



Cabinet 15 September 2010

Recommendations from the Public Venue (The Apex) Working Party: 11 August 2010 (Sep10/02)

Cabinet Member: Cllr Mrs L Alexander

*Chairman of the Working Party:
Cllr Mrs Mildmay-White*

1. The Apex: First Floor Area and Business Plan (Report B159)

On 11 August 2010 the Working Party RESOLVED:-

That, the Working Party endorses the Chief Executive exercising the urgency powers contained within the Council's Constitution to authorise the following actions and expenditure:-

- (1) capital expenditure of up to £160,000, to be funded from unallocated capital reserves, be invested in the fit-out of the First Floor Area of The Apex on the basis outlined in Report B159;*
- (2) the business plan for The Apex be amended, as set out in Report B159, to reflect the additional revenue income and expenditure arising from the Council's control of the entire First Floor Area;*
- (3) the existing capital budget for equipping The Apex be increased by up to £48,000 from unallocated capital reserves to accommodate the purchase of additional conference/banqueting furniture and two mobile bars to support the successful delivery of the business plan; and*
- (4) under the terms of rules 2.2(ii) and (iii), an exemption from Contract Procedure Rules be authorised to allow the selected designer, Ryoko Leveritt, to design, procure and/or supply furniture to the bar/café area of The Apex, as required, within the agreed budget.*

According to the Council's Constitution, this use of the Chief Executive's Urgency Powers 'shall be reported to the next meeting of the Cabinet, appropriate Committee or Council

The details surrounding the use of the Chief Executive's Urgency Powers are attached to this report as Appendix A.

Recommendations

The Cabinet is requested to **NOTE**:-

- (1) the use of the Chief Executive's Urgency Powers as detailed in Appendix A to Report B202; and
- (2) that this matter will also be reported to Council on 28 September 2010.

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Use of Chief Executive Officer's urgency powers – Apex fit out

Part C paragraph (a) of the Council's Scheme of Delegation provides that "where, in [the CEO's] opinion, by reason of limitation of time or urgency, a decision is required on any matter, after such consultation as he considers necessary (or as required by the Council's Budget and Policy Framework Procedure Rules in part 4 of this constitution) he shall have power to make a decision provided that any such decision shall be reported to the next meeting of the Cabinet, appropriate Committee or Council..."

Rule 4 of the Budget and Policy Framework Procedure Rules says that "officers..may take a decision which is contrary to the Council's policy framework or contrary to or not wholly in accordance with the budget approved by full Council if the decision is a matter of urgency. However, the decision may only be taken:

- (i) if it is not practical to convene a quorate meeting of the full Council; and*
- (ii) if the Chairman of the Overview and Scrutiny Committee agrees that the decision is a matter of urgency".*

Rule 2.2 (ii) of the Contracts Procedure Rules permits any member of Management Team to authorise non-compliance with those Rules "in a case of urgency where following the Rules would result in an unreasonable delay".

The Council's Contract Procedure Rules also allow an exemption to those rules to be made by a member of the Management Team where they are satisfied that the exemption is justified:

- (i) in a case of urgency where following the Rules would result in an unreasonable delay; or*
- (ii) in requiring the provision of goods, services or works of a specialised nature.*

The background to this decision is set out fully in Paper B159 to the Public Venue (The Apex) Working Party on 11 August, 2010 and is summarised here. The recommendations in that paper were approved, in addition to an additional recommendation to employ a furniture designer to design and supply a furniture scheme for the first floor bar/café area.

Background

1. The business plan agreed for the Apex in December 2009 did not include any income or expenditure related to what is known as the 'First Floor Lettable Area' (FFLA) as this area of the building was in the control of the developer at that time. However, in June 2010, it was agreed with the developer that the Council would take control of the entire First Floor Lettable Area, taking the income from this space, but also becoming responsible for the fitting out costs and overheads.
3. The cost of fitting out this space was also not included in the Council's original capital budget for the Apex since it was the responsibility of the developer. Therefore no provision was made for fitting out the catering operations within the public area. Until June 2010, the Council had hoped that this cost would be met in full or part by an external caterer, but a tendering exercise was unsuccessful and the Council must now provide the

necessary infrastructure in the building at the time of opening to allow a basic catering service to be provided in-house. This investment is likely to be recouped both in income from catering and also, if an external contractor is brought in at a later date, through better contract terms.

4. The public space of the new area will be used predominantly for catering although there is also the opportunity to hire it out for events, etc as well. More bar and café furniture will therefore be needed as well as an additional serving structure to meet the bar requirements at the time of opening, and also to allow for the future development of catering. This structure will match the design and finish of the Council's existing bar on the first floor.

