

Louise Fleming

From: Louise Fleming on behalf of Commissioners
Sent: 11 May 2015 16:14
To: K.knight1666@btinternet.com
Subject: FW: LBTH v Rich Mix - Case HQ12X02558
Attachments: LW Letter - LBTH - 7.05.15.pdf; 2015.03.27 Letter to LBTH(5256367_1_LO).pdf; 2015.04.30 Ltr to LBTH(5368982_1_LO).pdf

Importance: High

Ken, Max asked me to send this to you for your attention.
Louise

From: Oliver.Browne@lw.com [<mailto:Oliver.Browne@lw.com>]
Sent: 07 May 2015 12:34
To: Commissioners
Cc: Don.McCombie@lw.com; Charles.Courtenay@lw.com; Philip.Clifford@lw.com; Daniel.Harrison@lw.com
Subject: LBTH v Rich Mix - Case HQ12X02558
Importance: High

Dear Sirs,

We should be very grateful if you would please review the attached correspondence. Hard copies follow by post.

Kind regards,

Oliver E. Browne

LATHAM & WATKINS
99 Bishopsgate
London EC2M 3XF
United Kingdom
Direct Dial: +44.20.7710.1825
Fax: +44.20.7374.4460
Email: oliver.browne@lw.com
<http://www.lw.com>

Latham & Watkins is the business name of Latham & Watkins (London) LLP, a registered limited liability partnership organised under the laws of New York and authorised and regulated by the Solicitors Regulation Authority (SRA No. 203820). A list of the names of the partners of Latham & Watkins (London) LLP is open to inspection at its principal place of business, 99 Bishopsgate, London EC2M 3XF, and such persons are either solicitors, registered foreign lawyers or European lawyers. We are affiliated with the firm Latham & Watkins LLP, a limited liability partnership organised under the laws of Delaware.

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.
Latham & Watkins LLP

LATHAM & WATKINS

99 Bishopsgate
London EC2M 3XF
United Kingdom
Tel +44(0)20.7710.1000 Fax: +44(0)20.7374.4460
www.lw.com

FIRM / AFFILIATE OFFICES

Abu Dhabi	Milan
Barcelona	Moscow
Beijing	Munich
Boston	New Jersey
Brussels	New York
Chicago	Orange County
Doha	Paris
Dubai	Riyadh
Düsseldorf	Rome
Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.

7 May 2015

Our ref. 503435-0000

BY EMAIL AND POST

Sir Ken Knight
Tower Hamlets Commissioners
Tower Hamlets Town Hall
6th Floor Mulberry Place
5 Clove Crescent
London E14 2BG

Dear Sirs

Legal Proceedings between London Borough of Tower Hamlets ("LBTH") and Rich Mix Cultural Foundation ("Rich Mix")

We write regarding the ongoing legal proceedings between LBTH and Rich Mix (the "Proceedings"), which are due to go to trial in the week commencing 20 July 2015. We act on a pro bono basis for the Defendant in the Proceedings, Rich Mix. This letter raises issues of considerable concern to Rich Mix and we should be grateful if you could give it your attention as soon as possible. As explained at the end of the letter, we and Rich Mix's representatives are ready to discuss the issues discussed below at your convenience.

Background to Proceedings and Settlement Offer

In summary, LBTH has claimed that Rich Mix must pay LBTH £850,000 plus accrued interest. Whilst Rich Mix believes it has robust defences to LBTH's claim, Rich Mix has nevertheless made an open offer to settle the proceedings (see our letter dated 27 March 2015, a copy of which is enclosed) (the "Offer"). The Offer followed multiple earlier settlement proposals on the part of Rich Mix.

The Offer was for the payment of £850,000, plus a contribution to LBTH's external legal costs. In an attempt to avoid any further additional expenses for the council taxpayers of LBTH as a result of this unnecessary legal action, the Offer was amended from the earlier settlement proposals to include up to £50,000 in respect of LBTH's demonstrable external legal costs (e.g. counsel's fees), reasonably incurred. We, and Rich Mix, consider the Offer to be a very reasonable and commercial attempt to bring the Proceedings to a satisfactory conclusion.

We have received no response to the Offer (and received no reasonable response to the previous settlement proposals either). We consider that it is in the interests of both parties to

Latham & Watkins is the business name of Latham & Watkins (London) LLP, a registered limited liability partnership organised under the laws of New York and authorised and regulated by the Solicitors Regulation Authority (SRA No. 203820). A list of the names of the partners of Latham & Watkins (London) LLP is open to inspection at its principal place of business, 99 Bishopsgate, London EC2M 3XF, and such persons are either solicitors, registered foreign lawyers or European lawyers. We are affiliated with the firm Latham & Watkins LLP, a limited liability partnership organised under the laws of Delaware.

the Proceedings to settle the case, rather than waste the time and expense involved in the trial and risk the considerable repercussions that would result from a judgment in favour of either side. Two Masters of the High Court have also expressed this view. In short, in light of the Offer, it makes no sense for the parties to proceed to trial.

Rich Mix is concerned that, following the decision in *Erlam & Others -v- Mohammed Lutfur Rahman* dated 23 April 2015 (the “Decision”) there may be some confusion among LBTH staff as to decision-making authority. It would be regrettable if, as a result of any such confusion, the parties found themselves in Court at the end of July despite the Offer having been made. We wrote to LBTH on 30 April 2015 to propose a stay of the proceedings and an adjournment of the trial hearing, but we have not received any response. Such letter was also copied to you, and we enclose a further copy for your convenience.

Section 106 Monies

In order to satisfy the Offer, Rich Mix requires access to section 106 monies set aside for Rich Mix under a decision of LBTH’s Strategic Development Committee in September 2010 (the “Section 106 Monies”), but which have never been disbursed.

We understand LBTH’s position to be that it is not obliged to apply the Section 106 Monies as recommended by the Strategic Development Committee (although we do not understand how that conclusion was reached or the basis for that conclusion). Further, we understand from Rich Mix that Mr Halsey, the Acting Head of Paid Service at LBTH, has stated that there is a legal presumption that the Strategic Development Committee’s decision was conditional and that Government has vested all executive authority with directly elected Mayors. His view was that this was also clear in the Constitution, and he stated that these were the reasons why council officers must work constructively with the Mayor to address his concerns regarding the disbursement of the Section 106 Monies to Rich Mix.

Rich Mix considers that LBTH and Mr Halsey are incorrect. It understands that the application of the Section 106 Monies is a planning matter, and that it is not within the powers of an Executive Mayor to intervene in planning matters. This issue has also been raised in correspondence published on website of the Department for Communities and Local Government (“DCLG”) between the Leader of the local Conservative Group and Mr Rowsell (of the DCLG). We note also that the approach taken by LBTH to the Section 106 Monies is not shared by PwC or the Secretary of State and we understand that it is the subject of a request from the Commissioners to KPMG (as external auditors) for a review.

As explained in the Offer, Rich Mix considers that, if it was given access to the remaining Section 106 Monies in accordance with the decision of the Strategic Development Committee, the Proceedings could be settled, without the need for a trial, in a manner which will benefit LBTH, Rich Mix and all their respective stakeholders.

Urgent Request

We respectfully ask that you consider Rich Mix’s circumstances, and the Offer, at your earliest convenience. We and Rich Mix are certain that it is now time to bring the Proceedings to an end. We and Rich Mix are very willing to meet with you and any other representatives of LBTH on short notice in order to achieve that aim. Rich Mix also remains

LATHAM & WATKINS

open to any other suggestions that you may have (including assisted negotiation and/or mediation) in order to reach a satisfactory resolution.

Ultimately, Rich Mix wants to ensure its continued survival and that it can continue to fulfil its mission to be the place where all of the communities of the world come together to make and experience art and feel like they belong. Settling the Proceedings also ensures that further costs to LBTH taxpayers, and further misallocation of LBTH legal resources, will be avoided. Rich Mix believes that settling the Proceedings is an important part of demonstrating good governance and meeting the Best Value duty of the Council, by allowing it to recover £850,000, which can be applied to the General Fund, and ensuring that a decision taken by a properly constituted committee of the Council can finally be implemented after almost 5 years of delay.

There is some urgency to this, as the current Court timetable requires significant legal work on both sides to be completed by 29 May. It would obviously be advantageous to the council taxpayers of LBTH not to incur further costs in a matter where offers to settle have been on the table for over 2 years.

We would be happy to provide any additional background information regarding the Proceedings upon request.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'Latham & Watkins', is written over a horizontal line.

LATHAM & WATKINS

LATHAM & WATKINS

99 Bishopsgate
London EC2M 3XF
United Kingdom
Tel: +44(0)20 7710 1000 Fax: +44(0)20 7374 4460
www.lw.com

FIRM / AFFILIATE OFFICES

Abu Dhabi	Milan
Barcelona	Moscow
Beijing	Munich
Boston	New Jersey
Brussels	New York
Chicago	Orange County
Doha	Paris
Dubai	Riyadh
Düsseldorf	Rome
Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.

27 March 2015

Our ref. 503435-0000
Your ref. L/C/DG/31632

BY EMAIL AND POST

London Borough of Tower Hamlets
Chief Executive's Directorate
Legal Services
6th Floor
Mulberry Place
5 Clove Crescent
London E14 2BG
Dear Sirs

London Borough of Tower Hamlets ("LBTH") v Rich Mix Cultural Foundation ("Rich Mix"): Claim No. HQ12X02558

As you know, a date has now been set for trial. In just under 4 months, the dispute between the parties will be ventilated, publicly, and at great expense. It is extremely disappointing that the trial is still on foot and that the parties have not been able to resolve their issues (a point the Court has echoed, twice). We, and Rich Mix, remain firmly of the view that a trial has no benefit for either LBTH or Rich Mix and, as set out below, are convinced that any judgment in favour of LBTH would be resoundingly negative for both parties.

There is a small window of opportunity available to the parties to settle this dispute so that they can move forward, together, for the benefit of Rich Mix, all of Rich Mix's stakeholders, and LBTH itself. We set out below the parameters of Rich Mix's revised settlement offer – which is being made, as with previous offers, on an open basis – and urge LBTH to give this offer serious consideration in order to bring an end to the current situation.

Revised Settlement Offer

Rich Mix has already made several offers to settle this matter. However, it would be prepared to make the following improved offer in order to settle all claims between LBTH and Rich Mix.

Without accepting any liability to LBTH, and on condition that LBTH transfers to Rich Mix the outstanding balance of the funds allocated to Rich Mix under the decision of LBTH's Strategic Development Committee dated 2 August 2010 (the "2010 SDC Decision"), Rich Mix is prepared to pay to LBTH:

1. £850,000 in full and final settlement of LBTH's claims; and
2. up to £50,000 in respect of LBTH's demonstrable external legal costs reasonably

Latham & Watkins is the business name of Latham & Watkins (London) LLP, a registered limited liability partnership organised under the laws of New York and authorised and regulated by the Solicitors Regulation Authority (SRA No. 203820). A list of the names of the partners of Latham & Watkins (London) LLP is open to inspection at its principal place of business, 99 Bishopsgate, London EC2M 3XF, and such persons are either solicitors, registered foreign lawyers or European lawyers. We are affiliated with the firm Latham & Watkins LLP, a limited liability partnership organised under the laws of Delaware.

incurred to the date of settlement.

Consequences of Rejecting Settlement Offer

For the reasons stated in Rich Mix's Re-Amended Defence and our second letter of today's date, there are serious doubts about the merits of LBTH's claim. In almost three years of litigation, LBTH has been unable to produce any signed document containing any obligation for Rich Mix to pay any money to LBTH. There are strong reasons to believe that no such obligation ever existed and that, even if such an obligation ever did exist, events occurring in the meantime have either waived such obligation or rendered it unenforceable. If LBTH were to lose at trial, it would have to bear its own estimated costs of £179,316 in addition to a significant proportion of Rich Mix's estimated costs of £216,243, i.e. the taxpayer would be exposed to a litigation costs liability of almost £400,000 in total.

Further, and as previously stated in correspondence, Rich Mix considers that the 2010 SDC Decision is still binding upon LBTH. It has not been varied or revoked by any body with competence to do so. As such, Rich Mix considers that LBTH currently has no power to apply the balance of the monies due under Schedule 8 of the 21 May 2008 Section 106 agreement with Bishopsgate Apartments LLP – currently understood to be over £1.5 million – to any use other than payment to Rich Mix, regardless of the outcome of the current proceedings.

Even if LBTH were to succeed in its claim, as stated over 18 months ago, Rich Mix simply would not have the funds to satisfy the judgment or any claim for LBTH's litigation costs. In order to recover the amounts claimed, LBTH would likely have to institute insolvency proceedings against Rich Mix which may then trigger rights for a number of other funders under the Deed of Priority. Given the multiple claims on the building, a successful action by LBTH would be unlikely to result in the building being offered or made available to LBTH. It is also unclear whether, at the end of lengthy, expensive insolvency proceedings, LBTH would recover either the £850,000 plus interest and legal costs claimed, or the significant amounts invested by LBTH in the Rich Mix project since its conception.

LBTH's Decision

If LBTH rejects the above offer, the taxpayer faces potential litigation costs exposure of up to £400,000 if LBTH loses its claim. Even if LBTH were to 'win', it may not recover the claimed sum or its litigation costs, and the benefit of the Rich Mix centre would be lost to the community.

If LBTH accepts the above offer, approximately up to £900,000 would immediately become available for LBTH to spend on general services, without any litigation risk or further litigation costs, and a valuable cultural facility serving the LBTH local authority area would be preserved.

We look forward to hearing from you.

Yours faithfully



LATHAM & WATKINS

LATHAM & WATKINS

99 Bishopsgate
London EC2M 3XF
United Kingdom
Tel: +44(0)20.7710.1000 Fax: +44(0)20.7374.4480
www.lw.com

FIRM / AFFILIATE OFFICES

Abu Dhabi	Milan
Barcelona	Moscow
Beijing	Munich
Boston	New Jersey
Brussels	New York
Chicago	Orange County
Doha	Paris
Dubai	Riyadh
Düsseldorf	Rome
Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.

30 April 2015

Our ref. 503435-0000
Your ref. L/C/DG/31632

BY EMAIL AND POST

London Borough of Tower Hamlets
Chief Executive's Directorate
Legal Services
6th Floor
Mulberry Place
5 Clove Crescent
London E14 2BG

Dear Sirs

London Borough of Tower Hamlets ("LBTH") v Rich Mix Cultural Foundation ("Rich Mix")

We refer to the decision in the case of Erlam & Others and Mohammed Lutfur Rahman dated 23 April 2015 (the "**Decision**") and to our client's settlement offer of 27 March 2014 (the "**Offer**"), to which we have received no response.

We also note, in relation to the Offer, the statement given by a LBTH spokesperson to the Hackney Gazette, published on 23 April 2015, that "*The council's grounds for pursuing repayment of this outstanding loan debt will be a matter for the courts to determine should the Mayor decide to pursue it*".

In the light of the uncertainty resulting from the Decision, and the apparent need for more time to consider the Offer with the appropriate decision-makers at LBTH (which we understand may be a difficult process given the possible lack of clarity in relation to the identity of those decision-makers), our client proposes that the parties seek to stay the proceedings and adjourn the trial currently laid down for the week commencing 20 July 2015.

If you agree to the above proposal, we suggest scheduling a short call to discuss how it may be effected. Please let us know of your availability for a call.

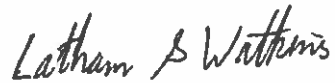
Because of the uncertainty about the current decision-making authority at LBTH, we are copying this letter to Sir Ken Knight as lead Commissioner of the Tower Hamlets Commissioners.

Latham & Watkins is the business name of Latham & Watkins (London) LLP, a registered limited liability partnership organised under the laws of New York and authorised and regulated by the Solicitors Regulation Authority (SRA No. 203820). A list of the names of the partners of Latham & Watkins (London) LLP is open to inspection at its principal place of business, 99 Bishopsgate, London EC2M 3XF, and such persons are either solicitors, registered foreign lawyers or European lawyers. We are affiliated with the firm Latham & Watkins LLP, a limited liability partnership organised under the laws of Delaware.

LATHAM & WATKINS LLP

We look forward to hearing from you.

Yours faithfully

A handwritten signature in cursive script that reads "Latham & Watkins".

LATHAM & WATKINS

Cc. Sir Ken Knight, Tower Hamlets Commissioners

Louise Fleming

From: Ken Knight <k.knight1666@btinternet.com>
Sent: 14 May 2015 09:54
To: Louise Fleming
Subject: Re: Overview & Scrutiny Committee - Old Poplar Town Hall (CDC.12)

Follow Up Flag: Follow up
Due By: 19 May 2015 08:00
Flag Status: Completed

Louise

I am going to ask Robin to initiate an officers report on RichMix which I intend to take forward with Alan and Chris. I recall that our commissioners emails are a number of emails regarding RichMix which I assume that you have access to? If so could you print off the relevant documents and put in three files for Chris, Alan and me to discuss next week.

