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## Hungate Ad-hoc Scrutiny Committee

1 May 2009

### Hungate Development - Final Report

#### Background

1. On 8 July 2008 following consultation with Group Leaders, the Chief Executive withdrew the planning application for the proposed development of the Council's new office accommodation at Hungate. This followed receipt of a formal written response from English Heritage that although the proposed building was a very impressive, sustainable and fit for purpose civic building, they were concerned that the building, by virtue of its height and massing could not be developed without harming the setting of the cluster of historic buildings and spaces around it. In summary, they objected to the proposal.
2. Members of the public commented on this decision and previous decisions taken in regard to the Hungate development and as a result of the concerns expressed, Cllr Brooks submitted this topic for scrutiny review in order to fully understand those decisions and the costs involved to date.
3. A feasibility report was presented to Scrutiny Management Committee (SMC) on 15 September 2008, and having agreed to proceed with the review, an Ad-hoc Scrutiny Committee was formed and the following remit was agreed:

4. **Aim**

To clarify whether the correct strategy for the accommodation project was set and adhered to, in order to ensure any future council projects are delivered on time and on budget.

#### Objectives

- i. In light of the overall budget, to identify whether the initial budget set was correct i.e. that all the relevant factors had been identified and included for, including the volume of all fees both agreed and incurred
- ii. To understand the decision taken in respect of agreeing which part of CYC would act as internal 'client' and to understand the relationship between Planning and the client.
- iii. To identify whether the consultation process was conducted properly and whether due consideration was given to the responses received when deciding how to proceed

- iv. To identify whether best practice was followed throughout the process in seeking the views of statutory consultees and English Heritage specifically, and whether those views unduly influenced the decisions made
  - v. To identify whether time was a factor in reaching the decisions made throughout the process e.g. in agreeing the design
5. On 10 November 2008 the Ad-hoc Scrutiny Committee met for the first time and agreed a timetable of meetings and a methodology for carrying out this review.

### **Consultation**

6. The Ad-hoc Scrutiny Committee held an informal information gathering event on 26 November 2008 and the following internal and external consultees attended:

Assistant Director of Property Services & Accommodation Project Director	CYC - Project Management Team
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Regional Director	English Heritage
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Assistant Director of Planning & Design	CYC – Planning & Conservation
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Head of Risk Management & Accommodation Project Manager	CYC – Risk Management
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7. Prior to the formal meeting held on 12 January 2009, another informal information gathering session was held and the following internal consultees attended:

Chief Executive  
Director of City Strategy  
Director of Resources  
Technical Finance Manager

8. Finally, on 10 March 2009 a final informal information gathering session was held and the following external consultees attended:

Previous Executive Member for Resources	Ex-Member of Hungate Project Member Steering Group
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Company Secretary	York Civic Trust
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## Information Gathered

9. **Objective i - In light of the overall budget, to identify whether the initial budget set was correct i.e. that all the relevant factors had been identified and included for, including the volume of all fees both agreed and incurred**
10. The Project Director provided a table showing the original overall budget as approved by the Executive in October 2006, and giving details of the increases in the budget approved by the Executive in July 2007 and June 2008. Having considered the information, Members were unable to draw any conclusions in regard to the first objective for this review, as it was unclear which of the figures represented costs that were already fully committed and those which were not.
11. As a result, the Committee requested a detailed budget history which was subsequently provided by the project's Technical Finance Manager. This included information on leases and carbon costs etc but did not include information on the additional 2 year rental costs to be incurred for St Leonards or the additional interest likely to be earned on the money from the sale.
12. The Committee therefore requested a further update on the financial position which was subsequently presented at a meeting in March 2009 – see Annex A. This identified:
  - Detail of committed expenditure at July 2008. i.e. expenditure that would have still been incurred even if the project had halted at July 2008 as it had already been confirmed to third parties
  - Commitments which had produced assets and commitments which were not recoverable
  - The cost of 2 years additional rent on properties that had been sold and the interest earned on the sale of those properties

## Analysis

13. The Committee acknowledged that the overall increase in budget was approx 10%, and noted that recent press coverage had suggested that the figure was much higher, and that the reasons for the two increases in the budget had been reported to the Executive and approved. Members agreed that the figures in the Press had been misleading and had not always compared like for like.
14. The Committee noted senior officers' view that the postponement of the development may not necessarily result in a financial loss to the Council as it may now get more for its money due to the down turn in the building market.
15. Overall the Committee were not satisfied that the size of the council owned plot at the Hungate site, due to its inner city location next to an historic building, was ever going to suit the vision of an economic structure as first identified by Councillors and the resulting budget constraints. They recognised that had a plot on a business park been identified or had there not been a requirement to

have everyone on one site, then it was likely that the Council would not have received the objections it did.

