



Executive

22 September 2009

Report of the Director of Learning Culture and Children's Services

The Barbican Auditorium**Summary**

1. This report is the fourth in a series which aims to establish the next steps in a strategy designed to bring the Barbican Auditorium back into public use.

Background

2. Previous reports have presented key information about the physical condition of the facility and about the potential market for its re-use. First, a detailed and thorough condition survey by the LHL Group report has identified an immediate cost of £818k to bring the Auditorium back into a usable condition, with an additional £1.097m required over the next 5 years. This represents the cost of only the minimum works required to operate the building in line with statutory requirements and makes no provision for the additional investment that would be essential if a commercially viable business were to be established at the Barbican.
3. Market analysis by Drivers Jonas has identified a clear demand for theatre / entertainment space within York together with interest in the Barbican from a number of key operators. Drivers Jonas also identified interest in the Barbican Auditorium from local and national organisations for a conference facility. As such it would provide conference / exhibition space alongside a 4* hotel to be sited on the land to the east. Whilst entertainment and conference operations are not fully compatible, a conference centre would nonetheless be expected to be able to attract and run some entertainment events.
4. Drivers Jonas recommended that the options be developed with the parties who have expressed an interest, in order to test that interest further and to establish both the likely financial basis on which any agreement could be entered into and appropriate mechanisms for the Council to demonstrate best consideration.
5. In response to this analysis the Executive, at its meeting on 28 April, agreed the following key points for the way forward:
 - a) **The Council's aspirations for the Barbican Auditorium** - The Auditorium should provide:
 - The major conference and/or entertainment facilities for the city.

- High quality facilities for the residents of York and for visitors acting as a focus for important city events and a focus for civic pride.
- Opportunities for community involvement and activities.
- An operation that does not require long-term revenue subsidy from the Council.

The Council would not specify particular activities or events at this stage in order not to stifle the potential to generate creative ideas and opportunities through open dialogue.

- b) **A further three months for structured discussions with interested parties** - Drivers Jonas to be retained to work with officers in this, as well as continuing to make contact with potential future users and examining options for involving a trust. A further report would then to be brought back on the available options.
 - c) **An open approach to capital investment** - The aim of the market exercise should be to attract private capital investment to the Centre. However, should an attractive proposal be made which involved a strong business case for Council capital investment in the building then this could be considered.
 - d) **Ensuring the Council obtains best consideration** – Specialist advice to be taken on all aspects of procurement, whilst structured discussions with interested parties are taking place, to assist officers in drawing up a formal procurement strategy.
6. Members also agreed the following immediate actions:
- a) £90k of essential works to be carried out, as a first stage of the total work required to re-open the building, in order to protect the integrity of the asset and prevent further deterioration.
 - b) Officers to support to the community users who previously used the Barbican auditorium site: the York Carol Concert and the Festival of Remembrance, in seeking alternative arrangements

Project Update

7. Drivers Jonas, Pan Leisure and David Pratley Associates have undertaken structured discussions with the parties identified at the time of the last report. One of the parties has withdrawn leaving four principal parties each of whom retain an interest. The key issues arising from these four strands are as follows:

Theatre Operator 1:

8. Discussion with a major national theatre operator has suggested the potential for a management contract to operate the Barbican with the following key features:
 - The contractor to take full responsibility for operating the site under a contract with a term of around 20 years

- The programme would be wide-ranging and include music, comedy, dance, opera, and potentially drama
- The Council would need to make the initial capital investment to re-open the building – around £800k
- The contractor would invest in improving the facilities, e.g. in bars, restaurant, conversion of the former sports hall, potentially into a performance space
- A significant management fee would be required in the initial years. Whilst this is likely to reduce over time a level of fee would be required throughout the life of the contract

Theatre Operator 2:

9. Discussion with a second major national theatre / music operator has suggested interest in operating the Barbican primarily as a music venue with the potential for secondary conference uses. Key features of this would be:
- A freehold transfer of the site. The Council would have no subsequent control of the facility though covenants on the sale could protect its continued use as an auditorium
 - The facility would be operated as a receiving house for theatre, musicals, and comedy and as a concert venue
 - The Council may need to make the initial capital investment to re-open the building though this would subsequently be repaid over time
 - The contractor would invest in improving the facilities, potentially adding ancillary music facilities and performance space
 - A strategic review of provision in the city would be required: The operator would not wish to operate in direct competition with other existing venues in the city

A Conference Operator:

10. A major national conference operator would be interested in entering into a management agreement with the Council. Broadly, the basis on which the Company would wish to pursue its interest is:
- A 10 -15 year contract
 - A conferencing facility using most areas of the building
 - The Council would need to make the initial capital investment to re-open the building – around £800k
 - The contractor would invest capital in the kitchen, catering and front of house areas
 - Ongoing maintenance liability would remain with the Council (i.e. £1.097m over the next 5 years, the cost over the remaining 5-10 years to be determined)
 - Variation clauses within the contract would protect the contractor in relation, for example, to decreased footfall or issues related to the building outside of their control.