In the meantime could you send the following email to Robin please.

Thanks

Ken

Robin

Rich Mix

Sorry we didn't meet in your SPOC role yesterday.

Just a couple of followups:

Following our discussion I have decided to separate the action logs into themes rather than name of commissioners. My intention is to maintain an overall action log however ensure that each commissioner updates and monitors the themes in their respective action logs. Perhaps you could ask those involved to consider how they suggest it is best achieved.

I have received a number of concerns about RichMix which I intend to lead on, could you arrange for a briefing report on the issues surrounding Rix Mix together with officers recommendations for me to consider next week. If it could be sent to me by close of play Tuesday it would be good? Following consideration of the report I will arrange meetings with the relevant officers to find a way forward.

Thanks

Ken

On 13 May 2015, at 16:03, Louise Fleming <Louise.Fleming@towerhamlets.gov.uk> wrote:

Louise Fleming

From: Robin Beattie
Sent: 14 May 2015 10:46
To: Commissioners
Subject: RE: Rich Mix

Ken

No problem.

Re the Action Log I am interpreting your comments to mean that you want the primary structure of the Master Log to be thematic but you want each commissioner to have individual logs to be 'owned' and updated by each Commissioner – these to comprise those actions that relate to work they are leading on either singly or with other commissioners within the Commissioner team or actions that are specific to them as commissioners to undertake (assuming you wish to keep it as a two way action log). I will progress structural options for your consideration along these lines unless you inform me that I have misinterpreted your intent.

Re Rich Mix

That's fine. Do you want the report to engage with the options for decision pathways including those specific to your directions or have you already decided to make a decision under Direction 4? If the latter can you let me know as we will need prepare to manage the process via the Monitoring Officer. The outstanding decisions are essentially political (with a small p and a big P) in nature so officers can provide risk assessed options in their report but would not be in a position to recommend a particular action. You will be aware that Max has, quite properly, informed the Head of Paid Service that he is conflicted on this issue being personal friends with the Chief Executive of Rich Mix. Therefore the record needs to show that he has had no engagement in this matter.

Ring me anytime if you need to discuss any of the above before next week or e-mail and I will respond as quickly as possible. I am out of the office this afternoon and tomorrow but you can reach me on my mobile if necessary and I will continue to monitor e-mails.

Regards

Robin Beattie
Service Head Strategy and Resources
Communities, Localities & Culture
6th Floor, Mulberry Place
Tel: 020 7364 4229
Email: robin.beattie@towerhamlets.gov.uk
Web: www.towerhamlets.gov.uk

London Borough of Tower Hamlets
Mulberry Place
PO Box 55739
5 Clove Crescent
London E14 2BG

From: Louise Fleming **On Behalf Of** Commissioners
Sent: 14 May 2015 09:57
To: Robin Beattie
Subject: Rich Mix

Robin

Sorry we didn't meet in your SPOC role yesterday.

Just a couple of followups:

Following our discussion I have decided to separate the action logs into themes rather than name of commissioners. My intention is to maintain an overall action log however ensure that each commissioner updates and monitors the themes in their respective action logs. Perhaps you could ask those involved to consider how they suggest it is best achieved.

I have received a number of concerns about RichMix which I intend to lead on, could you arrange for a briefing report on the issues surrounding Rix Mix together with officers recommendations for me to consider next week. If it could be sent to me by close of play Tuesday it would be good? Following consideration of the report I will arrange meetings with the relevant officers to find a way forward.

Thanks

Ken

Louise Fleming

From: Robin Beattie
Sent: 19 May 2015 19:18
To: Louise Fleming
Subject: FW: Rich Mix
Attachments: Commissioner Briefing Note For Sir Ken Knight Rich Mix.docx; Rich Mix - Cabinet - May 2015 (2) (2).docx

Hi Louise

See below e-mail to Ken. As there is this conflict of interest with Max on Rich Mix (self-declared to the HoPS as he is chums with the Rich Mix C.E) you will need to agree a way of handling documents on this issue with Ken which avoids giving Max access. Of course if Ken choses to share them subsequently with Max that's up to him but the process at least needs to be above reproach.

Regards

Robin Beattie
Service Head Strategy and Resources
Communities, Localities & Culture
6th Floor, Mulberry Place
Tel: 020 7364 4229
Email: robin.beattie@towerhamlets.gov.uk
Web: www.towerhamlets.gov.uk

London Borough of Tower Hamlets
Mulberry Place
PO Box 55739
5 Clove Crescent
London E14 2BG

From: Robin Beattie
Sent: 19 May 2015 19:12
To: Ken.Knight@communities.gsi.gov.uk
Cc: Stephen Halsey; David Galpin
Subject: FW: Rich Mix

Ken

Rich Mix briefing paper as requested. Attached is also a cabinet report consideration of which was interrupted by the Election Court ruling. This is explained in the briefing paper. Whilst covering some of the same ground as the briefing paper it is included hear as it sets out the Executive decision options.

I have sent the papers to this e-mail account rather than the Commissioners account as Max is conflicted on this issue and would have access to the papers if I had done so. There is nothing particularly contentious in either and the Cabinet report would be made public and whilst I am sure that Max Caller would never behave inappropriately it would be prudent to ensure that Rich Mix specific material is not sent to shared accounts under the circumstances lest the administrative arrangements be challenged by a 3rd party at a later date.

I have sent this under separate cover to Louise.

Regards

Robin Beattie
Service Head Strategy and Resources
Communities, Localities & Culture
6th Floor, Mulberry Place
Tel: 020 7364 4229
Email: robin.beattie@towerhamlets.gov.uk
Web: www.towerhamlets.gov.uk

London Borough of Tower Hamlets
Mulberry Place
PO Box 55739
5 Clove Crescent
London E14 2BG

From: Louise Fleming **On Behalf Of** Commissioners
Sent: 14 May 2015 09:57
To: Robin Beattie
Subject: Rich Mix

Robin

Sorry we didn't meet in your SPOC role yesterday.


Just a couple of followups:

Following our discussion I have decided to separate the action logs into themes rather than name of commissioners. My intention is to maintain an overall action log however ensure that each commissioner updates and monitors the themes in their respective action logs. Perhaps you could ask those involved to consider how they suggest it is best achieved.

I have received a number of concerns about RichMix which I intend to lead on, could you arrange for a briefing report on the issues surrounding Rix Mix together with officers recommendations for me to consider next week. If it could be sent to me by close of play Tuesday it would be good? Following consideration of the report I will arrange meetings with the relevant officers to find a way forward.

Thanks

Ken

<p style="text-align: center;">Cabinet 13 May 2015</p>	 TOWER HAMLETS
Report of: Stephen Halsey - Head of Paid Service	Classification: Exempt
Rich Mix Litigation	

Lead Member	Alibor Chowdhury
Originating Officer(s)	Robin Beattie, Service Head – Strategy & Resources David Galpin, Service Head – Legal Services
Wards affected	All wards
Community Plan Theme	A prosperous community
Key Decision?	Yes

Executive Summary

In June 2012, the Council issued a claim against Rich Mix Cultural Foundation (“**Rich Mix**”) in the High Court to recover £850,000 loaned to Rich Mix and due to be repaid in June 2006 plus interest (“**the loan claim**”). Following a case management conference in the High Court on 26 January 2015, the case has been set down for a 3-day hearing in the High Court to take place during the week commencing 20 July 2015.

The case continues to develop and the impending hearing provides a suitable point in proceedings to review the parameters of the original decision, including the greater clarity we now have regarding the level of costs in the case and to direct, via a formal decision, the future conduct of the litigation. This is considered appropriate from both a best practice and a best value perspective.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Decide whether to proceed with the trial which is listed for 3 days in the week commencing 20 July 2015 or not.
2. Decide whether to accept Rich Mix’s settlement proposal of 27 March 2015 or to continue with settlement discussions on the basis outlined in paragraph 3.17 of the report.
3. Agree, subject to 2, to continue the constructive discussions with Rich Mix concerning co location as set out in paragraph 3.17.
4. Specify the balance of supporting reasons in respect of the decisions in 1 and 2.

THIS PAGE TO BE DELETED BEFORE PUBLICATION

Consultation and Version Control

[Please state version number and all changes must be tracked or report will not be accepted]

Version Number	1.0 [Please update]	Version Date	dd/mm/yy
-----------------------	------------------------	---------------------	----------

Name	Title	Date Consulted	Date Cleared	Version
	Corporate Director			
	Department Finance			
	Corporate Finance			
	Legal Services			

Decision Type

Key Decision?	Urgent Decision?	Exempt from Call-In?	Restricted Report or Partially Restricted (e.g. appendix)?
Yes	Yes	No	Yes

*If the answer is yes make sure the forthcoming decision on the website states this or else the decision cannot be taken.

Further details on the procedure for Urgent Decisions can be found in the [Intranet Library](#) and the What to Do with Your Decision If [guidance note](#).

THIS PAGE TO BE DELETED BEFORE PUBLICATION

1. REASONS FOR THE DECISIONS

- 1.1 The Council are entitled to recover the £850,000 plus interest paid to Rich Mix under the loan agreement. Counsel's view is that the Council's prospects of success in relation to the loan claim are strong and in the order of 70%.
- 1.2 c
- 1.3 The costs in the case are significant. The litigation began in June 2012 and is at an advanced stage. The Council costs were just under £130,000 to January 2015, which included internal costs and represented 72% of the estimated total spend on this litigation. Rich Mix's costs were £160,000 of an estimated total spend of £215,000.
- 1.4 The court expects the parties to engage in alternative dispute resolution and an out-of-court settlement could yield additional value which the council is seeking.

2. ALTERNATIVE OPTIONS

- 2.1 The Council could withdraw its claim against Rich Mix and vacate the hearing in July 2015, although there is no legal reason to do so, given counsel's advice. It would result in the Council writing off Rich Mix's debt and the council would also be liable for Rich Mix's legal costs to date.
- 2.2 The Council could accept Rich Mix's most recent settlement offer, continue with settlement discussions on the same basis as it has done to date or adopt a different settlement strategy entirely. Any alternative strategy would need to take into account the matters in dispute as outlined in this report, including costs.

3. DETAILS OF REPORT

- 3.1 In 1999, Cityside Regeneration Ltd ("**Cityside**") conceived a project to provide a cultural centre for the arts in Bethnal Green. Cityside acquired a freehold property at 39-47 Bethnal Green Road ("**the property**") to construct the centre. The Council provided £1.8 million to Cityside in forward funding for the project in August 2002 and a further £952,000 in forward funding in March 2003. These two loans were paid pending the Cityside project obtaining funding from other sources.
- 3.2 At a meeting of Cabinet on November 2003, proposals were approved to implement the Rich Mix project in the following terms (among others) and a forward funding written agreement was entered into in September 2004:
 - (1) the property would be transferred from Cityside to the Council and then from the Council to Rich Mix;
 - (2) the forward funding of £2.75 million from the Council would be repaid less a sum of £850,000 ("**the second forward funding**"), repayment of

which was to be subject to a legal agreement between the Council and Rich Mix;

- (3) £900,000 of forward funding ("**the first forward funding**") would be repaid on practical completion;
 - (4) £1 million would be made available to Rich Mix by the Council by way of capital grant.
- 3.3 Clause 3 explicitly set out that the first forward funding was payable on the practical completion date and that the second forward funding was to be repaid to the Council by Rich Mix on 1st January 2006, or such other date agreed by the Council before 1st December 2005.
- 3.4 It was subsequently agreed between the Council and Rich Mix that the second forward funding be repaid by July 2006. This was extended by the Council's Director of Development and Renewal at the time under delegated powers. The sum of £850,000 became due in July 2006 but to date the loan has not been repaid to the Council.
- 3.5 The cultural centre was completed at the Rich Mix site and has been in operation since 2006. It consists of a cinema, café, theatre space, offices and work spaces which are leased to arts organisations. Rich Mix has the support of its funders, as indicated in the letter dated 17 March 2015, which is Appendix 3 to this report.
- 3.6 The Council's right to bring proceedings to recover the outstanding loan of £850,000 was due to expire in June 2012. This was a result of the Limitation Act 1980, which relevantly requires litigation to be commenced within six years. In order to protect the Council's position, the Council issued the loan claim in the High Court in June 2012. The claim seeks to recover interest on the unpaid loan, which takes the total claim over £1million. The decision to issue the claim was taken by the then Assistant Chief Executive after consultation with the Mayor.
- 3.7 The claim was not served immediately on Rich Mix, so as to enable discussions to continue between the parties. However, there is also a time limit on serving proceedings once they have been issued and, when discussions did not lead to settlement, the loan claim was served on Rich Mix in October 2012.
- 3.8 In November 2012, Rich Mix served a defence to the Council's loan claim, but also filed a counterclaim for £1,570,482 which it claimed was due under a service level agreement with the Council dated 26 September 2010 ("**the SLA claim**").
- 3.9 A preliminary hearing took place in the High Court on 9 July 2014, which considered a point of law determinative of the SLA claim. As a consequence of the preliminary hearing, Rich Mix no longer has a claim in the High Court for payment of £1,570,482 under the SLA. The High Court litigation now focuses on the Council's loan claim, which is due to be heard over 3 days in July 2015.

- 3.10 There are costs associated with the litigation to date. These costs were assessed for the purposes of the case management conference which took place in the High Court on 26 January 2015.
- 3.11 As at January 2015, the Council's costs in the litigation were just under £130,000, consisting of £26,820 for counsel and £100,000 for the Council's in-house legal service, which is handling the case. The Council's projected costs to conclusion of the case have been assessed by a costs draftsman as being £180,000 including the amount spent to date.
- 3.12 Rich Mix is being represented on a pro bono basis, but they have also had their costs assessed by a costs draftsman. As at January 2015, Rich Mix's costs were approximately £160,000 and their projected costs were limited at the case management conference to a total of approximately £215,000.
- 3.13 The Court has discretion whether to order one party to litigation to pay the other party's costs. However, the usual rule is that costs follow the event, so that the losing party is usually ordered to pay the winning party's costs. Should the council be unsuccessful at trial in relation to the loan claim, the Council will be liable to pay Rich Mix's costs which relate to the loan claim. However, as a result of Rich Mix being unsuccessful with its SLA claim, a proportion of the Council's costs to date should be recoverable from Rich Mix.
- 3.14 The Council and Rich Mix have made continuing efforts to try and settle their disputes by means other than litigation. Settlement discussions have continued on a confidential basis alongside the litigation but have not been successful to date.
- 3.15 Rich Mix sent an open offer letter to the Council at the end of September 2014 (please see Appendix 1). That letter was sent prior to judgment on the preliminary point on 1 October 2014 and sets out Rich Mix's most recent, formal position in relation to settlement. Whilst not accepting any legal liability for the loan, Rich Mix have offered to pay £850,000 back to the Council, on the condition that the Council pays to them section 106 monies totalling £1,570,482 which the Council received from Bishopsgate Apartments LLP.
- 3.16 On 27 March 2015, Rich Mix provided the council with a revised settlement offer. Rich Mix have offered to repay the £850,000 loan and up to £50,000 of the Council's external legal spend if the Council provides Rich Mix with further funding of £1,570,482 (please see Appendix 2).
- 3.17 The Council has proceeded to conduct settlement discussions according to the following principles established by the Council's Executive—
- (1) The Council is under no obligation to pay any section 106 monies to Rich Mix, although it may do so.
 - (2) Rich Mix owes the Council £850K plus interest.
 - (3) Forgiving the loan or paying Rich Mix further section 106 monies would involve a significant further investment in Rich Mix.

- (4) A further investment of the kind sought by Rich Mix should yield a significant additional benefit for Tower Hamlets.

3.18 To date, Rich Mix has not been able to offer any significant additional benefits of the kind which might comply with the 4th principle outlined above to justify the further investment that it seeks. However, they do remain in constructive discussions regarding the potential co-location of an Idea Store in part of the Rich Mix site. These discussions provide a platform whereby the Council may secure sufficient value for money, subject to the terms of such co-location, to justify consideration by the Mayor of their request for section 106 monies and the possible conversion of the loan debt into the value of any co-location arrangements. These very constructive discussions are running in parallel to the court proceedings and are relevant in so far as they represent a genuine option for Rich Mix should they be of the view that the loss of the court case specific to the loan issue may risk making them insolvent. The acceptability of such an agreement would also be dependent on the agreement of Rich Mix's key funders.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1. This report seeks the decision by the Mayor in cabinet to proceed to the hearing in the High Court in July 2015 to recover the £850,000 loan made to Rich Mix which was due for repayment in June 2006. Following the decision made at a preliminary hearing in the High Court on July 2014, Rich Mix no longer has a claim against the Council for payment of £1,570,482 under the SLA. As a consequence of the decision, the case is now focused on the loan repayment to the Council and the settlement discussions outlined in Para. 3.16.
- 4.2. The legal cost incurred by the Council to date is approximately £130,000. If the decision is made to proceed, further costs of £50,000 will be incurred making a total cost of £180,000. The legal costs of Rich Mix have also been assessed and total approximately £160,000 to date. However, the projected costs of Rich Mix are limited to approximately £215,000. As the Court has discretion to order the losing party to pay litigation costs of the other party, a proportion of the Council's costs should be recoverable at this stage.
- 4.3. The extent to which the legal cost is fully or partially recovered is dependent on the decision made by the Mayor in cabinet and the outcome. There is currently no budget provision to meet these litigation costs in the budget, any potential residual costs will need to be met from existing resources identified in the first instance. Approval may be required for the use of contingencies if this cannot be achieved.