### **Conclusion**

16. The initial budget of 35.6m was for a basic office space as specified in the original brief. However, the expectations and aspirations for a civic building at the Hungate site and the environmental sustainability, required an increase in budget of 10%.

### **Objective ii - To understand the decision taken in respect of agreeing which part of CYC would act as internal 'client' and to understand the relationship between Planning and the client.**

17. The Committee were informed that in terms of project governance, as the Corporate Landlord resides within the Resources Directorate, ownership of the project had from the outset been placed with Resources. Project management arrangements were put in place, consisting of a Member Steering Group made up of the Leader, Executive Member for Resources and the Shadow Leader to provide support and advice to the project board and project team, and consider what decisions required Executive approval. After the elections in May 2007, the Executive Member for Resources was replaced by a representative from the Conservative Group. Therefore, throughout the project, the Executive were responsible for all formal decisions made until July 2008, when the Chief Executive took the decision to withdraw the planning application.
18. The decision to proceed with the Hungate site proposal was made by the Executive following a site analysis by Donaldsons of a number of sites within the city centre. Subsequently, Atkins undertook an outline feasibility of two options i.e. Hungate and 17-21 Piccadilly & Blackfriars. The master plan for the Hungate site designated the type of use for each plot of land on the site. Members were informed that the Council first issued a set of Heads of Terms to Hungate York Regeneration Ltd for the sale of the Hungate sites in December 2004. In May 2006, the Executive approved the selling of the freehold interest in a number of sites located within the Hungate Development area. The overall value of those sites was £960k and as part of the sale, HYRL were obligated to pay under a Section 106 Agreement the sum of £1m as a contribution towards the Foss Basin Transport Plan relating to the Peasholme Office site.
19. The sale was completed in December 2006, therefore the only council owned land designated for office use and available to the Council at Hungate, was the plot fronting on to Peasholme Green next to the Black Swan Public House. This plot was deemed acceptable as the initial site analysis had identified that the size of the plot, including land occupied by the Peasholme Hostel, would allow for 15,333 sq m of gross office space which was over and above the council's requirements. It was however recognised from the start that the planning risk was always going to be high and therefore this was identified within the project risk register and reviewed monthly throughout the life of the project by the workstream manager and project board, The Risk

Management team provided training and access to the Council's risk register Magique to assist the project in managing all of the risks.

20. The planning application which was later withdrawn by the Chief Executive, was based on the revised design dated December 2007. In regard to the relationship between planning and the 'client', the Assistant Director of Planning & Design provided copies of all the objections received relating to the withdrawn planning application, together with a copy of an internal memo which outlined some issues raised by the planning team during the pre-application consultation stage. He also confirmed that he had attended many of the pre-planning consultation meetings and that the letter of objection sent by English Heritage had come as a complete surprise to him having witnessed no sign of a strong objection to the revised design prior to its arrival. The Committee were also informed that at the time when the application was withdrawn, many of the issues flagged up within the internal memo and with the Architects had not yet been addressed, therefore it was not possible to say what the recommendation from the Planning Dept would eventually have been in regard to the application.
21. The Chief Executive confirmed that when he met with the English Heritage Advisor at a pre-application consultation event in March 2008, the comments made were very positive and therefore he too was surprised at the letter of objection they subsequently submitted.