Capital and Revenue expenditure on the FFLA

5. Taking into account what was already budgeted for providing the other bars, the additional cost of extending the Council's catering operation across the whole of the public areas on the first floor at the time of opening is estimated to be £160,000, to include:
 - Permanent bar/café serving structure
 - Furniture
 - Equipment/tills/crockery/glasses, etc.
6. The current business plan does not include the overheads for the FFLA since these were not expected to be the responsibility of the Council. It is estimated that there will be additional service charges of up to £10,000. Utility costs for the space in full use are estimated to be around £15,000 although, clearly, this will not be the case at opening since only the public area will be operational. While the Council runs the catering operation itself it will also be prudent to increase the Apex's equipment replacement fund by £5,000 a year, although this would be a cost transferred (at least in part) to any caterer if a contract is awarded at a later date. In summary, the maximum additional overhead of the space is estimated at £30,000 a year, if all the space is in use and the Council is operating the catering operation itself.
7. In addition to the considerable operational benefits of having the space under one control, there is also a potential financial benefit which is not currently reflected in the business plan. This new income is divided into two types: catering and hires. For the former, initial additional net income in the business plan (while the Council operates a limited bar/café operation) is estimated at around £10,000 p.a. However, over time it is anticipated that this income will grow as the food offer develops. Hiring income for the rest of the FFLA is subject to market-testing but is estimated in the region of £18,000 p.a. when the spaces are fitted out. Decisions on the business case for fitting out any surplus space in the FFLA will need to be taken separately and are not covered by these urgent decisions.
8. In summary, after the first year, it should be possible to meet the additional overheads incurred from the FFLA and, beyond that, hopefully develop a small surplus.

Design and Supply of FFLA furniture

9. Members of the Public Venue (The Apex) Working Party had also requested that a designer be employed to design the furniture scheme for the public areas of the FFLA, given the potential detrimental impact of an unsuitable and uncoordinated scheme. The Working Party selected a local designer from various proposals submitted at its meeting on 11 August.
10. In order to ensure that furniture is installed in the building by mid-October when it opens, it was proposed that, as is standard practice in the profession, the chosen designer be commissioned to design, procure and/or supply the furniture, as appropriate, within the agreed budget. This required an exemption from contract procedure rules on the grounds of urgency and also special circumstances (CPR 2.2).
11. The reasons for this exemption were:
 - (a) It will cause unreasonable delay to follow a conventional procurement route, as these items must, ideally, be in place by early October at the time of opening and the lead-in time is 6-8 weeks.
 - (b) The Council did not become certain it would need to procure this furniture itself until June 2010, and therefore could not plan ahead to do so.
 - (c) The process involves purchasing a specific set of furniture, to an agreed design, without the flexibility that would be possible with a conventional procurement process (in which a range of suppliers offered items which met an agreed specification from their own stock). Some of the items may also be proprietary items.

Additional enhancements to support the business plan

12. *Conference and banqueting furniture*

While there is sufficient budget provision to procure the equipment required to open the Apex, this did not include the provision of new conference chairs and tables. The intention was that the old furniture from the Corn Exchange could be transferred. While this existing stock will be retained and can be used for other events and venues (for instance festival or outdoor events), it is now considered that it will not work well in the Apex. In particular, the Council needs to be aware of the high standards and competitiveness of the quality conferencing and business-to-business (B2B) sector which are a key part of the Apex business model. Upgrading this furniture is estimated to cost up to £40,000 depending on the outcome of tenders.

13. *Mobile Café / Bars*

The fire management plan indicates that a small number of mobile structures can be used in the Apex. The provision of these will enable customers to purchase drinks quickly prior to, and in the intervals for, major events. They

could also be used to generate additional income when not used for major events, particularly during the daytime in the outdoor space allocated to the Apex. Similarly, it is therefore recommended that the fit-out budget be increased by £8,000 for the purchase of two mobile bar units.

Reasons for urgency and consultation

14. The Apex opens in mid-October and, in order to ensure that the additional fit out was completed before or as soon as possible after opening, the works needed to be commissioned, and procurement processes started, prior to the end of August. To enable this, it was necessary that urgency powers were exercised by the Chief Executive. As there was no current budgetary provision for this expenditure the urgency powers also had to be exercised in conjunction with rule 4 of the Budget and Policy Framework Procedure Rules. It was the view of officers that it was not practical to convene a special meeting of full Council during August to consider just this one item in isolation and that, in addition, to do so would have caused a delay which would have jeopardised the smooth opening of the Apex. The decision would however be reported to the next available Cabinet and Council meetings.
15. To ensure adequate councillor involvement in the decision, the matter was considered by the full Cabinet at an informal briefing with the Council's senior management team on 28 July 2010. It had also been agreed at the meeting of the Public Venue (The Apex) Working Party on 13 July that this matter should be considered at a special meeting, including a tour of the building, on 11 August, on the understanding that any decisions would require CEO urgency powers to be used. Paper B159 was considered in detail by the Working Party on 11 August and the recommendations were approved, including an additional recommendation relating to the use of a furniture designer. The Council also issued a press release prior to the meeting, which attracted significant coverage, and also placed Paper B159 on its website. Press releases are also sent internally to a significant number of councillors.
16. As an in-year change to the budget, the Chairman of the O&S Committee also agreed that it was impractical to call a special meeting of the full Council in the time available.

Decisions made

- (i) capital expenditure of up to £160,000, to be funded from unallocated capital reserves, be invested in the fit-out of the First Floor Area of the Apex on the basis outlined in Paper B159;
- (ii) the business plan for the Apex be amended, as set out in Paper B159, to reflect the additional revenue income and expenditure arising from the First Floor Area;
- (iii) the existing capital budget for equipping the Apex be increased by up to £48,000 from unallocated capital reserves to accommodate the purchase of additional conference/banqueting furniture and two mobile bars to support the successful delivery of the business plan; and

(iv) under the terms of rules 2.2(ii) and (iii), an exemption from Contract Procedure Rules be authorised to allow the selected designer to design, procure and/or supply furniture to the bar/café area of the Apex, as required, within the agreed budget.

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