

Policy and Resources Committee

Agenda Item

Brighton & Hove City Council
Public Report

Subject: Black Rock – update report
Date of Meeting: 12 July 2012
REPORT OF: Strategic Director Place
Contact: Officer: Name: Katharine Pearce Tel 29-2553
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Key Decision: Yes Forward Plan No: 30125
Wards Affected: Regency & seafront wards

FOR GENERAL RELEASE

1. SUMMARY

- 1.1 This report summarises the background (and history) to recent negotiations with Brighton Arena Limited (BAL) in relation to the Black Rock site. It also summarises the process by which the council has reached a conclusion with regard to the final proposals submitted by the Developer for the Black Rock Site and recommends a way forward.
- 1.2 There is a Part II report relating to this matter which should be considered concurrently with or prior to the consideration of the report.

2. RECOMMENDATIONS:

The Strategic Director Place and Black Rock Project Board recommend that Policy & Resources Committee:

- 2.1 Agree to reject the revised proposals submitted by Brighton Arena Limited (“BAL”) relating to the Black Rock site (see Appendix 2 “the Site”).
- 2.2 Agree that the Site will be subject to a fresh procurement and re-marketing exercise.
- 2.3 Agree that the future strategy for the re-marketing of the Site should be worked up in conjunction with the cross party Project Board, including future possible uses on the Site (including an ice rink) being feasibility tested and subject to soft market testing, prior to the council returning to the market.
- 2.4 Agree that in the interim period, the Site should be marketed forthwith for

a temporary use to ensure that the overall appearance of the Site can be improved and the Site can be used productively until the outcome of a full procurement exercise is known.

- 2.5 Agree that any temporary use of the Site is to be agreed by the Economic Development & Culture Committee, who shall take into account the recommendations of the Project Board when referring any proposed temporary disposal to Policy & Resources Committee.
- 2.6 Note that in the event of BAL's revised proposals being rejected as recommended in 2.1, the Development Agreement with BAL will automatically terminate on 31st July 2012.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

Summary and policy context

- 3.1 In April 2007, after the marketing of the site for a privately funded leisure use, the Policy & Resources Committee gave landlord consent to Brighton Arena Limited ("BAL") for the Brighton International Arena Scheme. After a public consultation exercise and exhibition the scheme was chosen as the one which offered the best all round solution to the Black Rock site ("the Site") and would have provided the city with a brand new multi-purpose sports and entertainment arena and an adjacent permanent public ice rink. The rest of the scheme offered private and affordable housing and retail and restaurant uses. The design had received commendations from both CABE and English Heritage. During pre-planning stage discussions in 2008 the funder for the project went into receivership and at this time all funding for the project, including funds to the professional consultant and design team, ceased.
- 3.2 In the intervening period of time, considerable efforts have been made on the part of BAL and by the council team to seek ways to secure funding for the original scheme. Most arenas in the UK and further afield receive an element of public subsidy, but the BAL team's aspiration was to self operate the venue and cross subsidise from other aspects of the scheme to achieve viability, rather than to take this all as developer profit. This approach was not one that was especially attractive to funders, but the search for funding continued with several high networth individuals taking an interest but no final funder being forthcoming.
- 3.3 Over the last 18-24 months BAL have explored alternatives to unlock greater value in the scheme and discussed these options with council officers to see what may be acceptable. It was agreed informally that if the Developer wanted to come forward with final changes to incorporate a hotel use and additional commercial uses at ground floor level this would not be ruled out by the council (subject to a landlord committee receiving and approving such changes). However, these options still did not in the end create the value the scheme required to break even and to interest

funders.

- 3.4 The final opportunity to unlock the scheme came at the beginning of the year when ongoing negotiations took place with a well known commercial operator to take on a 25 year lease for the Arena. Changes to the building specification for the arena were proposed (although these were not discussed in detail with the council), but this appears to have created a greater cost burden on the project. Although a target agreement was reached it did not herald the final solution to funding the scheme which the developer had predicted.
- 3.5 An agreed deadline for a final amended scheme had been negotiated with BAL in February 2012. At the time the council and BAL felt this would allow time to gain agreement to the final amended details and to the new arena operator. A realistic and final objective assessment of the scheme could then be made and the opportunity taken to move forward or to call an end to the agreement with BAL.
- 3.6 In early May, only 4 weeks before the deadline, BAL introduced a new developer team to the council who appeared to be able to offer a last opportunity for a funded scheme. The new team took full legal ownership of the project and BAL, and worked towards submitting an amended scheme to the agreed deadline of 31 May.
- 3.7 A newly constituted Project Board was created to review the final set of proposals submitted by the new developer team on 30 May 2012 and to receive a presentation on 14 June 2012. The Board considered the proposals in detail (with the officer team) and reached a final view on the appropriate next steps. In the light of this, the Board has supported the recommendations contained in this report.

