



**Notice of meeting of  
Barbican Ad Hoc Scrutiny Committee**

**To:** Councillors Looker (Chair), Firth, King, Morley, Watt and Taylor (Co-opted Non-Statutory Member)

**Date:** Wednesday, 16 July 2008

**Time:** 3.30 pm

**Venue:** The Guildhall, York

**AGENDA**

**1. Declarations of Interest**

At this point, members are asked to declare any personal or prejudicial interests they may have in the business on this agenda.

**2. Minutes**

(Pages 3 -  
6)

To approve and sign the minutes of the meeting of the Barbican Ad Hoc Scrutiny Committee held on 28 May 2008.

**3. Public Participation**

At this point in the meeting members of the public who have registered their wish to speak regarding an item on the agenda or an issue within the Committee's remit can do so. The deadline for registering is Tuesday 15 July 2008 at 5.00 pm.

**4. Final Report**

(Pages 7 -  
12)

To consider the final report of the Barbican Ad Hoc Scrutiny Committee.

**5. Any Other Matters which the Chair decides are urgent under the Local Government Act 1972**

Democracy Officer:

Name: Simon Copley

Contact details:

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- E-mail – [simon.copley@york.gov.uk](mailto:simon.copley@york.gov.uk)

For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports

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- register by contacting the Democracy Officer (whose name and contact details can be found on the agenda for the meeting) **no later than 5.00 pm** on the last working day before the meeting;
- ensure that what you want to say speak relates to an item of business on the agenda or an issue which the committee has power to consider (speak to the Democracy Officer for advice on this);
- find out about the rules for public speaking from the Democracy Officer.

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### **Holding the Executive to Account**

The majority of councillors are not appointed to the Executive (38 out of 47). Any 3 non-Executive councillors can 'call-in' an item of business from a published Executive (or Executive Member Advisory Panel (EMAP)) agenda. The Executive will still discuss the 'called in' business on the published date and will set out its views for consideration by a specially convened Scrutiny Management Committee (SMC). That SMC meeting will then make its recommendations to the next scheduled Executive meeting in the following week, where a final decision on the 'called-in' business will be made.

### **Scrutiny Committees**

The purpose of all scrutiny and ad-hoc scrutiny committees appointed by the Council is to:

- Monitor the performance and effectiveness of services;
- Review existing policies and assist in the development of new ones, as necessary; and
- Monitor best value continuous service improvement plans

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City of York Council

Committee Minutes

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MEETING	BARBICAN AD HOC SCRUTINY COMMITTEE
DATE	28 MAY 2008
PRESENT	COUNCILLORS LOOKER (CHAIR), KING, MORLEY, WATT AND TAYLOR (CO-OPTED NON- STATUTORY MEMBER)
APOLOGIES	COUNCILLOR FIRTH

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### 1. **DECLARATIONS OF INTEREST**

Members were invited to declare at this point in the meeting any personal or prejudicial interests they might have in the business on the agenda.

Councillor Taylor declared a personal non-prejudicial interest in agenda item 4 (Interim Report) as he had attended Directorate of Environment & Development Services (DEDS) management team meetings at which the Barbican had been discussed, although not taken any part in decision making, and as the web designer for Save Our Barbican (SOB).

### 2. **MINUTES**

RESOLVED: That the minutes of the Barbican Ad Hoc Scrutiny Committee meeting held on 21 November 2007 be approved and signed by the Chair as a correct record.

### 3. **PUBLIC PARTICIPATION**

It was reported that there had been no registrations to speak at the meeting under the Council's Public Participation Scheme.

### 4. **INTERIM REPORT**

Members received an interim report on the Barbican Ad-hoc Scrutiny Review.

It was noted that there was a typographical error in the first objective of the review, at paragraphs 3 & 6 of the report, which should read:  
"To understand why the contract in relation to the sale of the Barbican site was not signed, sealed and delivered until *after* May 2003."