5. LEGAL COMMENTS

- 5.1. Legal implications are contained in the body of the report.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The Rich Mix Centre is a regional arts, cultural and educational facility, which may deliver benefits consistent with the Council's Community Plan objectives. It provides culturally related performance space and accommodation for the cultural industries and also includes a cinema space. Whilst being a regional facility it has also developed a locally specific engagement agenda as part of its work.
- 6.2 Consideration should be given to whether continuing with the litigation will be consistent with both the Culturally specific Community Plan themes and the cross-cutting theme in the Community Plan of efficiency, which is concerned with delivering value for money services.
- 6.3 When considering its approach to the dispute with Rich Mix, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector equality duty). An equality checklist has completed and is appended to this report which provides information relevant to these considerations.
- 6.4 The decisions about proceeding with litigation and the approach to be taken to settlement have no direct impact on people with protected characteristics. However, there may be some concern about the financial viability of Rich Mix in the event of an adverse judgment and some potential should that occur for indirect impacts on persons who share protected characteristics. That potential is difficult to quantify at this point in time, particularly as there are intervening steps which each carry their own uncertainty, including: the Council obtaining a favourable judgment; the failure of settlement discussions; and a positive decision by the Council to enforce any judgment. Given the uncertainties it is difficult to identify a likely impact and the potential for an equality impact should be kept under review.

7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 7.1 The recommendation in this report will not impact or contribute to a sustainable environment.

8. RISK MANAGEMENT IMPLICATIONS

- 8.1 The costs in the case will total just under £400,000 to the conclusion of the trial in July 2015. If it is unsuccessful, the Council will likely bear a significant portion of these costs. If the Council succeeds, it is uncertain as to whether it will be able to recover either the loan monies or any of the costs due to it from Rich Mix. It appears to be the position of Rich Mix that it may not be able to pay, but the Council has not verified this assertion. It would always be open for the Council to continue to try to find alternative ways to obtain value from further investment in Rich Mix, as it has continued to do through settlement discussions in order to ensure its continued viability.

- 8.2 Counsel's view is that the Council's prospects of success in relation to the loan claim are strong and in the order of 70%. There are, however, no guarantees in relation to litigation.
- 8.3 There has been a range of media comment regarding the dispute between the Council and Rich Mix. It is possible that continuing media comment could lead to a reputational risk for the Council.
- 8.4 Consideration needs to be given to the risks of providing further funding to Rich Mix who have recently stated in the press that their financial position may be threatened by the need to repay the loan. Rich Mix has already received substantial amounts of public funding both in capital and revenue terms but their revenue position has been weakened by a reduction in Arts Council Funding from the start of the austerity period. The extent to which the Council is in a position to provide more funding to Rich Mix without securing additional value needs careful consideration during a period of austerity. There is a counter argument that pursuing the court case might endanger the future of the organization and therefore put at risk the considerable amount of public investment already provided to this organization. Both arguments will need to be considered in reaching a decision.

9. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 9.1 The recommendations of this report will not impact on the reduction of crime and disorder.

10. BEST VALUE IMPLICATIONS

- 10.1 The costs and benefits of proceeding with the litigation or achieving a settlement of the dispute need to be considered as set out in the report.

11. SAFEGUARDING IMPLICATIONS

- 11.1 There are no safeguarding implications arising from the report

Linked Reports, Appendices and Background Documents

Linked Report

- NONE.

Appendices

- Appendix 1 – Letter to the Council from Latham & Watkins, 30 September 2014
- Appendix 2 – Letter to the Council from Latham & Watkins, 27 March 2015
- Appendix 3 – Letter to Rich Mix from key funders, 17 March 2015

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- NONE.

Officer contact details for documents:

N/A

Commissioner Briefing Note For Sir Ken Knight.

Rich Mix

1. The Rich Mix Project

- 1.1 The Rich Mix Cultural Foundation runs the facility and has operated as a charitable company, limited by guarantee, since 2004 (Rich Mix Cultural Enterprises Limited is a wholly owned subsidiary of the Rich Mix Cultural Foundation). The Centre opened in 2006, though in a partially completed form, and transfer arrangements for the associated land and property occurred in December 2007. The official launch of the completed building took place in October 2008.
- 1.2 Rich Mix concept began its development in 1992 as a regeneration project when the Council and Urban Space Management held an exhibition in Spitalfields Market. The concept was explored with the community and at a series of pan-London meetings at that time. The project proper was initiated through Cityside Regeneration in 1996, as part of an SRB3 Programme (a successor funding programme to the Bethnal Green City Challenge).
- 1.3 The project involved the purchase of two sites; 39-47 Bethnal Green Road by the Cityside Regeneration Company (for the LBTH), and at a later stage, 35-37 Bethnal Green Road by the London Development Agency. Through these purchases and the subsequent programme of capital works, the former industrial spaces and cinema were converted into an 'international cultural, educational and heritage centre for London'.
- 1.4 The Mayor of London (Ken Livingston) personally launched the project at an event in April 2002. In November 2003, the Council agreed that the Rich Mix Cultural Foundation (RMCF) would assume accountable body responsibility for the receipt of all grants, and the letting of contracts to develop the Centre. This was as part of a complex funding package to enable the capital project to commence.
- 1.5 At February 2006, the planned capital costs of the project were £26,810. The funding split is set out below :

	Value	£000
Estimated project costs		26,810
Funding secured		
Arts Council for England		6,265
Millennium Commission		5,050
London Development Agency		4,460
Single Regeneration Budget		2,343

European Regional Development Fund	730
LB Tower Hamlets	2,750
ODPM – Thames Gateway Sustainable Communities Fund	2,700
Spitalfields Market Community Trust	500
Garfield Weston Foundation	100
Bridge House Trust	200
Gatsby Foundation	650
Other contributions	212
Total	25,400
LBTH Forward Funding Facility (S106 loan)	850
	26,810

- 1.6 There were cost over runs and D+R have confirmed that the Council's total investment in the building was £3.6m. This investment is partially protected by a charge on the property and a Deed of Priority with the other major funders (Arts Council, LDA and Millennium Commission/ Big Lottery). This arrangement means that if RMCF were to be wound up and the site sold, priority as creditors would be to the major funders, and proceeds from the sale would be distributed in proportion to the sums invested. With property values low it at this time there must be some doubt about the extent to which the value of this investment could be recovered.
- 1.7 The legal arrangements relating to the Rich Mix project are complex. The Council transferred its freehold interest in the site (which had been purchased by the former Cityside SRB Company with SRB funding) in 2006 after receiving ministerial consent. The LDA owned part of the site was transferred to RMCF on the basis of a long-leasehold.
- 1.8 SLA's were drawn up for the revenue support that was provided, and these tended to focus on the regeneration aspects of the project e.g. local employment and creative industry related targets: Cultural and Arts related outcomes were dealt with by ACE, as Rich Mix has the status of a Regularly Funded Organisation (RFO). This was reconfirmed following an Arts Council review at the end of 2010/11 but the ACE funding was reduced. The Council provided £100,000 per annum in revenue support for three years ending in 2009.
- 2. The History of the Loan**
- 2.1 In 1999, Cityside Regeneration Ltd ("**Cityside**") conceived a project to provide a cultural centre for the arts in Bethnal Green. Cityside acquired a freehold property at 39-47 Bethnal Green Road ("**the property**") to construct the centre. The Council provided £1.8 million to Cityside in forward funding for the project in August 2002 and a further £952,000 in forward funding in March 2003. These two loans

were paid pending the Cityside project obtaining funding from other sources.

- 2.2 At a meeting of Cabinet on November 2003, proposals were approved to implement the Rich Mix project in the following terms (among others) and a forward funding written agreement was entered into in September 2004:
- (1) the property would be transferred from Cityside to the Council and then from the Council to Rich Mix;
 - (2) the forward funding of £2.75 million from the Council would be repaid less a sum of £850,000 ("**the second forward funding**"), repayment of which was to be subject to a legal agreement between the Council and Rich Mix;
 - (3) £900,000 of forward funding ("**the first forward funding**") would be repaid on practical completion;
 - (4) £1 million would be made available to Rich Mix by the Council by way of capital grant.
- 2.3 Clause 3 explicitly set out that the first forward funding was payable on the practical completion date and that the second forward funding was to be repaid to the Council by Rich Mix on 1st January 2006, or such other date agreed by the Council before 1st December 2005.
- 2.4 It was subsequently agreed between the Council and Rich Mix that the second forward funding be repaid by July 2006. This was extended by the Council's Director of Development and Renewal at the time under delegated powers. The sum of £850,000 became due in July 2006 but to date the loan has not been repaid to the Council.
- 2.5 The cultural centre was completed at the Rich Mix site and has been in operation since 2006. Rich Mix continues to have the support of its Key Funders.
- 2.6 The Council's right to bring proceedings to recover the outstanding loan of £850,000 was due to expire in June 2012. This was a result of the Limitation Act 1980, which relevantly requires litigation to be commenced within six years. In order to protect the Council's position, the Council issued the loan claim in the High Court in June 2012. The claim seeks to recover interest on the unpaid loan, which takes the total claim over £1million. The decision to issue the claim was taken by the then Assistant Chief Executive after consultation with the Mayor.
- 2.7 The claim was not served immediately on Rich Mix, so as to enable discussions to continue between the parties. However, there is also a time limit on serving proceedings once they have been issued and, when discussions did not lead to settlement, the loan claim was served on Rich Mix in October 2012.

- 2.8 In November 2012, Rich Mix served a defence to the Council's loan claim, but also filed a counterclaim for £1,570,482 which it claimed was due under a service level agreement with the Council dated 26 September 2010 ("the SLA claim").
- 2.9 A preliminary hearing took place in the High Court on 9 July 2014, which considered a point of law determinative of the SLA claim. As a consequence of the preliminary hearing, Rich Mix no longer has a claim in the High Court for payment of £1,570,482 under the SLA. The High Court litigation now focuses on the Council's loan claim, which is due to be heard over 3 days in July 2015.
- 2.10 There are costs associated with the litigation to date. These costs were assessed for the purposes of the case management conference which took place in the High Court on 26 January 2015.
- 2.11 As at January 2015, the Council's costs in the litigation were just under £130,000, consisting of £26,820 for counsel and £100,000 for the Council's in-house legal service, which is handling the case. The Council's projected costs to conclusion of the case have been assessed by a costs draftsman as being £180,000 including the amount spent to date.
- 2.12 Rich Mix is being represented on a pro bono basis, but they have also had their costs assessed by a costs draftsman. As at January 2015, Rich Mix's costs were approximately £160,000 and their projected costs were limited at the case management conference to a total of approximately £215,000.
- 2.13 The Court has discretion whether to order one party to litigation to pay the other party's costs. However, the usual rule is that costs follow the event, so that the losing party is usually ordered to pay the winning party's costs. Should the council be unsuccessful at trial in relation to the loan claim, the Council will be liable to pay Rich Mix's costs which relate to the loan claim. However, as a result of Rich Mix being unsuccessful with its SLA claim, a proportion of the Council's costs to date should be recoverable from Rich Mix.
- 2.14 The Council and Rich Mix have made continuing efforts to try and settle their disputes by means other than litigation. Settlement discussions have continued on a confidential basis alongside the litigation but have not been successful to date.
- 2.15 Rich Mix sent an open offer letter to the Council at the end of September 2014 (please see Appendix 1). That letter was sent prior to judgment on the preliminary point on 1 October 2014 and sets out Rich Mix's most recent, formal position in relation to settlement. Whilst not accepting any legal liability for the loan, Rich Mix have offered to pay £850,000 back to the Council, on the condition that the Council pays to

them section 106 monies totalling £1,570,482 which the Council received from Bishopsgate Apartments LLP.

- 2.16 On 27 March 2015, Rich Mix provided the council with a revised settlement offer. Rich Mix have offered to repay the £850,000 loan and up to £50,000 of the Council's external legal spend if the Council provides Rich Mix with further funding of £1,570,482 (please see Appendix 2).
- 2.17 The Council has proceeded to conduct settlement discussions according to the following principles established by the Council's Executive—
- (1) The Council is under no obligation to pay any section 106 monies to Rich Mix, although it may do so.
 - (2) Rich Mix owes the Council £850K plus interest.
 - (3) Forgiving the loan or paying Rich Mix further section 106 monies would involve a significant further investment in Rich Mix.
 - (4) A further investment of the kind sought by Rich Mix should yield a significant additional benefit for Tower Hamlets.
- 2.18 To date, Rich Mix has not been able to offer any significant additional benefits of the kind which might comply with the 4th principle outlined above to justify the further investment that it seeks. However, they do remain in constructive discussions regarding the potential co-location of an Idea Store in part of the Rich Mix site. These discussions provide a platform whereby the Council may secure sufficient value for money, subject to the terms of such co-location, to justify consideration by the Mayor of their request for section 106 monies and the possible conversion of the loan debt into the value of any co-location arrangements. These very constructive discussions are running in parallel to the court proceedings and are relevant in so far as they represent a genuine option for Rich Mix should they be of the view that the loss of the court case specific to the loan issue may risk making them insolvent. The acceptability of such an agreement would also be dependent on the agreement of Rich Mix's key funders.

3. Financial History

- 3.1 **Rich Mix has had a troubled financial history since its development.**
The vision was originally for a regional facility dedicated to celebrating and showcasing the multicultural history and achievements of immigrant populations in London.
- 3.2 The capital for the project was funded by a range of public bodies outlined in Section 1 and the London Borough of Tower Hamlets. Revenue funding was provided by the Arts Council and (for a time) Tower Hamlets. The Arts Council along with the original project funders (the Key Funders) remain financially interested parties having a charge against the Land and are supportive of Rich Mix.

- 3.3 The Rich Mix business model failed almost immediately and it went through a succession of Chief Executive's as it struggled to survive. It remained in a very fragile financial state until 2011/12 when the current Chief Executive (Jane Earl) who had been appointed a year earlier started to stabilise its financial situation following a further cash injection of £500,000 by the Council. By this time the Rich Mix project had received in capital and revenue combined circa £32m of public funding. The additional £500,000 was agreed between London Borough of Tower Hamlets and Rich Mix in 2010/11 (see Section 4) as an early payment as Rich Mix was then running at a deficit in the region £560k up to 31st March 2010 set against an overdraft limit of £150k. Unless further funds could be found with immediate effect the major creditors were very likely to foreclose rendering Rich Mix insolvent before the new Director could have an impact. The sum enabled Rich Mix to pay off debts and avoid foreclosure. It was paid from part of a larger S.106 developer contribution that formed the failed counter claim from Rich Mix outlined above (see section 4).
- 3.4 In 2010/11 the Arts Council cut its funds to Rich Mix. The Business Plans submitted to the Council as part of its due diligence process before Rich Mix secured the £500,000 indicate that it was then seeking to offset the revenue impact of the Arts Council budget reduction with part of the remaining £1.5m S.106 contribution retained by the Council. The Arts Council has subsequently been a vocal supporter of Rich Mix's claim in this resource.
- 3.5 Currently the business model appears stable and robust supported by a range of income generating initiatives that have helped to bring this about including a strategic focus on provision of rented space to the cultural industries on site, commercial venue lettings, commercial cinema, bar and catering franchises. However it has limited capacity to increase cultural outputs without further investment.

4. The S106. Issue

- 4.1 The SDC committee has the constitutional role of allocating S.106. In August 2010 the Strategic Development Committee (SDC) considered a report identifying the availability of S106 funding that could be used to help stabilise the continuing financial problems of this organisation.
- 4.2 The S106 funding considered most suitable to support Rich Mix was **PA/07/02193**. This relates to a Telford Homes Scheme on the opposite side of the road to Rich Mix. It provided a total sum of £2,093,978 for cultural, social and community products and for the provision of workspace offsite to be paid by four equal instalments. Each instalment was to be paid nine months apart over a period of 27 months from the commencement date. Each instalment would equate to £523,494.50. These payments have all now been made.

4.3 the Committee resolved

- That option 3 as detailed in paragraphs 8.7-8.10 of the report (SDC003/011) be adopted
- That the Corporate Director of Development and Renewal be authorised to progress option 4 and to negotiate with the Rich Mix based on the performance areas specified in Section 2 of Appendix 2 of the report (SDC003/011) for inclusion in a SLA; and
- That the Corporate Director of Development and Renewal be authorised to administer the draw-down of S.106 monies by Rich Mix against the negotiated performance framework set out in the SLA referred to above.

