



Executive

28 April 2009

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

The Barbican Auditorium**Summary**

1. This report asks the Executive to agree the next steps in a strategy designed to bring the Barbican Auditorium back into public use.

Background

2. This report follows the initial briefing reports to Executive on 20 January and 3 March 2009. Those reports described the need for the authority to intervene directly to prevent further delay in reopening the Barbican Auditorium. A conditional development agreement had been entered into with Absolute Leisure Limited (ALL) in 2004 following a thorough procurement exercise. Action in the High Court delayed progress on ALL's scheme in the first instance but once this action had been cleared away ALL's failure to complete the agreement led to the Council terminating it on 9 January 2009. At the same time, the Council terminated the lease that had allowed ALL to operate the facility in the interim.
3. The 20 January report described the successful steps the Council had taken to gain access to the building, make it secure, and tidy up its external appearance. The report recognised the need for early informed planning to bring this important city asset back into use. However, the report also recognised that the desire to see early progress should not result in hasty, uninformed decision making, since this could lead to a return to the kind of unsuccessful arrangements of the past which had led to the Council's original decision to go to the market, or to future failure with a new partner.
4. The 3 March report agreed the need to seek specialist advice in two areas:
 - 4.1 Entertainment market advice: the report described the need to appoint entertainment industry specialists to support officers in early consideration of the potential for long term use of the Barbican Centre, the current market for entertainment uses, and future trends within the industry.
 - 4.2 The physical condition of the building: inevitably a delay of some five years in the active use of the building has had an impact on its condition. The report highlighted a significant number of issues concerning the physical fabric of the building. It was recognised that a

thorough analysis of the building is essential before any decisions about future use can be made.

5. With respect to 4.1, the 3 March report briefed members on the appointment of Drivers Jonas following a formal procurement process. Their bid benefited from the inclusion of the expertise of David Pratley Associates (theatre and entertainment) and Pan Leisure Ltd (conferencing and leisure). They were instructed to advise on the potential for market interest from the theatre / entertainment industry to acquire and attract capital investment into the Barbican Centre and then operate it, as well as on the potential for market interest in complementary uses, e.g. conferencing or other leisure uses.
6. Following the 3 March report a specialist firm of surveyors / architects, the LHL Group (one of the Council's framework partners), was commissioned to complete the work described at 4.2. Their brief was to undertake a full condition survey focussing on the needs of the building to operate in the short and long term, including an assessment of all key systems, Disability Discrimination Act (DDA) compliance, and fire risk assessments.
7. Both pieces of commissioned work have been progressed in a timely and, in the view of the Project Steering Group, high quality manner. The findings are discussed in the next section below.
8. We have, since the last report, also completed some improvements to the condition of the building:
 - Some of the outside doors have been repainted where they were powder coated and damaged by graffiti.
 - Notice Boards have been cleaned, restored, repainted and are back in use.
 - Graffiti has been removed from the masonry.
 - The broken paving stones have been removed from the roof terraces.
 - The perimeter fencing is being realigned where it is displaced.
 - Rubbish has been removed from around the building on a couple of occasions.
 - A security company has been employed to make regular patrols with electronic tags in place and keep an eye out for any more damage.
 - Replacement stones have been ordered for the damaged Rotunda - the work is now underway and should be completed by the time of the Executive meeting. The circular planter will be planted up imminently.

The Specialist Advice

Drivers Jonas

9. Drivers Jonas's work has comprised a number of stages including:
 - a review of the Barbican's facilities, locational attributes and connectivity.
 - a brief review of historic usage and trading.
 - consultation and soft market testing with a number of key leisure and theatre/entertainment operators both locally and nationally including Visit

York, the Universities, hotel operators, and key theatre and events operators.

