

---

## Meeting of the Executive

26<sup>th</sup> June 2007

Report of the Corporate Landlord

### **Notice of Motion to the Executive concerning re-provision of a pool on the Kent Street site.**

#### **Purpose of Report**

1. To provide officer advice to the Executive regarding a motion that has been submitted to the Executive for consideration and referral on to Full Council.

#### **Motion**

2. Council instructs Council officers as a matter of urgency to seek to retain the option of a pool on the Kent Street site. To enable the re-provision of a pool on the site this Council asks
  - a) That officers take no active steps to promote the sale of the site, save as might be required by law;
  - b) That officers enter into negotiations to withdraw from the agreed sale.
  - c) The £2m funding currently earmarked for a University Pool to be retained by the Council for pump priming a pool development at the Kent Street site or other appropriate city centre location.
  - d) Officers provide a report which examines alternative design solutions for a replacement pool including examining:
    - i) whether an agreement can be reached with the car park owner for car parking facilities to provide the customer parking off the coach park site, or
    - ii) the possible release of the end bay of the car park, and
    - iii) the redesigning of the previously proposed pool etc to provide front servicing to remove the need for the access road to the back.

Proposer: Councillor David Scott  
Seconder: Councillor Ruth Potter

3. Under Standing Order 11 (a) (i) Members may put a notice of motion direct to the Executive provided it is submitted no later than five clear working days prior to publication of the agenda for that meeting to enable the preparation of a suitable officer report from the relevant

directorate on the associated issues. The Executive is then asked to consider both the motion and the officer report and make recommendations accordingly to Council – in this case to the June meeting.

## **Information and Background**

4. Following an initial market testing exercise in August 2001 the council received bids from five short listed developers responding to a number of objectives including the construction of a pool of sufficient size to accommodate all the existing user groups.
5. In November 2002, Barbican Venture (York) Ltd were chosen as the preferred developer and their bid comprised a £3m capital receipt and a Competition Standard Pool to be owned by the council.
6. In May 2003, a new administration decided a consultation exercise should take place on the choice of providing either a Competition Standard Pool or a Community Pool. As the Community Pool was smaller it provided the opportunity of increasing the development area of the site and therefore an increased capital receipt, which could be made available for refurbishing the Edmund Wilson and Yearsley pools. The consultation came out in favour of the Community Pool and the Executive agreed to proceed with the option of Barbican Venture building a Community Pool on the Barbican site.
7. Legal advice was received, that as the council wished to have ownership of the pool, this fell within the definition of “works procurement regulations” of the EC public procurement regime, this had the effect that Barbican Venture were no longer to be responsible for constructing the pool.
8. Following an extensive archaeological survey, Barbican Venture submitted a revised development scheme which included an increase in the number of apartments and a 4 star hotel with undercroft car parking. The scheme also relocated the swimming pool to the Kent Street Coach Park. This gave an increased capital receipt that could be spent on the two other pools and a better scheme overall in planning terms. In December 2003 the Executive chose this latest scheme. 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 and planning permission was granted in April 2004.
9. A 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. The Executive accepted a lower offer from Barbican Venture for the Barbican land and acknowledged there was not sufficient resources to meet all of the original leisure requirements.

10. In February 2006, Executive therefore decided that the smaller receipt should be used to fund a revised Leisure Facilities Strategy, that subject to further feasibility work, would include:
- a) the refurbishment or replacement of the Edmund Wilson Pool
  - b) the retention of the Yearsley Pool, with a planned regime of repair and maintenance works, and
  - c) a partnership with the University, including a capital contribution from the Council, to bring forward a publicly accessible Competition Standard Pool planned by the University for their new campus
11. In September 2006 the Planning Committee amended the planning permission that obligated BVYL and the Council to re-provide a new pool at Kent Street and other sporting facilities at the Barbican site and in its place obligated the council to spend the Barbican capital receipt on the facilities as stated in the Leisure Facilities Strategy outlined in paragraph 10 above.