4.4 Option 3 as detailed in the SDC report stated:

'Subject to the Council receiving the first payment of 500k (or part thereof) from Telford Homes on the Bethnal Green S.106 these monies to be given to Rich Mix within the following performance framework:-

A first payment of £150,000 to be drawn down by Rich Mix following achievement of the key first quarter business performance targets (April –June 2010) set out in Appendix 2. This will be paid as soon as an SLA agreement is signed by Rich Mix and receipt of evidenced confirmation of these target achievements.

A second payment of £150,000 to be drawn down by Rich Mix in August following achievement of business performance targets set out in Appendix 2 for the period July - August and to be paid following receipt of evidenced confirmation that they have been met.

A third payment of £200,000 to be drawn down by Rich Mix in October 2010 following evidenced achievement of further performance targets for the full Second Quarter (July –Sept) to be negotiated by officers focusing on key performance areas set out in Appendix 2 (Section 2).'

4.5 These payments were subsequently made to Rich Mix and are referenced in section 3.3 and 3.4.

4.6 Option 4 also forming part of the SDC resolution stated

'Members have the option of extending the support beyond that set out in Options 2 and 3 above to include further payments as set out below. The remaining three instalments of £523,494 each (or any part thereof) subject to being paid by the developer are nine months apart and will be made available in the financial year that they are paid for Rich Mix to draw down subject to performance against further targets to be agreed with the Council for each tranche focusing on

those key performance areas set out in Appendix 2 (Section 2)'.

- 4.7 Whilst agreeing to the performance programme covering the payment of the first 500k (Option 3 of the SDC decision) The then Mayor Lutfur Rahman was clear that he would authorise further payments under provisions driven by Option 4 only provided he could be satisfied that the money delivered added value in terms of outputs to the value of the sum being drawn down. As the Rich Mix needed the money to compensate for funding cuts and shore up a frail business model this proved to be a stumbling block as the increase in outputs that Rich Mix could deliver under those circumstances could not match, in terms of market value, the S106 investment being requested. In view of these difficulties current negotiations centre on a possible colocation scheme where the Councils successful library, lifelong learning and community hub model (Idea Stores) share the costs of the site and help Rich Mix boost visitor numbers. This provides more opportunity for the required output values to be generated by converting the outputs into discounted future lease values as part of an occupancy or lease deal without adversely impacting on Rich Mix's revenue model. See also 2.18
- 4.8 The Monitoring Officer at that time drew up an SLA which supported the first payments and provided a framework for on-going negotiations on performance outputs for the remaining S.106 sum.
- 4.9 As part of its counterclaim when the Council pursued repayment of the outstanding loan Rich Mix argued that this SLA was a binding agreement and circumstances were such that the Council was now legally obliged to pay all of the outstanding S.106 (PA/07/021930) to it. This argument was dismissed by the law courts.
- 4.10 Subsequent to this Rich Mix Solicitors have raised the view with officers that the SDC decision was binding on the Council and that the S106 allocation cannot be used for any other purpose. However they have never pursued this as legal argument via the Courts. Commissioner Max Caller, who has confirmed to the Council that he is conflicted in relation to Rich Mix, has pursued other lines of enquiry specific to S106 decision making in other parts of the Borough which are, never the less, directly relevant to Rich Mix. He has stated to officers that, in his view, the Mayor has no constitutional authority to engage in any S106 business. Legal Services secured external Counsels opinion at an early stage in the litigation process with Rich Mix on this point which is at odds with Max Callers views as currently expressed. Similarly the SDC decision is not a binding one from a legal perspective. These matters can be clarified with you in more detailed discussion on the legal position with officers.
- 4.11 It has also been alleged, incorrectly in the past, that the S106 agreement was specific to Rich Mix. The agreement was not at all

specific and the money can be allocated to a specified range of culturally related purposes anywhere in the Borough.

5. Current Position Regarding Litigation

- 5.1 In June 2012, the Council issued a claim against Rich Mix Cultural Foundation ("**Rich Mix**") in the High Court to recover £850,000 loaned to Rich Mix and due to be repaid in June 2006 plus interest ("**the loan claim**"). Following a case management conference in the High Court on 26 January 2015, the case has been set down for a 3-day hearing in the High Court to take place during the week commencing 20 July 2015.
- 5.2 The case continues to develop and the impending hearing provides a suitable point in proceedings for the Executive to review the parameters of the original decision, including the greater clarity we now have regarding the level of costs in the case and to direct, via a formal decision, the future conduct of the litigation.
- 5.3 To this end a report was prepared and scheduled for consideration by Cabinet. This report could not progress following the outcome of the Election Court Ruling and the subsequent cross party agreement governing executive decision making. As a result the litigation process continues to move forward to the original timetable. The matter will be programmed for urgent review for any New Mayor.

Louise Fleming

From: Robin Beattie
Sent: 19 May 2015 19:31
To: Commissioners
Subject: RE: Rich Mix

Hi Ken

Rich Mix briefing paper has been sent to you at Ken.Knight@communities.gsi.gov.uk and to Louise Fleming under separate cover. I have sent the papers to this e-mail account rather than the Commissioners account as Max is conflicted on this issue it would be prudent to ensure that Rich Mix specific material is not sent to shared accounts under the circumstances lest the administrative arrangements be challenged by a 3rd party at a later date.

I have also sent you a draft cabinet report consideration of which was interrupted by the Election Court ruling. This is explained in the briefing paper. Whilst covering some of the same ground as the briefing paper I have included it as it sets out the Executive decision options. If you want to review any of the documents referenced in either we can retrieve them for you. The SDC report can be accessed using the Councils Web Site. Steve Halsey can advise you on the relevant Officers to engage more directly on this matter.

I will be at a government commissioning event in London tomorrow so will not be available. Thorsten and Oscar have been considering your thoughts on the revisions to the Action Log as set out in your e-mail below from an operational perspective and will take you through the proposed approach to achieve your desired outcome during the SPOC slot tomorrow. Also they will provide you with the log update position and help you address any items that might need formal closure.

Regards

Robin Beattie
Service Head Strategy and Resources
Communities, Localities & Culture
6th Floor, Mulberry Place
Tel: 020 7364 4229
Email: robin.beattie@towerhamlets.gov.uk
Web: www.towerhamlets.gov.uk

London Borough of Tower Hamlets
Mulberry Place
PO Box 55739
5 Clove Crescent
London E14 2BG

From: Louise Fleming **On Behalf Of** Commissioners
Sent: 14 May 2015 09:57
To: Robin Beattie
Subject: Rich Mix

Robin

Sorry we didn't meet in your SPOC role yesterday.

Just a couple of followups:

Following our discussion I have decided to separate the action logs into themes rather than name of commissioners. My intention is to maintain an overall action log however ensure that each commissioner updates and monitors the themes in their respective action logs. Perhaps you could ask those involved to consider how they suggest it is best achieved.

I have received a number of concerns about RichMix which I intend to lead on, could you arrange for a briefing report on the issues surrounding Rix Mix together with officers recommendations for me to consider next week. If it could be sent to me by close of play Tuesday it would be good? Following consideration of the report I will arrange meetings with the relevant officers to find a way forward.

Thanks

Ken

Louise Fleming

From: Robin Beattie
Sent: 22 May 2015 14:20
To: 'Ken Knight'
Cc: Louise Fleming
Subject: RE: Rich Mix

Hi Ken

That's fine. The leads for Rich Mix issues are Myself and David Galpin in Legal Services. I have been taking forward discussions with Rich Mix on performance measures re the S.106 matter and the linked co location discussions and David Galpin is leading on settlement and legal proceedings (Rich Mix counter claim and recovery of the £800,000 loan). I would suggest you would get the best overview of a complex picture if you see us both together. If there are any background documents you would like to see let me know and I will organise them for you.

I have asked David to be ready to rearrange his calendar at short notice to accommodate you which he has agreed to do. I will of course do the same.

If you need to discuss earlier matters specific to the loan issue and forward funding these were set up when Rich Mix was being dealt with as a regeneration issue in D+R. The person to speak to regarding the detail behind this earlier phase of discussion and decision making would be Chris Holm who was finance manager for D+R at the time.

Regards

Robin Beattie
Service Head Strategy and Resources
Communities, Localities & Culture
6th Floor, Mulberry Place
Tel: 020 7364 4229
Email: robin.beattie@towerhamlets.gov.uk
Web: www.towerhamlets.gov.uk

London Borough of Tower Hamlets
Mulberry Place
PO Box 55739
5 Clove Crescent
London E14 2BG

From: Ken Knight [<mailto:Ken.Knight@communities.gsi.gov.uk>]
Sent: 22 May 2015 08:52
To: Robin Beattie
Subject: Re: Rich Mix

Robin
Thanks for the brief.
Chris, Alan and myself are dealing with this consideration.
After our discussion next week we are likely to need a discussion with the officer responsible.
Kind regards

Ken

From: Robin Beattie [<mailto:Robin.Beattie@towerhamlets.gov.uk>]
Sent: Tuesday, May 19, 2015 07:11 PM

To: Ken Knight
Cc: Stephen Halsey <Stephen.Halsey@towerhamlets.gov.uk>; David Galpin <David.Galpin@towerhamlets.gov.uk>
Subject: FW: Rich Mix

Ken

Rich Mix briefing paper as requested. Attached is also a cabinet report consideration of which was interrupted by the Election Court ruling. This is explained in the briefing paper. Whilst covering some of the same ground as the briefing paper it is included here as it sets out the Executive decision options.

I have sent the papers to this e-mail account rather than the Commissioners account as Max is conflicted on this issue and would have access to the papers if I had done so. There is nothing particularly contentious in either and the Cabinet report would be made public and whilst I am sure that Max Caller would never behave inappropriately it would be prudent to ensure that Rich Mix specific material is not sent to shared accounts under the circumstances lest the administrative arrangements be challenged by a 3rd party at a later date.

I have sent this under separate cover to Louise.

Regards

Robin Beattie
Service Head Strategy and Resources
Communities, Localities & Culture
6th Floor, Mulberry Place
Tel: 020 7364 4229
Email: robin.beattie@towerhamlets.gov.uk
Web: www.towerhamlets.gov.uk

London Borough of Tower Hamlets
Mulberry Place
PO Box 55739
5 Clove Crescent
London E14 2BG

From: Louise Fleming **On Behalf Of** Commissioners
Sent: 14 May 2015 09:57
To: Robin Beattie
Subject: Rich Mix

Robin

Sorry we didn't meet in your SPOC role yesterday.

Just a couple of followups:

Following our discussion I have decided to separate the action logs into themes rather than name of commissioners. My intention is to maintain an overall action log however ensure that each commissioner updates and monitors the themes in their respective action logs. Perhaps you could ask those involved to consider how they suggest it is best achieved.

I have received a number of concerns about RichMix which I intend to lead on, could you arrange for a briefing report on the issues surrounding Rich Mix together with officers recommendations for me to consider next week. If it could be sent to me by close of play Tuesday it would be good? Following consideration of the report I will arrange meetings with the relevant officers to find a way forward.

Thanks

Ken

.....
Working Together for a Better Tower Hamlets
Web site : <http://www.towerhamlets.gov.uk>

London Borough of Tower Hamlets E-Mail Disclaimer.

This communication and any attachments are intended for the addressee only and may be confidential. It may contain privileged and confidential information and if you are not the intended recipient, you must not copy, distribute or take any action in reliance on it. If you have received this E-Mail in error please notify us as soon as possible and delete this E-Mail and any attachments. This message has been checked for viruses, however we cannot guarantee that this message or any attachment is virus free or has not been intercepted or amended. The information contained in this E-Mail may be subject to public disclosure under the Freedom of Information Act 2000. Unless the information is legally exempt from disclosure, the Confidentiality of this E-Mail and your reply cannot be guaranteed.

If your request relates to a Freedom of Information enquiry, please resend this to foi@towerhamlets.gov.uk
.....

Please consider your environmental responsibility: Before printing this e-mail or any other document, ask yourself whether you need a hard copy.

This email was scanned by the Government Secure Intranet anti-virus service supplied by Vodafone in partnership with Symantec. (CCTM Certificate Number 2009/09/0052.) In case of problems, please call your organisations IT Helpdesk.

Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

This email and any files transmitted with it are private and intended solely for the use of the individual or entity to which they are addressed. If you are not the intended recipient the E-mail and any files have been transmitted to you in error and any copying, distribution or other use of the information contained in them is strictly prohibited.

Nothing in this E-mail message amounts to a contractual or other legal commitment on the part of the Government unless confirmed by a communication signed on behalf of the Secretary of State.

The Department's computer systems may be monitored and communications carried on them recorded, to secure the effective operation of the system and for other lawful purposes.

Correspondents should note that all communications from Department for Communities and Local Government may be automatically logged, monitored and/or recorded for lawful purposes.

The original of this email was scanned for viruses by the Government Secure Intranet virus scanning service supplied by Vodafone in partnership with Symantec. (CCTM Certificate Number 2009/09/0052.) This email has been certified virus free.

Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

Louise Fleming

From: Ken Knight <k.knight1666@btinternet.com>
Sent: 25 May 2015 18:45
To: Louise Fleming
Subject: Rich Mix

Louise

Hope you had a good long weekend and the dog sitting went ok.

The email below relates to Rich Mix. If we can get the meeting Robin proposes it will be with me, Chris and Alan. I will speak about it on Tuesday when I have my meeting with Steve.

Ken

Sir Ken Knight

Begin forwarded message:

From: Ken Knight <Ken.Knight@communities.gsi.gov.uk>
Date: 22 May 2015 21:19:04 BST
To: "'k.knight1666@btinternet.com'" <k.knight1666@btinternet.com>
Subject: Fw: Rich Mix

From: Robin Beattie [<mailto:Robin.Beattie@towerhamlets.gov.uk>]
Sent: Friday, May 22, 2015 02:20 PM
To: Ken Knight
Cc: Louise Fleming <Louise.Fleming@towerhamlets.gov.uk>
Subject: RE: Rich Mix

Hi Ken

That's fine. The leads for Rich Mix issues are Myself and David Galpin in Legal Services. I have been taking forward discussions with Rich Mix on performance measures re the S.106 matter and the linked co location discussions and David Galpin is leading on settlement and legal proceedings (Rich Mix counter claim and recovery of the £800,000 loan). I would suggest you would get the best overview of a complex picture if you see us both together. If there are any background documents you would like to see let me know and I will organise them for you.

I have asked David to be ready to rearrange his calendar at short notice to accommodate you which he has agreed to do. I will of course do the same.

If you need to discuss earlier matters specific to the loan issue and forward funding these were set up when Rich Mix was being dealt with as a regeneration issue in D+R. The person to speak to regarding the detail behind this earlier phase of discussion and decision making would be Chris Holm who was finance manager for D+R at the time.

Regards

Robin Beattie
Service Head Strategy and Resources
Communities, Localities & Culture

6th Floor, Mulberry Place
Tel: 020 7364 4229
Email: robin.beattie@towerhamlets.gov.uk
Web: www.towerhamlets.gov.uk

London Borough of Tower Hamlets
Mulberry Place
PO Box 55739
5 Clove Crescent
London E14 2BG

From: Ken Knight [<mailto:Ken.Knight@communities.gsi.gov.uk>]
Sent: 22 May 2015 08:52
To: Robin Beattie
Subject: Re: Rich Mix

Robin
Thanks for the brief.
Chris, Alan and myself are dealing with this consideration.
After our discussion next week we are likely to need a discussion with the officer responsible.
Kind regards

Ken

From: Robin Beattie [<mailto:Robin.Beattie@towerhamlets.gov.uk>]
Sent: Tuesday, May 19, 2015 07:11 PM
To: Ken Knight
Cc: Stephen Halsey <Stephen.Halsey@towerhamlets.gov.uk>; David Galpin <David.Galpin@towerhamlets.gov.uk>
Subject: FW: Rich Mix

Ken

Rich Mix briefing paper as requested. Attached is also a cabinet report consideration of which was interrupted by the Election Court ruling. This is explained in the briefing paper. Whilst covering some of the same ground as the briefing paper it is included here as it sets out the Executive decision options.

I have sent the papers to this e-mail account rather than the Commissioners account as Max is conflicted on this issue and would have access to the papers if I had done so. There is nothing particularly contentious in either and the Cabinet report would be made public and whilst I am sure that Max Caller would never behave inappropriately it would be prudent to ensure that Rich Mix specific material is not sent to shared accounts under the circumstances lest the administrative arrangements be challenged by a 3rd party at a later date.

I have sent this under separate cover to Louise.

Regards

Robin Beattie
Service Head Strategy and Resources
Communities, Localities & Culture
6th Floor, Mulberry Place
Tel: 020 7364 4229
Email: robin.beattie@towerhamlets.gov.uk
Web: www.towerhamlets.gov.uk

London Borough of Tower Hamlets
Mulberry Place
PO Box 55739
5 Clove Crescent
London E14 2BG

From: Louise Fleming **On Behalf Of** Commissioners
Sent: 14 May 2015 09:57
To: Robin Beattie
Subject: Rich Mix

Robin

Sorry we didn't meet in your SPOC role yesterday.

