
Report of The Director, Development Department

Executive Board Committee

Date: 17 January 2006

Subject: Appeal for Access to Information in relation to the Abbey Mills St Ann's Mills Project

Electoral Wards Affected: Kirkstall

Specific Implications For:

Ethnic minorities

Women

Disabled people

Eligible for Call In

x

Not Eligible for Call In

(Details contained in the report)

EXECUTIVE SUMMARY

This report outlines the Development Department's rationale for declining two specific requests for information made by Councillor Illingworth in relation to the Abbey Mills and St Ann's Mills project.

The report outlines the background to the Abbey Mills St Ann's Mills project, which, subject to the approval of Executive Board, includes the disposal of Abbey Mills and the reinvestment of the capital receipt into the St Ann's Mills site.

The Development Department's decision to decline the two requests for information has been taken in the context of previous experiences, where draft information, that essentially has been work in progress, has been released in good faith to Councillor Illingworth and has subsequently been used in the public domain to criticise both the Department and officers.

The Development Department seeks the Executive Board Committee's approval to the decision that it has taken.

1.0 Purpose of this Report

- 1.1 This report presents the Development Department's case in support of its decision to decline two requests made by Councillor John Illingworth for specific information relating to the Abbey Mills and St Ann's Mills project.

2.0 Background Information

- 2.1 The Development Department manages a portfolio of small industrial units, which aim to support the economic regeneration activities of the Council. Included in the small industrial unit portfolio are Abbey Mills and St Ann's Mills, both of which are located in the Kirkstall Ward.

- 2.2 The Development Department has recognised for some time that there are a number of issues in relation to the ongoing operation of both properties that need to be addressed. In the early stages of the Development Department's considerations, the main issues to identify were that:

- The main tenant of Abbey Mills had vacated.
- The main tenant of St Ann's Mills had indicated its intention to vacate.
- The condition survey of St Ann's Mills undertaken in 2003 had indicated that the premises faced backlog maintenance of £433,655 plus fees and contingencies.
- The condition survey of Abbey Mills undertaken in 2003 had indicated that the premises faced backlog maintenance of £626,085 plus fees and contingencies.
- Abbey Mills is a Grade II listed building and officers were also concerned about its continued suitability for industrial use.

- 2.3 In recognition of the issues identified above, officers from the Development Department considered the options available to improve the current position and create a long-term sustainable position.

- 2.4 Accordingly, the preliminary evaluation of the options by officers concluded that the course of action to recommend to Members of Executive Board was to dispose of Abbey Mills for residential conversion and re invest the capital receipt into the refurbishment of the St Ann's site. This would facilitate the relocation of the businesses from Abbey Mills to St Ann's Mills.

- 2.5 Executive Board duly received a report on Abbey Mills St Ann's Mills on 15 December 2004. This report sought approval from Executive Board to a series of recommendations to enable the proposal outlined above to be progressed. The report also informed Members that one Ward Member (Councillor Illingworth) did not support the officer recommendation. Rather, Councillor Illingworth supported a counter proposal which in summary included:

- The retention by the Council of both Abbey Mills and St Ann's Mills.
- Considering some disposal of interests to existing tenants at Abbey Mills to generate some (small) capital receipts and to develop a mixed economy solution on that site.
- Seeking to relocate St Ann's Mills tenants and use the 3 storey mill building to house local community groups, perhaps paying a market rent.

- 2.6 Officers from the Development Department did not support Councilor Illingworth's counter proposals. Officers felt that it did not address the pressing issue of conditions of the buildings. It did not raise sufficient capital and could increase demands for revenue support from community groups.