- a review of the property market in York and the planning history and policies associated with the site.
 - exploration of the options regarding trusts.
10. Drivers Jonas have reviewed the possible market uses for the Barbican Centre, considering them in terms of market growth, and their suitability in the light of the historic uses of the Barbican Centre, the configuration of the building, and adjacent land uses. The following paragraphs set out their key findings.
 11. There is a strong market for future leisure and cultural growth in York. Culture and tourism are growth areas at regional level and there are clear opportunities for York to take advantage of this focus as a consequence of the city's relatively strong performance in both areas. Drivers Jonas's assessment of the market for the Barbican Centre demonstrates a potential audience for a range of arts events, developed by the extensive professional and amateur arts infrastructure in the region, and opportunities to develop an audience for a limited number of rock and pop concerts as well as for classical music within the immediate catchment area.
 12. Their assessment points to growth in the conference and exhibitions market at regional and national levels which represents a potential market for future use of the Barbican Centre. Growth is also evident in the hotel market and, significantly, York has been one of the few areas that has so far managed to withstand the economic downturn, suggesting that the hotel market in the city remains relatively strong (supported by York's occupancy figures).
 13. Drivers Jones have taken an overview of the competitive supply relevant to the Barbican Centre, focusing on a broad range of leisure uses. They have assessed the likely demand for each of the primary and secondary uses that they identify including theatre / entertainment and conferencing / exhibition uses. They believe that there is clear demand for increased theatre / entertainment space within York; it is also clear that some interest exists from a number of key operators.
 14. Interest has also been identified in the Barbican Centre 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 would also be expected to be able to attract and run entertainment events, particularly at weekends.
 15. Drivers Jonas have reviewed each of the options. They recognise that the range of options is limited for a re-use in line with the Centre's original function but point out that this is to be expected given the unusual nature of the building, its location and the anticipated costs involved in returning the building to a safe and functional state. Their assessment stresses that the options identified are at "an embryonic stage – their development is unlikely to be without further risk and cost to City of York Council".

16. Drivers Jonas recommend that the options are taken forward by the Council and developed further with the parties who have expressed an interest, in order that the Council can be properly advised about the likely financial basis on which any agreement could be entered into with any of the parties identified. They note that in the event that interest is pursued with any of those who have expressed an interest, formal marketing of the Council's interest will be required in order that the Council can demonstrate best consideration.
17. They also considers the broader issues in relation to the commercial property market and the Council's options in relation to the Barbican Centre as a site should none of the above options prove viable. They draw attention to the site's current town planning allocation which restricts the use of the site to D2 (Assembly and Leisure) in the emerging Local Development Framework recommending that this is reviewed.
18. In summary, Drivers Jonas recommend that a succinct brief is now prepared to be used as a basis for further structured dialogue with the interested parties currently identified. As a minimum, they advise that this strategy should consider and articulate:
 - The Council's aspirations for the Barbican Centre and any non-negotiable requirements for its ongoing use which an operator would wish to understand from the outset;
 - Details of the practical approach and time scale to be taken to approach the two markets;
 - Details of the Council's ability and willingness to fund either improvements to the building's fabric or a third-party operation;
 - Congruence of this approach with the Council's obligations to obtain best consideration of their assets in entering into agreements with third parties;
 - The approach to be taken to discussions with interested parties in light of embryonic stadium proposals for York;
 - Timescale for the exercise – how much time will the Council give to this exercise before considering a different approach to their freehold interest?
19. Drivers Jonas advise that it will be sensible for the Council in the meanwhile to maintain and protect the value of their freehold interest by:
 - Carrying out any absolutely essential repairs identified by the LHL Group to make the Barbican Centre wind and watertight and secure from intruders.
 - Re-considering the town planning allocation which restricts the use of the site to D2 (Assembly and Leisure) in the emerging Local Development Framework.
 - Working with adjoining landowners to understand their intentions for their land holdings and assessing how, if the opportunity were to arise, the Council could embark upon a joint marketing exercise for the island site, plus elements of the Kent Street site, in the event that a sustainable operator and user cannot be found for the existing building.