Evaluation of proposals by the Project Board

- 3.8 The Project Board considered the proposals from the new BAL developer team in the light of the following key criteria:

The impact of the final submitted scheme upon:

- The original scheme design and function
- The leisure/entertainment component of the scheme including ice
- The emerging seafront strategy
- The aspirations for the Site
- Transport
- Housing – including affordable housing

- 3.9 The proposals submitted by the new team were schematic rather than worked up designs. In the time available this was to be expected. The Board praised the work done by the team in what was a short timeframe.

- 3.10 The Project Board also reviewed the proposal being made in the light of the following critical issues which the Members and Officers had previously been alive to:
- Ability to achieve a viable and acceptable scheme in design and planning terms
 - Legal challenge possibilities around procurement
 - Financial deliverability
 - Need for council subsidy to the leisure element
- 3.11 In the light of the above evaluation process the Project Board reached the final view that the proposals presented were not able to satisfy the criteria sufficiently to offer confidence that a future acceptable scheme had a high enough chance of deliverability. It was also felt overall that the scheme had altered so significantly it was not justifiable for the council to take a position of not re-presenting the site to the open market.
- 3.12 Furthermore, the scheme as presented:
- Did not convince the members of the Board that a viable case could be made which was sustainable long term for the proposed leisure use.
 - The loss of the large capacity arena within the scheme was felt to have marked a considerable change to the overall “offer” and left the ice rink having to work far harder as a viable destination in its own right. It was not felt overall that the bidders had been able to make a sufficiently robust case for this.
 - The change in the location of the ice rink, whilst utilising a less attractive part of the site also had detrimental effects. It was felt that although high quality housing was being proposed, this now dominated the site and had changed the emphasis from the previous leisure focus to housing with a distribution of retail.
 - Whilst the retail and restaurant use was to be welcomed, the location of these uses in separate “blocks” with spaces in between (and housing above) on this exposed seafront location was viewed as unlikely to offer sufficient protection to the public realm. There was a concern that these areas could become no-go areas in the winter months and despite planting to mitigate this, the spaces between the retail were seen to suffer from the same problem experienced in the Marina. This would have a negative effect on the business case for the retail.
- 3.13 In the light of the issues highlighted in 3.10 and 3.12 above, the final view of the Board was to support the option of re-marketing the site to a refreshed brief. The minutes of the Board’s meetings are annexed to the Part II report.
- 3.14 The following table illustrates the changes proposed to the current scheme and the final proposals presented to the Project Board. Subsequently BAL have indicated that it would be prepared to change the

proposals so that for example the arena would revert back to a 10,000 seater. This has led to the production of the Part II report.

Evolution of mix of uses: Brighton International Arena Scheme 2004-2012 – BAL 30 May 2012

Core uses	Original Scheme	1st Revision Jan 2011	2 nd Revision Feb 2011	3 rd Revision Aug 2011	Latest Revision May 2012	Developer's Explanatory Notes
Arena	8,000-11,000 seats	8,000-11,000 seats	9,000 seats	10,000 seats	3,000 seats	Arena and incorporated ice pad
Housing	111 units – 40% affordable	123 private residential	139 private residential	139 flats – mix of sizes	209 flats – mix of sizes	Increase due to smaller arena and to ensure whole site viability.
Retail	2,500ft ²	2,500ft ²	2,500ft ²	2,500ft ²	See below	See below
Public Rink	1 st floor level 1,700m ²	Relocated to basement	No public rink	Olympic standard public rink	Public rink	Subject to funding
Large ground floor commercial space	Not mentioned. Utilised by A3 uses in original	34,000ft ²	34,000ft ²	Unconfirmed use. 100% retail use unlikely to be delivered	82,056ft ²	Associated Retail & Leisure and to support jobs
Restaurants and bars	25,000ft ²	25,000ft ²	25,000ft ²	25,000ft ²	37,961ft ²	Opportunity to maximise 'destination; feel and support jobs
Signature Restaurant	4,000ft ²	4,000ft ²	4,000ft ²	25,000ft ²	3,228ft ²	As above
Hotel	Not included	90 bed	110 bed with roof terrace	110 bed with roof terrace. Budget hotel	120 bed 4* and 90 bed 3*	Hotels create jobs, underpinning general leisure use

