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Mr B Woolley
Director of City Strategy
9 St. Leonard's Place
York
YO1 7ET

Direct line: 553312

Our ref:

Your ref:

Contact:

16th August 2006

Dear Mr Woolley,

03/04075/GRG4 Barbican Centre/Kent Street Car Park, Paragon Street, York YO10 4AG

I am writing to you as one of the joint applicants for the development of the Barbican Centre/Kent Street Car Park, Paragon Street, York, to request the amendment of the resolution of the Section 106 agreement requirement for this development to read:

- The developers to provide a capital sum of £6,385,000 to City of York Council, who will use this sum to deliver new and improved sports facilities for the city in line with the City's sports strategy, instead of as present to require details of the re-provision of a pool at Kent Street and other sports facilities and the bowling green.

Background

Following an initial market testing exercise the council received bids, in August 2001, from five short listed developers responding to a number of objectives including the construction of a pool, built to modern standards, and of sufficient size to accommodate all the existing user groups.

Subsequently in November 2002, Barbican Venture (York) Ltd. were chosen as the preferred developer and their bid comprised of a £3m capital receipt and a 25m "County Standard" pool to be owned and operated by the council.

In October 2003 legal advice was received, that as the council wished to have ownership of the pool and control over elements of its appearance and layout, this fell within the definition of "works procurement regulations" of the EC public procurement regime. As the value of the construction work and related procurement services were over the threshold limits, the building construction project would need to be advertised Europe wide. The Council's Executive on 16 December 2003 therefore authorised Property Services to secure tenders by following the EC procurement regime to deliver the Kent Street pool. This had the effect

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that Barbican Venture would not be responsible for constructing the pool and that the capital receipt from the land sale would be used to build the pool.

In October 2003 Barbican Venture, following an extensive archaeological survey which provided the opportunity for undercroft car parking for the proposed apartments and hotel, submitted a revised scheme. The scheme relocated the swimming pool to the coach park adjacent to Kent Street, the two star hotel became a four star hotel and apartments rose in number to 240. This resulted in an increase in the value of the capital receipt from £9.6m to £10.33m (less fees and costs of relocating customers) to be spent on the three pools and a better scheme overall in planning and leisure terms.

On 16 December 2003 the Council's Executive chose this latest scheme anticipating that the Council would enter into a contract with Barbican Venture for the delivery of the proposals with the exception of the construction of the pool which would be procured by the council.

It was further decided that the pool would close on 31 May 2004 ahead of the redevelopment. This date was set in order to give time to plan effectively for the relocation of customers and redeployment of affected staff.

Following extensive pre-application discussions over a period of 2 months, Barbican Venture and the Council submitted joint applications for the redevelopment of the Barbican site and the council submitted an outline application for the new pool site on 22 December 2003.

In summary, at the time of the planning application and the subsequent Planning Committee decision on 22 April 2004 to approve Barbican Venture's scheme, Barbican Venture would not be involved in constructing the pool and the council's Executive had made a clear commitment that the capital receipt from the Barbican land sale would be used as a contribution towards the total cost of the rebuild/refurbishment of the city's three pools.

The protracted delay throughout 2004/5 caused by legal action brought by the "Save our Barbican" group led directly to Barbican Venture's nominated house builder withdrawing and Barbican Venture being unable to proceed with the sale. A subsequent downturn in the apartments market in York, together with a substantial increase in building costs, made it impossible for Barbican Venture to pay a similar price for the land.

In February 2006 the Council's Executive however did accept a revised offer for the Barbican land, which following subsequent negotiations is £6,385,000. This offer provides for a scheme in keeping with the original planning application:

- 240 apartments, including 60 affordable
- a 4* hotel linked to the Barbican Auditorium to provide a large scale conferencing facility

and, subject to the approval of a new planning application on the site of the previously proposed Kent Street swimming pool:

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- a budget hotel

The Executive confirmed that the whole receipt (which would include a further £1,850,000 if the sale of the coach park site and the Auditorium completed) would be used to fund the council's revised Leisure Facilities Strategy, that subject to further feasibility work, would include:

- the refurbishment or relocation of the Edmund Wilson Pool
- the retention of the Yearsley Pool, with a planned regime of repair and maintenance works, and
- subject to successful conclusion of ongoing 'partnership' discussions with the University, a contribution to the 'competition standard pool' on the University site

City of York Council

During the interim until the Leisure Facilities Strategy is complete City Sports and Active Leisure has put the following arrangements in place:

- Alternative arrangements for sports hall users were made with All Saints School. These facilities came on stream in November 2004. Clubs, courses and fitness classes were scheduled into the facilities at All Saints with the remaining time being made available for casual bookings. Attendance numbers have stayed the same at All Saints as they were at the Barbican Centre. Some of the clubs have had more enquiries about joining.
- A replacement bowling green has been provided at the Retreat on Heslington Road.
- The climbing wall which was part of the sports provision has been replaced by a new state-of-the-art facility at Oaklands School (opening 2 September 2006)
- The majority of swimming groups and classes were successfully relocated with attendance remaining the same or increasing. With respect to swimming lessons the swimming programmes at Edmund Wilson and Yearsley pools were reviewed and extra swimming lessons were provided at both pools creating 310 lesson spaces (compared to 374 at the Barbican pool). 8 out of 10 school sessions were relocated.
- Alternative arrangements for gym members were negotiated with two commercial gyms in the city.

