

## COMMITTEE REPORT

**Committee:** Planning Committee                      **Ward:** Fishergate  
**Date:** 28<sup>th</sup> September 2006                      **Parish:** Fishergate Planning Panel

**Reference:** 03/04075/GRG4  
**Application at:** Barbican Centre/Kent Street Car Park Paragon Street York YO10 4AG  
**For:** Redevelopment including 240 apartments, hotel, alterations to Barbican Centre, alterations to existing multi-storey car park  
**By:** City Of York Council And Barbican Venture (York) Ltd  
**Application Type:** General Regulations (Reg4)

### 1.0 PROPOSAL

1.1 This application is being brought back to Committee following a request from the applicant to vary one of the terms of the proposed Section 106 legal agreement.

1.2 The application for the development as described above was presented to Committee in April 2004 (Committee report attached as appendix 2). Committee resolved that the application be approved provided it was not called in for a decision by the Secretary of State, and the implementation was subject to a legal agreement requiring a number of obligations to be fulfilled. At the same meeting a separate outline application for the erection of a community swimming pool at Kent Street was approved, also subject to referral to the Secretary of State. The relevant Minutes of that meeting are at appendix 3.

1.3 The Government Office for Yorkshire and the Humber confirmed on the 22<sup>nd</sup> June 2004 that the decision in relation to the application should be made by the Council. Planning permission was issued on 21<sup>st</sup> September 2004 (appendix 4).

1.4 Because of the Council's controlling interest in the land, a condition of any sale of the Barbican site would be the completion of the Section 106 agreement. Thus the Council could ensure that whilst the planning permission had been issued, it could not be implemented without the legal agreement being completed. The Section 106 agreement is still outstanding.

1.5 An application to vary conditions 3, 4, 5, 6, 10, 13, 17, 19 and 21 of the original permission, to allow commencement of work on site prior to compliance with these pre conditions was granted in March 2006, following the referral of the application to the Secretary of State who decided not to call in the application (reference 05/00882/GRG4). It was resolved that the outstanding S.106 should also make reference to this application, although the terms of the S.106 were not altered. (Decision notice at appendix 5). A further application to vary conditions to enable the development of the site to be phased has been submitted and is also on this agenda for consideration (application reference 06/00526/GRG4).

1.6 The applicant has now come forward with a proposal to amend the wording of one proposed obligations in the Section 106 from requiring: -

'Details of the reprovision of sports facilities within the city including the Bowling Green and development of the community swimming pool considered under application 03/04082/GRG4;'

to

'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 Council's sport's strategy, instead of at present to require details of the reprovision of a pool at Kent Street and other sports facilities and the bowling green.'

1.7 The applicant's letter requesting the amendment is attached at appendix 6, with the accompanying documents, namely the approved Executive report from 7th February 2006 and extract from the York Active Leisure Strategy, at appendices 7 and 8 respectively.

1.8 In view of the length of time since the previous report to Committee regarding the application and the level of interest in this issue, it was considered appropriate to carry out an extensive reconsultation on this request. Over 660 letters have been distributed to residents, site notices have been erected and a notice has been placed in the York Press. The overall expiry date for the publicity was 13<sup>th</sup> September 2006.

## **2.0 POLICY CONTEXT**

2.1 Development Plan Allocation:

DC Area Teams East Area (1) 0003

City Boundary York City Boundary 0001

Schools Multiple (Spatial)

Areas of Archaeological Interest City Centre Area 0006

2.2 Local Plan Policies:

CYT20

Planning agreements

CYC3

Change of use of community facilities

## **3.0 CONSULTATIONS ON THE REQUEST TO VARY THE SECTION 106 RESOLUTION**

3.1 **Internal**

### City Development

States the key policy issue to be considered relates to the impact of the loss of the existing facility and anticipated future need.