### **Analysis**

22. In regard to the site analysis, the Committee noted that English Heritage's views on a suitable size of building for that site did not match those of Atkins, and were unclear whether Atkins had ever consulted English Heritage during their site analysis or whether Atkins had taken into consideration the proximity of the council owned plot to the historic building. Members received a copy of the Strategic Site Study report produced by Atkins (containing the brief), in which Atkins stated they had taken account of the historic public house
23. The Assistant Director of Property Services confirmed that Atkins had followed normal practice and consulted with the Council's planning officers about the site, and that the planning officers had previously consulted with English Heritage on the master plan for the site, but the master plan did not include the Peasholme Hostel plot. To alleviate the effect of the accommodation building on the historic Black Swan Public House, the decision was taken to situate the new accommodation building at the back of the plot away from the road. Members concluded that had the master plan included the hostel plot, the issue of the mass and scale of the new office accommodation may well have been highlighted at that very early consultation stage, and if it was not possible to overcome the concerns of the statutory consultees in regard to this issue, work need not have progressed, which in turn might have limited the amount spent on the project.
24. The Committee were also unclear whether the project management had been successful as minutes of meetings showed that some of the senior members of the Project Board were not always in attendance and therefore not party to

issues arising and decisions being made. In response, officers confirmed that to ensure all the Directors were kept updated and their views sought, regular updates on progress were given to CMT via draft Executive reports, and verbal presentations with slides and diagrams. It was noted that following the decision to withdraw the Council's planning application for Hungate, the Chief Executive and Executive had given a clear commitment to greater ownership and support for the project and project team. This change in stance was deemed to be the best way forward to reach a successful planning approved design and led to a review of the structure and governance of the management of the project.

### **Conclusion**

25. The separation between the 'client' and Planning was right and proper, and in line with best practice.

### **Objective iii - To identify whether the consultation process was conducted properly and whether due consideration was given to the responses received when deciding how to proceed**

26. The Committee noted that the notes/minutes taken at each pre-application consultation meeting were always presented at the next meeting for endorsement, thus allowing those consultees present, the opportunity to address any discrepancies in the meeting notes.
27. The Assistant Director of Property Services acknowledged that although the project team had provided lots of feedback when they had responded positively to comments from consultees, they could have done more to explain why they were unable to respond positively to other issues.
28. The Chief Executive explained the process that was followed when the letter of objection from English Heritage was received. Firstly, he held a meeting with key officers to discuss the seriousness of the letter and to seek their advice. He also consulted with the Group Leaders. The following day he and the Director of City Strategy held a meeting with English Heritage, at which English Heritage confirmed that although they liked the design, they could not support the planning application for that site due to the scale and massing of the proposed building.
29. The Committee queried whether the Chief Executive was fully aware of the financial consequences of the decision to withdraw the planning application. He confirmed that having considered all the views gathered and the options available, he together with the Director of City Strategy made the decision to withdraw the planning application drawing a halt to any further spending on the project and removing any further financial consequences. It was also made clear that technically, making the decision at the time, did not rule out a later re-submission of a revised planning application for that site.
30. The Regional Director of English Heritage expressed surprise at this decision as she saw the content of their letter as being up for negotiation and had not

expected the immediate withdrawal of the planning application. She confirmed that English Heritage liked the design and would have accepted a significantly smaller version of it on that site. The Chief Executive was clear however, that a significantly smaller version of the building was not a viable option as it would not allow for everyone to be on one site. Therefore the business case pointed to withdrawal of the application.

31. The Director of City Strategy stated that any significant change to a planning application required its withdrawal and the submission of a new application, therefore the decision they took had been in line with best practice. Also, the view of English Heritage was that the impact of mass could not have been mitigated by a change in the architectural treatment and therefore there was no other option available. He also pointed out that planning permission already exists for that plot for a building of 110,000sq ft.

### **Analysis**

32. The Committee accepted that the Project Team had recognised from the outset that the support of the statutory consultees was crucial to the granting of planning permission and that therefore they had always sought to address any issues raised. For example, The Committee noted that the Chief Executive had been aware of the concerns of the Civic Trust and that the project team were engaging with them about their concerns. The Regional Director of English Heritage informed the Committee that the English Heritage Advisor had raised a number of concerns with the Council's project team, in particular at a meeting held on 5 December 2007. The Project Team were able to show evidence of concept sketches showing changes that addressed those concerns. Notes taken at the next meeting (held on 20 December 2007) showed that English Heritage responded positively to those sketches. In fact, all of the notes/minutes of meetings held from 20 December 2007 onwards showed mostly encouraging comments from English Heritage. Those encouraging comments also appeared in the Minutes of meetings recorded by the Architects. The Committee concluded that whilst consultation procedures were followed flawlessly, the project teams commitment to the project led them to underestimate the impact on others of the growing murmurs of disapproval.