Core uses	Original Scheme	1st Revision Jan 2011	2nd Revision Feb 2011	3rd Revision Aug 2011	Latest Revision May 2012	Explanatory note
Sports Injury Clinic	10,000ft ²	Space used by relocated public rink	No basement level	No longer included	No longer included	
Museum	2,227ft ²	Possible subject to space	No basement level	No longer included	Not included	
Media Suite	7,585ft ²	Retained but reduced in size	Retained but reduced in size	Retained. Smaller and in basement	Not included	
Parking	70 total	Retained	Retained and 100 added	170 total	TBA	

4. CONSULTATION

- 4.1 The cross party Project Board membership and the officers advising the Board is shown on Appendix 2.
- 4.2 The Brighton International Arena Scheme was the subject of a full public consultation exercise when the original scheme was submitted to the council in 2004.

5. LEGAL/FINANCIAL & OTHER IMPLICATIONS:

- 5.1 The Development Agreement with BAL was completed on 27.07.05 (“the DA”). On 5 November 2007 a Supplemental Agreement was completed which referred to the approved Stage D Design Proposals and extended the Long Stop date in the DA by 9 months. The Long Stop Date is the date by which the Conditions (e.g. Satisfactory Planning Permission, exchange of the Affordable Housing Agreement, letting of Building Contract) are to be met and if they are not, either party can terminate the DA.
- 5.2 On 28 February 2012 a further Supplemental Agreement was entered into. This (i) acknowledged that changes to the Approved Scheme were proposed, (ii) set out a process for approval of those changes (see following paragraph) and the timing of the application for planning permission (“the Application”), (iii) extended the Long Stop Date to 28 February 2015 and (iv) varied the terms relating to the Lease. The Unconditional Date is the date on which all of the Conditions are actually met. Within the overall timeframe the DA as amended also has milestones, such as submission of the Application, which must be met and if not the DA automatically terminates.
- 5.3 BAL was required to submit by 31 May 2012 (i) a schedule of material changes to the Approved Scheme including replacement sections and elevation drawings as appropriate together with (ii) the scoping of the transport assessment for these Revised Proposals and (iii) satisfactory proof of funding for the achieving of Satisfactory Planning Permission. The council must either approve or reject the Revised Proposals by 31 July 2012, and if approved, BAL then has to submit the Planning Application by 31 July 2013.
- 5.4 From a legal perspective there are 3 distinct issues arising from the amendments – (a) uses (b) design and (c) area – each of which influences the ongoing procurement risk in the event of the council wishing to approve the revised scheme.
- 5.5 The above table highlights the proposed use changes. The revised scheme includes a combined ice pad and “arena” with 3,000 seats (Approved Scheme has a separate 8,000 – 11,000 capacity arena and a public ice pad), 82,056 sq ft of associated retail and leisure uses (Approved Scheme has retail and leisure uses ancillary to the main arena and ice pad areas), housing increase in units from 111 to 209 units, an increase in restaurants and bars (25,000 sq ft to 37,961 sq ft) and the introduction of 2 hotels.

- 5.6 The previous design was one large building, so that when approaching the development from Madeira Drive in the direction of the Marina the main uses would be restaurant and community ice pad, the main arena and then the residential (40% of which is required to be Affordable Housing under the terms of the DA). The revised proposal has a more separate block approach comprising a ground floor café with housing above (on land outside of the site; see following paragraph), retail block 1 with housing above, retail block 2 with housing above, first hotel with more retail and housing above, and the second hotel and a restaurant wrapped round the arena building which has retail on the upper floors, hotel facilities on the third floor and a signature restaurant on the fourth floor.
- 5.7 The footprint of the proposal goes beyond the site area referred to in the Approved Scheme and the DA.
- 5.8 As is plain from this report, the changes to the Approved Scheme (as defined in the DA) are significant. To all intents and purposes this is a new proposal rather than an amended scheme. Given the extent and nature of the changes to the scheme, it would therefore not be unreasonable or inappropriate for the council to choose to reject the latest Revised Proposals, terminate the DA and test the market for other proposals. There would be no constraint on the new BAL team putting forward fresh proposals in response to the new tendering exercise.
- 5.9 In the event of the committee rejecting the officers' and Board's recommendation to reject the scheme and terminate the DA, there would be a significant risk of procurement challenge given the significant changes to the scheme and lack of opportunity for other developers to have their proposals actively considered.
- 5.10 BAL are extremely disappointed with the recommendation in this report and are keen for the committee to consider whether or not it is appropriate to extend the period for presentation of further Revised Proposals, as otherwise if the recommendation to reject the Revised Proposals is agreed, the DA will automatically terminate on 31st July 2012.. This has led to the production of the Part II report.