- 2.7 As part of the Executive Board report, the Development Department highlighted its proposal to consult with the Kirkstall Community on the public realm works proposed for Abbey Mills and St Ann's Mills.
- 2.8 At its meeting on 15 December 2004 Executive Board resolved to support the officer recommendations made in the report. A copy of the full minute for this item is attached in Appendix 1. However, with specific reference to this report the following recommendations are highlighted for Members' attention:
- 2.9 The following basis for the refurbishment/remodelling of the Abbey Mills and St Ann's Mills sites, be agreed:
- Consultation with the Kirkstall Community regarding the preferred form of public realm works at the site of Abbey Mills and St Ann's Mills.
 - That subject to (a) above, officers further develop the proposals contained in the report and bring back a more detailed report when designs have been prepared and costed to RIBA stage D and the results of the marketing of the Abbey Mills site are known; such report to deal with the proposed treatment of Abbey Villas, recognising their proximity to Kirkstall Abbey.
- 2.10 It is important to note that officers are not empowered to implement any proposals at Abbey Mills or St Ann's Mills until Executive Board has received and approved a further report from officers recommending a proposal in detail.
- 2.11 Since the decision of Executive Board officers from the Development Department have been working to action and implement the agreed proposals outlined in the report. In addition the Development Department has also participated in a Scrutiny inquiry into Executive Board's decision following it being subject to a call in and also an investigation of the proposal by Internal Audit and external auditors, both following requests made by Councillor Illingworth.
- 2.12 Whilst the project team has continued to undertake further work, in accordance with the Executive Board decision, they have received a significant number of requests for information from Councillor Illingworth which will be expanded upon later in this report. In addition, officers from the Development Department have met with Councillor Illingworth on at least 6 occasions since the Executive Board meeting to discuss this project.

3.0 Main Issues

- 3.1 Councillor Illingworth has recently made requests for information relating to:
- Draft plans for the refurbishment of St Ann's Mills
 - Draft questionnaire to be used during public consultation

After careful consideration and following consultation with the Legal and Democratic Services Division, the Development Department has decided to decline both of these requests.

4.0 Rationale in Support of the Development Department's Decision

- 4.1 The Development Department recognises the important role and contribution that Ward Members can and should make in the development and implementation of capital infrastructure schemes, especially when they might have a significant impact on the local area. In this sense, the decision to restrict information in this instance has not been taken lightly. The rationale that supports the Department's decision centres around the experience to date on the way in which previous information about this project has been used by Councillor Illingworth once it has been released to him.
- 4.2 To date the Development Department is in receipt of four volumes of correspondences from Councillor Illingworth in relation to this project. However, to aid Member's of Executive Board focus on the key aspects that relate specifically to the decision to decline two specific requests for information, the Department has highlighted evidence of Councillor Illingworth's previous actions in relation to:
- The release of draft work in progress to publicly criticise the Council's proposals and Council staff.

5.0 Evidence to Support the Development Department's Decision

- 5.1 The release of draft work in progress to publicly criticise the Council's proposals and Council staff.
- 5.2 Since the Executive Board meeting held on 15 December 2004, Councillor Illingworth has made a number of requests for information from the Development Department relating to this project. On occasion the information requested has been in draft form. However, whilst the Development Department has released this information, it has come to the Department's attention that there are instances where draft work in progress has been used by Councillor Illingworth to criticise the Council's proposal in the public domain. Examples of this include the draft proposals released by the Development Department for accessing the Abbey Mills site from Kirkstall Road.
- 5.3 In accordance with the Executive Board's recommendations the Development Department have been evaluating alternative proposals for the access and egress to the site. Given the difficult nature of the access options and local sensitivity of the site the Development Department has drafted indicative access and egress proposals for the site, with the intention that they could be used for consultation purposes through the Planning Brief process. At Councillor Illingworth's insistence, these draft plans, together with draft Highway drawings were released to him as a Ward Member in good faith. The Development Department agreed to Councillor Illingworth's request for information to enable him to see how feasibility work on the access and egress to the site was progressing. However, it has subsequently come to light that he chose to use the draft proposals to openly criticise the Department via correspondence copied to a number of external organisations.
- 5.4 To evidence this point Councillor Illingworth sent an e-mail on the 28 June 2005 concerning the new access road to Abbey Mills which was widely circulated. The circulation of this e-mail, which is attached in Appendix 2, included English Heritage, Sustrans, ROSPA, The BBC, Yorkshire Post Newspapers and Leeds Metropolitan University.
- 5.5 In this e-mail Councillor Illingworth criticised the safety measures of the draft proposals released to him by the Development Department and in considering the safety measures that he felt should be in place stated that ***'None of these safety measures are presently contemplated for the proposed junction near the Normans'***.

