition of the F Block, which is a mid-20th century building owned by the Council located on the Stonehill Estate, is required. The Council has commenced the procurement of a demolition contractor for the demolition of F Block. The appointment of the chosen contractor will be subject to a separate authority report.
14. Another consideration in building this access road would be that such development and construction activity would deter the anti-social behaviour, crime and fly-tipping associated with vacant land.
15. Furthermore, the delivery of this access road would improve the overall quality of the road in that area both structurally and aesthetically and could potentially increase the land value of the surrounding areas.
16. The other set of considerations is how the road will be maintained and how it relates to the future plans for this part of Meridian Water.
17. The road being constructed does not constitute part of the future anticipated road grid for Meridian Water when fully redeveloped. However, this part of the Masterplan can only be implemented once the strategic industrial land designation has been lifted for this part of the site, and comprehensive residential-led regeneration can be progressed.
18. Ahead of this, the proposed road provides the necessary access and service functions for the industrial and employment-led uses on this part of Meridian Water. Once built the road will not be adopted but it will be incorporated into the private estate network of the east bank, linking up with Silvermere, Anthony Way and Towpath Road. This is maintained through rental revenue receipts including contribution from a service charge for the east bank.
19. In the first 5-8 years, repairs should be minimal. The cost will be subsumed into the maintenance costs and maintenance regime for the private estate roads on Stonehill Estate. They are covered by a revenue cost budget within the Meridian Water, which is met by rental income from meanwhile sites.
20. Counting one re-surfacing, the road should then have a last span of 15-20 years taking it up to the horizon of comprehensive redevelopment.

21. Utilities will be run under the road via ducts and pipework that will be installed before the road is surfacing is undertaken. The utility companies will then be able to thread their cables and pipework without necessitating digging up the road. Standard wayleave agreements will be put in place for the utility companies allowing them to access and maintain utility connections while obliging them to return the road to its original condition should they do any works.
22. At the point where the road network is reconfigured for permanent development, the utilities will also need to be relayed and/or upgraded. These costs of utility and road works are allocated to an infrastructure, enabling works and site preparation works budget for the development of the relevant plots in this part of the Meridian Water scheme, and are contained within the wider project budget assumptions.

Public Health Implications

23. The Meridian Water development in general has significant potential to benefit residents' wellbeing. Whilst this proposal has little direct impact on public health it will contribute to the overall success of the development in full. There are no further public health implications that have not already been identified.

Equalities Impact of the Proposal

24. An Initial Screening was undertaken and the proposal does not affect service users or the wider community because it is a targeted intervention only affects a private estate road network.

Environmental and Climate Change Considerations

25. Highways are designed based upon historic climate, however during their lifetime they could be subject to different climates. Climate change factors that must to be considered are the prospect of wetter and milder winters, drier and hotter summers and more extreme rainfall and storms. If these are not considered, upgrades may need to be made later on, which in turn could result in additional costs and disruption. The new road would address these issues by laying down a new asphalt overlay on top of the existing sub-grade and the existing concrete carriageway slab, as well as providing a new linear drainage system. Similarly, retaining the existing materials would reduce the carbon footprint involved with such construction activity.
26. New construction materials will have increased carbon emissions, including both in construction and use, which will need to be offset as part of Meridian Water's wider approach to achieving a net zero development. As part of the brief for the demolition of F Block, there is a require for the demolition contractor to allow for the reuse of materials in the construction of the new and upgraded road e.g. the crushed concrete. We are working with Net Positive Solutions who are advising on the sustainability aspects of this project.

Risks that may arise if the proposed decision and related work is not taken

27. The reputational and legal risk to the Council if it is deemed to be in breach of contract, in the Council do not deliver the access road.
28. The developer has now satisfied its pre-commencement planning conditions and the Council now must fulfil its legal obligation to undertake the “Post-Completion works”. If the Council does not comply or undertake these works in a timely manner, the developer would be entitled to legal remedies through court action or may be able to enforce their contractual right to ‘step in’ to fulfil the Council’s obligations and seek reimbursement of their costs for doing so.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

29. **Risk:** The Council builds out the road but the Aytan Family do not undertake the development of their plots.

Commentary: Contractually, the Council is obliged to deliver the road once consent is in place irrespective of whether or not the landowner implements their planning permission.

Mitigation: These works would deliver road improvements that would provide enhance the accessibility along the East Bank, in conjunction with the re-opening of Silvermere Drive and would benefit the overall amenity of that area of the Meridian Water site. In particular it would improve access to Hastingwood Estate, which the Council acquired in June 2020, and contributes to revenue income.

