

**Manchester City Council
Report for Resolution**

Report To: Executive – 11 February 2009

Subject: B of the Bang

Report of: The Chief Executive

Summary

The City Council has settled the legal proceedings brought in connection with the design and construction of the sculpture B of the Bang. The report considers the financial and other implications of the settlement and makes recommendations for the future of the sculpture.

Recommendations

It is recommended that the Executive:

- Note the settlement of proceedings in connection with the design and construction problems of the sculpture B of the Bang
 - Note the work undertaken to identify options for the future of sculpture as set out at paragraph 5 of this report
 - Determine the option to be pursued by the City Council in connection with the sculpture and
 - Delegate authority to the Chief Executive in consultation with the Leader of the Council and the Executive Member for Arts and Leisure to undertake such work as shall be necessary to implement the decision of the Executive.
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Wards Affected: Bradford

Community Strategy Spine	Summary of the contribution to the strategy
Performance of the economy of the region and sub region	Sportcity has been identified as an area for major investment, regeneration and expansion. Resolving the issues around B of the Bang will contribute towards the regeneration of the site and the wider east Manchester area.
Reaching full potential in education and employment	None
Individual and collective self esteem – mutual respect	None
Neighbourhoods of Choice	None

Full details are in the body of the report, along with any implications for:

- Equal Opportunities Policy
- Risk Management
- Legal Considerations

Financial Consequences – Revenue

The financial consequences for the revenue budget are set out at paragraph 4 of the report. The costs which the council has incurred in connection with the spike failures are approximately £705k. These costs have been recovered through the legal settlement. The balance of £1m will be held by the council pending the final decision on the future of the structure.

Financial Consequences – Capital

Are set out at paragraph 4 of the report.

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Background documents (available for public inspection):

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

1.0 Introduction

- 1.1 The purpose of this report is to consider the financial and other implications of the settlement of legal proceedings brought by the City Council in connection with the sculpture B of the Bang and to consider options for the future of the sculpture.

2.0 Background

- 2.1 In June 2003, the Council and New East Manchester Limited (NEM) commissioned Thomas Heatherwick Studio Limited (THS) to design and construct the sculpture B of the Bang at Sportcity. The sculpture was intended to commemorate the successful staging of the Commonwealth Games in 2002 in Manchester and was commissioned following an international design competition in which the proposals were evaluated by an independent evaluation board.
- 2.2 Following its appointment THS together with its contractor and professional team commenced the work to design and construct the sculpture. Under the terms of its appointment THS and its team assumed full responsibility for the risks of delivery of the sculpture for the agreed maximum sum in return for control of the design and construction process. To address this a contractual structure was put in place that gave the artist the control of delivery, with the Council benefiting from a suite of collateral warranties from the THS team under which the designers and contractors covenanted directly to the Council in relation to their role in the project.
- 2.3 The sculpture was completed by January 2005. Shortly after completion there were two incidents of spike failure where parts of the sculpture either became detached or required removal. Testing of the spikes identified a number of factors that could have contributed to the failures and the Council appointed specialist consultants Arup to advise both in relation to the implications of the failure and to ensure the structure was safe at all times.
- 2.4 Since the initial spike failures both the THS team and the City Council have undertaken repairs and a number of additional spikes have been removed both for testing and, as a result of further incidents of failure. The sculpture continues to occupy a prominent site at Sportcity but clearly requires significant remedial work to be undertaken to address its current condition.

3.0 Legal Proceedings

- 3.1 Once the defects in the sculpture became apparent, the Council sought to work with the THS team to give them every opportunity to put things right. Although the THS team were keen for the issues to be resolved and initially undertook some additional works to fit dampers to the structure at their own cost, as the problems persisted there was limited progress in resolving the matter and the Council was required to act proactively to remove the damaged spikes and take action necessary to maintain the safety of users of the Sportcity site.

- 3.2 The lack of progress in addressing the matter led the Council to instruct solicitors and leading counsel to advise on the appropriate action to take in order to best protect the public funds invested in the project and, after complying with the pre-action protocol, in October 2007 the Council commenced proceedings for damages in respect of the losses incurred in connection with the sculpture. Proceedings were commenced against the THS team for breach of contract. The Council also liaised with the NWDA and other funders as the claim progressed recognising the fact that the legal proceedings protected the interests of all of the funders of the sculpture.
- 3.3 The proceedings were settled between the City Council and the THS team on 31 October 2008. Under the terms of the settlement the City Council received the sum of £1.7m in full and final settlement of all claims including costs. Although the settlement sum did not represent the full amount of the City Council's claim, including costs, it was considered to be in the interests of the City Council to accept the settlement to avoid incurring the substantial cost of taking the complex matter to trial (a significant part of which would be irrecoverable) and the risks that are inherent in any piece of complex litigation.