Legal officer consulted: Bob Bruce

Date: 3 July 2012

Financial Implications:

- 5.11 The business case for the previous scheme has always contained a significant funding gap. Without a viable business case it was unclear how a funding package for the scheme could be structured and who would be the funders. In the current economic climate any bank funding would be extremely difficult to secure and a very significant proportion of the funding would need to be provided by equity investors (who carry the most risk and have the least security).
- 5.12 The new delivery team is experienced and highly committed with a successful track record of delivering projects. The documentation provided says the project has committed funding of £3m to take it through planning and to initial delivery and that the funds are held within Lloyds Banking Group, although we have not been provided with evidence to substantiate this position. The funding is being provided through a

Dorset based development company. Further information received states that subject to agreement on the final design principles with the council, they have access to further debt and equity providers to underpin the construction and development of the site and they would anticipate the debt equity balance to be about 50/50. The equity funder is said to have a long-term interest in the development rather than looking for a quick return.

5.13 The Developer has said that they think their scheme proposals are viable, have employed CBRE (a leading commercial property and real estate advisor with detailed knowledge of the site having also advised the council) who have confirmed the position and are prepared to share the initial valuation work with the council. It is inevitable that the removal of the arena and the increase in housing and commercial space will make the scheme much more viable. It is their aim to ensure that the project is financially stable at all times. Their intention is also to deliver the project within tight timescales.

5.14 The potential financial implications if BAL's outline proposals are agreed are as follows:

5.15 Positive implications if this scheme was deliverable and acceptable in design and planning terms: :

- Community infrastructure levy and/or S.106 income for the council.
- Business rates retention – the current site does not generate any business rates so the council would, until at least 2020, benefit from 50% of the business rates generated by the site (although this would only be generated upon completion of the development). There is currently insufficient information to estimate how much this might be but business rates would be generated by the proposed leisure, retail, hotel and restaurant uses and could amount to several hundred thousand pounds per annum.
- Additional council tax from the new 209 flats is forecast to be approximately £200,000 per annum assuming 40% social housing is delivered on site although the Developer has indicated that they would prefer to provide it offsite.
- New homes bonus also generated by the 209 flats is forecast to be about £300,000 per annum for 6 years.
- The development may be a catalyst for further redevelopment within the marina which could generate further income from business rates, council tax and new homes bonus.

It should be noted that these or other positive implications would potentially flow from other schemes; other developers have not had the opportunity to pitch for this site which was marketed as a leisure site.

Negative implications if the council approves the amended scheme:

- A reduced size of venue (with 3,000 seats) would be a direct competitor for certain money making events currently held at the Brighton Centre with a potential significant impact on the £900,000 per annum entertainment income currently achieved by the Centre. It would also be a potential competitor to the Brighton Dome.

- The ice rink has an explanatory note which says “subject to debt funding markets”. The banks are reluctant to fund out of the ordinary developments and more work would need to be done to establish whether and what type of ice facility on the site would be fundable. It is possible that the council could be asked to take a lease on the ice rink thereby transferring the risk on whether an operator could generate sufficient income to cover the lease.
- There are potential procurement issues to overcome which are set out in legal implications which could lead to a significant risk of challenge from another developer.
- There will be a consequent impact on council services as a result of the increase in residents although most services in planning for future services will have made some provision for demographic changes within the city.
- The transport solutions for the site may require a contribution from the council.

If Members decide not to proceed with these proposals and depending on the timetable envisaged for remarketing the site, consideration will need to be given to testing the market for possible temporary uses for the site which could generate an interim revenue income.

Finance officer consulted: Mark Ireland

Date: 3 July 2012

Equalities Implications:

- 5.16 The previous BAL scheme had submitted a Design and Access Statement for the approval of the council. The revised proposals had not yet reached this stage. There are not considered to be any specific equalities issues arising from this report

Sustainability Implications:

- 5.17 BAL have demonstrated commitment to meeting the council’s objectives around sustainable development in relation to policies within the emerging City Plan. The previous BAL scheme expended considerable time and resources working with the council, WSP environmental consultants and Bio-Regional (acting for the council) to formulate a proposal that would deliver a high level of sustainable design and minimise or re-use energy need within the site.

