



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, 28 May 2008

Time: 5.00 pm

Venue: The Guildhall, York

A G E N D A

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 - 4)

To approve and sign the minutes of the meeting of the Barbican Ad Hoc Scrutiny Committee held on 21st November 2007.

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 27th May 2008 at 5.00 pm.

4. Interim Report (Pages 5 - 10)

To consider an interim report on the Barbican Ad-hoc Scrutiny Review.

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

Democracy Officer:

Name: Simon Copley

Contact details:

- Telephone – (01904) 551078
- E-mail – 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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If you would, you will need to:

- 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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Further information about what's being discussed at this meeting

All the reports which Members will be considering are available for viewing online on the Council's website. Alternatively, copies of individual reports or the full agenda are available from Democratic Services. Contact the Democracy Officer whose name and contact details are given on the agenda for the meeting. **Please note a small charge may be made for full copies of the agenda requested to cover administration costs.**

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If you have any further access requirements such as parking close-by or a sign language interpreter then please let us know. Contact the Democracy Officer whose name and contact details are given on the order of business for the meeting.

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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

MEETING	BARBICAN AD HOC SCRUTINY COMMITTEE
DATE	21 NOVEMBER 2007
PRESENT	COUNCILLORS LOOKER (CHAIR), FIRTH, KING, MORLEY, WATT AND TAYLOR (CO-OPTED NON-STATUTORY MEMBER)

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.

No interests were declared.

2. **PUBLIC PARTICIPATION**

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

3. **SCOPING REPORT**

Members received a report which set out a timetable for work and suggested officer involvement for the scrutiny review to investigate the arrangements surrounding the sale of the Barbican site and identify key lessons for the future in the event of developments of a similar nature or scope being proposed.

Members discussed the objectives for the review which had been agreed by Scrutiny Management Committee:

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

In relation to objective a), Members highlighted the need for information on the deal for the sale of the Barbican that had been agreed by the Executive in or around April 2003 and on the process by which this had been reviewed and a revised deal agreed after May 2003. They also requested information on the land involved in both the original and revised deals.

With regards to objective b), Members requested that information on the outcomes of the consultation processes should be provided and also reference made to consultation prior to May 2003 to set subsequent processes in context.

Members also commented on the need to explore the partnership and tendering process to investigate how the Council linked up with its developer partner. They requested copies of the District Auditor's report to provide some information in this regard.

Members then put together the following timetable for the next stages of the review:

- Provision of a briefing pack providing all of the necessary background material, including information on the original and revised deals, consultation processes and outcomes, and the District Auditor's report, with any further information being requested via the Chair;
- Informal discussions with the Assistant Director (Lifelong Learning & Leisure), Head of Property Services and appropriate officers from Finance to advise on contractual matters, to be held in January 2008, with notice of questions being provided in advance;
- A formal meeting in January or February 2008 to decide how to take the review forward, including whether to hold discussions with external organisations.

RESOLVED: That the timetable and officer involvement set out above be agreed.

REASON: To ensure compliance with scrutiny procedures, protocols and workplans.

Councillor J Looker, Chair

[The meeting started at 5.00 pm and finished at 5.50 pm].



Barbican Ad-Hoc Scrutiny Committee

28 May 2008

Interim 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 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 May 2003

19. 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

20. 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 the contracts, to ensure the proposals were broadly publicly acceptable.
21. A consultation leaflet was issued in March 2003 and although the results came in during the pre-election period. It appears that a decision was taken not to make them available publicly until after the election, which, in turn, delayed the signing of the contract.

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

22. 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. At that time, two issues came to light:
 - The inclusion of a county standard pool, with spectator facilities, made it difficult to provide the requested fitness facilities

- The capital receipt would most likely be insufficient to refurbish the other pools in the City
15. The incoming administration in 2003 decided to run the pool as a Council service and renegotiate with BV on a different package which would address the capital receipt issue.

Issues Arising

16. 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.
17. 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.
18. 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.

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

19. 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.
20. 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.
21. 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

22. 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.

23. 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.
24. 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.
25. 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.

Options

26. Having regard to the remit for this review and the information contained within this report, Members may
 - Request additional information to support the review
 - Agree that they now have all of the necessary information in order to make some final recommendations

Corporate Direction & Priorities

27. 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
28. 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

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

Risk Management

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

Recommendations

31. In light of the above options, Members are asked to:
- i. Note the contents of the report and agree any amendments
 - ii. Agree what if any, additional information is required to progress this review
 - iii. Consider whether there was a loss in capital for the council as a result of the decisions taken
 - iv. Consider whether best value was achieved

Reason: To ensure full consideration of all the objectives, and the completion of 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 19 May 2008

Wards Affected:

All

For further information please contact the author of the report

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