Just a couple of followups:

Following our discussion I have decided to separate the action logs into themes rather than name of commissioners. My intention is to maintain an overall action log however ensure that each commissioner updates and monitors the themes in their respective action logs. Perhaps you could ask those involved to consider how they suggest it is best achieved.

I have received a number of concerns about RichMix which I intend to lead on, could you arrange for a briefing report on the issues surrounding Rix Mix together with officers recommendations for me to consider next week. If it could be sent to me by close of play Tuesday it would be good? Following consideration of the report I will arrange meetings with the relevant officers to find a way forward.

Thanks

Ken

Working Together for a Better Tower Hamlets
Web site : <http://www.towerhamlets.gov.uk>

London Borough of Tower Hamlets E-Mail Disclaimer.

This communication and any attachments are intended for the addressee only and may be confidential. It may contain privileged and confidential information and if you are not the intended recipient, you must not copy, distribute or take any action in reliance on it. If you have received this E-Mail in error please notify us as soon as possible and delete this E-Mail and any attachments. This message has been checked for viruses, however we cannot guarantee that this message or any attachment is virus free or has not been intercepted or amended. The information contained in this E-Mail may be subject to public disclosure under the Freedom of Information Act 2000. Unless the information is legally exempt from disclosure, the Confidentiality of this E-Mail and your reply cannot be guaranteed.

If your request relates to a Freedom of Information enquiry, please resend this to foi@towerhamlets.gov.uk

Please consider your environmental responsibility: Before printing this e-mail or any other document , ask yourself whether you need a hard copy.

This email was scanned by the Government Secure Intranet anti-virus service supplied by Vodafone in partnership with Symantec. (CCTM Certificate Number 2009/09/0052.) In case of problems, please call your organisations IT Helpdesk.
Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

This email and any files transmitted with it are private and intended solely for the use of the individual or entity to which they are addressed. If you are not the intended recipient the E-mail and any files have been transmitted to you in error and any copying, distribution or other use of the information contained in them is strictly prohibited.

Nothing in this E-mail message amounts to a contractual or other legal commitment on the part of the Government unless confirmed by a communication signed on behalf of the Secretary of State.

The Department's computer systems may be monitored and communications carried on them recorded, to secure the effective operation of the system and for other lawful purposes.

Correspondents should note that all communications from Department for Communities and Local Government may be automatically logged, monitored and/or recorded for lawful purposes.

The original of this email was scanned for viruses by the Government Secure Intranet virus scanning service supplied by Vodafone in partnership with Symantec. (CCTM Certificate Number 2009/09/0052.) This email has been certified virus free.
Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

This email was scanned by the Government Secure Intranet anti-virus service supplied by Vodafone in partnership with Symantec. (CCTM Certificate Number 2009/09/0052.) In case of problems, please call your organisations IT Helpdesk.
Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

This email and any files transmitted with it are private and intended solely for the use of the individual or entity to which they are addressed. If you are not the intended recipient the E-mail and any files have been transmitted to you in error and any copying, distribution or other use of the information contained in them is strictly prohibited.

Nothing in this E-mail message amounts to a contractual or other legal commitment on the part of the Government unless confirmed by a communication signed on behalf of the Secretary of State.

The Department's computer systems may be monitored and communications carried on them recorded, to secure the effective operation of the system and for other lawful purposes.

Correspondents should note that all communications from Department for Communities and Local Government may be automatically logged, monitored and/or recorded for lawful purposes.

The original of this email was scanned for viruses by the Government Secure Intranet virus scanning service supplied by Vodafone in partnership with Symantec. (CCTM Certificate Number 2009/09/0052.) This email has been certified virus free.

Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

Louise Fleming

From: Ken Knight <k.knight1666@btinternet.com>
Sent: 01 June 2015 10:22
To: Stephen Halsey
Cc: Louise Fleming
Subject: Fwd: Direction 4 and Rich Mix

Steve,

As you know the Secretary of State's Direction made on 6th May 2015 (Direction 4) ensured that Commissioners could intervene on any area of the Council's decision making. Max Caller has made you aware of a number some areas that the Commissioners have decided to intervene and our rationale for doing so.

At our recent meetings you and I have also discussed that, in addition to the ongoing "action log" I would also welcome officers proposals as to how "interventions" by the Commissioners are recorded to ensure a clear mutual understanding. As I recently mentioned, Commissioners have also considered a simplified protocol which it might be useful to transfer to an algorithm for Direction 4 related matters.

As you are aware I wrote to you recently regarding the Council's decisions required relating to Rich Mix and that Commissioners have been considering this matter in relation to Direction 4. Three Commissioners (Alan Wood, Chris Allison and myself) had a meeting with David Galpin and Robin Beattie on Wednesday afternoon to receive an officers briefing on the issues surrounding Rich Mix having read the background papers previously. As you may know the meeting was rather rushed at the end as we had to conclude the discussion in order to attend the public Commissioners Decision Making Meeting at 1830 hrs.

In view of the briefing and the time constraints I thought it might be helpful to set out the Commissioners understanding of the position we reached and our expectation of the next stages:

- * discussion took place regarding the imminent Mayoral election on 12 June and the implications and context of making a Direction 4 intervention in the remaining pre election (purdah) period and that a significant decision might be deemed to fall within the protocol agreed by the Council.

- * Commissioners explored the potential of finding a pragmatic solution to find joint agreement and avoiding ongoing litigation between both parties.

- * officers reported that, with the exception of witness statements between the respective parties which were due in the next 48 hours there was no further activity or expenditure that was due prior to the election. Officers also expressed the view that there was therefore no benefit at this stage in seeking a stay of proceedings due to be heard in July.

- * officers reported that they were producing a report on the issues for presentation to the Mayor immediately following the election on 12 June. Commissioners requested an early copy of the draft report prior to 12 June.

- * officers agreed that they would lay out the timetable, including the submission of the report to the Mayor and discussions with Rich Mix to provide the latest position in the report. It was agreed that Officers would notify Rich Mix of the intention of not seeking a joint stay of the proceedings at this stage a would include the proposed timetable for joint discussions and Mayoral decisions.

- * Commissioners noted the above position and reported that they do not intend to intervene under Direction 4 at this time but looked forward to an early draft of the report intended for the Mayor. The Commissioners did express some concern that a number of recommended options were being considered for the report.

* On the conclusion of the meeting the Commissioners agreed that they would not intervene immediately based on the above discussion and advice, but could do so at a later stage.

Following the meeting the Commissioners concluded that Officers should produce a single professional recommendation providing balanced advice on the best interest of the Council which I would be grateful if you would facilitate is included in the report due to sent to us shortly.

I look forward to catching up on Tuesday.

Kind regards

Ken

Sir Ken Knight

Cabinet: 8 July 29015

1.	Rich Mix Litigation	<p>In June 2012, the Council issued a claim against Rich Mix Cultural Foundation ("Rich Mix") in the High Court to recover £850,000 loaned to Rich Mix and due to be repaid in June 2006 plus interest ("the loan claim"). Following a case management conference in the High Court on 26 January 2015, the case has been set down for a 3-day hearing in the High Court to take place during the week commencing 20 July 2015.</p> <p>The case continues to develop and the impending hearing provides a suitable point in proceedings to review the parameters of the original decision, including the greater clarity we now have regarding the level of costs in the case and to direct, via a formal decision, the future conduct of the litigation. This is considered appropriate from both a best practice and a best value perspective.</p> <p>The Mayor in Cabinet will be asked to consider whether to proceed with the case or whether to continue settlement discussions with Rich Mix.</p>
		[REDACTED]
		[REDACTED]

[illegible]

LONDON BOROUGH OF TOWER HAMLETS

MINUTES OF THE BEST VALUE PROGRAMME REVIEW BOARD

HELD AT 10.30AM ON WEDNESDAY, 17 JUNE 2015

Members Present:

Sir Ken Knight (KK)	(Commissioner)
Max Caller (MC)	(Commissioner)
Alan Wood (AW)	(Commissioner)
Ben Stoneman (BS)	Deputy Director – Interventions, DCLG
Stephen Halsey (SH)	Head of Paid Service and Corporate Director, Communities, Localities and Culture

Officers Present:

Chris Holme (CH)	– (Acting Corporate Director – Resources)
Louise Russell (LR)	– (Service Head, Corporate Strategy & Equality)
Dave Clark (DC)	– (Acting Service Head – Resources)
Everett Haughton (EH)	– (Service Manager, Third Sector – D&R)
Corrine Hargreaves (CHA)	– (Senior Manager, HR Strategy – RES)
Gulam Hussain (GH)	– (Strategy Policy and Performance Officer)

1. APOLOGIES FOR ABSENCE

Apologies sent on behalf of John Biggs, Mayor of Tower Hamlets, Chris Allison, Commissioner and Robin Beattie, Service Head – Strategy and Resources (CLC).

2. MINUTES OF THE PREVIOUS MEETING AND ACTION LOG

The board **AGREED** the notes of the meeting held on 13 May 2015

Matters Arising

The board **AGREED** that a report setting out the lessons learnt from the Election should be brought forward to the Commissioners in a meeting to be scheduled separately of the Best Value Programme Board.

ACTION BY:

Stephen Halsey (HoPs, Corporate Director, CLC)
John Williams (Returning Officer)
Gulam Hussain/Louise Fleming (Strategy, Policy and Performance Officer)

The board **NOTED** that the new Mayor was reviewing the report into options for East End Life and further discussions would be held with officers and the Commissioners as appropriate.

AW and MC noted that cross themed actions needed to be captured in the actions logs. Issues around school place planning and how the council would meet projected growth needed to be considered. There was also a need to better acknowledge this issue in the property disposal strategy adopted by the council.

LR and SH advised that the current administration had a different attitude towards free schools and academies and a paper setting out the current position of the council in relation to meeting the need for school places will be developed.

The board **AGREED** that any additional actions for the Best Value Plan should be considered by the Board in reviewing the six month monitoring of the current plan..

The board **AGREED** that a report on pupil place planning should be considered at a separate meeting.

ACTION BY:

Stephen Halsey (HoPs, Corporate Director, CLC)
Aman Dalvi (Corporate Director, D&R)
Robert McCulloch-Graham (Corporate Director, ESCW)
Louise Russell (Service Head, Corporate Strategy & Equality)
Gulam Hussain/Louise Fleming (Strategy, Policy and Performance Officer)

The Interim Monitoring Officer updated the board on the progress of developing a guide for members and advised this was being prepared.

The board was also advised that the council had obtained legal advice in relation to ongoing issues with the Rich Mix Centre.

The board **AGREED** that the advice obtained would be forwarded to the Commissioners.

ACTION BY:

Meic Sullivan-Gould (Interim Monitoring Officer)

3. BEST VALUE IMPROVEMENT PLAN – REVIEW OF PROGRESS

LR updated the board on the progress of actions in the Best Value Improvement Plan. The majority were on target with the following exceptions;

- Member guidelines related to the Procurement Action Plan which required further discussion with the new Mayor.
- Review of the MSG programme - revised date already agreed.
- Procurement of the new Content Management System - revised date already agreed

Work on the six month monitoring report of the BV Plan to be submitted to the Secretary of State was underway with a view to present a first draft to Cabinet in July, allowing time for September Cabinet to consider if subject to a call in. The plan would be submitted to the DCLG by 17th September as required.

The board **AGREED** that the draft report would be presented to the Best Value Programme Review Board Meeting in public in July involving the new Mayor and members.

ACTION BY:

Louise Russell (Service Head, Corporate Strategy & Equality)
Gulam Hussain/Louise Fleming (Strategy, Policy and Performance Officer)

MC queried how cross plan or additional activities could be identified and best captured in the plan. LR noted that a process was required for items to be added to the plan and would be best addressed through an additional Board meeting to be scheduled for July.

The board **AGREED** that a Board meeting is scheduled for July to discuss cross plan actions and processes for adding actions.

ACTION BY:

Louise Russell (Service Head, Corporate Strategy & Equality)
Gulam Hussain/Louise Fleming (Strategy, Policy and Performance Officer)

Comment [LR1]: Gulam – this needs to be put in the diary. I suggest July 22nd or 29th - thanks

Formatted: Left

4. ORGANISATIONAL CULTURE ACTION PLAN

The board received a presentation on the Organisation Culture Action Plan. The presentation set out the core objectives of the plan and highlighted the progress with delivering the plan.

MC queried the ambassador schemes and made suggestions around recognising staff who participate. MC also highlighted that there was a need to brand and clarify the culture being promoted in the organisation. The Head of Paid Service advised that the new Mayor was keen to promote a culture of Transparency, Trust and Innovation.

LR set out that a tender exercise for external support had been completed and further discussions would begin shortly. The successful tender from Solace was keen to engage the new Mayor before commencing work.

MC advised that the programme could potentially be delayed to September to encompass the newly appointed statutory officers expected to join the organisation.

The board **AGREED** that the Head of Paid Service and the Lead Commissioner would raise with the Mayor during their meetings the issue of branding the organisational culture and promoting it at the forthcoming staff conference.

The board **AGREED** that CHargreaves would provide a briefing to the Mayor for his speech at the Staff Conference.

ACTION BY:

Sir Ken Kight (Lead Commissioner)
Stephen Halsey (HoPs, Corporate Director, CLC)
Louise Russell (Service Head, Corporate Strategy & Equality)
Corrinne Hargreaves (Senior Manager, HR Strategy)

5. GRANTS ACTION PLAN

The board received a presentation on the Grants Action Plan. The presentation noted the significant number of VCS organisations in the borough and noted the endemic issues with the grants process. The presentation set out the need to create a sustainable approach to grants with a focus on capacity building for organisations and a move towards commissioning.

MC noted that services needed to be clear on the appropriate processes for procurement or the awarding of grants and needed to follow processes correctly.

The board discussed possible future governance structures and processes for grants decision making including the forming of an advisory board to aid decision making ensuring the Council builds its own capacity for future grants decision making.

The board **AGREED** that the Head of Paid Service and the Lead Commissioner would raise the matter with the Mayor to obtain his view on the formation of an advisory group consisting of cross party representation to aid decision making.

BEST VALUE PROGRAMME REVIEW BOARD, SECTION ONE (UNRESTRICTED)
17/06/2015

The board **NOTED** that significant progress had been made in the way in which the authority managed its grants.

The board **AGREED** that the consolidation of all grants under the Corporate Director for Resources would be formalised as agreed by CMT.

ACTION BY:

Sir Ken Kight (Lead Commissioner)
Stephen Halsey (HoPs, Corporate Director, CLC)

The meeting ended at 12.30 p.m.

LONDON BOROUGH OF TOWER HAMLETS

OVERVIEW AND SCRUTINY COMMITTEE

"CALL IN" REQUISITION

I / WE THE UNDERSIGNED WISH TO "CALL IN" FOR CONSIDERATION BY THE OVERVIEW AND SCRUTINY COMMITTEE OF THE LONDON BOROUGH OF TOWER HAMLETS THE PROVISIONAL DECISION (S) OF THE ~~CABINET~~^{MAYOR} TAKEN ON THE 22 DAY OF... JUNE..... 2015 IN RELATION TO THE REPORT SHOWN BELOW:

REPORT TITLE/NO. MAYOR'S Decision Log No. 101 - Rich Mix

- Councillor OLIVER RAHMAN (Sign) [Signature] (Print)
- Councillor Gulam Kibria Khan (Sign) GE (Print)
- Councillor Maum Miah (Sign) [Signature] (Print)
- Councillor Gulam Robban (Sign) G Robban (Print)
- Councillor Muhammad Mustapha (Sign) [Signature] (Print)

Decisions can also be "Called In" by 2 Church, Faith or Parent Governor representatives who have been co-opted to membership of the Committee.

- Co-opted Member _____ (Sign) _____ (Print)
- Co-opted Member _____ (Sign) _____ (Print)

Dated 26/06/2015

Once completed please return to John S Williams, Service Head, Democratic Services
Telephone: 020 7364 4204 Fax: 020 7364 3232

LONDON BOROUGH OF TOWER HAMLETS

OVERVIEW AND SCRUTINY COMMITTEE – 2015/2016

"CALL IN" REQUISITION

<u>AGENDA ITEM NO.</u>	Mayor's Decision Log No. 101
<u>REPORT TITLE/ DATE OF MAYORIAL DECISION</u>	RICH MIX LITIGATION (Pages 1 - 18) - restricted
<u>REASONS FOR "CALL IN"</u>	<p>Independent Group fully supports and appreciates the wonderful work done by Rich Mix, its staff and partners at grassroots level. The key issues and reasons to call-in this decision herein, relates to the process; lack of transparency, accountability, precedent, best value for money, avoidance from criticism of cronyism and nepotism, together with, a fair and honest level-playing field for all local organisations, among other areas.</p> <p>While it may be the case that a similar decision can be reached after going through the proper process, the issue of concern is that transparency should be observed with information available for scrutiny by local residents and elected members.</p> <p>This call-in is based on the following reasons:</p> <p>This decision was not being undertaken in the right way – there had been insufficient evidence and work to date to clarify the potential risk of a precedent, costs and benefits of writing off such a significant amount of public money, without public and elected councillors having the opportunity to objectively scrutinise and judge the merit of such a haphazard decision taken behind closed doors without evidence.</p> <p>Need to know the cost of implementation of this decision for the council and local residents.</p> <p>There has been a lot of talk about transparency and accountability - even criticism by Labour, Conservatives,</p>

and Secretary of State/Commissioners previously - about decisions being taken behind the close doors. If they were genuine in their criticism then all documents relating to this decision should be made public and members should be able to scrutinise the decision.

