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## Barbican Ad-Hoc Scrutiny Committee

16 July 2008

### Final Report

#### Background

1. In July 2007, Scrutiny Management Committee (SMC) considered a scrutiny topic proposed by Cllr Joe Watt relating to the sale of the Barbican. SMC agreed that the scale of the topic as proposed was too wide ranging for review and requested Cllr Watt's attendance at their next meeting to discuss the possibility of a review tailored to learn key lessons and achieve improvements in handling future developments of a similar scale and nature.
2. Cllr Watt attended the meeting of SMC in September 2007 and agreed to revise his topic submission in order that it did not duplicate the work that was ongoing at the time as part of the review commissioned by the Executive on swimming provision in York.
3. In coming to a decision to review this topic, the Scrutiny Management Team recognised certain key objectives and the following remit was agreed:

'To investigate the arrangements surrounding the sale of the Barbican site, with the purpose of learning some key lessons for the future, in the event of developments of a similar nature or scope being proposed.

- To understand why the contract in relation to the sale of the Barbican site was not signed, sealed and delivered until after May 2003.
- To understand the public consultation process which took place and the resulting decisions.
- To assess whether decisions taken in relation to the sale resulted in a loss of capital to the Council.
- To understand the changes in land values with a view to establishing whether best value was actually achieved in this case.

#### Consultation

4. This review has been carried out in consultation with the Assistant Director of Lifelong Learning & Leisure, the Head of Property Services, Political Group Leaders i.e. those involved in the decision making process relating to the Barbican, and representatives of the Save Our Barbican Group and the Barbican Action Group.

## Information Gathered

5. In order to understand the full sequence of events leading to the Barbican sale, the Committee were given copies of all the reports previously presented at formal decision making meetings together with the minutes of those meetings. They then held a number of informal meetings where they met separately with officers, Members and representatives of the local action groups, to discuss their understanding of the events and to ask a number of questions.

6. From this process the Committee were able to clarify the following information:

### **To understand why the contract in relation to the sale of the Barbican site was not signed, sealed and delivered until after May 2003**

7. In 2001 sales particulars for the site were issued, and 11 bids were received. Five of these were long listed and invited to make further bids based on a number of objectives. Four schemes were submitted as a result of this process from which two were short listed. In November 2002, Barbican Venture Ltd (BV) was selected as the preferred developer. This was a company formed for this particular project with the intention of building a serviced residential home and two hotels on the site, and refurbishing and selling the Kent Street car park. The deal also included a county standard pool at no cost to the Authority (to be operated by Cannon Leisure) and for the refurbishment of the Barbican Centre (to be operated by Absolute Leisure), plus a capital receipt of £3m.

## Issues Arising

8. While the council was trying to assemble a workable scheme only a limited amount of consultation was done with a small number of representatives. As there was strong disagreement within the Council about the BV scheme and bid, and the council's plans for the other two pools in the city, a decision was taken in February 2003 to launch a city-wide public consultation prior to the signing of any contractual agreement, to ensure the proposals were broadly publicly acceptable.
9. A consultation leaflet was issued in March 2003 which pointed out that there would be no fitness or crèche facilities with the county standard pool. The results of the consultation were not fully available until after the election period, which in turn, delayed any final decision by the Council as to the way forward.
10. The Barbican Action Group which had formed to protect the swimming facilities on the Barbican site were broadly satisfied with the resulting proposed scheme and therefore disbanded.

### **To understand the public consultation process which took place and the resulting decisions**

11. There was a mixed response to the consultation leaflet. Although the results broadly supported the refurbishment and renewal of the Barbican, there was

some criticism of the lack of community and play facilities and the level of fitness equipment.

12. The incoming administration in 2003 wanted to revisit the amount of the capital receipt to allow it to fund the refurbishment of the other two pools in the city, and decided to continue running the Barbican pool as a Council service whilst they renegotiated the agreement with BV. They also chose to re-run the consultation process in order to gauge public opinion on their alternative package which would address the capital receipt issue. This further delayed the final decision.

### **Issues Arising**

13. During the period of renegotiation, the Council received external legal advice that it would be illegal to allow BV to build the pool as part of the development bid. It was advised that even though BV's intention was to gift the pool to the City, the contract to construct the pool would have to be tendered by the Council, in accordance with European procurement rules.
14. A further public consultation was carried out in July 2003 on a revised package which asked whether residents preferred a community pool with considerable investment in other city pools, or a county standard pool with fewer resources available for the other pools. The result was marginally in favour of the community pool, and this was selected by the Executive in September 2003.

### **To assess whether decisions taken in relation to the sale resulted in a loss of capital to the Council & To understand the changes in land values with a view to establishing whether best value was actually achieved in this case**

15. In October 2003 an archaeological survey showed that parking for the apartments and hotel could be put in an undercroft under the buildings. BV became Barbican Venture (York) Ltd and submitted a new scheme and offer. A decision was taken not to consult on the new scheme as it reflected the Executive's view of the outcome of the second consultation process, and would be subject to the planning process.
16. As part of the new scheme, Barbican Venture increased the number of apartments and included a new 4 star hotel. They also moved the council's community pool on to the Kent Street coach park site, requiring a third of the car park to be demolished. The revised scheme which included a capital receipt of £4.4m was accepted by the Council's Executive in December 2003.
17. In February 2004 the Executive agreed to split the sale of the site into two contracts. The residential and hotel sites and the Kent Street car park to be sold to Barbican Venture and a lease of the auditorium to Absolute Leisure Ltd.

