

Arrangements for the Disposal of the Barbican

City of York Council

Audit 2005-2006

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Background and introduction

- 1 In 2000, the Council undertook a Best Value Review of leisure facilities which highlighted the continued importance of swimming provision to the achievement of corporate objectives. In August 2001 the tendering arrangements began for the Barbican site, with the requirement for:
 - a pool to remain on site; and
 - the auditorium to be refurbished, managed and made available for specified events.
- 2 After an appraisal process based on the achievement of these objectives a report went to the Member Panel recommending selecting the Barbican Venture as the preferred developer on 31 October 2002. This included:
 - £750,000 capital receipt for the auditorium, which is to be refurbished and run at nil subsidy;
 - £4.125 million receipt for the remainder of the site; and
 - a new pool.
- 3 Following legal advice in December 2003 the Council took responsibility for the development of the pool and a higher capital receipt of £10.33 million was agreed with Barbican Venture.
- 4 In February 2004, the Council agreed to separate the Conditional Development Agreements with Barbican Venture for the auditorium and main development. A conditional contract was signed with Absolute Leisure Ltd in January 2006 and they now occupy the site on a short-term lease. The Council is currently finalising a revised deal with Barbican Venture for the remainder of the site, which is due to be signed in the near future. The current proposed deal involves:
 - no pool provision; and
 - a receipt of £7.862 million.
- 5 Section 123 of the Local government Act 1972 provides that '*a principal Council may dispose of land held by them in any manner they wish*', but that '*except with the consent of the Secretary of State a Council shall not dispose of land under this section ...for a consideration less than the best that can reasonably be obtained.*' A key principle established in case law is that the commercial value of the land represents best consideration.

Objectives and scope

- 6 The objectives of our review were to assess the Council's arrangements to:
 - secure best consideration;
 - ensure appropriate governance controls are maintained; and
 - manage the impact on service delivery.
- 7 During the course of our work a number of electors have contacted us and provided us with information. We have taken account of the information they have provided which is relevant to our external audit responsibilities.

Audit approach

- 8 Our work included:
 - discussion with senior officers;
 - reviewing reports to Members dating back to the inception of the project in 2000; and
 - auditing supporting information.
- 9 During the audit we obtained our own legal and technical advice to complement the work of the local audit team.

Main conclusions

- 10 The project to dispose of the Barbican site has been lengthy. The nature of the current deal is different from the requirements contained within the original tender in two significant aspects:
 - the disposal of the auditorium has been separated from the rest of the site; and
 - the requirement to include the provision of leisure facilities on the site has been removed.
- 11 As a consequence of a change in requirements, and the time taken to progress the project, the value to be received for the site has fallen from £10.3 million to £7.9 million. To ensure the continued achievement of best consideration the Council has:
 - undertaken an initial market testing exercise, which led to the selection of Barbican Venture as preferred partner;
 - obtained an independent professional valuation for the auditorium equipment in January 2006;
 - obtained an independent professional valuation for the car park and hotel site; and
 - reviewed the arrangements by Barbican Venture to remarket the site in December 2005.
- 12 We note that the requirement to comply with s123 of the 1972 Local Government Act has not been set out to Members in project progress reports.
- 13 Our audit of the Council's controls over the process to select a preferred partner has not identified any significant weaknesses:
 - clear assessment criteria were established in relation to the objectives of the project;
 - each tender was scored and evaluated against these criteria;
 - the processes were documented; and
 - timely reporting of progress was reported to Members for decision making, and these reports were made publicly available.
- 14 The Council has not, however, defined the what level of variation in either the requirements of the project or the value offered by the partner, would require a retendering exercise, and whether the preferred partner would be able to challenge any retendering in law.

- 15 The original objective of the project to dispose of the Barbican was to support the improved provision of sports facilities in the City. Our review of the Council's arrangements to ensure continued service provision through the project and to achieve this objective has not highlighted any significant weaknesses. However, there are opportunities for the Council to improve the clarity of how the objectives are expressed and how success will be assessed.

Recommendations	
<i>R1</i>	<i>Establish adequate arrangements to inform members of the legal framework within which decision are taken.</i>
<i>R2</i>	<i>Clarify the legal status of the preferred partner in future transactions and establish controls over the variations that will generate a review of the continued validity of the agreement.</i>
<i>R3</i>	<i>Ensure that the objectives of projects and significant transactions are clearly articulated, allowing them to drive decision making and for success to be evaluated.</i>