Development Interest in the whole Barbican Site:

11. Since the last meeting of the Executive a developer who is negotiating to buy the residential and hotel site from its two current owners, has expressed interest in acquiring the Barbican Auditorium and the Kent Street site from the Council in order to bring forward a comprehensive scheme. Discussion with the interested party suggests that if the Council were to sell the Barbican Auditorium and the Kent Street site to a developer who was able to acquire the other two sites the key implications would be:
- A potentially comprehensive and coherent development of the whole site
 - A requirement to relax the Council's existing covenants and building restrictions on the housing site in order to allow the developer to bring forward an alternative scheme from that which currently has planning permission
 - The Barbican Auditorium to become a conference centre / entertainment venue with most of the existing structure being absorbed into a hotel development (though the identity of the proposed venue operator is not known to the Council)
 - A 4 star hotel being constructed (the developer has confirmed that they have an operator working with them on the scheme though the identity is not known to the Council)
 - Difficulty satisfying procurement and best consideration requirements by selling the Auditorium and Kent Street site to a nominated developer without competition

Initial Conclusions:

12. These 4 expressions of interest are positive and it is recommended that they be pursued. However, none can be accepted immediately because:
- No single expression of interest is sufficiently attractive to be pursued exclusively at this stage; each has merits and demerits
 - None can be assessed accurately at present as we hold differing information for each, which is to be expected given the uneven nature of the process of soliciting expressions of interest
 - More than one of the four suggests a potential requirement on the Council to contribute capital / revenue financing and to be involved in some level of specification of the activities that will be undertaken in the facility. To entertain this possibility implies the need for a procurement exercise which would require the Council to advertise the opportunity in the Official Journal of the European Union (see below)
 - Some of the proposals involve service contracts which would also potentially require to be formally procured.
 - There is a need to put clear timescales around the exercise. It would be unwise to enter into exclusive discussions, for example, with a developer which could drag on without a clear end date

- There remain a number of interested parties, in and around York, who continue to express an interest in acquiring the Barbican Centre for a range of uses and these should have the opportunity to formalise their interest

Options

13. It is recommended that the Council now undertakes formal marketing in respect of the Barbican Auditorium in order to continue to pursue, through the market, the agreed aspirations set out in paragraph 5a) above. This will oblige offers to buy and/or to operate the Barbican Auditorium to come forward on a (more) standard basis, so that they can be assessed against the Council's criteria for the re-use of the site. It will also have the advantage of transparency and open up the possibility of other developer or operator interest. The existing interested parties will be encouraged to take part in this competitive process (they would not ordinarily expect to enter into an exclusive relationship with a local authority, without first having to participate in a competitive process).
14. The principal options open to the Council in respect of market testing are:
 - a) To undertake a 'standard' marketing campaign in order to sell the Barbican Auditorium, not attaching any conditions on its operation or use, and seeking only the best consideration sum for the property
 - b) To undertake a market testing exercise in line with European Union procurement regulations. This approach would facilitate both straight-forward offers to buy the Barbican Auditorium as well as offers which might entail Council involvement in some form of partnership, e.g. one which might involve some Council funding.

Analysis

15. It is recommended that option b) from Paragraph 14 above, is followed, undertaking a market testing exercise in line with European Union procurement regulations. This approach will allow bids to come forward to buy the site as well as allowing bids that propose some Council involvement e.g. in controlling or specifying activities. For this reason it will allow the Council the potential for more control over the eventual outcome for the Auditorium and is therefore more likely to enable the Council to pursue the aspirations for the Auditorium set out in paragraph 5 above. Under option a) on the other hand it will not be possible to impose any conditions or control beyond covenants that could be used, for example, to protect the continued existence of the building. Option b) will also enable the Council to identify and select the "most economically advantageous tender" rather than selecting merely on price.
16. The mechanism involved would be the "competitive dialogue procedure" as this is appropriate in the award of complex contracts where there is a need to discuss all aspects of the proposed contract with bidders in order to identify and define solutions to meet the contracting authority's needs and requirements in a way that is not allowed under open procedures. The process will involve the following stages:
 - Publication of a contract notice setting out the authority's needs and requirements and award criteria based on them