### **Issues Arising**

18. The Save our Barbican Group (SOB) started in spring 2003 when the consultation document was issued. Its purpose was to report local resident's concerns over the amount of residential development and the impact on the neighbourhood of the proposed casino and nightclub. For some, the involvement of Absolute Leisure also caused concern, and things intensified following the enlargement of the residential development. SOB's aim was to stop the development, to enable a rethink and consideration of other alternatives, with proper consultation. This aim was not achieved and ceased to be possible at the granting of planning permission.
19. In 2004, SOB took legal action due to the Council not having carried out an Environmental Impact Assessment (EIA), which council officers had been advised was not legally required as part of the planning process. This eventually led to judicial review by which time, it was too late for the Council to get an EIA as this was needed prior to planning approval. The advice given to the Council at that time, was that the judicial review would take approximately three months. But, in fact it took much longer because when SOB lost the judicial review, they chose to appeal as they felt it would be of national importance to other environmental groups. They then had to fight a decision not to grant them legal aid which they won. Having got financial aid, their original appeal was heard but it was unsuccessful. This series of events could not have been predicted in advance.
20. It is recognised that the scheme could have been built had the delays not occurred, as it was a good time to sell property and the best possible offer had been made. But, by the time the judicial review was rejected in late 2005, a downturn in the property market had begun. As a result, Barbican Venture submitted a revised lower offer which excluded any build of a pool, and as a consequence of the downturn, the Council had little option but to accept.
21. At the same time, the University as part of their Heslington expansion, had put forward a proposal for a new pool to be built on their site. This contributed to concerns as to whether the pool at the Barbican would continue to be viable.
22. Subsequently, there was a review as to whether CYC should have re-tendered the whole scheme in light of the revised Barbican Venture proposals. It found that as the market was dropping and not many companies were interested in this mix of development, the Authority would have been worse off.

## **Analysis**

23. Having considered all of the information gathered, the Committee discussed the problems that had led to the initial delays in selling the site. They expressed the view that it was realistic to take two years to formulate a proposal and that it was not unreasonable for a new administration to exercise its democratic right and change the proposal. The committee recognised however, that there was no evidence that any risk assessment had been carried out in regard to reopening the process. They also concluded that there was no evidence to suggest that use of an external project manager would have been beneficial.

24. The Committee agreed that the decisions taken in relation to the sale had resulted in a significant reduction of capital receipt to the Council. They concluded that this had been due to the complicated nature of the transaction, the changes to the brief by both the Council and the developer, the issues and the subsequent legal actions around an Environmental Impact Assessment, and the lack of periodic reviews of the project, including updates to the risk assessment, especially given the speculative nature of land values. Taking the project as a whole, the Committee acknowledged that best value had not been achieved, but recognised that each decision had been taken in good faith.
25. Finally, the Committee expressed the view that there might have been a more effective way of dealing with the protest movement and agreed to recommend that the Council should review the way it handles objections to schemes.

### **Options**

26. Having regard to the remit for this review and the information contained within this report, Members may agree to make the recommendations below in full or in part, or agree some alternative recommendations.

### **Corporate Direction & Priorities**

27. It is recognised that this review supports the following direction statements as set out in the Council's Corporate Strategy:
  - We will listen to communities and ensure that people have a greater say in deciding local priorities
  - Our ambition is to be clear about what we will do to meet the needs of our communities, and then deliver the best quality services that we can afford
28. The review also provides an opportunity for the Council to consider the procedures followed and the decisions taken at the time of the sale of the Barbican, in order to identify ways of improving what we do, in line with our Corporate Values.

### **Implications**

29. There are no Financial, HR, Equalities, Legal, Crime and Disorder, ITT or other implications associated with the recommendation within this report.

### **Risk Management**

30. There are no known risks associated with Recommendation (a). Recommendation (b) recognises that there is a risk to the Council if risk assessments are not regularly reviewed and updated during the period of a project. If a decision is taken not to approve Recommendation (b), then the levels of risk associated with projects will remain unknown.

## Recommendations

31. In light of the above options, Members are asked to agree that:
- i. it was realistic to take two years to formulate a proposal
  - ii. it was not unreasonable for a new administration to exercise its democratic right and change the proposal, taking into account the associated risks
  - iii. although each decision taken in relation to the sale had been taken in good faith, the delays in making those decisions, the longevity of unforeseen legal action and the shift in land values, had resulted in a significant reduction in capital receipt to the Council
  - iv. best value was not achieved taking the project as a whole, even with recognising the reasons outlined in paragraph 24.
  - v. there might have been a more effective way of dealing with the pressure groups
32. Therefore, the Committee are asked to recommend that:
- a) The Executive should commission an officer report which sets out a corporate approach for the Council when dealing with pressure groups
  - b) All future projects have a robust system of risk management which is regularly reviewed and updated throughout the period of each project.

Reason: To ensure that any future projects are managed effectively and take into account lessons learnt from this review.

### Contact Details

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**Interim Report Approved**

**Date** 28 July 2008

**Wards Affected:**

**All**

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