1. PPG 17 in para 10 indicates that the sites of existing recreational buildings should not be built on unless an assessment has been undertaken which has clearly shown they are surplus to requirements. In the absence of such an assessment the applicant is expected to demonstrate that this is the case.

2. Policies L1b and C3 of the draft Local Plan also impose a need to prove prior to redevelopment that a facility is no longer required or an appropriate alternative serving the same catchment exists.

The original version of the S106 agreement clearly sought to address points 1&2 through a requirement to provide details of the reprovion of sports facilities. If this element of the S106 is to be altered the Council would need to be convinced that the proposed wording again adequately addresses the points highlighted. A detailed view relating to both these points should be sought from the Council's Learning, Culture and Children's Services Directorate.

#### Learning, Culture and Children's Services (reported in full)

'The City's Sport & Active Leisure Partnership *Active York* commissioned research into supply and demand for facilities in the City. This has included analysis for swimming pools using national participation rates and an assessment technique designed with Sport England.

This assessment has identified that; based on national participation rates, by 2015 the City will require 1,945 m<sup>2</sup> of open access public pool space. (This should be in appropriate training/ swimming pool environments rather than leisure or learner pools).

Edmund Wilson Pool, Yearsley Pool & the training pool at Waterworld currently cater for 59% of this demand. The remainder is currently unmet. There are 5 pools in the City that offer access for club bookings. However these are well used and they have very little capacity to cater for additional swimmers. The bulk of the remaining demand must therefore be met by providing new facilities.

Without significant investment, by 2015 both Yearsley and Edmund Wilson Pool will close. If the council is forced to commit its capital to building a 25m community pool on the Kent St site this committee has no way of ensuring that provision at the other sites can be retained. A new community pool would cater for only 13% of the City's total demand for swimming facilities, and may (with Waterworld) be the only public pool available in the City. Reinvestment in Yearsley, a new pool or refurbished Edmund Wilson pool to the west of the City and a partnership with the University to provide a competition standard pool would cater for 91% of the total demand for swimming.

There is no certainty that a swimming pool at the University can be delivered either by the University alone or in partnership with the Council. However until it becomes clear that it cannot, it would be inappropriate to bind the Council (or any developer) to building a pool that would compete directly for the same customers, and would quickly become unsustainable if a competition standard pool opened.

#### *Sports Strategy*

In June 2005 the council adopted *Active York's* "Blueprint for Action for sport & Active leisure" and considered the implications its contents had for sports facility planning. Most significantly this document says:

Where possible we must enhance existing significant sports sites e.g. York R.I., Burnholme Community College, Clifton Park and the University rather than placing new City wide facilities on isolated sites. Rewording the planning condition to allow investment in the existing sites and a partnership with the University would be entirely consistent with this policy.

Active York, of which the Council is a member has also published their priorities for action for

meeting the swimming demand in the city, these include:

- Offer support and assistance to a scheme to create an 8 lane 25m pool with teaching/ training pool suitable of hosting county level competition.
- Work with and represent local residents in negotiations with other pool providers to allow and encourage public access to a new range of facilities. This may also require seeking funding for facility improvements, staffing or other supporting costs.
- Work with the council to ensure that any re-provision/ replacement of community pools involves the increase in overall provision & provides high quality facilities that fill an identified gap in provision.
- Assist and advise on other schemes that offer the opportunity to increase pool facilities in the city; and support those that offer accessible, sustainable and affordable provision.

Allowing the Council to redevelop the existing pools and pursue a partnership for delivering a competition pool would make a significant contribution to the work of Active York and would be consistent with their action points above.