Members discussed the problems that had led to the initial delays with sale of site. They expressed the view that it was realistic to take two years to formulate a proposal and that it was not unreasonable for a new administration to exercise its democratic right and change the proposal, although the risk assessment of reopening the process may not have been

adequate. They also concluded that there was no evidence to suggest that use of an external project manager would have been beneficial.

Members then agreed to amend the following parts of the report:

- To reword paragraph 21 to read, “A consultation leaflet was issued in March 2003 and the results were not fully available until after the election, which, in turn, delayed the signing of any contractual agreement”;
- To reword paragraph 22 to read, “The consultation document pointed out that there would be no fitness or creche facilities with the county standard pool. There was a mixed response to the consultation leaflet issued in March 2003. Although the results broadly supported the refurbishment and renewal of the Barbican, there was some criticism of the lack of community and play facilities and the level of fitness equipment. The new administration wanted to revisit the capital receipt to allow it to fund the refurbishment of the other two pools”;
- To reword paragraph 15 to read, “The incoming administration in 2003 decided to renegotiate the agreement and re-run the consultation process, so there was a different package which would address the capital receipt issue, and this further delayed the final decision being taken”;
- To delete paragraph 16;
- To add the words, “and also reflected the Executive’s view of the outcome of the consultation process”, at the end of paragraph 18.

Members then agreed that decisions taken in relation to the sale had resulted in a loss of capital receipt to the Council. They concluded that this had been due to the nature of the transaction, the changes to the brief, the lack of an Environmental Impact Assessment, and the lack of periodic reviews of the project, including updates to the risk assessment, especially given the speculative nature of land values. They agreed that best value was not achieved, taking the project as a whole, although each decision had been taken in good faith.

Members also expressed the view that there might have been a more effective way of dealing with the protest movement and recommended that the Council should review the way it handles objections to schemes.

- RESOLVED: (i) That the contents of the report be noted and the amendments to wording, as set out above, be agreed;
- (ii) That it be agreed that no additional information be required to progress the review;
- (iii) That it be agreed that there was a loss in capital for the Council as a result of the decisions taken and that best value was not achieved;
- (iv) That it be agreed that a draft of the final report be circulated first to the Chair and then to other Members

for comment, prior to being considered at a meeting provisionally scheduled for 5pm on 2 July 2008.<sup>1</sup>

REASON: To ensure full consideration of all the objectives, and the completion of the review within the agreed timeframe.

Action Required

1 To circulate draft final report.

GR

J LOOKER, Chair

[The meeting started at 5.00 pm and finished at 6.30 pm].

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## Barbican Ad-Hoc Scrutiny Committee

16 July 2008

### Final Report

#### Background

1. In July 2007, Scrutiny Management Committee (SMC) considered a scrutiny topic proposed by Cllr Joe Watt relating to the sale of the Barbican. SMC agreed that the scale of the topic as proposed was too wide ranging for review and requested Cllr Watt's attendance at their next meeting to discuss the possibility of a review tailored to learn key lessons and achieve improvements in handling future developments of a similar scale and nature.
2. Cllr Watt attended the meeting of SMC in September 2007 and agreed to revise his topic submission in order that it did not duplicate the work that was ongoing at the time as part of the review commissioned by the Executive on swimming provision in York.
3. In coming to a decision to review this topic, the Scrutiny Management Team recognised certain key objectives and the following remit was agreed:

'To investigate the arrangements surrounding the sale of the Barbican site, with the purpose of learning some key lessons for the future, in the event of developments of a similar nature or scope being proposed.

- To understand why the contract in relation to the sale of the Barbican site was not signed, sealed and delivered until after May 2003.
- To understand the public consultation process which took place and the resulting decisions.
- To assess whether decisions taken in relation to the sale resulted in a loss of capital to the Council.
- To understand the changes in land values with a view to establishing whether best value was actually achieved in this case.

#### Consultation

4. This review has been carried out in consultation with the Assistant Director of Lifelong Learning & Leisure, the Head of Property Services, Political Group Leaders i.e. those involved in the decision making process relating to the Barbican, and representatives of the Save Our Barbican Group and the Barbican Action Group.