4.0 Financial Implications

- 4.1 The total amount spent in connection with the sculpture following the initial spike failures was in the region of £705k of which around £335k was legal fees, the balance being costs incurred in connection with the removal testing and other technical work necessary to support the claim and to ensure the structure was secure.
- 4.2 It is proposed to deduct from the settlement £700,000 towards the cost of the spike removals and legal costs leaving a balance of £1,000,000. This is in line with the current budget monitoring position of the City Council and ensures that there is no impact on the City Council's budget for this year.
- 4.3 The options for the future of the sculpture are set out below and the financial implications and associated risks of each option will need to be developed further before any commitment could be made. In the meantime the settlement monies will be held by the Council pending a final decision in relation to the future of the sculpture.

5.0 Next Steps

- 5.1 Following settlement of the proceedings the City Council has worked in conjunction with THS to consider the options available in relation to remedial works to the sculpture. The City Council and THS were supported by Arup, Davis Langdon and the constructors William Hare who gave their time free of charge to help develop and appraise the options. An initial workshop was held to review the technical data and identify potential options for the remedial work to the structure. Following the initial workshop, discussions were held involving THS, the technical teams and specialist contractors to assess the feasibility of the options and the likely costs involved.

- 5.2 The workshop considered all options for the remediation of the sculpture. Initially, consideration was given to the replacement of the spikes with new spikes manufactured from steel. This option (which was estimated to cost in the region of £3.5M), would involve using thicker steel that would be heavier and as a result would require the reduction in size of the spikes. As any reduction in size is unacceptable on aesthetic grounds, the artist proposed an alternative solution based on the use of composite carbon/glass fibre materials to manufacture replacement spikes.
- 5.3 The outcome of the workshop suggests that a solution that utilises composite carbon/glass fibre materials has the potential to form the basis of a remedial scheme. The solution would require the removal of the existing steel spikes and replacing them with composite spikes. The spikes would be designed to include strakes or other similar features that would reduce considerably wind induced vibration to ensure the aesthetic characteristics of the existing sculpture were retained. Preliminary work would seem to indicate that funds of between £2m and £3m would be required to remedy the structure including professional consultancy costs.
- 5.4 The conclusion of this work is encouraging in that it suggests a long term solution may be available to remedy the sculpture. However, it is clear from this work that any remedial scheme is likely to require significant additional funds and that at this time no such funding is available. Discussions with potential public funders would indicate that they could not contribute towards the cost of a remedial scheme in isolation as it would not deliver any significant additional outputs to the area, although they have confirmed that there is scope for the Council to continue to use the remaining settlement monies (after deduction of the City Council's costs) for the purpose of public art on the site.
- 5.5 The potential technical solution to secure a viable future for the sculpture would provide an opportunity to work in conjunction with the artist, Thomas Heatherwick to try to raise the funds necessary to allow the work to proceed. However, particularly having regard to the current financial climate, officers consider it likely that the fundraising would need some significant time to raise the required additional monies. There would also be a need for considerable design and testing before the City Council and other potential funders could be satisfied that any scheme is viable and this would also require considerable time.
- 5.6 There is therefore the need to consider how the structure should be dealt with in the meantime and following the workshop sessions and subsequent discussions with the artist and others the following two options have been identified:

Option 1 – Retain the sculpture in its current position.

A number of measures have been put in place to ensure the structure in its current position does not pose a health and safety risk including the removal of the tallest spikes and retention of the fence line. A full inspection of the sculpture was also carried out in May last year. It would be possible to retain

the sculpture in this position, subject to regular monitoring and if necessary removal of spikes that show the potential for failure which would give rise to significant ongoing cost to the City Council. Alternatively, as the workshop sessions have concluded that any remedial scheme would require the removal of the spikes the work to remove the spikes could be undertaken immediately and the legs and core left in place whilst funds were raised towards the remedial scheme.