Crime & Disorder Implications

- 5.18 If agreed, it is important to market the site for a temporary use without delay to ensure that the overall appearance of the area can be improved and the site used productively until a full procurement exercise is re-commenced. Ideally the selected use should be open all year round and into the evening therefore providing additional controlled activity and security in a currently underutilised area of the seafront.

Risk and Opportunity Management Implications:

- 5.19 The risks and opportunities presented by the proposals put before the Black Rock Project Board were evaluated as part of the evaluation exercise. A well developed Risk and Opportunity Matrix is proposed for the project as it moves towards the next stage.

Corporate / Citywide Implications:

- 5.20 A revised and up to date development brief for the Site will allow for new proposals to be considered against the backdrop of the council's current priorities and those contained in more recent strategic consultation such as the Sports Facilities Plan, Sustainable Community Strategy, Tourism Strategy and emerging seafront strategy.

6. EVALUATION OF ALTERNATIVE OPTION(S):

- 6.1 These are set out in the main body of the report.

7. REASONS FOR REPORT RECOMMENDATIONS:

- 7.1 These are set out in the report.

SUPPORTING DOCUMENTATION

Appendices:

1. Membership of Project Board and Terms of Reference
2. Site Plan – Brighton International Arena

Documents in Members' Room:

30th May submission document – most recent proposal.

Background Documents:

There are no documents at present.

APPENDIX 1

Members of the Black Rock Project Board

Chair – Green Group	: Councillor Ian Davey
Labour Group	: Councillor Warren Morgan
Conservative Group	: Councillor Vanessa Brown

Officers attending:

Strategic Director, Place	: Geoff Raw
Project Manager, Major Projects & Regeneration Team	: Katharine Pearce
Head of Planning & Public Protection	: Martin Randall
Head of Strategic Finance & Procurement	: Mark Ireland
Principal Solicitor	: Bob Bruce
Head of Tourism & Leisure	: Adam Bates
Commissioner, Culture	: Paula Murray
Architecture & Design Manager	: Nigel McCutcheon
Sports Facilities Manager	: Toby Kingsbury
Seafront Development Manager	: Toni Manuel
Divisional Support Assistant (Minutes)	: Joanne Hussey

BRIGHTON INTERNATIONAL ARENA PROJECT BOARD TERMS OF REFERENCE

Objectives of the Project Board

The headline purpose of the project board is to make recommendations to a future Council committee with regard to the material changes to the current Brighton International Arena scheme. *[A previous Project Board for the project came to an end after signing off the current scheme in 2007]*

The Project Board will have an important broader role to play should the project move forward. However the first tasks during April – June 2012 will focus upon the following:

- Reviewing all Material Changes to the Brighton International arena scheme which the Developer will submit by 31 May 2012.
- Reporting to the relevant agreed Committee with recommendations regarding approval/disapproval
- Setting conditions to be met by the developer during the period prior to a planning submission – if applicable
- Inviting contributions and/or attendance from key stakeholders on specific issues of interest or concern to the Project Board

Operating Principles

Project Boards are usually cross party and also include relevant Senior Officers. The board will be organised and serviced by the Project Manager. The draft membership as currently proposed will include:

Members

- Green Party nominated representative (Chair – Councillor Ian Davey)
- Labour Councillor nominee
- Conservative Councillor nominee

Officers

- Major Projects & Regeneration – Project Manager – Lead, Co-ordination and Servicing
- Culture Commissioner/Head of Service Tourism and Leisure –Client view (either/or)
- Sports Facilities Manager –Client view
- Seafront Manager – Client view

- Head of Strategic Finance - Finance
- Principal Solicitor - Legal
- Planning representative -Planning

The Strategic Director (Place) or the Strategic Director (Communities) may also opt to sit on the Project Board, as can the Head of Service Planning and Public Protection.

External Partners

The Project Board is an internal body, but officers sitting on the board can meet external partners and involve them where necessary.

Specialist Advice

The Project Board can also call upon specialist advice and support across the full range of disciplines as it sees fit.

Confidentiality

All meetings of the Project Board shall be held in confidential session. Wider dissemination of information / reporting must first be cleared through the Chair.

Management, Lead and Administration for Project Board meetings will be provided by the Major Projects & Regeneration team as well as updates/briefings as appropriate.