As we have shown that there is a demand for additional swimming facilities in the City, the provision of new pools must be seen as a positive step. However this should not be at the expense of existing well-used and popular facilities. I would therefore recommend that, to provide the best possible opportunity for sports facility improvements in the City the original planning obligation be replaced by the clause suggested by Sport England. ‘

### **3.2 External**

#### Fishergate Planning Panel

Objects strongly with the following comments:-

- i) The Panel states the proposal is radical departure from the scheme approved and changes the character such that it cannot be considered as a variation. It states a full consultation should take place with a full application being submitted. The alternative buildings including another hotel proposed here has not been the subject of any consultation. Also the Panel was not formally consulted on this variation (*NB letter with request letter attached was sent to the Panel*).
- ii) The Local Plan states if sports facilities are to be lost they must be replaced in the same area, such that this variation would be a departure from the Plan.
- iii) Sport England have similar requirements for replacement facilities
- iv) The impartiality of the Council may be called in question if it will gain financially from the sale. Also the Council is joint developer so its position is further compromised. The matter should be called in for consideration by the Planning Inspectorate.

#### First Stop York

Support the variation to the terms of the S106 Legal Agreement and is concerned about risks to the Barbican Venture development, including the proposed 4 star hotel and conference facility, as outlined in the applicant's letter. The First Stop York tourism partnership states that it remains very interested in the plans of Barbican Venture and of Absolute Leisure Ltd. for the Barbican Centre development and the auditorium, and would welcome further information as the plans progress.

## Nearby Residents and Other Interested Parties

At the time of writing 75 letters/ emails with comments have been received from. In addition a petition sheet circulated by the Labour Party has been signed by 22 residents. The comments and concerns received can be summarised as follows:-

- i) The Local Plan states that where sporting facilities are lost to development then adequate replacement should be provided in the same area. If this is allowed effectively the Council will lose a prime city centre site to development without protecting and safeguarding the interests of the residents and community in York.
- ii) The complex belongs to the people of York, and even less money will be paid for it now by the developers, without any facilities benefiting poorer, older people etc without transport to reach Acomb, Yearsley etc.
- iii) Local residents in the inner area of York and City Centre workers have been and will be left without valuable public swimming facilities or a gym if this variation is agreed.
- iv) Community swimming pools are a basic service a Council can provide, and one which Council Tax payers expect. Smaller towns are able to provide affordable public pools.
- v) The alternative suggestion is a remote possibility i.e. a swimming pool at the University proposed Heslington East site. This is not in the York central area and is not at all certain as the whole Heslington East proposal is subject to a Public Inquiry. The University authorities describe talk of a swimming pool as part of their expansion plans as merely an aspiration. This does not satisfy the Local Plan.
- vi) The proposal is such a radical departure from the scheme that was passed by the Planning Committee that it changes the character of the scheme by the back door. The variation, as proposed, has not been the subject of any public consultation.
- vii) No planning application for a hotel on the Kent street site has been published and no details have been made available to the Public. A full consultation on this aspect should take place before conditions are waived to allow a new scheme to proceed.
- viii) The morality and acceptability in legal terms of the Planning Committee who is joint applicant granting itself a variation of the agreement is questioned.
- ix) Local children have been deprived of a swimming facility since the Barbican pool closed and additional location have been incurred by schools transporting children, both for parents and for schools, to other pools which have become overcrowded. Swimming is important to assisting in the adoption of healthy lifestyles and reducing obesity particularly in children, which is a national concern.
- x) The developer should be made to abide by the original agreement; the pool should be built by the developer on Kent Street and not by the Council.
- xi) The proposal is counter to the Government's initiatives to promote a healthier population.
- xii) Residents in the south of the City have already been deprived of facilities for too long, and the proposal is contrary to the Council's transport policy since people will not be able to walk to the new facility.
- xiii) The proposals favour students at the University over permanent residents in this area.

xiv) There are two rivers in this part of the City and it is therefore essential that local children are able to swim.

xv) The pool at Kent Street should be seen as an income generator and marketed to school parties, and tourists visiting the City.

xvi) There is insufficient information regarding what would be built instead of a pool at Kent Street to be able to approve this amendment.

xvii) Insufficient time has been given to the consultation regarding this amendment, i.e. 3 weeks in the holiday period.