5.6 Councillor Illingworth had previously raised with officers his concerns over access, however, officers have consistently informed him that their work was only in draft form. Furthermore Councillor Illingworth goes on to suggest that the Development Department has proposals to create a link road from Abbey Mills to the far side of the mill goit. Councillor Illingworth's e-mail states that:

'We also know that major landowners on the far side of mill goit have been anxious to create a new access road to their property that would bypass the congested area on Bridge Road'.

Councillor Illingworth concludes that ***'Eventually substantial traffic will flow through the proposed junction, which will either have a terrible accident record, or alternatively will involve major civil engineering works that degrade the environment of Kirkstall Abbey Park'.***

5.7 Following on from the e-mail of the 28 June 2005, Councillor Illingworth then sent a press release on the draft access proposals to Abbey Mills. In this press release, which again is attached in Appendix 2, Councillor Illingworth describes the draft access proposals as:

'a hideous death trap'

'without doubt, the most stupid road scheme I have seen in 26 years of Council service'.

'It breaks every rule in the safety book'

'Every motorist and traffic engineer knows that this is downright dangerous'

5.8 In addition to the above, Councillor Illingworth again claims that the Development Department is party to a proposal to create a link road through to private developers land. Councillor Illingworth states that:

'There is a real possibility that this will start off as a minor access, which will be gradually enlarged to create a major new connection to the former Allders car park, and later to the open fields behind Kirkstall Abbey. Developers have wanted this for at least 25 years. Surveyors have recently been on site measuring up for a new bridge over Abbey Mill goit, and Council planners have discussed the idea in secret behind closed doors.'

Councillor Illingworth concludes his e-mail to the press by stating that, ***'I doubt that the listing will stop them unless the public makes a fuss. They are such Philistines'.***

5.9 Whilst examining the draft drawings released to Councillor Illingworth in good faith, Councillor Illingworth identified an error in the plotting of the draft drawing in relation to an Ordinance Survey Reference Point. The Development Department does not dispute the error in the drawing. Indeed, it is grateful for Councillor Illingworth in pointing this out at an early stage in the development of access and egress proposals. However, the drawings in question did not constitute a detailed design proposal and were not developed to pass detailed scrutiny. Rather they were developed to support the Planning Brief process and were therefore much more indicative than one might expect from a detailed design proposal that is ready for implementation. In addition, at the time that the drawings were released to Councillor Illingworth, the drawings had not been signed off by the Group Engineer to say that they were acceptable to support the Planning Brief and in this sense they were very much work in progress. On this basis, the Development Department is concerned about Councillor Illingworth's subsequent actions once the error on draft drawings came to light. In an e-mail to the Chief Executive dated the 21 August 2005 (Appendix 2) and copied to all Councillors, the Audit Commission and KPMG, Councillor Illingworth called into question the integrity of Development Department officers in the preparation of the draft drawings. Councillor Illingworth makes a number of statements in this regard which are detailed below:

' A substantial area of land and buildings in the 'Normans' has been moved electronically eastwards in the original highway drawing, making it appear that this road scheme might be practicable, when in fact it is not.

'...there may have been some attempt to 'smooth out the joins', so that these changes are less obvious than they might otherwise be'.

'It is clear that key buildings have either been omitted in the case of Abbey Mills and Abbey Villa, or electronically moved out of the way in the 'Normans'.

5,10 The Development Department maintains that the above actions by Councillor Illingworth demonstrates how draft information released to him has been used to criticise the Department's work. The Development Department would have been more than happy to discuss any concerns that Councillor Illingworth had regarding the draft access proposals to Abbey Mills. Indeed, the Department met with Councillor Illingworth on 3 October 2005 to discuss the matter with him. However, given the nature of Councillor Illingworth's actions, it is becoming increasingly difficult for officers to progress work on the agreed recommendations of Executive Board in a timely manner.

In particular, the Development Department is concerned by:

- the way the way in which Councillor Illingworth criticised draft work undertaken by the Department, and by implication the Council, with a number of public agencies and the press in what it considers to be an alarmist tone.
- the suggestion that officers from the Department are working secretly with developers to create a major new access route to private land. The Development Department refutes this allegation.
- the reference to officers of the Department as 'Philistines' in a statement to the press.
- the numerous suggestions that officers from the Development Department have deliberately made digital changes to base map information to make an access and egress proposal work, whilst ignoring safety regulations. The Development Department refutes all of these allegations.