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The sale and redevelopment of this land was always intended to be the route to delivering the city's desire to maintain swimming facilities on three sites in the City. The Council as Leisure Authority had planned to refurbish Edmund Wilson and Yearsley Pools and build a community 25m pool on the Kent St site as detailed in application 03/04082/GRG4. However since the original application there has been a number of financial and strategic changes that make this no longer viable.

- The sale of the land is now not generating sufficient resources to meet all of the Council's original leisure requirements. This means that we can either provide for the new pool on the Kent Street site **or** replace and refurbish our existing facilities at Edmund Wilson and Yearsley.
- The City's Sport & Active Leisure Partnership *Active York*, of which the council is a partner have produced a sports facilities strategy that highlights the need for a competition standard facility in the South or East of the City (copy attached).
- The Council has now clearly identified that its priority for swimming pools has to be to safeguard existing levels of provision before creating new. This strategy was adopted by the Council in February 2006 (copy of paper attached).
- The Council is now in discussion with the University of York over a possible partnership arrangement to provide an open access 25m x 25m pool within the university campus. We recognise that this is not currently a certainty but believe it would be financially unsound to develop a small pool within a mile of the campus with the knowledge that a larger, better equipped facility is being considered. Such a facility would clearly attract users from the community pool making the capital investment disproportionate to the level of community benefit derived, and make the community pool no longer viable in revenue terms. The only sensible option available to the Council is to continue partnership discussions to a conclusion and invest in sports facilities accordingly.

The Council's Executive is happy to commit the full capital receipt for the site to the replacement/ refurbishment and provision of sports facilities in the city. I am also fully satisfied that the other sports relocation obligations mentioned in the original planning report (including the reprovision of the bowling green) have all been complied with completely, as stated above.

If the wording of this obligation is not amended the Barbican Venture development may not proceed and there is no certainty that a new developer can be found to replace this scheme. In the event a new developer did replace Barbican Venture it is known that this will take up to 2 years to reach this stage of the development and the capital receipt would be substantially reduced. There will therefore be a number of lost opportunities to the City in addition to the leisure ones including.

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- A 4* hotel and conferencing facilities and the associated employment which were identified at the original application stage as being in considerable demand in the City.
- Sixty much needed affordable housing units on the edge of the city centre. York's Housing needs survey 2002-2007 identifies the need for 950 new affordable homes per annum. At the current time there are few developments being presented for planning and much of the proposed provision is tied up in complex inquiry processes. This development has a site, a builder and conditional approval to build and is therefore considered to be valuable in terms of meeting our affordable housing targets.

Barbican Venture (York) Ltd.

Barbican Venture is aware that the Council's ambitions for swimming facilities in the city have changed since the original application was considered. Since the review of policy in February 2006 it is no longer appropriate to link this development with the construction of a swimming pool on the current Kent Street coach park.

I believe that, if the Section 106 condition is not amended Barbican Venture will be unable to complete the purchase of the Barbican land, for the agreed sum of £6,385,000. Accepting the Council's intention to use this receipt to fund future investment in its leisure facilities Barbican Venture cannot be obligated to provide or build a swimming pool. The Council has already made the decision, in order to comply with EU procurement regulations, to take responsibility for the provision of the pool. If Barbican Venture do not purchase the Barbican Land I believe that this would be a significant loss to the City both in terms of the loss of capital for reinvestment in the City's sports facilities and the loss of a high quality hotel and residential properties (including 60 affordable units).

Absolute Leisure Limited

Initially in the marketing of the Barbican land the Council sought bids from developers who could provide an experienced operator who would manage the Barbican Auditorium on behalf of the developer and provide a quality entertainment programme. The Barbican Venture bid included Absolute Leisure Limited (ALL) as their operator.

In February 2004, the council's Executive approved ALL as an acceptable operator and offered a separate conditional development agreement and lease to the company. This had the effect of separating ALL from Barbican Venture's development proposals. None of the obligations in the approved form of the Section 106 agreement specifically relate to the Auditorium and it has been agreed between the Council's Executive and Barbican Venture that all the financial contributions due under that agreement would be funded by Barbican Venture.

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I therefore seek that any amendment to the Section 106 agreement specifically absolves ALL from being named as developer in the agreement.

I trust that, in considering the content of this letter, you can see the merits in the proposed amended resolution both for this development and for the future of sports provision in the City.

Yours sincerely

Neil Hindhaugh
AD: Head of Property Services