Option 2 – Dismantle the sculpture to be reinstated on the site at a later date

This would involve the dismantling of the sculpture and storage of the core (and possibly legs) for use in the rebuilt structure. The sculpture could then be reinstated either at its original site or another location in Sportcity, possibly as part of a comprehensive public realm strategy developed in connection with the redevelopment of the site. The site of the sculpture is currently part of the wider Sportcity site that is being marketed by the City Council for redevelopment as a leisure and tourism attraction of international significance.

- 5.7 The two options outlined above both create the potential for B of the Bang to remain a key part of the site in the future, finally allowing the public sector bodies to get the full benefit of their investment in the sculpture. This reflects the City's commitment to both this piece of work and to public art in general, reflecting the importance such work has in creating the sense of place so vital in any regeneration scheme. However, at the same time there is a risk that, in its present condition the sculpture may have a negative impact on the area inadvertently acting as a symbol of decline. This effect will only increase if the sculpture remains in its current condition for some time and suffers further spike failures in the meantime.

6.0 Evaluation of Options

- 6.1 The options are presented to the Executive to allow it to determine how to proceed in relation to the sculpture.
- 6.2 Option 1 gives rise to significant ongoing maintenance costs which can be reduced by the immediate removal of the spikes from the sculpture. However, whether maintained in its current form or with its spikes removed, the visual impact of the sculpture will be much diminished and is likely to have a significant negative impact on the surrounding area. The City Council does not have sufficient funds from the settlement to allow this to be addressed in a way that retains the sculpture. Officers consider that the condition of the retained part of the sculpture would inevitably lead to increased calls on the Council to contribute the further funds necessary to carry out the work to restore the sculpture.
- 6.3 Option 2 has the advantage of minimising any ongoing cost of monitoring and maintenance, potentially allowing more of the settlement monies to be made available for a remedial scheme. It also allows the existing site to be incorporated into the redevelopment proposals for Sportcity and contribute towards delivering a viable scheme for the site which will include a comprehensive public realm strategy. This would provide a platform for

further public and/or private funding to be raised to contribute towards the rebuilding of the sculpture in a position that fully integrates it in the wider scheme. It is also likely that in any redevelopment of the site the focus of public activity will change and therefore the sculpture would, in those circumstances, be more appropriately located on another part of the site.

6.4 Officers have reached the conclusion that, on balance, option 2 is to be preferred, as there is little prospect of capturing the necessary additional funding required to remediate the structure in the short term. Option 2 is preferable both from a short term site management perspective and also in the longer term as it offers enhanced prospects for funding and delivery of a remedial scheme.

6.5 The above proposals have been discussed with the artist who initially responded positively to the proposal outlined in option 2 although has also now indicated that he feels that there are advantages in maintaining the sculpture in its current position as per option 1. It is the intention of officers to continue to work closely with the artist whichever option is pursued. Delegated authority is sought to allow the Chief Executive to work with the artist to develop any proposals for resolving both the technical and financial issues concerning the structure. If at any time it becomes apparent that it will not be reasonably possible to resolve these issues it is proposed that the balance of the fund would be applied towards commissioning a replacement piece of public art to commemorate the Commonwealth Games.

7.0 Recommendations

7.1 The recommendations are set out at the beginning of this report.

8.0 Contributing to the Community Strategy

(a) Performance of the economy of the region and sub region

8.1 Sportcity has been identified as an area for major investment, regeneration and expansion. Resolving the issues around B of the Bang will contribute towards the regeneration of the site and the wider east Manchester area.

(b) Reaching full potential in education and employment

8.2 None

(c) Individual and collective self esteem – mutual respect

8.3 None

(d) Neighbourhoods of Choice

8.4 None

9. Key Polices and Considerations

(a) Equal Opportunities

9.1 None

(b) Risk Management

9.2 The resolution of the litigation has reduced the Council's potential exposure to additional costs in connection with the legal proceedings.

(c) Legal Considerations

9.3 The settlement of the proceedings was in the opinion of the City Solicitor in the best interests of the Council having regard to the substantial cost of taking the complex matter to trial (a significant part of which would be irrecoverable) and the risks that are inherent in any piece of complex litigation. In the event that a decision were taken to pursue the potential remedial scheme of the sculpture in its current position the work would be undertaken by the City Council and its supply chain. This would have the benefit of giving the City Council control over the delivery of the project but would also mean that the City Council will have the associated risk. This would include any risk associated with the parts of the structure being retained, notably the core and legs. These parts of structure show no evidence of any deterioration and are thought to be sound although before any remedial works were commissioned it would be necessary to undertake a full survey to ensure the integrity of these parts of the sculpture.