- 5.11 In light of the above, and in an attempt to try and prevent similar instances occurring in the future, the Development Department has chosen to decline Councillor Illingworth's request for copies of the working plans undertaken by Architectural Design Services for St Ann's Mills. Rather, the Development Department's preferred course of action will be to brief Councillor Illingworth on the final drawings that it intends to progress, and table for Executive Board approval. Councillor Illingworth would receive copies of the drawings at this stage, once the Department was happy with the proposals put forward.
- 5.12 A second area of concern relates to the proposed public consultation exercise, which is being progressed as part of the agreed actions following Executive Board on 15 December 2004. Specifically, Executive Board asked that the Department progresses:
- consultation with the Kirkstall Community regarding the preferred form of public realm works at the site of Abbey Mills and St Ann's Mills.
- To implement this recommendation of Executive Board, officers from the Development Department have engaged the services of Swift Research to ensure that the consultation is undertaken in an objective and professional way. Swift Research is one of the consultants on the Council's framework agreement for undertaking consultation exercises.
- 5.13 At this stage in the project, Swift Research has developed draft proposals for a consultation exercise with the Kirkstall Community. The Development Department are keen to obtain a representative sample of views from the Kirkstall community and to achieve this it is proposed to undertake a door to door survey of 400 residents of the Kirkstall Ward. In addition, there will also be a postal survey of 600 residents. All of these residents will be randomly selected by Swift Research.
- 5.14 The Development Department plans to brief Ward Members on its consultation proposals once its draft work has been finalised. Ward Members will therefore be briefed prior to the consultation exercise being implemented.
- 5.15 Councillor Illingworth has indicated by e-mail that he has concerns over the impartiality of the Council's approach. In his e-mail of the 10 August 2005 Councillor Illingworth stated that ***' I am particularly concerned that the local authority should not appear to take sides on controversial issues such as the future of St Ann's Mills and Abbey Mills'***
- Councillor Illingworth went on to state that ***' I have serious doubts about the form of public consultation envisaged by the Development Department and by our consultants, which appear to be inconsistent with ministerial advice'***.
- 5.16 As a Ward Member the Development Department recognises Councillor Illingworth's right to be concerned about officer proposals and his right to challenge the Council's approach to consultation in this instance. However, the Department's position is that it should be allowed to finalise its proposals and brief Ward Members once there is a clear and fully formed proposal to discuss. Based on Councillor Illingworth's adversarial approach to the Abbey and St Ann's Mills projects to date, the Development Department is concerned how any draft information released at this stage may be used.
- 5.17 The Chief Asset Management officer has also received a verbal request from Councillor Illingworth for a list of the 400 randomly selected residents of Kirkstall that will be selected by the consultants for a door-to-door survey. In view of the need for impartiality, officers from the Development Department have no information on who the 400 randomly selected residents of the Kirkstall Ward might be. This task is being managed by the external consultants on behalf of the Council.

- 5.18 For this reason, the Development Department has declined this verbal request made by Councillor Illingworth. Primarily, given the way in which Councillor Illingworth has used information released to him in the past, the Development Department is concerned about why Councillor Illingworth would want this information and what he may do with it that might disrupt the Department's work in implementing an Executive Board recommended course of action.
- 5.19 In light of the above, the Development Department has declined Councillor Illingworth's request for further information on the proposed consultation whilst it is still in draft form. The department will brief Councillor Illingworth on its proposals once they have been finalised and prior to implementation.