### **Conclusion**

33. Both pre and post application consultation with statutory bodies, staff and service departments was exemplary. The committee remained divided on the adequacy of the consultation with the public. However it was agreed, that further attention could have been paid to the pre-application consultation with the public on design concepts, although due to the constraints it may not have made a difference.

**Objective iv - To identify whether best practice was followed throughout the process in seeking the views of statutory consultees and English Heritage specifically, and whether those views unduly influenced the decisions made**

34. The Committee were presented with evidence of a series of meetings held by the project team with the statutory consultees i.e. English Heritage, CABE, Civic Trust etc, as part of the pre-planning consultation process. Notes from those meetings were included in the information pack provided to the Committee. They recorded the views of the consultees and the Council's Planning Dept and showed how they had helped to inform the progress of the project. The issues identified were flagged with the Architects which in many cases, ultimately led to changes in the building design. For example following a debate on materials, an effort was made to soften the interface between the Council building and the public house next door.
35. The Assistant Director of Property Services confirmed that the project team were under no illusions that support from the statutory consultees would be key to getting planning permission and it was always expected that conditions would be attached. It was always recognised therefore that working closely with the statutory consultees to iron out as many issues as possible at pre-planning stage, was fundamental to a successful outcome. In his view, and that of the Assistant Director of Planning, the letter of objection dated 8 July 2008 from English Heritage was unexpected, bearing in mind the amount of work which had gone into the pre-planning consultation stage, the resulting changes to the design and the encouraging comments received throughout the process from English Heritage.
36. In regard to the massing and scale of the building and its position next to the historic public house, the Committee found evidence within the notes of the various pre-application consultation meetings, which specifically identified the efforts of the project team to address those concerns of English Heritage. The notes suggested the focus at the meetings then moved to other elements of the design such as materials, as evidenced in English Heritage's internal memo dated 2 January 2008 – see Annex B.
37. At the informal session held in April 2009, the Company Secretary of York's Civic Trust, stated their concerns with the project in regard to the massing and scale of the building, particularly in relation to the Black Swan public house. He confirmed that the Civic Trust found some of the consultation imagery provided by the Architects misleading, as in their view it down played the bulk and mass of the building by showing the MAFF/DEFRA building in the background. He also provided an image given to them as part of a presentation by the Architects showing the relationship between the Council's proposed civic building and the Black Swan public house – see Annex C.
38. The Secretary of the Civic Trust commented on the Project Team's focussed approach to supplying the new civic building on brief and on budget and agreed that the pre-application consultation process had been 'textbook'. He did however criticise the level of attention paid to the feedback received, as the Civic Trust felt that no account had been taken of their first response, resulting in them having to respond more vigorously.
39. In response, officers stated that the evidence of the concerns over massing being addressed, was apparent in the significant number of changes made to the building design prior to the submission of the planning application. The



Project Director produced evidence of those design changes by providing a full history of revised drawings and team meeting notes. They clearly showed the number of changes that had been made between March 2007 and April 2008.

40. The Regional Director of English Heritage informed the Committee that it was standard practice for an English Heritage Advisor to attend pre-application consultation meetings with developers, and to provide advice on the impact on the historic environment of any proposals and specific elements of the design, presented to them. Their Advisor would then as a matter of course, involve other specialist officers from English Heritage in carrying out their own internal review of the information provided, and where necessary provide feedback to the developer, either verbally or via email.

### **Analysis**

41. The Committee recognised that feedback from English Heritage's own internal processes, was imperative to identifying their ongoing view of the evolving project. The only evidence that the Committee was able to find was an email that referred to an earlier internal review meeting at which English Heritage had criticised the first design – see Annex D. The Committee therefore acknowledged that this lack of feedback supported the evidence from the Assistant Directors of Property Services and Planning & Design, that the letter of objection sent by English Heritage had come as a complete surprise.
42. To clarify whether any other such feedback had ever been generated by English Heritage and sent to the Project Team, the Committee made a 'Freedom of Information' (FOI) request. This was done in two parts. Initially a request was made on 2 December 2008 for copies of any notes taken at their internal 'Important Application Review' meetings since August 2007. This was followed up by a further request on 11 December 2008 for any other internal documentation, and copies of any letters/ emails held by English Heritage relating to the Hungate development.
43. The FOI documentation provided by English Heritage (shown at Annex E), generated a number of queries:
  - i. Bearing in mind the content and tone of English Heritage's letter of objection to the Council's planning application, the Committee would like to understand the surprise expressed by the Regional Director of English Heritage at the meeting of this Committee on 27 January 2009, in regard to the Council's decision to withdraw the application and the view she expressed that the content of the letter was 'up for negotiation'
  - ii. Inconsistencies in comments recorded in the minutes of the 'Important Application Review Meeting' of 23 June 2008
  - iii. English Heritage email dated 26 June 2008, which included the comments "We are not wholly convinced that it does achieve these objectives but will have a more clear view early next week." - The query is, what happened early the following week or at any time up to the sending of the letter of objection, as the Committee received no