## **Information Gathered**

5. In order to understand the full sequence of events leading to the Barbican sale, The Committee were given copies of all the reports previously presented at formal decision making meetings together with the minutes of those meetings. They then held a number of informal meetings where they met separately with officers, Members and representatives of the local action groups, to discuss their understanding of the events and to ask a number of questions.
6. From this process the Committee were able to clarify the following information:

### **To understand why the contract in relation to the sale of the Barbican site was not signed, sealed and delivered until after May 2003**

7. In 2001 sales particulars for the site were issued, and 11 bids were received. Five of these were long listed and invited to make further bids based on a number of objectives. Four schemes were submitted as a result of this process from which two were short listed. In November 2002, Barbican Venture Ltd (BV) was selected as the preferred developer. This was a company formed for this particular project with the intention of building a serviced residential and two hotel site and refurbishing and selling the Kent Street car park. A county standard pool at no cost to the authority was part of the deal (to be operated by Cannon Leisure) and refurbishing the Barbican Centre (to be operated by Absolute Leisure).

## **Issues Arising**

8. While the council was trying to assemble a workable scheme only a limited amount of consultation was done with a small number of representatives. As there was opposition within the Council to the BV scheme and bid, and the council's plans for the other two pools in the city, a decision was taken in February 2003 to launch a city-wide public consultation prior to the signing of any contractual agreement, to ensure the proposals were broadly publicly acceptable.
9. A consultation leaflet was issued in March 2003 which pointed out that there would be no fitness or crèche facilities with the county standard pool. The results of the consultation were not fully available until after the election period, which in turn, delayed the signing of the agreement.

### **To understand the public consultation process which took place and the resulting decisions**

10. There was a mixed response to the consultation leaflet. Although the results broadly supported the refurbishment and renewal of the Barbican, there was some criticism of the lack of community and play facilities and the level of fitness equipment. The new administration wanted to revisit the capital receipt to allow it to fund the refurbishment of the other two pools in the city.

11. The incoming administration in 2003 decided to continue running the Barbican pool as a Council service whilst they renegotiated the agreement with BV and re-run the consultation process in order to gauge public opinion on their alternative package which would address the capital receipt issue. This further delayed the final decision.

### **Issues Arising**

12. During the period of renegotiation, the Council received external legal advice that it would be illegal to allow BV to build the pool as part of the development bid. It was advised that even though BV's intention was to gift the pool to the City, the contract to construct the pool would have to be let by the Council having been tendered in accordance with European procurement rules.
13. A further public consultation was carried out in July 2003 on a revised package which asked whether residents preferred a community pool with considerable investment in other city pools, or a county standard pool with fewer resources available for the other pools. The result was marginally in favour of the community pool, and this was selected by the Executive in September 2003.
14. BV responded to the results of the consultation by submitting a revised application and a decision was taken not to consult on that revised submission as it would be subject to the planning process and it also reflected the Executive's view of the outcome of the consultation process.

### **To assess whether decisions taken in relation to the sale resulted in a loss of capital to the Council & To understand the changes in land values with a view to establishing whether best value was actually achieved in this case**

15. In October 2003 an archaeological survey showed that parking for the apartments and hotel could be put in an undercroft under the buildings. BV became Barbican Venture (York) Ltd and submitted a new scheme and offer.
16. As part of their new scheme, they increased the number of apartments and included a new 4 star hotel. They also moved the council's community pool on to the Kent Street coach park site, requiring a third of the car park to be demolished. The revised scheme was accepted by the Council's Executive in December 2003.
17. In February 2004 the executive agreed to split the sale of the site into two contracts. The residential and hotel sites and the Kent Street car park to be sold to Barbican Venture and a lease of the auditorium to Absolute Leisure Ltd.