### Sport England

States it has treated the consultation as non-statutory. It states that the proposal continues to ensure replacement is provided, although the draft wording lacks clarity as to when the money would be made due, what replacement sport provision the Council would provide, how this would be ensured and when and where the facilities would be provided. An alternative wording to that suggested by the applicant is put forward as follows: -

‘Upon signing of the revised agreement, the developers provide the City Of York Council a capital sum of £ 6,385,000 who then undertake to use this to deliver new and improved sport facilities within 4 years of receipt of this money. Facilities to be provided to accord with the City’s Sport and Investment Plan (February 2006) in substitution for the re-provision of a pool at Kent Street. Improved sport facilities to include a contribution towards the construction of a 25m 8-lane community swimming pool, built to competition standards’.

Sport England states this would better safeguard the interests of the local community with a greater level of definition regarding the replacement expected, and that the revised wording would demonstrate a greater commitment to replace facilities lost and so would accord with Sport England Policy Objectives 7 and 8 (December 2005). These are:-

“7 To support the development of new facilities, the enhancement of existing facilities which will secure opportunities to take part in sport and which can be achieved in a way which meets sustainable development objectives”.

“8 To promote the use of planning obligations as away of securing the provision of new or enhanced places for sport and a contribution towards their future maintenance, to meet the needs arising from new development”.

### York Georgian Society

States its objections throughout the continuing evolution of the scheme have not changed. It is suggested the scheme now be withdrawn, reconsidered, redesigned and resubmitted when viable proposals have merged. The Terry’s redevelopment may change the requirements for affordable housing and a 4 star hotel on the site.

The appropriateness of the Council granting itself permission to vary the S.106 is questioned, and whether it is appropriate for the developer to specify how the capital sum is used. The Society queries whether the agreement can be changed as a result of changed circumstances, and for how long amendments can continue to be made on an application as this is not normally acceptable. It concludes that an overall scheme should be developed and that this application should be withdrawn.

## **4.0 APPRAISAL**

### **4.1 Key Issues :-**

- Acceptability of alternative obligation in planning terms and in relation to Council's Sports and Leisure Strategy.

### **4.2 Relevant Policy Context**

#### National Policy

The following Planning Policy Guidance Notes (PPGs) are considered of most relevance to this request:-

PPS1 (Delivering Sustainable Development) -sets out the Government's overarching planning policies on the delivery of sustainable development through the planning system.

PPG13 (Transport) - the note seeks to promote more sustainable transport choices for people, and to promote accessibility to jobs, shopping, leisure facilities and services by public transport, walking and cycling and seeks to reduce the need to travel especially by car in new developments. It offers guidance on the location of housing in town and city centres to promote more sustainable patterns of development and to make better use of previously developed land. Additional guidance is offered in relation to mix of uses on sites, design and safety.

PPG17 (Sport and Recreation) - Includes advice to local authorities to adopt a strategic approach to the provision of sports and recreational facilities, to protect open space for the community, to resist the loss of recreational provision and ensure facilities are accessible by a choice of modes of transport.

#### Statutory Development Plan (1956 York Town Map and North Yorkshire County Structure Plan).

The 1956 Plan is out of date and is considered to carry little weight in planning terms. The Plan designates the site primarily for Business use and shows the rest as a cattle market. The application is therefore technically a departure from the Development Plan and has been advertised as such in the consultation on this request.

The most relevant Structure Plan policies are as follows:

R1 - states provision will be made for the development of recreational, leisure and cultural facilities in locations accessible to both public and private transport where this is not detrimental to local interests.

#### Regional Spatial Strategy to 2016 (published December 2004)

S3 – states that development plans, strategies and investment programmes should take an integrated approach to development

SOC3 - states in developing strategies for retail and leisure development local planning authorities should undertake an assessment of need in their areas and apply the sequential approach set out in PPG6 to identify sufficient sites in or on the edge of existing town centres.