Given the overall grants/funding related issues, best value review, PWC report and other relevant criticism, would it be wise, professional or appropriate for the new Labour mayor or the Executive to make such a decision now or in future to write off such a significant sum of Tax Payers' money, without proper accountability and transparency.

On what criteria and rationale can such a decision be made? We would request that the criteria and rationale be made public and shared with elected members in general, particularly councillors who have called-in this decision taken in a hurry and behind closed doors, opening up the council to potential criticism and cherry-picking, if no such information and evidence is made available. The criteria and rationale must be in writing and formally announced or made public and all organisations should be informed so they are aware of its existence and potential benefits on the same basis as the Rich Mix.

Will other agencies, projects or similar venues be allowed to make such a case (if and once the criteria or rationale is known) and receive the same treatment from the Labour mayor, Labour executive, and Labour-controlled Overview and Scrutiny Committee which is now supposed to scrutinise and monitor the Mayor, its policies and decisions rather than opposition? More importantly, how will other bodies know on what criteria and rationale this decision was made on, and how can they pursue similar course with the council if there is no clear information.

If there is genuine need for 'Exempt Information' under legislation relating to this decision - summarised and appropriately redacted information must be provided and at the very least a criteria to inform public and other bodies be available so a fair, honest and transparent level playing fields is established.

How does this decision fit in with the cuts a Labour mayor and cabinet will have to make soon. Is it best use of our resources? What evidence is there to support such a claim vis-à-vis other cuts and pressures facing the council?

	<p>The decision has been undertaken in such a hurry, whereas, this decision could have been made in a few days at the Cabinet meeting, following proper protocol with full information, reports, rationale and details provided for scrutiny so that a transparent and robust decision is reached.</p> <p>The lack of information, rationale, fairness, transparency, secretive manner in which this decision seemed to be handled has resulted in this decision being called-in – not the work done by Rich Mix. This decision will also make other groups in the community uneasy as there may be a risk of perceived level of cronyism and nepotism due to the manner in which is being taken behind closed doors. In order to support the some of the good work done by Rich Mix, and the Council's reputation, the above points must be addressed immediately.</p>
<p><u>ALTERNATIVE COURSE OF ACTION PROPOSED</u></p>	<ul style="list-style-type: none"> • Make all documents and information relating to this decision public for a proper and genuine scrutiny and accountability in a transparent manner and postpone any action until such time. • Publicise and make available the rationale for this decision and how other local organisations can benefit from such approach from the Council. • Provide requested information to all Councillors – especially those who have called-in this decision to protect the Council's reputation in the community. • Publicise and make available the true cost of implementing such a decision. • Revert back to the previous state of play until above steps have been taken, and then, make an objective decision based on the results, facts and professional advice in a democratic manner.
<p><u>WITHIN THE COUNCIL'S POLICY OR BUDGET FRAMEWORK - Please Indicate</u></p>	<p>Impact on the Council's Budget.</p> <p>Impact on financial resources.</p> <p>Impact on ability to deal with the cuts in future budgets.</p>

Council's Policy of dealing with similar organisations.

Process and protocols in decision making and governance.

Various relevant Local Government Acts relating to transparency, openness, funding/grants, and accountability particularly Local Government Transparency Code 2015

Directions from the Secretary of State.

Relevant elements of directions as set out here, relating to good governance, accountability, value for money etc. -

<https://www.gov.uk/government/publications/further-directions-to-the-council-of-the-london-borough-of-tower-hamlets-and-related-documents>

Louise Fleming

From: Robin Beattie
Sent: 29 June 2015 16:44
To: Louise Fleming
Subject: FW: Rich Mix
Attachments: commissioner decision report.pdf

Louise

As discussed. FYI.

Regards

Robin Beattie
Service Head Strategy and Resources
Communities, Localities & Culture
6th Floor, Mulberry Place
Tel: 020 7364 4229
Email: robin.beattie@towerhamlets.gov.uk
Web: www.towerhamlets.gov.uk

London Borough of Tower Hamlets
Mulberry Place
PO Box 55739
5 Clove Crescent
London E14 2BG

From: Robin Beattie
Sent: 26 June 2015 16:09
To: Ken.Knight@communities.qsi.gov.uk
Cc: David Galpin; Stephen Halsey
Subject: FW: Rich Mix

Dear Ken,

Following on from my e-mail of the 26th attached is the commissioner decision report. You may take the view that this is not a grant in which case you will not need to make a formal decision. There are certainly matters you will need to consider if you are of the view that a Commissioner Decision is required given the political history of this issue. This is an exempt report from the councils perspective but as the Commissioners rather than the Mayor are the decision makers for grants you will need to be clear if you are going to make this decision in public and if not why not (as this might be subject to challenge). We understand that the 'Independent Group' may be organising to call in the Mayors decision. We will keep you posted.

The Best Value arguments for and against a settlement involving the payment of a significant amount of S106 monies as part of a deal to write off £800,000 of debt and drop litigation to recover it are carried in the body of the Mayors Decision Report but as we have discussed (and as is made clear in the report) there is no right or wrong objectively determined recommendation on how to perceive Best Value in these circumstances. The historic and substantial level of public investment in this organisation may or may not be a reason for writing off the debt depending on your subjective position and the extent to which you consider the outcome of litigation would put Rich Mix at genuine risk of insolvency. As we have also discussed, the financial position of the Rich Mix is such that an output driven approach to establishing a best value argument for further investment has been attempted but failed as they simply cannot deliver additional outputs to the value of the investment established by their settlement offer. As you have already confirmed that this settlement arrangement is a satisfactory pragmatic

solution to resolving a long outstanding dispute and as you are the decision makers for grant related matters I can safely assume that you are clear about how you will articulate the subjective supporting best value arguments that would underpin the additional grant (S106) element of this arrangement.

If, however, you are of the view that this settlement arrangement does not include a grant element(i.e. the S.106 is not a grant in this context) and therefore a commissioner decision is not required then please let David Galpin and Myself know and Legal Services will progress matters to a close on the basis of the Mayoral decision, subject to the outcome of any call in. You will be aware that we are under intense pressure to resolve this matter given the position we are currently at regarding litigation. If you are not able to address this matter swiftly can you please advise.

Regards

Robin Beattie
Service Head Strategy and Resources
Communities, Localities & Culture
6th Floor, Mulberry Place
Tel: 020 7364 4229
Email: robin.beattie@towerhamlets.gov.uk
Web: www.towerhamlets.gov.uk

London Borough of Tower Hamlets
Mulberry Place
PO Box 55739
5 Clove Crescent
London E14 2BG

From: Adam Ballard
Sent: 26 June 2015 10:42
To: Robin Beattie
Subject: Rich Mix

Dear Robin

As discuss, please find attached a copy of the report for Sir Ken.

I would be grateful if you could liaise with Sir Ken and ask him to consider and sign the attached decision.

Democratic Services have confirmed that the notice has been published following Councillor Pierce giving written confirmation that he would waive the 28 days' notice:

<http://moderngov.towerhamlets.gov.uk/mgIssueHistoryHome.aspx?IId=52037>

Kind regards


Adam

Adam Ballard
Solicitor
London Borough of Tower Hamlets
Legal Department
Mulberry Place
5 Clove Crescent
London
E14 2BG

T: 0207 364 3312

F: 0207 364 4804/4861

DX: London Borough of Tower Hamlets legal department
DX 42656 Isle of Dogs

<p align="center">Individual Commissioner Decision</p> <p align="center">Decision Log No: 15</p>	 TOWER HAMLETS
<p>Report of: Stephen Halsey – Corporate Director Communities Localities and Culture and Head of Paid Service</p>	<p>Classification: Exempt</p>
<p>Rich Mix Litigation</p>	

Is this a Key Decision?	Yes
Decision Notice Publication Date:	25 June 2015
General Exception or Urgency Notice published?	Urgency Notice published
Restrictions:	Exempt

EXECUTIVE SUMMARY

In June 2012, the Council issued a claim against Rich Mix Cultural Foundation ("Rich Mix") in the High Court to recover £850,000 loaned to Rich Mix and due to be repaid in June 2006 plus interest ("the loan claim"). The Mayor has agreed an approach to settlement of that claim which would involve the payment of section 106 monies to Rich Mix. Agreement is sought from the Commissioners as, in the specific circumstances of this case, the payment of section 106 monies to Rich Mix may be construed as a grant. In accordance with the Secretary of State's directions the Commissioners are responsible for grants made by the Council and ensuring best value in relation to these.

DECISION

Recommendations:

The Commissioners are requested to:

1. Agree to payment of £1,570,482 of section 106 monies to Rich Mix as part of settlement of the High Court litigation with Rich Mix.

APPROVALS

1. (If applicable) Corporate Director proposing the decision or his/her deputy
I approve the attached report and proposed decision above for submission to the Commissioners.

Signed  Date 23/6/15

2. Chief Finance Officer or his/her deputy

I have been consulted on the content of the attached report which includes my comments.

Signed  Date 25/6/15

3. Monitoring Officer or his/her deputy

I have been consulted on the content of the attached report which includes my comments.

(For Key Decision only – delete as applicable)

I confirm that this decision:-

~~(a) has been published in advance on the Council's Forward Plan~~ OR
(b) is urgent and subject to the 'General Exception' or 'Special Urgency' provision at paragraph 18 or 19 respectively of the Access to Information Procedure Rules.

Signed  Date 26/06/15

4. Commissioner


I agree the decision proposed in paragraph above for the reasons set out in paragraph 1 and appendix A in the attached report.

Name Signed

Date

Name Signed

Date

<p style="text-align: center;">Commissioner Decision Report 24 June 2015</p>	 TOWER HAMLETS
<p>Report of: Stephen Halsey – Corporate Director Communities Localities and Culture and Head of Paid Service</p>	<p>Classification: Exempt</p>
<p>Rich Mix Litigation</p>	

Originating Officer(s)	Stephen Halsey
Wards affected	All wards
Key Decision?	Yes
Community Plan Theme	A prosperous Community

EXECUTIVE SUMMARY

In June 2012, the Council issued a claim against Rich Mix Cultural Foundation ("Rich Mix") in the High Court to recover £850,000 loaned to Rich Mix and due to be repaid in June 2006 plus interest ("the loan claim"). The Mayor has agreed an approach to settlement of that claim which would involve the payment of section 106 monies to Rich Mix. Agreement is sought from the Commissioners as, in the specific circumstances of this case, the payment of section 106 monies to Rich Mix may be construed as a grant. In accordance with the Secretary of State's directions the Commissioners are responsible for grants made by the Council and ensuring best value in relation to these..

DECISION

Recommendations:

The Commissioners are requested to:

1. Agree to payment of £1,570,482 of section 106 monies to Rich Mix as part of settlement of the High Court litigation with Rich Mix.

1. REASONS FOR THE DECISIONS

- 1.1 The Commissioners have responsibility for the Council's grant-making functions and any settlement which involves payment of section 106 monies to Rich Mix may be construed as a grant.

2. ALTERNATIVE OPTIONS

- 2.1 Alternative approaches to settlement have been considered, but the proposed approach involves payment of section 106 monies to Rich Mix and associated payment back to the Council of the loan of £850,000.

3. DETAILS OF REPORT

- 3.1 The individual mayoral decision report at Appendix A sets out the background and details of this matter.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 Relevant implications are set out in the report at Appendix A.

5. LEGAL COMMENTS

- 5.1. Relevant implications are set out in the report at Appendix A.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 Relevant implications are set out in the report at Appendix A.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 Relevant implications are set out in the report at Appendix A.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 The recommendation in this report will not impact on, or contribute to, a sustainable environment.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 Relevant implications are set out in the report at Appendix A.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 The recommendations of this report will not impact on the reduction of crime and disorder.

11. SAFEGUARDING IMPLICATIONS

11.1 There are no safeguarding implications arising from the report

Linked Reports, Appendices and Background Documents

Linked Report

- NONE.

Appendices


- Appendix A – Mayoral decision sheet and report

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- NONE.

Officer contact details for documents:

N/A

<p align="center">Individual Mayoral Decision</p> <p align="center">Decision Log No: 101</p>	 <p align="center">TOWER HAMLETS</p>
<p>Report of: Stephen Halsey - Head of Paid Service</p>	<p>Classification: Exempt</p>
<p>Rich Mix Litigation</p>	

Is this a Key Decision?	Yes
Decision Notice Publication Date:	18 June 2015
General Exception or Urgency Notice published?	Urgency Notice published
Restrictions:	Exempt

EXECUTIVE SUMMARY

In June 2012, the Council issued a claim against Rich Mix Cultural Foundation ("Rich Mix") in the High Court to recover £850,000 loaned to Rich Mix and due to be repaid in June 2006 plus interest ("the loan claim"). Following a case management conference in the High Court on 26 January 2015, the case has been set down for a 3-day hearing in the High Court to take place during the week commencing 20 July 2015.

Rich Mix have applied to adjourn the hearing which is listed for a hearing on Friday 19 June 2015. At the same time, settlement discussions are ongoing and there is an open offer from Rich mix to resolve the proceedings. In the circumstances, a decision is sought from the Mayor as to the future conduct of the proceedings and settlement discussions. The details and options are set out in the attached report.

DECISION

Recommendations:

The Mayor is recommended to:

1. Decide whether to proceed with the trial which is listed for 3 days in the week commencing 20 July 2015 or not.
2. Decide whether to accept Rich Mix's settlement proposal of 27 March 2015 (the option in paragraph 2.2 of the report ("option 2.2")) or to continue with settlement discussions on the basis outlined in paragraph 3.17 of the report (the option in paragraph 2.3 of the report ("option 2.3")) or on some other basis.

3. Agree, subject to 2, to continue the constructive discussions with Rich Mix concerning co location as set out in paragraph 3.17.
4. Specify the balance of supporting reasons in respect of the decisions in 1 and 2.

APPROVALS

1. (If applicable) Corporate Director proposing the decision or his/her deputy

I approve the attached report and proposed decision above for submission to the Mayor.

Signed  Date 18/6/15

2. Chief Finance Officer or his/her deputy

I have been consulted on the content of the attached report which includes my comments.

Signed  Date 18/6/15

3. Monitoring Officer or his/her deputy

I have been consulted on the content of the attached report which includes my comments.

(For Key Decision only – delete as applicable)

I confirm that this decision:-

~~(a) has been published in advance on the Council's Forward Plan OR~~
(b) is urgent and subject to the 'General Exception' or 'Special Urgency' provision at paragraph 18 or 19 respectively of the Access to Information Procedure Rules.

Signed  Date 18/06/15

4. Head of Paid Service

I have been consulted on the content of the attached report which includes my comments where necessary.

Signed  Date 18/6/15

5. Mayor

I agree the following from the options presented in the report (please delete or indicate as appropriate):

1. I ~~do~~ / do not wish the Council to proceed with the trial which is listed for 3 days in the week commencing 20 July 2015

2. I would like to settle the case on the basis of:

(a) Option 2.2

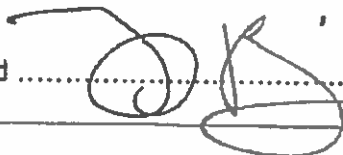
~~(b) Option 2.3~~

(c) Some other basis (please specify):

Please specify any additional reasons (if any) to those set out in the body of the report:


.....
.....
.....

Signed



Date

18/6/2015

<p style="text-align: center;">INDIVIDUAL MAYORAL DECISION 18 June 2015</p>	 TOWER HAMLETS
<p>Report of: Stephen Halsey - Head of Paid Service</p>	<p>Classification: Exempt</p>
<p>Rich Mix Litigation</p>	

Lead Member	No current lead member
Originating Officer(s)	Robin Beattie, Service Head – Strategy & Resources David Galpin, Service Head – Legal Services
Wards affected	All wards
Community Plan Theme	A prosperous community
Key Decision?	Yes

Executive Summary

In June 2012, the Council issued a claim against Rich Mix Cultural Foundation ("Rich Mix") in the High Court to recover £850,000 loaned to Rich Mix and due to be repaid in June 2006 plus interest ("the loan claim"). Following a case management conference in the High Court on 26 January 2015, the case has been set down for a 3-day hearing in the High Court to take place during the week commencing 20 July 2015.