The LHL Group

20. An executive summary of the LHL Group report is provided in the Annex to this report. It identifies a cost of £818k to bring the Auditorium back into a usable condition, with an additional £1.097m required over the next 5 years. This could be seen as the inevitable consequence of the lack of any significant renewal or refurbishment of the building since it first opened and the lack of basic maintenance since it closed in 2004. It might be thought that the occasional use of the building over recent years challenges the conclusions that the LHL Group have reached. However, this use was not without its difficulties and furthermore, any future use by the Council would always comply fully with licensing and health and safety regulations, statutory testing and servicing obligations.
21. The £818k identified represents the cost of only the minimum works required to operate the building in line with statutory requirements. For example, where the executive summary refers to:
- “reinstatement” of catering facilities: this provides for only the minimum facilities that would be required to allow an external caterer to operate in the building (e.g. providing work surfaces and power); it does not provide facilities and equipment such as would be required to operate in-house catering
 - “decoration”: this includes only the smallest amount for making good. No provision is included for overall redecoration

Whilst there could be some potential to shave costs by closing off some rooms and not repairing them, in reality the building operates as an integrated whole with use of the Auditorium requiring supporting spaces. In any event the savings from this approach would be minimal.

Options

22. It is proposed that the Council should progress the work recommended by Drivers Jonas to develop options for the Barbican Centre through structured dialogue with the identified interested parties, and, at the same time, either:
- Option 1: Undertake immediately all the work necessary to return the building to a usable condition
 - Option 2: Undertake immediately that part of the work that is necessary to make the building wind and watertight, safe and secure, keeping the Council’s options open regarding the remainder

Analysis

23. The Drivers Jonas report provides confidence that it will be sensible for the Council to pursue options for the Barbican Auditorium with the market. They recommend that the Council sharpens its focus on the market and conclude that the entertainment, events and conferencing markets are the ones most likely to attract commercial interest and be consistent with locally assessed need.

24. Option 2 would, for a reasonable level of investment, i.e. £90k, protect the integrity of the asset, prevent further deterioration, and allow time for the options for the Centre's future use to be explored. Work to be undertaken immediately would include:

- Essential testing of and repair to the mechanical and electrical systems
- Repairs to prevent water penetration
- Additional hoarding and protection
- Making good where the passageway to the pool was removed

This work would contribute towards the total work required to re-open the building should a decision be taken to do this following the further market testing.

25. With regard to Option 1, the immediate capital investment required would be the £818k identified by the LHL Group. In addition, a decision to operate the building would involve set-up costs (as well as annual running costs). Drivers Jonas advise against spending the full £818k now for a number of reasons including:

- they have not been able to identify significant demand for interim use; in the 5 years that the building has been closed previous users have generally made alternative arrangements
- they feel that pursuing interim use at this stage would represent a major drain on officers' time and a distraction from the principal focus, i.e. identifying a medium to long-term sustainable use for the Centre
- the necessary works would take 6 to 9 months to complete by which time work on market options should be well advanced
- there is a risk that work undertaken would not be compatible with emerging longer term plans for the building

26. It should also be noted that the nature of any interim use is currently ill defined; it would inevitably take time to build. Previous reports have described the additional revenue costs likely to be incurred should the Council operate the Centre on an interim basis. Given this the 3 March meeting of Executive supported a potential role for an external partner / partnership. However, such a partnership would need to be established whilst work to the building was being completed. It is likely that there would still be additional revenue costs for the Council in such an arrangement together with the need for further capital expenditure over time from the £1.097m requirement noted by the LHL Group.

27. On the basis of the above analysis Option 1 is not recommended. It would see significant expenditure for a potentially limited period, delivering an as yet ill-defined but almost certainly limited programme of events. Focusing on Option 2 on the other hand gives a positive and informed basis for moving forward, focussing on pursuit of a solution that will bring the necessary investment to the building, protecting the asset in the meanwhile, and keeping the Council's options open.

Next Steps:

28. The next step will be development of the recommended brief to be used as the basis for further structured dialogue with interested parties. In response to the issues raised by Drivers Jonas (set out in paragraph 18 above) the following principles for this brief are proposed for members' consideration:

- a) **The Council's aspirations for the Barbican Centre** - The Centre 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.

It is not advised that the Council should 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) **Timescale for the exercise: How much time will the Council give to this exercise?** – It is proposed that the Council offers a further three months for structured discussions to take place and that a further report is brought back to members at the end of this period with regard to the available options and the direction to be followed.
- c) **The Council's willingness to fund improvements** – It is proposed that an open approach is taken to this issue at this stage. 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) **Congruence of the recommended approach with the Council's obligations to obtain best consideration** – The Council has a duty to obtain best consideration. It is proposed that further specialist advice is taken on all aspects of procurement whilst structured discussions with interested parties are taking place.
- e) **Approach to be taken to co-ordinate with work on stadium proposals for York** – There is some potential for overlap in proposals for the Barbican and for the Community Stadium. Officers are working together to make sure that the specialist advice is co-ordinated and that the market understands the potential of both developments. It is proposed that these issues are further explored in the structured market discussions and in the development of the outline business case for the stadium which will come to the Executive in June.