SOC4 - The contribution which sport and recreation makes to the health and well being of the community in the region should be reflected in development plans. Local planning authorities should inter alia:-

- 'b) Identify areas of deficiency of sport and recreation provision.
- c) Identify sites to meet the identified need, where appropriate, and provide policies to ensure that proposals for new or extended recreational and sports facilities:-
  - i) are located wherever possible within urban areas and in locations that are accessible by good public transport and other non-car modes or, where these need to be located near to existing facilities which are not well related to public transport, seek measures to increase access to the site by sustainable transport modes and minimise the impact of traffic and car parking;
  - ii) make use of previously-developed land wherever possible'

#### City of York Draft Local Plan

GP13 - expects developers to enter into planning obligations to provide for the infrastructure, archaeological, environmental and other significant consequences of a proposed development.

C3 - states permission will only be granted for the redevelopment or change of use of educational, social, health, community or religious facilities where (a) the proposal is of scale and design appropriate to the character and appearance of the locality, (b) it can be demonstrated that existing land or buildings are surplus to or no longer capable of meeting existing or future needs of the community, or it can be demonstrated that alternative acceptable sites for the existing use can be provided.

L1b – States permission will only be granted for the loss of a leisure facility where it can be demonstrated the either the need for the facility no longer exists or appropriate alternative facilities exist within the catchment area.

4.3 The swimming pool at the Barbican closed in 2004 and remains so. Some of the plant has been removed and the water has been drained. As stated in the original report to Committee, the loss of pool facilities without subsequent replacement would be contrary to Local Plan policies, and therefore unacceptable from a planning point of view. In the interim facilities have been made available in accordance with the statement of re-provision submitted when the application was presented to Committee in 2004. These included swimming lessons being relocated to Edmund Wilson, Yearsley and new Earswick pools. Some school sessions had been relocated to the Mount School's pool also the beauty treatment suite relocated to Edmund Wilson pool. The alternative provision had been discussed in detail with Sport England, with no objections being raised.

4.4 PPG 17 (para 33) states it is essential that local authorities have undertaken detailed assessments of needs and audits of existing facilities, and set appropriate local standards in order to justify planning obligations. Leisure Services consultation response points out that The City's Sport & Active Leisure Partnership *Active York* commissioned research into supply and demand for facilities in the City.

4.5 From the comments of the Lifelong Learning and Culture Directorate, it is clear that the existing pools are under threat of closure without significant investment, which would leave the City well short of the amount of pool space considered appropriate from the active York research. The report to the Executive (appendix 7) sets out the costs of providing a new community pool at Kent Street and improving facilities elsewhere, as summarised below: -

Usable capital receipt from sale: £6.385 m



Cost of Provision of replacement pool at Kent Street: £6 m  
Cost of refurbishment or replacement of Edmund Wilson Pool: £4 m  
Cost of ongoing maintenance programme at Yearsley Pool: £0.5 m

4.6 Given that the new Kent Street pool would account for all but £0.385 m of the receipt, a large proportion of the 59% demand of swimming facilities currently met (largely by Edmund Wilson and Yearsley pools) would be lost. A new community pool at Kent Street would account for almost all of the receipt from the sale of the Barbican site but would cater for only 13% of the City's total demand for swimming facilities.

4.7 The alternative put forward, for reinvestment or replacement of Edmund Wilson and maintenance of Yearsley, together with a contribution of approximately £2m towards an 8 lane 25 m competition standard pool, is supported by Sport England and would help to achieve the Active York partnership objectives. Therefore whilst the non-replacement of the Barbican pool at Kent Street appears on the face of it to represent a net loss of facilities, the circumstances and requirements for facilities have changed from the time of the first consideration of the scheme. It is no longer viable or desirable in terms of the City's wider swimming requirements in the medium to long term to insist upon the reprovision of a community pool in this location. Kent Street would not provide the 8 lane, competition standard pool for the City, as sought by Active York and Sport England.