### **Facts and Figures**

12. The strategy set out in February 2006 established the following financial framework.

<b>Funding</b>	<b>£,000s</b>
Barbican site receipt	6,385
Legal Fees	12
Kent Street site receipt	1,000
Auditorium receipt	765
Barbican claims provision	148
less Leisure section 106 contribution	-170
<b>Total available funding</b>	<b>8,140</b>
<b>Budget Breakdown</b>	<b>£,000s</b>
Pre-2006/7 spend	249
Oaklands Pool	4,000
University Pool Contribution	2,000
Yearsley original allocation	500
Procurement costs	330
Legal Fees	47
Community Building	200
<b>Total</b>	<b>7,326</b>

13. The £814k contingency has now been allocated to two components:
  - a) The additional costs of the remedial works at Yearsley Pool as approved by Executive 12<sup>th</sup> June 2007
  - b) The cost of demolition of the Edmund Wilson Pool, this may not be needed if the site can be sold as it stands. If not demolished, the costs of demolition would reflect upon the capital receipt received from the sale of that site.
14. The attached drawing at Annex A identifies the area required to provide a viable Community Pool complex at Kent Street including limited car parking and delivery access. This is a combination of the areas marked A and B.
15. The area available for development for the limited services hotel and the subject of the Kent Street sale for which a £1m offer has been accepted is denoted by the area marked A.
16. The Kent Street car park, owned by Indomito, is a combination of the areas marked B and C.
17. The Kent Street site sold for the limited services hotel development is not large enough to accommodate a Community Pool development as previously proposed, even if its layout were redesigned. (See Annex A)
18. A Competition Standard Pool would require a significantly larger land take and would be all the more impossible to accommodate on this site.
19. The estimated cost of building a Community Pool, as outlined on the plan at Annex A, is c.£7m (this figure is based upon previous estimates updated to 2008/9). The cost of building a Competition Standard Pool has been estimated to be around £10m+ by the council's university partners. If the council wished to pursue the development of either a Community Pool or a Competition Standard Pool in the city centre on a site not owned by the council, a substantial additional sum would be needed to acquire the land to support such a development. This level of capital investment is not available within the council's existing capital resources and could only be pursued with support from partner organisations and / or lottery funding, which in itself is a scarce resource. In addition to the operational costs of a new pool there would be a range of premises costs including energy, rates, plant and equipment management, maintenance etc, all of which would exceed the projected income and for which there is no budget provision.
20. Any development on the Kent Street site, in lieu of the limited services hotel, would have to have access to a pre-determined number of car parking spaces within the retained Kent Street car park, at a rate to be negotiated. This would result in an annual revenue cost, to be added to the pool operating costs.

## **The Leisure Facilities Strategy**

21. The Leisure Facilities Strategy agreed in February 2006 acknowledged the need for a comprehensive approach to swimming provision in the city which would deliver the vision previously set out and meet the specific needs identified: Facilities for local competitions, schools use, club development, teaching, fitness swimming, and family swimming. It was also underpinned by the conclusions of Active York's planning work that showed the need to provide for a deficit of 12 x 25m lanes of water.
22. Within this strategy Yearsley and the replacement of Edmund Wilson at Oaklands (York High School) would provide effective and flexible community pools whilst the new university pool would provide all the functions of a community pool plus much needed club development and short-course competition facilities as part of an integrated and fully accessible leisure complex at Heslington. The University is required to provide a competition standard pool with community access as a condition of its planning approval.
23. The University of York and the City of York Council have subsequently agreed and signed up to a Statement of Intent with regard to the development of a swimming pool and fitness facilities at Heslington. (See Annex B)
24. The Leisure Facilities Strategy also recognised the importance of creating arrangements that are financially sustainable. The previously proposed Kent Street Community Pool complex included facilities, such as a fitness suite, necessary to meet customer needs and provide a viable facility. The requirement for the University to build a fully accessible Competition Standard Pool, available to the wider community, would have been in direct competition with the proposed Community Pool on Kent Street and would have made the latter, with its lower specification, unviable.
25. In the current climate it will be important for the Council to consider all delivery options including acting in an enabling role rather than attempting to provide all of the services itself. Members may wish to consider a range of options for leisure facility development and provision as part of the review of the leisure facilities strategy that has been requested. The principles of partnership agreed with the University could equally apply to the provision of further facilities in partnership with any other willing organisation, public or private. This does not necessarily have to be at the expense of the established partnership with the University.