6.0 Comments of the Director of Legal and Democratic Services

- 6.1 The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended, give all Members certain rights of access to information in respect of forthcoming executive business. By para 17 a right of access is given to any 'document' which contains material relating to forthcoming executive business. However, 'document' is defined so as to exclude anything in draft form so any drawings relating to the proposals for St Ann's Mills other than the final version, and any draft consultation documents would not be available under these rights.
- 6.2 The definition is also limited to any 'report or background papers...taken into consideration'. 'Background papers' are defined as those documents that 'relate to the subject matter of the report....and 'in the opinion of the proper officer.. disclose any facts or matters on which the report or an important part of the report is based and...were relied on to a material extent in preparing the report'. Consequently even when these drawings and documents have been finalised, when the Development makes a further report to the Executive Board, it will be entitled to take a view whether that report will be 'based' on these in any sense and whether they were relied on to a material extent. To paraphrase, if they fairly take the view these drawings and documents are not material to the report then again there would be no right of access under the Regulations even at that stage.
- 6.3 These rights are in addition to the other legal rights of access for Members, including the 'need to know' rights. However whilst these rights are necessary to enable Members to keep themselves informed about Council business, they do not extend automatically to what has been called a 'roving commission' through Council documents. Plainly, where officers are pursuing a public consultation exercise to inform a report, it must be right that the Ward Members generally have a 'need to know' in relation to the documents the officers use as part of that consultation. However, there is no basis for suggesting this means that those Members have a right of access to each and every piece of work carried out by the officers, and each and every draft document. Clearly Members would be entitled to everything that was put into the public domain by officers, but it would seem the timing of this would be for officers to take a reasonable view on, not pre-empting the public consultation on the one hand, nor disadvantaging Members viz their constituents on the other.

- 6.4 The case-law shows that the 'need to know' does not generally apply where a Member has what has been called an ulterior or indirect motive. Consequently it would be appropriate for officers to take account of whether a Member might be seeking access to information in order to pre-empt or discredit, a public consultation exercise. Likewise, whilst it might be argued the 'need to know' extends to the 'need to challenge' it seems highly unlikely that the courts would accept it would extend automatically to requests which officers reasonably concluded could be part of an attempt to undermine proposals which had received approval from the Executive Board. It seems still less likely the courts would accept a Member could rely on these rights where officers concluded reasonably there was a risk, that the information might be used to discredit the Council (whether officers or Members).
- 6.5 Notwithstanding this, the courts have said that in relation to the 'need to know' the decision of the Council is the 'final word', subject only to an application to the courts for judicial review on the usual public law principles. This means that as long as the Council's decision is not 'unreasonable' in a legal sense, the Council is free to set the limits of Members' 'need to know' rights as broadly or as narrowly as it chooses.

7 Summary and Conclusions

- 7.1 The Development Department is currently progressing a series of recommendations of Executive Board in relation to the future of Abbey Mills and St Ann's Mills. At the time of the last Executive Board report on this matter on the 15 December 2004 Councillor Illingworth made clear his opposition to the proposals put forward. Following the approval of the Executive Board report, Councillor Illingworth has remained opposed to the scheme in its current form.
- 7.2 The Development Department recognises that, as an elected Ward Member, Councillor Illingworth's opposition to this scheme is part of the democratic process and that one of a Ward Member's important roles is to challenge proposals put forward by officers. However, this role has to be set in the context of the officer's ability to progress work required by Executive Board. In this regard the Development Department maintains that Councillor Illingworth's approach to the Abbey Mills St Ann's Mills scheme has moved on from one of challenge, to one that actively seeks to undermine at every opportunity the legitimate attempts by officers to progress Executive Board requirements. In particular, the Development Department notes the view of the Chief Legal and Democratic Services Officer that *'the 'need to know' does not generally apply where a Member has what has been called an ulterior or indirect motive'*. Councillor Illingworth's requests for information have been significant in volume. One officer alone has dealt with circa 400 e-mails in 2005 in relation to this project either sent or generated as a result of Councillor Illingworth enquiries.
- 7.3 In recognition of the case outlined above, the Development Department proposes that:
- the Executive Board Committee supports its decision to decline Councillor Illingworth's requests for information in this instance.
 - officers continue to consult with Councillor Illingworth on the Abbey Mills St Ann's Mills scheme to enable him to undertake his Ward Member duties. However, the timing of briefings and the release of draft information in support of the Department's proposals should be determined by the Director of Development in consultation with the Director of Legal and Democratic Services.

8 Recommendation

8.1 Executive Board Committee is asked to approve the recommendations that:

- the Development Department's decision to decline Councillor Illingworth's requests for information in relation to working drawings of Abbey Mills St Ann's Mills and the proposed public consultation exercise be supported.
- officers continue to consult with Councillor Illingworth on the Abbey Mills St Ann's Mills scheme to enable him to undertake his Ward Member duties. However, the timing of briefings and the release of draft information in support of the Department's proposals should be determined by the Director of Development in consultation with the Director of Legal and Democratic Services.