4.8 The planning policies as mentioned above, in particular L1b of the Local Plan require either for it to be demonstrated that the existing facility is surplus to requirements or that alternative facilities are to be provided within the catchment area. The pool at the Barbican served a local population mainly drawn from the east and south of the City. Many were also students living in shared accommodation in the Fishergate area. A competition standard pool on the University campus would be within 1.5 miles of the previous pool and the two sites are linked by a bus route that is served by a bus every 6 minutes. Sports planning is carried out based on four geographical zones in the City, with both the Barbican site and the University campus in the South zone. Active York's analysis of swimming has identified the need for a competition standard pool but also indicates that this should be provided in the south or east of the City where there is the highest unmet demand.

4.9 A pool on the University campus would have a greater capacity than the previous or proposed pools at the Barbican site, it would cater for the local users of the previous pool, it would be accessible by bus for users of the previous pool who travelled to the pool via the City Centre and it would be readily accessible to residents of the east of the City. A Section 106 agreement has already been drawn up as part of the University proposals, which includes the provision of an 8 lane, 25-metre pool. It has been agreed that the pool would be provided as part of phase 1 of the development. Completion of the agreement is pending the outcome of the current Public Inquiry into the University development. However the contribution of approximately £2m towards the provision of a competition standard pool as previously identified would be available whatever the outcome of the Inquiry.

4.10 With regard to the concerns expressed by the Planning Panel, residents and the Georgian Society regarding the processing of this amendment, the Council as applicant is distinct from the Council as Local Planning Authority which is considering this matter. The amendment to the resolution has been publicised by the Planning Authority as considered appropriate, with a 3-week consultation period as normally applied to new planning applications. The Executive meeting which considered the Leisure Facilities Strategy paper attached at appendix 7 was a public meeting, and so the information regarding the alternative options for pool provision was in the public domain from that time.

4.11 Comments received including those from the Planning Panel refer to the provision of a hotel on the Kent Street site. Other than the outline application for a pool as considered and approved at the same time as the application at the Barbican, no application for a hotel or any other development had been received for Kent Street. Alternative development is not being considered with in this report, and any planning application would be the subject of consultation and would be determined upon it planning merits.

4.12 Comments received also refer to the number of amendments to the original scheme. The amendments have related to variations of conditions rather than of the details of the application, and have all involved formal applications to the Planning Authority which have been the subject of consultation and Committee consideration.

## **5.0 CONCLUSION**

5.1 Given the circumstances set out by the applicant and the context as explained by Learning, Culture and Children's Services in its consultation response, the amendment to require reinvestment in swimming facilities rather than the provision of a pool at Kent Street represents an appropriate way of best compensating for the loss of the facilities at the Barbican site. Continued insistence on reprovision at Kent Street would jeopardise the existing public pools. The partnership strategy supports the amended approach. The Sport England alternative to the applicant's wording would better define the terms of the reinvestment.

5.2 The original application technically constitutes a departure from the Statutory Development Plan (1956 Town Map). Also the Council is part applicant. The application was referred to the Government Office for Yorkshire and the Humber. For consistency it is recommended that this request to vary the resolution be referred to the Government Office.

## **6.0 RECOMMENDATION:**

i) That the wording of the Section 106 obligation relating to the reprovision of a swimming pool at Kent Street be amended to:-

'Upon signing of the revised agreement, the developers shall provide the City Of York Council a capital sum of £ 6,385,000 who then undertake to use this to deliver new and improved sport facilities within 4 years of receipt of this money. The facilities to be provided shall accord with the City's Sport and Investment Plan (February 2006) in substitution for the re-provision of a pool at Kent Street. Improved sport facilities shall include a contribution towards the construction of a 25m 8-lane community swimming pool, built to competition standards'.

ii) That the amendment be referred to the Government Office prior to completion of the agreement.

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