- A pre-qualification process which will assess the track record and experience of bidders to ensure that only those competent and sufficiently financially robust to carry through their proposals are invited to participate
- An invitation to dialogue in order to identify and define solutions to meet the Council's requirements through discussion with the Council giving equal opportunity to each of the bidders
- Potentially elimination of some of the outline proposals on the basis of the award criteria set out in the contract notice
- Submission of formal tenders by the remaining participants on the basis of the solutions presented and discussed during the dialogue
- Tenders evaluated against the award criteria in order to identify the "most economically advantageous tender"
- Post tender clarification where required
- Award of tender

This process represents a rational next step after the "structured dialogue" that has taken place and will provide a structured and user-friendly process for those who have previously expressed an interest, together with any new parties, to present their proposals.

17. It is recommended that the detailed award criteria to be used in the contract notice and for assessment of bids be based on the following objectives:
- High quality facilities for the use of residents of York and for visitors (for example conference, entertainment, leisure uses), acting as a focus for important city events and a focus for civic pride
 - A major entertainment programme for the City: Bids will score best on this criterion that meet the Council's aspirations for an extensive and wide-ranging programme of music, comedy, dance and entertainment of a quality likely to draw a sub-regional and regional audience. The minimum standard will be a programme that contains at least some elements of the above. Proposals for entertainment of a primarily adult nature or for gambling will be rejected.
 - Opportunities for community involvement and activities
 - Financial impact on the Council:
 - An operation that does not require long-term revenue subsidy from the Council
 - Maximises capital receipt and minimises the requirement for capital injection on the part of the Council to refurbish the building or improve the facilities
 - Coherence of the proposals with the overall masterplan for the area and contribution to the overall quality of the development

A relative weighting must be given to the criteria. Members' views on this are requested.

18. In marketing the Barbican Auditorium the Council has the opportunity to re-market the Kent Street coach park site. It is proposed to advertise the opportunity to acquire the Auditorium with or without the Kent Street site. The marketing / development of the Kent Street site would provide another opportunity to provide all the facilities identified as needed but lacking in the city centre (e.g. good quality hotel, an entertainment centre and conference facilities for 500+) as the timetable for the development of the 4* hotel site adjacent to the Auditorium, in private ownership, is not certain.
19. As the site has a planning permission for a 2/3* hotel and other developers have expressed interest in acquiring the site in its own right, it is proposed that the Council put a reserve price on the Kent Street site of £1m. In undertaking the financial assessment, bids including Kent Street will be adjusted by this figure for the purpose of comparing them to bids not including Kent Street. If, ultimately, none of the bidders is interested in Kent Street then it will be marketed separately.
20. As noted in paragraph 11 above, a particular developer's interest in the Barbican will hinge upon that developer's ability to acquire the hotel site. This developer also appears to have ambitions to acquire the whole of the Barbican site and go forward for a new planning permission. The whole area including Barbican Road and Kent Street has the potential to be enhanced by improved urban design. A co-ordinated approach would add greater benefits than piecemeal development in isolation could offer and help to create better links with not only Walmgate, but Parliament Street and Piccadilly. The Council, together with the promoters, could maximise the possibilities this presents including the opportunity of looking at parking for the whole site. It would also allow us to address key transport issues in this area. In order to provide a context in which consideration can be given to this issue a Planning Statement has been produced for this site by a range of officers across the Council (available in the members' library). Whilst this Planning Statement is not a statutory requirement it will be a 'material consideration' and will provide a basis for discussions and meetings with developers. It is proposed that it is used as the basis for judging coherence as referred to in the last criterion in paragraph 17 above. In this respect proposals for the Barbican Auditorium from all bidders will be judged according to the quality of their contribution to the site as a whole.