## **Response to the motion**

26. Part a) – The Kent Street coach park site has been sold to Barbican Venture (York) Limited (BVYL) at an agreed price of £1,000,000 plus VAT and a further non-returnable payment of £12,000 towards the Council's costs. The purchase price will be paid only when BVYL obtains planning permission for the construction on the site of a limited services hotel and other non-residential uses. The Purchaser has two years to

satisfy the condition although this period may be extended if a planning permission has been granted but the relevant challenge period has not expired or if there is an appeal or challenge taking place subject to a final long stop date of three years from 30 March 2007.

27. Part b) – BVYL have been informally approached and they have intimated they are not interested in selling the site. If BVYL can be persuaded to enter into negotiations to surrender the sale agreement, it is probable that the sum the Council will have to pay will need to reflect; (i) purchasing and investigation costs, (ii) any professional fees spent on feasibility studies and planning and (iii) loss of developer's profit. The biggest element is the developer's profit and at this stage it is not possible for officers to estimate what this sum would be, without seeing plans of the limited services hotel and whether it is acceptable planning terms and seeking advice on what the completed hotel with an operator paying rent is worth on the open market.
28. Part c) – The sum £8,140m arising from the capital receipt for the sale Barbican Centre site, and the Kent Street car and coach park has been put in the capital programme to replace and upgrade the city leisure facilities. If the Kent Street coach park sale is rescinded this will reduce the capital programme sum by £1.012m plus the sum that will have to be paid to BVYL in compensation as mentioned in paragraph above . this loss of receipt would have a significant impact upon the £2m allocated as a contribution to the University project or, as intimated in the motion, any other pool.
29. In addition part d) i and ii of the motion seek authority to spend monies to take back part of the Kent Street car park, which will reduce further the available funds. Part d) iii of the motion raises the question of access and parking. From initial consultation and work with planning and highway advisors it was clear that disabled parking, drop off or service delivery from Kent Street would be unacceptable and all such needs should be provided from within the developed site.

### **Additional information**

30. BVYL have intimated that they do not wish to sell the site. As with most things there may be a price at which they would reconsider. However, if the council was to pursue this course it is likely to be subject to scrutiny from the District Auditor.
31. To recover the Kent Street site, the question of Compulsory Purchase has been raised. The legal view is:

If BVYL insist that the sale is completed in accordance with the agreed terms the title to the land passes to them. In this event the Council could consider whether the land could be acquired compulsorily. However, detailed consideration would need to be given to the legal implications and feasibility of using CPO powers in these circumstances having regard to the previous planning decisions of the Council in respect of the use of this land (see paragraph 11 of this report)

The Council would have to satisfy the Secretary of State in its Statement of Reasons that it required the land for development purposes other than those which it had previously resolved to support. This would have to be considered in the context of the agreed development proposals. Any CPO proceedings would take significant time and is likely to incur substantial costs which would not be recovered if the action proved unsuccessful.

32. If the council simply refused to complete on the contract of sale, BVYL would be entitled to sue the Council for specific performance. It is probable the court would order the council to complete the sale. There are no remedies available to the Council that would justify non-completion of the sale.

### **Consultation**

33. There has been no specific consultation to support the writing of this report, though the subject matter being the sale and development of the Barbican and Kent Street land and the Leisure Facilities strategy has been widely consulted upon and debated.
34. The views of the four group leaders have been sought during the preparation of this report.

### **Options**

35. **Option 1** – to refer this motion to the Council meeting on 28<sup>th</sup> June 2007 with comments from the Executive

**Option 2** – to seek further information before referring the motion to Full Council

### **Corporate Priorities**

36. The report relates primarily to the corporate priorities
  - a) Improve the health and lifestyles of the people who live in York, in particular among groups whose levels of health are the poorest.
  - b) Improve our focus on the needs of customers and residents in designing and providing services
  - c) Improve the way the council and its partners work together to deliver better services for the people who live in York

### **Implications**

#### **Financial**

37. The current strategy relating to Yearsley, the new Edmund Wilson replacement and the partnership with the University of York is affordable in revenue terms for the council. There are existing budgets to fund the operation of Yearsley and the Oakland's Pools. The University and the

Council are working on a revenue neutral model for the pool at Heslington East.