30. **Risk:** Delivery of these works could impact the Housing Infrastructure Fund (HIF) works programme

Mitigation: Turner and Townsend will be carefully managing all the interdependencies associated with the HIF programme and therefore ensure that the Council’s £170m government funding is secure.

31. **Risk:** Demolition of the F Block delays delivery of the Access Road.

Commentary: The access road covers land where the F Block is currently located, so this must be partially demolished in time for the works to be completed. Late demolition of the F Block may result in a delay in the delivery of the access road.

Mitigation: The construction of the Silvermere Drive can commence in advance of demolition work, and the remaining road works can be phased around the schedule for demolition.

Risk: The delivery of the road is delayed

Commentary: If the delay was to be excessive or impact on the landowner’s programme for development, they could take legal action if the Council is in breach of the contract.

Mitigation: In line with the contract, the Council will take reasonable endeavours to deliver the road on programme.

Financial Implications

32. See Confidential Appendix

Legal Implications

Provided by MD on 29th September 2021 (based on draft report circulated at 18:46 on 28th September 2021)

33. The Council is the freeholder of the Stonehill Site including the land forming the access road (which it accounts for in its General Fund) and is contractually obliged to deliver the works described in this report by the Agreement for Sale dated 2nd June 2017 between the Council and HSBC Pension Trust (UK) Limited.
34. Section 2(1) of the Local Authorities (Land) Act 1963 empowers the Council for the benefit or improvement of its area to construct or carry out works on land. The Council's general power under chapter 1 of the Localism Act 2011 would also enable it to undertake works on land it owns. Section 1 of the Local Government (Contracts) Act 1997 empowers the Council to enter into a contract with a third party in relation to the works on the basis the Council is discharging its functions in relation to works on land.
35. The value of each package of works described in this report is below the procurement threshold for works meaning that the Public Contracts Regulations 2015 do not mandate that the Council undertakes a compliant competitive procedure. The Council is however required to comply with its Contract Procedure Rules. In relation to the highways and street lighting works suitable contracts are already in place and in relation to gas, electricity and water connections competition is prevented by statutory control. Therefore the Contract Procedure Rules do not require a competitive procurement to be undertaken.
36. Throughout the engagement of the various contractors, the Council must comply with its obligations of obtaining best value, under the Local Government Act 1999 and ensure that best value has been, and will continue to be, obtained for the Council.
37. Any wayleaves to be granted in relation to the works must be approved in accordance with the Council's Property Procedure Rules and the Property Services scheme of delegation.
38. The access road will be constructed by the Council in order to fulfil a contractual obligation rather than in the exercise of the Council's highway authority functions. Accordingly and following the principle in *Barlow v Wigan MBC* [2020] EWCA Civ 696, the access road will not be deemed to be highway maintainable at public expense pursuant to Highways Act 1980, s36. It is proposed that the costs of maintaining the access road will be met through service charges imposed on tenants of the estate either through existing service charge provisions, agreed amendments or incorporation of appropriate service charge provisions in new leases granted by the Council. A

review of existing lease provisions will be necessary to ensure there are adequate provisions to enable recovery of maintenance costs.

Workforce Implications

39.n/a

Property Implications

40. It is noted that this report is issued as a result of legal obligations placed on the Council as the result of its acquisition of the Stonehill Estate in 2017. The contractual obligations under Schedule 4 "Post-Completion Works" means to build an access road from Silvermere Drive to Rivermead Road for the Aytan Family development and bear the costs of providing the main surface and foul drainage, mains water, gas and electricity to these sites.

41. To fulfil its contractual obligations, the Council has been taking action to ensure that all utilities are installed pre-road construction and finishing minimising the likelihood of the surface having to be disturbed and, therefore, extending the road's life. It is also noted that should any works be required, these will be recovered as far as possible as detailed in leases from the Council's tenants on the East Bank, minimising any cost to the Council. Provision is being made regarding the utility provision pre-road finishing.

Options Considered

42. These are provided in Appendix 1 (Confidential Appendix).

Conclusions

43. It is recommended that the Executive Director, Place Department, approves the delivery of the aforementioned Access Road to fulfil the Council's contractual obligations as stipulated in the sale agreement pertaining to the purchase of Stonehill Business Park in June 2017.

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Appendices

Appendix 1 – Confidential Appendix