29. To support this work we recommend that:
- Drivers Jonas are retained as our advisors to work with officers in preparing a succinct brief to be used as a basis for further structured dialogue with the interested parties, and to further develop the approach to the market addressing the issues set out in paragraph 18 above.
 - Drivers Jonas to continue to make contact with potential future users and to continue to include examination of options for involvement of a trust
 - Independent legal advice is sought to assist officers in drawing up a formal procurement strategy.

Consultation

30. There has been considerable dialogue with interested parties over recent weeks but given the stage of the analysis no formal consultation. Drivers Jonas have been highly active and have spoken to many interested local parties. These conversations have strongly influenced the conclusions they have reached.
31. 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

32. 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:

33. The costs of the Drivers Jonas report at £18k, the LHL Group report at £25k, and the initial works to improve the appearance of the building described at paragraph 8 have been funded in 2008/09 through virements from surpluses generated within corporate treasury management budgets. In addition a one-off sum of £120k has been built into the Council's 2009/10 revenue budget to cover the costs of maintaining the Barbican Centre in its current closed state up until 31 March 2010. This is broken down as follows:

	£,000
Rates	47
Insurance	38
Fuel & water	5
Security	20
Basic Maintenance	10
	<u>120</u>

34. There is currently no budget provision to cover any revenue costs beyond March 2010.
35. Under Option 2, the recommended option, further costs will be incurred now from:
 - The immediate works to secure the building £90k
 - Professional and legal advice to support the market testing £30k
36. There are no existing directorate budgets available to fund this additional £120k in 2009/10. As the costs are one-off they could be funded from the Council's General Contingency. As part of the 2009/10 revenue budget, a contingency of £600k was set aside to meet any unforeseen or unquantifiable costs which may arise during the year. Decisions to release Contingency Funds are reserved to the Executive. No approval has been given to date in 2009/10 for drawdown against the Contingency, however it should be noted that this specific scheme was not one of the possible calls on the Contingency identified in the annual budget report approved by Council on the 26th February.
37. Option 1 would incur costs of £728k over and above those identified for Option 2 (£818k less £90k of immediate Option 2 works). There is no funding available in the current capital programme to fund works of this scale, so they could only be undertaken at the expense of one or more existing capital schemes.
38. **Human Resources:** None
39. **Legal:** Legal implications are as set out in the report.
40. **Crime and Disorder:** None
41. **Information Technology:** None
42. **Property:** The property implications are contained in the report

Risk Management

43. Risks related to this important project will be 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.

Recommendation

44. The Executive is asked to agree:
 - Option 2 set out in paragraph 22 above: To focus on progressing the work recommended by Drivers Jonas in order to develop options for the Barbican Centre through structured dialogue with the identified interested parties, whilst undertaking work now to make the building wind and watertight, safe and secure

- The Council's aspirations for the Centre, i.e. that it 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
 - No on-going requirement for public subsidy
- Key next steps:
 - Drivers Jonas to be retained as our advisors to work with officers in preparing a succinct brief to be used as a basis for further structured dialogue with the interested parties, and to further develop the approach to the market
 - Essential work to be carried out to prevent any further deterioration of the Centre
 - Independent legal advice to be taken to assist officers in all aspects of procurement
- To receive a further report in the light of the structured dialogue setting out the available options and the direction to be followed
- The allocation of £120k of additional one-off budget in 2009/10 to cover the costs of the actions set out under the recommended Option and funded from general contingency.

Reason: to enable future plans for public use of the Barbican Auditorium to be developed and progressed as soon as possible.

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Wards Affected: All

For further information please contact the authors of the report.

Background Papers: Executive reports of 20 January and 3 March, 2009

Annex: Executive Summary of the LHL Group report