Rich Mix have applied to adjourn the hearing which is listed for a hearing on Friday 19 June 2015. At the same time, settlement discussions are ongoing and there is an open offer from Rich mix to resolve the proceedings. In the circumstances, a decision is sought from the Mayor as to the future conduct of the proceedings and settlement discussions. The details and options are set out in the attached report.

Recommendations:

The Mayor is recommended to:

1. Decide whether to proceed with the trial which is listed for 3 days in the week commencing 20 July 2015 or not.
2. Decide whether to accept Rich Mix's settlement proposal of 27 March 2015 (the option in paragraph 2.2 of the report ("option 2.2")) or to continue with settlement discussions on the basis outlined in paragraph 3.17 of the report (the option in paragraph 2.3 of the report ("option 2.3")) or on some other basis.
3. Agree, subject to 2, to continue the constructive discussions with Rich Mix concerning co location as set out in paragraph 3.17.

4. Specify the balance of supporting reasons in respect of the decisions in 1 and 2.

1. **REASONS FOR THE DECISIONS**

- 1.1 The Council are entitled to recover the £850,000 plus interest paid to Rich Mix under the loan agreement. Counsel's view is that the Council's prospects of success in relation to the loan claim are strong and in the order of 70%.
- 1.2 The costs in the case are significant. The litigation began in June 2012 and is at an advanced stage. The Council costs were just under £130,000 to January 2015, which included internal costs and represented 72% of the estimated total spend on this litigation. Rich Mix's costs were £160,000 of an estimated total spend of £215,000.
- 1.3 The court expects the parties to engage in alternative dispute resolution and an out-of-court settlement could yield additional value which the council is seeking.

2. **ALTERNATIVE OPTIONS**

- 2.1 The Council could withdraw its claim against Rich Mix and vacate the hearing in July 2015, although there is no legal reason to do so, given counsel's advice. It would result in the Council writing off Rich Mix's debt and the council would also be liable for Rich Mix's legal costs to date.
- 2.2 The Council could accept Rich Mix's most recent settlement offer which was that Rich Mix would repay the loan of £850,000 and pay the Council's external legal costs up to £50,000 if the Council released the section 106 monies totalling £1,570,482 which the Council received from Bishopsgate Apartments LLP. The monies held under the S106 agreement formed part of Rich Mix's counter claim against the Council, which was dismissed following the preliminary judgment on 1 October 2015. This would be a simple commercial offset and relatively straightforward to implement, although paragraph 5.3 of the legal comments should be noted. The Council is not obliged to pay over the monies held under the section 106 agreement. There may be a question as to whether payment would deliver best value, which should depend at least in part upon what Rich Mix will deliver for the further investment. However, as the money would be utilised by Rich Mix to fund its operations it is arguable that it does represent best value as it protects Rich Mix's immediate future and safeguards the significant investment the Council has already made in the charity.
- 2.3 Alternatively the Council can continue with settlement discussions on the same basis as it has done to date or adopt a different settlement strategy entirely. Any alternative strategy would need to take into account the matters in dispute as outlined in this report, including costs. The current settlement discussions have related to the co-location of an Idea Store in Rich Mix's building. The proposals have been discussed between the parties and dialogue continues between the Council and Rich Mix. This dialogue has

diminished following the outcome of the election court. This option would be more difficult to implement and agreement would need to be obtained from the key funders as well as the board of Rich Mix. However it does present a strong technical solution to establishing value for money and best value without risk to the financial future of Rich Mix in a way that could substantially reduce on going revenue risk to it and support its business model. The co-location of an Idea Store would take several years to be designed and installed. . If an Idea Store was co-located at the Rich Mix site then the best value requirement would be further satisfied as the local community would have access to an Idea Store in an area where the Council does not have one. The Council would be obtaining a below market-rate lease in exchange for ending proceedings in respect of the loan amount. This should recover the amount loaned to Rich Mix in the longer term.

3. DETAILS OF REPORT

3.1 In 1999, Cityside Regeneration Ltd ("Cityside") conceived a project to provide a cultural centre for the arts in Bethnal Green. Cityside acquired a freehold property at 39-47 Bethnal Green Road ("the property") to construct the centre. The Council provided £1.8 million to Cityside in forward funding for the project in August 2002 and a further £952,000 in forward funding in March 2003. These two loans were paid pending the Cityside project obtaining funding from other sources.

3.2 At a meeting of Cabinet on November 2003, proposals were approved to implement the Rich Mix project in the following terms (among others) and a forward funding written agreement was entered into in September 2004:

- (1) the property would be transferred from Cityside to the Council and then from the Council to Rich Mix;
- (2) the forward funding of £2.75 million from the Council would be repaid less a sum of £850,000 ("the second forward funding"), repayment of which was to be subject to a legal agreement between the Council and Rich Mix;
- (3) £900,000 of forward funding ("the first forward funding") would be repaid on practical completion;
- (4) £1 million would be made available to Rich Mix by the Council by way of capital grant.

3.3 Clause 3 explicitly set out that the first forward funding was payable on the practical completion date and that the second forward funding was to be repaid to the Council by Rich Mix on 1st January 2006, or such other date agreed by the Council before 1st December 2005.

3.4 It was subsequently agreed between the Council and Rich Mix that the second forward funding be repaid by July 2006. This was extended by the Council's Director of Development and Renewal at the time under delegated powers. The sum of £850,000 became due in July 2006 but to date the loan has not been repaid to the Council.

- 3.5 The cultural centre was completed at the Rich Mix site and has been in operation since 2006. It consists of a cinema, café, performance theatre space, bar, gallery, offices and work spaces which are leased to arts organisations. Rich Mix has the continuing support of its key funders, as indicated in the letter dated 17 March 2015, which is Appendix 3 to this report.
- 3.6 The Council's right to bring proceedings to recover the outstanding loan of £850,000 was due to expire in June 2012. This was a result of the Limitation Act 1980, which relevantly requires litigation to be commenced within six years. In order to protect the Council's position, the Council issued the loan claim in the High Court in June 2012. The claim seeks to recover interest on the unpaid loan, which takes the total claim over £1million. The decision to issue the claim was taken by the then Assistant Chief Executive after consultation with the Mayor.
- 3.7 The claim was not served immediately on Rich Mix, so as to enable discussions to continue between the parties. However, there is also a time limit on serving proceedings once they have been issued and, when discussions did not lead to settlement, the loan claim was served on Rich Mix in October 2012.
- 3.8 In November 2012, Rich Mix served a defence to the Council's loan claim, but also filed a counterclaim for £1,570,482 which it claimed was due under a service level agreement with the Council dated 26 September 2010 ("the SLA claim").
- 3.9 A preliminary hearing took place in the High Court on 9 July 2014, which considered a point of law determinative of the SLA claim. As a consequence of the preliminary hearing, Rich Mix no longer has a claim in the High Court for payment of £1,570,482 under the SLA. The High Court litigation now focuses on the Council's loan claim, which is due to be heard over 3 days in July 2015.
- 3.10 There are costs associated with the litigation to date. These costs were assessed for the purposes of the case management conference which took place in the High Court on 26 January 2015.
- 3.11 As at January 2015, the Council's costs in the litigation were just under £130,000, consisting of £26,820 for counsel and £100,000 for the Council's in-house legal service, which is handling the case. The Council's projected costs to conclusion of the case have been assessed by a costs draftsman as being £180,000 including the amount spent to date.
- 3.12 Rich Mix is being represented on a pro bono basis, but they have also had their costs assessed by a costs draftsman. As at January 2015, Rich Mix's costs were approximately £160,000 and their projected costs were limited at the case management conference to a total of approximately £215,000.

- 3.13 The Court has discretion whether to order one party to litigation to pay the other party's costs. However, the usual rule is that costs follow the event, so that the losing party is usually ordered to pay the winning party's costs. Should the council be unsuccessful at trial in relation to the loan claim, the Council will be liable to pay Rich Mix's costs which relate to the loan claim. However, as a result of Rich Mix being unsuccessful with its SLA claim, a proportion of the Council's costs to date should be recoverable from Rich Mix.
- 3.14 The Council and Rich Mix have made continuing efforts to try and settle their disputes by means other than litigation. Settlement discussions have continued on a confidential basis alongside the litigation but have not been successful to date.
- 3.15 Rich Mix sent an open offer letter to the Council at the end of September 2014 (please see Appendix 1). That letter was sent prior to judgment on the preliminary point on 1 October 2014 and sets out Rich Mix's most recent, formal position in relation to settlement. Whilst not accepting any legal liability for the loan, Rich Mix have offered to pay £850,000 back to the Council, on the condition that the Council pays to them section 106 monies totalling £1,570,482 which the Council received from Bishopsgate Apartments LLP.
- 3.16 On 27 March 2015, Rich Mix provided the council with a revised settlement offer. Rich Mix have offered to repay the £850,000 loan and up to £50,000 of the Council's external legal spend if the Council provides Rich Mix with further funding of £1,570,482 (please see Appendix 2).
- 3.17 The Council has proceeded to conduct settlement discussions according to the following principles established by the Council's Executive—
- (1) The Council is under no obligation to pay any section 106 monies to Rich Mix, although it may do so.
 - (2) Rich Mix owes the Council £850K plus interest.
 - (3) Forgiving the loan or paying Rich Mix further section 106 monies would involve a significant further investment in Rich Mix at a time of austerity and should yield a significant additional benefit for Tower Hamlets if it is to be considered..
- 3.18 On 21 May 2015 Rich Mix applied to stay proceedings indefinitely to allow the Council time to consider Rich Mix's offer. The hearing to consider the stay application was listed on 4 June 2015. After consulting with the DCLG Commissioners on 27 May 2015 the Authority agreed that it ~~the Council~~ would request that the stay application hearing be adjourned until after the Mayoral election on 11 June 2015. Rich Mix agreed to this request and it has been re-listed on 19 June 2015.
- 3.19 The Council was required to serve its witness evidence by 29 May 2015. The Council has one witness statement, which was filed with the court on 28 May 2015. Rich Mix informed the Council that it was unable to comply with the direction. Rich Mix requested an extension of time to serve their witness evidence after the hearing on 19 June 2015. The Council has agreed to this

request. If Rich Mix's application to stay proceedings is unsuccessful then they have agreed to serve their witness evidence by 22 June 2015.

- 3.20 There are good reasons for not agreeing to adjourn the hearing which is presently listed for July. The proceedings were filed in 2012 and have now been going for around three years. It should be in the interests of both parties to bring the proceedings to a conclusion. Settlement should always be the preferred option, but even taking this into account the hearing dates have value as a powerful incentive to encourage settlement.
- 3.21 To date, Rich Mix has not been able to offer any significant additional benefits of the kind which might comply with the 3rd principle outlined above to justify the further investment that it seeks. However, they do remain in constructive discussions regarding the potential co-location of an Idea Store in part of the Rich Mix site. These discussions provide a potential platform whereby the Council may secure sufficient value for money, subject to the terms of such co-location, to justify consideration by the Mayor of their request for section 106 monies and the possible conversion of the loan debt into the value of any co-location arrangements. These very constructive discussions are running in parallel to the court proceedings and are relevant in so far as they represent a genuine option for Rich Mix should they be of the view that the loss of the court case specific to the loan issue may risk making them becoming insolvent. The acceptability of such an agreement would also be dependent on the agreement of Rich Mix's key funders.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1. This report seeks the decision by the Mayor in cabinet to proceed to the hearing in the High Court in July 2015 to recover the £850,000 loan made to Rich Mix which was due for repayment in June 2006. Following the decision made at a preliminary hearing in the High Court on July 2014, Rich Mix no longer has a claim against the Council for payment of £1,570,482 under the SLA. As a consequence of the decision, the case is now focused on the loan repayment to the Council and the settlement discussions outlined in Para. 3.16.
- 4.2. The legal cost incurred by the Council to date is approximately £130,000. If the decision is made to proceed, further costs of £50,000 will be incurred making a total cost of £180,000. The legal costs of Rich Mix have also been assessed and total approximately £160,000 to date. However, the projected costs of Rich Mix are limited to approximately £215,000. As the Court has discretion to order the losing party to pay litigation costs of the other party, a proportion of the Council's costs should be recoverable at this stage.
- 4.3. The extent to which the legal cost is fully or partially recovered is dependent on the decision made by the Mayor in cabinet and the outcome. There is currently no budget provision to meet these litigation costs in the budget, any potential residual costs will need to be met from existing resources identified in the first instance. Approval may be required for the use of contingencies if this cannot be achieved.

5. LEGAL COMMENTS

- 5.1. Legal implications are largely contained in the body of the report.
- 5.2. Paragraph 2.2 of the report contains a settlement option which involves the payment of section 106 monies to Rich Mix. The decision to allocate section 106 monies held by the Council is an executive function of the Council by virtue of section 9D(2) of the Local Government Act 2000.
- 5.3. Should the payment of section 106 monies be constituted as a grant, then approval would be required from the commissioners appointed by the Secretary of State. The power of the commissioners to make decisions in relation to grants arises from directions made by the Secretary of State on 17 December 2014 pursuant to powers under sections 15(5) and 15(6) of the Local Government Act 1999 (the Directions). Paragraph 4(ii) and Annex B of the Directions together provide that, until 31 March 2017, the Council's functions in relation to grants will be exercised by appointed Commissioners, acting jointly or severally. This is subject to an exception in relation to grants made under section 24 of the Housing Grants, Construction and Regeneration Act 1996, for the purposes of section 23 of that Act (disabled facilities grant).
- 5.4. When considering whether or not to make funds available for the purposes specified, the Council should consider whether or not this will be consistent with its best value arrangements. The Council is obliged as a best value authority under section 3 of the Local Government Act 1999 to "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness" (the best value duty).

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The Rich Mix Centre is a regional arts, cultural and educational facility, which may deliver benefits consistent with the Council's Community Plan objectives. It provides culturally related performance and exhibition space and accommodation for the cultural industries and also includes a cinema space. Whilst being a regional facility it has also developed a locally specific engagement agenda as part of its work.
- 6.2 Consideration should be given to whether continuing with the litigation will be consistent with both the Culturally specific Community Plan themes and the cross-cutting theme in the Community Plan of efficiency, which is concerned with delivering value for money services.
- 6.3 When considering its approach to the dispute with Rich Mix, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector equality duty). An equality checklist has

completed and is appended to this report which provides information relevant to these considerations.

- 6.4 The decisions about proceeding with litigation and the approach to be taken to settlement have no direct impact on people with protected characteristics. However, there may be some concern about the financial viability of Rich Mix in the event of an adverse judgment and some potential should that occur for indirect impacts on persons who share protected characteristics. That potential is difficult to quantify at this point in time, particularly as there are intervening steps which each carry their own uncertainty, including: the Council obtaining a favourable judgment; the failure of settlement discussions; and a positive decision by the Council to enforce any judgment. Given the uncertainties it is difficult to identify a likely impact and the potential for an equality impact should be kept under review.

7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 7.1 The recommendation in this report will not impact or contribute to a sustainable environment.

8. RISK MANAGEMENT IMPLICATIONS

- 8.1 The costs in the case will total just under £400,000 to the conclusion of the trial in July 2015. If it is unsuccessful, the Council will likely bear a significant portion of these costs. If the Council succeeds, it is uncertain as to whether it will be able to recover either the loan monies or any of the costs due to it from Rich Mix. It appears to be the position of Rich Mix that it may not be able to pay, but the Council has not verified this assertion. It would always be open for the Council to continue to try to find alternative ways to obtain value from further investment in Rich Mix, as it has continued to do through settlement discussions in order to ensure its continued viability.
- 8.2 Counsel's view is that the Council's prospects of success in relation to the loan claim are strong and in the order of 70%. There are, however, no guarantees in relation to litigation.
- 8.3 There has been a range of media comment regarding the dispute between the Council and Rich Mix. It is possible that continuing media comment could lead to a reputational risk for the Council.
- 8.4 Consideration needs to be given to the risks of providing further funding to Rich Mix who have recently stated in the press that their financial position may be threatened by the need to repay the loan. Rich Mix has already received substantial amounts of public funding both in capital and revenue terms but their revenue position, which has never been strong, has been weakened by a reduction in Arts Council Funding from the start of the austerity period. The extent to which the Council is in a position to provide more funding to Rich Mix without securing additional value needs careful consideration during a period of austerity. There is a counter argument that pursuing the court case might endanger the future of the organization and

therefore put at risk the considerable amount of public investment already provided to this organization, although the colocation solution under discussion goes some way to reducing this risk. These are not technical considerations but both arguments will need to be considered in reaching a balanced decision.

9. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 9.1 The recommendations of this report will not impact on the reduction of crime and disorder.

10. BEST VALUE IMPLICATIONS

- 10.1 The costs and benefits of proceeding with the litigation or achieving a settlement of the dispute need to be considered as set out in the report. The settlement option which involves payment of section 106 monies to Rich Mix raises issues of best value as addressed in paragraph 2.2 of the report.

11. SAFEGUARDING IMPLICATIONS

- 11.1 There are no safeguarding implications arising from the report
-

Linked Reports, Appendices and Background Documents

Linked Report

- NONE.