documentation or correspondence relating to that period as part of their Freedom of Information request

- iv. There was no record of any discussions/meetings taking place between 26 June and 8 July or any correspondence/documentation relating to that period provided as part of the FOI. Therefore, how was the content for the letter of objection based English Heritage's last IAR meeting of 23 June 2008 arrived, given the more positive nature of the documentation prior to that period
  - v. the letter of objection sent by English Heritage was copied to the Civic Trust & Conservation Trust. Officers pointed out that this was unusual and queried why it had occurred when there was no other evidence within the FOI documentation provided by English Heritage, that these organisations had been liaising or in communication throughout the pre-application consultation process.
44. The committee therefore chose to invite the Regional Director of English Heritage to attend their next meeting, which was declined. The Committee then made a further request to the Regional Director to attend its meeting in May 2009, which was also declined – see Annex F.
45. In response to query (v) the Secretary of the Civic Trust explained that following Coppergate, the Civic Trust, English Heritage and CABE had agreed to liaise with each other over future major developments in York.
46. The Committee also made an FOI request to CABE for copies of all their correspondence sent between April and July 2008 to English Heritage, the Council and others, in relation to the Hungate project. The documentation duly provided was considered by the Committee at their meeting in March 2009. Members queried the lack of notes/minutes provided in relation to their 'Internal Panel Reviews' held on 28 February and 4 August 2008. CABE subsequently clarified that it is their normal practice to produce an advice letter following a review meeting rather than meeting minutes, and a copy of the advice letter pertaining to 28 February 2008 had been included in the FOI documentation. In regard to the Internal Panel Review on 4 August 2008, no such advice letter was produced as the Council's planning application had already been withdrawn.
47. Finally, as the Committee saw a change in the views of some of the statutory consultees, but no evidence of the reasons behind it, they therefore agreed that publicly funded organisations have a duty to be clear, consistent and timely in the consultation responses they provide.

### **Conclusion**

48. Best practice was followed in seeking the views of the statutory consultees, but the authoritative views from English Heritage were received too late in the process and were never received from CABE.

**Objective v - To identify whether time was a factor in reaching the decisions made throughout the process e.g. in agreeing the design**

49. The committee found that whilst time was a material factor, they were unable to find evidence that time was a considerable factor in regard to the project i.e. the project was neither rushed nor delayed.

**Implications Associated with Recommendations Arising from the Review**

50. **Human Resources** – In relation to recommendation (v), the Committee recognise that an increased level of involvement of the Chief Executive and Senior Directors may assist in a successful outcome for the ongoing new council offices project and are pleased to see that steps have already been taken to allow for this.
51. **Financial** – There will be a financial implication associated with recommendation (i). The degree of additional budget required for implementing the recommendation as part of a future project of this nature cannot be assessed at this stage and would need to be fully investigated as part of the lead up to a project. On balance, the Committee felt the additional costs that may be incurred at that early stage could lead to an efficiency saving later on.
52. There are no equalities, legal or other implications associated with the recommendation within this report.

**Corporate Strategy**

53. The provision of the new accommodation and the consequential improvements in services to our customers will contribute to all of the Council's priorities and key change programmes.

**Risk Management**

54. The risk associated with not dealing consistently with feedback on consultation and not providing the right level of senior management support to any project of the size and nature, is that the potential remains for a similar outcome on future projects with high levels of public uncertainty. However the Committee acknowledges that since withdrawing its planning application for Hungate, the council has already reviewed the leadership, project management process and the roles within the council and of its partners. And as part of that review, the Council has already considered 'lessons learnt' particularly those relevant to 'consultation' and has prepared future strategies for communicating and engaging the 'external audience'.