### **Issues Arising**

18. The Save our Barbican Group (SOB) started in spring 2003 when the consultation document was issued, and things intensified following the enlargement of the residential development. SOB's aim was to stop the development, to enable a rethink and consideration of other alternatives, with

proper consultation. This aim was not achieved and ceased to be possible at the granting of planning permission.

19. In 2004, SOB took legal action due to the Council not having carried out an Environmental Impact Assessment (EIA) as part of the planning process. This eventually led to judicial review by which time, it was too late for the Council to get an EIA as this was needed prior to planning approval. The advice given to the Council at the time, was that the judicial review would only take six months. But, when SOB lost the judicial review, they chose to appeal as they felt it would be of national importance to other environmental groups. They then had to fight a decision not to grant them legal aid which they won. Having got financial aid, their original appeal was heard but it was unsuccessful. This series of events could not have been predicted in advance.
20. It is recognised that the original scheme could have been built had the delays not occurred, as it was a good time to sell property and the best possible offer had been made. But, by the time the judicial review was rejected in 2005, the property market had begun to dip. As a result, BV submitted a revised lower offer which the Council refused.
21. Subsequently, there was a thorough review as to whether CYC should have gone out again to tender (audit report). It found that as the market was dropping and not many companies were interested in this mix of development, the council would have been worse off.

## **Analysis**

22. Having considered all of the information gathered the Barbican Ad-Hoc Scrutiny Committee discussed the problems that had led to the initial delays with sale of site. They expressed the view that it was realistic to take two years to formulate a proposal and that it was not unreasonable for a new administration to exercise its democratic right and change the proposal, although they recognised that the risk assessment of reopening the process may not have been adequate. They also concluded that there was no evidence to suggest that use of an external project manager would have been beneficial.
23. The Committee agreed that the decisions taken in relation to the sale had resulted in a loss of capital receipt to the Council. They concluded that this had been due to the nature of the transaction, the changes to the brief, the lack of an Environmental Impact Assessment, and the lack of periodic reviews of the project, including updates to the risk assessment, especially given the speculative nature of land values. They acknowledged that best value was not achieved, taking the project as a whole, but recognised that each decision had been taken in good faith.
24. Finally, the Committee expressed the view that there might have been a more effective way of dealing with the protest movement and agreed to recommend that the Council should review the way it handles objections to schemes.

## **Options**

25. Having regard to the remit for this review and the information contained within this report, Members may agree to make the recommendations below in full or in part, or agree some alternative recommendations.

## **Corporate Direction & Priorities**

26. It is recognised that this review supports the following direction statements as set out in the Council's Corporate Strategy:
- We will listen to communities and ensure that people have a greater say in deciding local priorities
  - Our ambition is to be clear about what we will do to meet the needs of our communities, and then deliver the best quality services that we can afford
27. The review also provides an opportunity for the Council to consider the procedures followed and the decisions taken at the time of the sale of the Barbican, in order to identify ways of improving what we do, in line with our Corporate Values.

## **Implications**

28. There are no Financial, HR, Equalities, Legal, Crime and Disorder, ITT or other implications associated with the recommendation within this report.

## **Risk Management**

29. There are no risks associated with the recommendations within this report.

## **Recommendations**

30. In light of the above options, Members are asked to agree that:
- i. it was realistic to take two years to formulate a proposal
  - ii. it was not unreasonable for a new administration to exercise its democratic right and change the proposal
  - iii. although each decision taken in relation to the sale had been taken in good faith, the delays in making those decisions and the shift in land values , had resulted in a loss of capital receipt to the Council
  - iv. best value was not achieved taking the project as a whole, even with recognising the reasons outlined in paragraph 23
  - v. as there might have been a more effective way of dealing with the objection groups, the Executive should commission an officer report which sets out a corporate approach for the Council for dealing with them

Reason: In order to reach a conclusion to the review within the agreed timeframe

**Contact Details**

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**Chief Officer Responsible for the report:**

Dawn Steel  
Democratic Services Manager

**Interim Report Approved**

**Date**

4 July 2008

**Wards Affected:**

**All**

**For further information please contact the author of the report**