38. The original scheme for Kent Street would have been close to break-even and only have required a small subsidy . This assumption was based upon a strategy of high level fitness provision and income. The introduction of a University pool and fitness provision, with or without the council's support, would undoubtedly have reduced the opportunity for generating the target income. In consequence an annual deficit of £100k could be expected, although it is difficult to quantify at this stage. Any proposal to build a smaller facility on Kent Street or anywhere else that excluded the fitness facility would not be viable.
39. The introduction of a new competition standard pool and fitness facility would not generate significantly higher management costs but would increase the level of premises running costs including rates.
40. The longer-term revenue consequences of adding to the property portfolio would depend upon the strategy for maintaining the new asset. Such high levels of investment would warrant planned investment over the life of the building to protect and preserve this important asset. Current capital and revenue constraints do not support this level of property investment.
41. The capital programme is based on the achievement of the capital receipt from the sale of Kent Street for £1m. If the Council were able to withdraw from the Kent Street sale and from the University project (£2m), there would be £1m, less the compensation costs referred to in paragraph 27, available towards a new pool on the Kent Street site or an alternative site.
42. If the council were to consider borrowing the capital to support a £7m investment in a community swimming pool and fitness facility the revenue cost (repayment and interest) would be £630,000 per annum.
43. If the council were to consider borrowing the capital to support a £10m investment in a competition standard swimming pool and fitness facility the revenue cost (repayment and interest) would be £900,000 per annum.

#### **Legal**

44. All contained within the body of the report

#### **Property**

45. All contained within the body of the report

#### **Other**

46. There are no implications from this report for Human Resources, Equalities, Crime and Disorder and information Technology

#### **Risk Management**



47. The key risks to the local authority:
- a) BVYL have been informally approached and they have intimated they are not interested in selling the site.
  - b) To negotiate the cancellation of the agreement to sell the Kent Street site will cost the Council a substantial sum. It is likely that the District Auditor would wish to investigate such a decision.
  - c) Development of the Kent Street site for a pool is contrary to the current planning permission as outlined in paragraph 11 above.
  - d) The reputation of the council in dealing in the property market would be severely damaged
  - e) The reputation of the council in dealing with an established partner, the University of York, would be severely damaged

## **Summary**

48. Officers advise that the council should not interfere with the process of selling the Kent Street site as:
- there is no possibility of developing a community pool at this location
  - there are significant difficulties and risks in pursuing such a course of action.
49. If members wish to consider other alternatives for providing a city centre pool, competition or community standard, then the council should refer the matter, back to officers for a full and robust option analysis within the Leisure Facilities Review Report. (A suggested framework for that report is at Annex C)
50. Until that report is complete and all parties have agreed to a future strategy, officers would advise that no action is taken to undermine the partnership agreement that currently exists between the City of York Council and the University of York

## **Recommendations**

51. That the Executive considers the motion submitted together with the information and advice given in this report and decides whether to submit this with its recommendations to Full Council

Reason : To comply with council standing orders.

**Author:**  
Neil Hindhaugh  
Assistant Director : Head of  
Property Services

**Chief Officer Responsible for the report:**  
**Neil Hindhaugh**  
Assistant Director: Head of Property Services

Report Approved

Date 15/6/07

**Simon Wiles**  
Director of Resources

Report Approved

Date 15/6/07

**Specialist Implications Officer(s)**

Charlie Croft  
Assistant Director (Lifelong Learning and Culture)

Suzan Hemingway  
Assistant Director (Legal and Democratic Services)

Tom Wilkinson  
Corporate Finance Manager

**Wards Affected:** *List wards or tick box to indicate all*

All

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

**Background Papers:** Leisure Facilities Strategy report to Executive February 2006

Annex A – Plan of the Barbican and Kent Street sites

Annex B – Statement of Intent between City of York Council and the University of York

Annex C – Scoping Framework for Leisure Facilities Strategy Report