**Recommendations**

55. Having considered the aim and objectives for this review, and In light of the information gathered, The Hungate Ad-hoc Scrutiny Committee recommends that the Council:

- i. Carries out pre-project public consultation before commencing on any major project to identify and take account of the level of public support, aspirations and expectations, in order to inform the project including the budget
- ii. Continues with its best practice approach to pre-application consultation
- iii. Agrees a code of practice with statutory consultees which seeks to ensure they provide clear, consistent, timely and documented responses to consultation, from persons in authority within their organisation
- iv. Always provides full and consistent feedback to all consultees no matter whether the Council is able to respond positively or negatively to the issues being raised
- v. For all major projects, ensure that the Chief Executive and Senior Directors take ownership of the project and give consistent support to the project team

Reason: In order to ensure any future council projects are delivered on time and on budget

**This report has been produced by the Hungate Ad-hoc Scrutiny Committee in conjunction with the Scrutiny Officer listed below**

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**Interim Report Approved**  **Date** 1 May 2009

**Wards Affected:**

All

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

**Background Papers:**

Topic Registration Form dated 16 July 2008  
Feasibility Report dated 15 September 2008  
Scoping Report dated 18 November 2008  
Interim Reports dated 10 December 2008, 12 & 27 January, and 10 March 2009

**Additional Documentation Considered By Committee:**

Overview & Information pack provided by Hungate Project Team

- Admin Accommodation: Project Initiation Document & supporting annexes
- Planning Policy Statement 6: Planning for Town Centres

- Meeting of the Executive 1<sup>st</sup> Feb 05: Accommodation Review – Site Option Appraisal & supporting annexes
- Meeting of the Executive 1<sup>st</sup> Feb 05: Committee Minutes
  - Meeting of the Executive 22<sup>nd</sup> Nov 05: Business Case & 8 supporting annexes
  - Meeting of the Executive 22<sup>nd</sup> Nov 05: Committee Minutes
  - Hungate Master Plan Development Brief
  - Hungate Master Plan - Maps
  - Meeting of the Executive 10<sup>th</sup> Oct 06: Accommodation Project Update & supporting annexes
  - Meeting of the Executive 10<sup>th</sup> Oct 06: Committee Minutes
  - Meeting of the Executive 24<sup>th</sup> July 07 & 4 supporting annexes
  - Meeting of the Executive 24<sup>th</sup> July 07: Committee Minutes
  - Meeting of the Executive 17<sup>th</sup> June 08 & 2 supporting annexes
  - Meeting of the Executive 17<sup>th</sup> June 08: Committee Minutes
  - Contract Documents for the Office Accommodation Project dated Sept 2006
  - Meeting of the Executive 13<sup>th</sup> Feb 07: Admin Accommodation Project Report & supporting annexes
  - Meeting of the Executive 13<sup>th</sup> Feb 07: Committee Minutes
  - RMJM Stage B Report: June 2007
  - RMJM Stage C Addendum: March 2008
  - RMJM Stage D Report: May 2008
  - Corporate Asset Management Plan
  - RMJM Consultation Process: Pre-Planning Application dated August 08
  - Summary of External Feedback on Building Design: Dec 07 – Mar 08
  - Pre Planning Design Exhibition – Staff Feedback
  - Pre Planning Design Exhibition – External Feedback
  - Staff Pre-Planning Design Exhibition Comments
  - External Pre-Planning Design Exhibition Comments
  - CMT Digest – 23<sup>rd</sup> Apr 08
  - Project Board Meeting Minutes – 25<sup>th</sup> Apr 08
  - Member Steering Group Meeting Minutes – 28<sup>th</sup> Apr 08

Strategic Site Study report produced by Atkins

Freedom of Information Documentation Pack from CABE

Programme of Pre-Application Consultations

Documentation evidencing changes to design during pre-application process

**Annexes:**

**Annex A** – Budget History Information

**Annex B** – English Heritage Internal Memo dated 2 January 2008

**Annex C** – Image provided by York's Civic Trust

**Annex D** – English Heritage Email dated 10 September 2007

**Annex E** – FOI Documentation Received From English Heritage

**Annex F** – Written Response from English Heritage