Next Steps

21. The indicative timetable will be:
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|---------------------------------------------------|---------------------|
| ▪ Publication of contract notice | Sept – October 2009 |
| ▪ Invite prequalified bidders to submit solutions | November 2009 |
| ▪ Dialogue | Dec – January 2010 |
| ▪ Reduction of the outline proposals | February 2010 |
| ▪ Submission of final tender | March 2010 |
| ▪ Tenders evaluated | March 2010 |
| ▪ Contract award decision | April 2010 |

The Remedial Works

22. The remedial work necessary to preserve the building, as approved in the April report, started at the end of July. There are many specialist contractors needed so their work will need to be co-ordinated and phased to avoid interference with each other. The work is to include essential electrical testing and remedial works, fire alarm repairs, boiler and plant service and repairs, water risk management, sealing off the pool corridor access, gutter cleaning, boarding up doors to the terraces, repairs to the paving on the terraces and front apron. It is anticipated that the work will be completed towards the end of September. Once these items are complete there will be a need to continue some routine inspection and service work

Relocation of Community User Groups

23. Officers have worked with the organisers of the Festival of Remembrance and the York Carol Concert to ensure that they have satisfactory arrangements for their events:
- York Carol Concert is relocating to the University Central Hall. In response to a request from officers the University have kindly offered the Carol Concert a substantial discount on their booking. The Council has also offered a £1k grant ensuring that the event will be viable
 - The Festival of Remembrance will be held at the Theatre Royal. Officers have worked with the Theatre Royal to ensure that the special requirements of the festival can be accommodated. The Council has agreed to underwrite the Theatre's abnormal costs up to a limit of £1k to ensure that the festival only has to pay a standard fee

Community Trusts

24. In response to members' request officers have given consideration for the potential of a community trust to play a role in the Barbican Auditorium. This is not considered practicable at this stage because:
- Successful trusts generally emerge from existing organisations / business. None exists in this case
 - Running an auditorium on commercial lines with minimum subsidy requirement is not a natural focus for a charitable organisation
 - A new trust would have no capacity to raise the essential capital for investment
 - The liability of a trust to pay VAT on expenditure would effectively mean that capital investment would need to remain with the Council

None of the foregoing would prevent any existing trust bidding in the proposed exercise.

Consultation

25. There has been considerable dialogue with interested parties but given the stage of the analysis no formal consultation. Drivers Jonas has been highly active and has spoken to many interested local parties. These conversations have strongly influenced the conclusions they have reached.

26. As reported at the 3 March Executive meeting consultation as part of the City Centre Area Action Plan found the types of facilities that respondents felt are currently lacking included: venues to hold bigger events, music venues, a good performance venue, children's entertainment: consultation feedback which can be positively responded to if the recommendations from Drivers Jonas are progressed.

Corporate Priorities

27. The Council's new Corporate Strategy describes the desire to "inspire residents and visitors to free their creative talents and make York the most active city in the country. We will achieve this by providing high quality sporting and cultural activities for all". Within the new strategy we commit to developing an "achievable plan for the Barbican Auditorium" to contribute to this priority.

Implications

Financial:

28. The Executive has already agreed an allocation of £120k from contingency in 2009/10 to fund the costs of the review process and the essential remedial works. It is still expected that all project costs can be contained within this sum.
29. The grants to the Carol Concert and the Festival of Remembrance will also be funded from the existing Barbican Centre budget.
30. Some of the initial expressions of interest suggest a requirement for the council to contribute capital and/or on-going revenue funding. There is no provision to fund either of these costs within the council's current capital or revenue budgets.
31. **Legal:** Legal implications are as set out in the report.
32. **Property:** Property implications are as contained in the report.
33. **Risk Management:** Risks in related to this important project are handled through good governance arrangements A Project Group representing key senior officers of the authority with specific legal, technical and financial support is now established and meeting on a weekly basis, chaired by the Director of Learning, Culture and Children's Services. The group through its chair reports to the Chief Executive and the wider senior leadership team of the council.
34. There are no Human Resources, Crime and Disorder, or Information Technology implications.

Recommendations

35. Members are asked to:
- Agree to a formal marketing of the Barbican Auditorium as set out in paragraph 0
 - Agree to the inclusion of the freehold of the Kent Street Coach Park site on the basis set out in paragraphs 18 and 19

- Give their views on the relative weighting of the criteria set out in paragraph 17
- Delegate to the Director of Learning Culture and Children's services the authority to establish the final criteria and weighting to be used in assessing bids and final tenders based on the contents of paragraph 16

Reason: To enable future plans for the Barbican Auditorium to be developed and progressed

Contact Details

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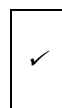
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Date

8 September 09

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Wards Affected: All

For further information please contact the authors of the report

Background Papers: *Barbican Auditorium* - Reports to the Executive 20 January, 3 March and 28 April 2009.