Appendices

- Appendix 1 – Letter to the Council from Latham & Watkins, 30 September 2014
- Appendix 2 – Letter to the Council from Latham & Watkins, 27 March 2015
- Appendix 3 – Letter to Rich Mix from key funders, 17 March 2015

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- NONE.

Officer contact details for documents:

N/A

Appendix 1

LATHAM & WATKINS

30 September 2014

BY EMAIL AND POST

London Borough of Tower Hamlets
Chief Executive's Directorate
Legal Services
6th Floor
Mulberry Place
5 Clove Crescent
London E14 2BG

88 Bishopsgate
London EC2M 3XF
United Kingdom
Tel. +44(0)20 7718 1000 Fax +44(0)20 7374 4400
www.lw.com

FIRM / AFFILIATE OFFICES

Abu Dhabi	Milan
Barcelona	Moscow
Beijing	Munich
Boston	New Jersey
Brussels	New York
Chicago	Orange County
Doha	Paris
Dubai	Riyadh
Düsseldorf	Rome
Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D C

Our ref. 503435-0000
Your ref. L/C/DG/1632

Dear Sirs

London Borough of Tower Hamlets ("LBTH") v Rich Mix Cultural Foundation ("Rich Mix"): Claim No. HQ12X02558

LBTH and Rich Mix have spent a considerable amount of time, money and effort in relation to the dispute described above. Rich Mix continues to believe that settlement of the outstanding issues is the most reasonable and commercial way to proceed, particularly given the nature of the stakeholders in Rich Mix and LBTH. Bearing that in mind, Rich Mix sets out below a settlement offer on an open basis which is designed to resolve, fully and finally, the High Court proceedings in a fair and amicable fashion.

Rich Mix seeks LBTH's response to this settlement offer within 30 days of the date of this letter.

Section 106 Monies

Before setting out the terms of the settlement offer, it is important to have clarity regarding the status of the £2,093,978 paid under paragraph 2(e) of Schedule 8 to the section 106 agreement between Bishopsgate Apartments LLP and LBTH dated 21 May 2008 (the "Section 106 Monies"). The decision of the Strategic Development Committee of 2 August 2010 (the "SDC Decision") resolved as follows:

1. *"That option 3 as detailed in paragraphs 8.7-8.10 of the report (SDC003/011) be adopted;*
2. *That the Corporate Director of Development and Renewal be authorised to progress option 4 and to negotiate with the Rich Mix based on the performance areas specified in Section 2 of Appendix 2 of the report (SDC003/011) for inclusion in a SLA; and*

Latham & Watkins is the business name of Latham & Watkins (London) LLP, a registered limited liability partnership organised under the laws of New York and authorised and regulated by the Solicitors Regulation Authority (SRA No. 203825). A list of the names of the partners of Latham & Watkins (London) LLP is open to inspection at its principal place of business, 88 Bishopsgate, London EC2M 3XF, and such persons are either solicitors, registered foreign lawyers or European lawyers. We are affiliated with the firm Latham & Watkins LLP, a limited liability partnership organised under the laws of Delaware.

LATHAM & WATKINS

3. *That the Corporate Director of Development and Renewal be authorised to administer the draw down of S.106 monies by Rich Mix against the negotiated performance framework set out in the SLA referred to above."*

The payments comprised within 'Option 3' have been made, so will not be discussed in this letter. 'Option 4' is defined in paragraphs 8.11 – 8.13 of report SDC003/011 as follows:

"8.11 Option 4.

8.12 Members have the option of extending the support beyond that set out in Options 2 and 3 above to include further payments as set out below.

8.13 The remaining three instalments of £523,494 each (or any part thereof) subject to being paid by the developer are nine months apart and will be made available in the financial year that they are paid for Rich Mix to draw down subject to performance against further targets to be agreed with the Council for each tranche focusing on those key performance areas set out in Appendix 2 (Section 2)."

The SDC Decision is a binding resolution. As such, LBTH currently has no power to apply the Section 106 Monies to any use other than those specified in the SDC Decision. Please confirm that you agree and, if not, please clarify the basis of your disagreement.

Open Settlement Offer

The proceedings between LBTH and Rich Mix have now been ongoing for well over two years, and the most expensive stages of the case – the preparation of evidence and the trial of the substantive issues in dispute – still lie ahead. Rather than waste further taxpayers' money and charitable resources in continuing with these proceedings (particularly given the risk of non-satisfaction of any judgment debt should LBTH be successful), the time has now come to settle the dispute once and for all.

LBTH is claiming the payment of £850,000 which it says is due from Rich Mix under a forward funding agreement dated 13 September 2004 (the "Forward Funding Agreement") in respect of sums advanced to Cityside Regeneration Limited ("Cityside") on dates prior to the purported execution of the Forward Funding Agreement. For the various reasons that have been discussed between the parties, and those contained in Rich Mix's Amended Defence & Counterclaim, Rich Mix denies any legal liability to pay £850,000. However, Rich Mix does acknowledge, and will always be grateful for, the financial support provided by LBTH to the Rich Mix project via Cityside. In recognition of such support, Rich Mix makes the following offer for the settlement of the instant proceedings.

Despite no binding legal obligation to do so, Rich Mix is prepared to pay £850,000 in full satisfaction of LBTH's claim, subject to the following.

Under current management, which has been in place in since January 2010, Rich Mix has consistently exceeded its demanding annual financial performance targets. We understand that the Rich Mix project has received no financial support from LBTH council tax payers since March 2009, and at the time of writing anticipates no future need for further generosity on the part of LBTH council tax payers. Rich Mix does, however, provide a valuable cultural facility to the LBTH local authority area. As stated by the GLA in its letter of 21 January

LATHAM & WATKINS

2014, "the centre is healthy financially and [Rich Mix's] business plan is proving successful", and "Rich Mix is reaching both the local community in the borough as well as wider London audiences and visitors".

The Section 106 Monies are derived entirely from a private sector source. They do not consist in any part of funds provided by council tax payers. The payment due to Rich Mix represented only a portion of Bishopsgate Apartments LLP's section 106 obligations, the remainder of which funded social housing and local environmental improvements. As LBTH is aware, Rich Mix does not presently have sufficient funds to make the payment of £850,000 noted above. In order to do so, Rich Mix requires access to the remaining Section 106 Monies. For the reasons noted above, LBTH is unable to apply such monies to any purpose other than that specified in the SDC Decision; we also understand that the Section 106 Monies are currently not available for unrestricted General Fund expenditure. By disbursing the remaining Section 106 Monies to Rich Mix, £850,000 of which would immediately be paid to LBTH, the proposed settlement would provide three key benefits:

1. LBTH's ability to spend on general services would immediately be increased on a net basis by the full amount of £850,000, without any litigation risk;
2. the future of the Rich Mix centre, which has received funds from a number of public and quasi-public sources since the inception of the Rich Mix project, and which provides such a valuable cultural facility to the LBTH local authority area, would be safeguarded; and
3. LBTH would avoid any further legal expenditure in pursuing its claim to trial.

We look forward to hearing from you.

Yours faithfully

LATHAM & WATKINS

LATHAM & WATKINS

99 Bishopsgate
London EC2M 3XF
United Kingdom
Tel +44(0)20 7710.1000 Fax +44(0)20 7374 4400
www.lw.com

FIRM / AFFILIATE OFFICES

Abu Dhabi	Milan
Barcelona	Moscow
Beijing	Munich
Boston	New Jersey
Brussels	New York
Chicago	Orange County
Doha	Paris
Dubai	Riyadh
Düsseldorf	Rome
Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.

27 March 2015

Our ref. 503435-0000
Your ref. L/C/DG/31632

BY EMAIL AND POST

London Borough of Tower Hamlets
Chief Executive's Directorate
Legal Services
6th Floor
Mulberry Place
5 Clove Crescent
London E14 2BG
Dear Sirs

London Borough of Tower Hamlets ("LBTH") v Rich Mix Cultural Foundation ("Rich Mix"): Claim No. HQ12X02558

As you know, a date has now been set for trial. In just under 4 months, the dispute between the parties will be ventilated, publicly, and at great expense. It is extremely disappointing that the trial is still on foot and that the parties have not been able to resolve their issues (a point the Court has echoed, twice). We, and Rich Mix, remain firmly of the view that a trial has no benefit for either LBTH or Rich Mix and, as set out below, are convinced that any judgment in favour of LBTH would be resoundingly negative for both parties.

There is a small window of opportunity available to the parties to settle this dispute so that they can move forward, together, for the benefit of Rich Mix, all of Rich Mix's stakeholders, and LBTH itself. We set out below the parameters of Rich Mix's revised settlement offer – which is being made, as with previous offers, on an open basis – and urge LBTH to give this offer serious consideration in order to bring an end to the current situation.

Revised Settlement Offer

Rich Mix has already made several offers to settle this matter. However, it would be prepared to make the following improved offer in order to settle all claims between LBTH and Rich Mix.

Without accepting any liability to LBTH, and on condition that LBTH transfers to Rich Mix the outstanding balance of the funds allocated to Rich Mix under the decision of LBTH's Strategic Development Committee dated 2 August 2010 (the "2010 SDC Decision"), Rich Mix is prepared to pay to LBTH:

1. £850,000 in full and final settlement of LBTH's claims; and
2. up to £50,000 in respect of LBTH's demonstrable external legal costs reasonably

Latham & Watkins is the business name of Latham & Watkins (London) LLP, a registered limited liability partnership organised under the laws of New York and authorised and regulated by the Solicitors Regulation Authority (SRA no. 203620). A list of the names of the partners of Latham & Watkins (London) LLP is open to inspection at its principal place of business, 99 Bishopsgate, London EC2M 3XF and such persons are either solicitors, registered foreign lawyers or European lawyers. We are affiliated with the firm Latham & Watkins LLP, a limited liability partnership organised under the laws of Delaware.

LATHAM & WATKINS

incurred to the date of settlement.

Consequences of Rejecting Settlement Offer

For the reasons stated in Rich Mix's Re-Amended Defence and our second letter of today's date, there are serious doubts about the merits of LBTH's claim. In almost three years of litigation, LBTH has been unable to produce any signed document containing any obligation for Rich Mix to pay any money to LBTH. There are strong reasons to believe that no such obligation ever existed and that, even if such an obligation ever did exist, events occurring in the meantime have either waived such obligation or rendered it unenforceable. If LBTH were to lose at trial, it would have to bear its own estimated costs of £179,316 in addition to a significant proportion of Rich Mix's estimated costs of £216,243, i.e. the taxpayer would be exposed to a litigation costs liability of almost £400,000 in total.

Further, and as previously stated in correspondence, Rich Mix considers that the 2010 SDC Decision is still binding upon LBTH. It has not been varied or revoked by any body with competence to do so. As such, Rich Mix considers that LBTH currently has no power to apply the balance of the monies due under Schedule 8 of the 21 May 2008 Section 106 agreement with Bishopsgate Apartments LLP – currently understood to be over £1.5 million – to any use other than payment to Rich Mix, regardless of the outcome of the current proceedings.

Even if LBTH were to succeed in its claim, as stated over 18 months ago, Rich Mix simply would not have the funds to satisfy the judgment or any claim for LBTH's litigation costs. In order to recover the amounts claimed, LBTH would likely have to institute insolvency proceedings against Rich Mix which may then trigger rights for a number of other funders under the Deed of Priority. Given the multiple claims on the building, a successful action by LBTH would be unlikely to result in the building being offered or made available to LBTH. It is also unclear whether, at the end of lengthy, expensive insolvency proceedings, LBTH would recover either the £850,000 plus interest and legal costs claimed, or the significant amounts invested by LBTH in the Rich Mix project since its conception.

LBTH's Decision

If LBTH rejects the above offer, the taxpayer faces potential litigation costs exposure of up to £400,000 if LBTH loses its claim. Even if LBTH were to 'win', it may not recover the claimed sum or its litigation costs, and the benefit of the Rich Mix centre would be lost to the community.

If LBTH accepts the above offer, approximately up to £900,000 would immediately become available for LBTH to spend on general services, without any litigation risk or further litigation costs, and a valuable cultural facility serving the LBTH local authority area would be preserved.

We look forward to hearing from you.

Yours faithfully



LATHAM & WATKINS

Professor Michael Keith
Chair of Board of the Rich Mix Cultural Foundation
35-47 Bethnal Green Road
London E1 6LA

17th March 2015

Dear Sir/Madam

Rich Mix Arts Centre "For the Avoidance of Doubt"

This is to confirm that the undersigned organisations are in full support of the Rich Mix Centre charity and social enterprise based on 35-47 Bethnal Green Road, E1 6LA in the London Borough of Tower Hamlets.

As the main original capital funders of the Rich Mix Centre, together with LBTH, the Arts Council England, Greater London Authority and Big Lottery Fund, we are key stakeholders and are resolutely supportive of the continuation of the centre which is delivering arts, education and community programmes in the aforementioned building.

We fully endorse and are supportive of the current artistic programme and have no intention or desire for Rich Mix to vacate the building or cease their activities. The centre delivers an excellent programme for both Tower Hamlets and London-wide audiences and despite some difficult times in the past, it is now a stable organisation with a strong leadership.

The Greater London Authority owns the freehold of part the Rich Mix building, and as a key stakeholder wants to see the Rich Mix retained and succeed for cultural, educational and community use.

We are happy for this letter to be used as a public statement of our position, and continue to be willing to meet with any of the interested parties in this matter.

Yours truly,



Munira Mirza
Deputy Mayor - Education and Culture
Mayor of London



Joyce Wilson
Arts Council
London Area Director

Joanne Saunders
Funding Manager
Big Lottery Fund

Cc: Lutfur Rahman, Mayor of London Borough of Tower Hamlets
Cc: Sir Ken Knight and Max Caller, Commissioners
Cc: Stephen Halsey, Corporate Director London Borough of Tower Hamlets

Louise Fleming

From: Ken Knight <k.knight1666@btinternet.com>
Sent: 31 July 2015 15:56
To: Louise Fleming
Subject: Alternative Action Proposed by O&S.pdf - Rich Mix
Attachments: Alternative Action Proposed by O&S.pdf; ATT00001.txt

Louise

As you are aware attached report regarding Rich Mix was given to me by Robin Beattie on Wednesday.

Can you advise Robin that I can confirm that I do not consider the matter to fall within the Directions relating to Grants and nor is there any intention of using Direction 4 regarding the Mayor's decision on this matter.

It hanks very much.

Have a good weekend.

Ken

LONDON BOROUGH OF TOWER HAMLETS

PROFORMA:

MAYORAL DECISION SUBJECT TO CALL-IN AND REFERENCE BACK

Mayoral Decision Log No: 103

Title: Rich Mix Litigation

Is this a Key Decision?

Yes

UNRESTRICTED / RESTRICTED:

Report - Restricted

Appendix 1 – Restricted by virtue of paragraphs 3 and 5 of Part 1 of Schedule 12A of the Local Government Act 1972 as it contains information that concerns the future conduct of the High Court commercial litigation with Rich Mix and contains legally privileged information.

DATE OF OVERVIEW AND SCRUTINY COMMITTEE:

7th July, 2015

DECISION OF THE OVERVIEW AND SCRUTINY COMMITTEE:

The Committee agreed to refer the decision back to the Mayor for reconsideration, with recommendations that the Mayor considers Rich Mix's business plan and considers setting targets for Rich Mix in relation to working with young people.

BACKGROUND

The decision sheet and supporting report are attached at Appendix 1. However for ease, the decision as agreed by the Mayor in relation to the report is listed below:-

ALTERNATIVE ACTION RECOMMENDED BY THE OVERVIEW AND SCRUTINY COMMITTEE (IF ANY)

The Committee agreed to refer the decision back to the Mayor for reconsideration, with recommendations that the Mayor considers Rich Mix's business plan and considers setting targets for Rich Mix in relation to working with young people. The Committee did not recommend an alternative action to the Mayor but wished the Mayor to confirm and clarify in his decision that Best Value considerations had been taken into account.

LEGAL COMMENTS

The legal comments are set out in Appendix 1 to this report.

DECISION OF THE MAYOR

I have reconsidered the Mayor's Decision Log No. 103 "Rich Mix Litigation" in the light of the representations made to me by the Overview and Scrutiny Committee at its meeting on 7th July, 2015 as set out above.

I can confirm that I have considered Rich Mix's business plan, set out at Appendix 2.

I have considered further clarification of the very latest business position by Rich Mix including historic and planned levels of outputs as set out in Appendix 3.

I have specifically taken into account the following considerations as to best value –

Continued pursuit of the Rich Mix loan in the Courts would, in my view, present a real risk of forced insolvency for this important local and regional arts facility which, if this came about, would result in the loss of a substantial amount of the public sector funding provided to establish it. Given the nature of the Charges established against the value of the land and the charitable status of the organisation the Council would be unlikely to be able to recover the money invested, including the loan, if the Rich Mix were to become insolvent.

Whilst Rich Mix retains the full support of all of its key funders it remains vulnerable to changes to Arts Council and voluntary contribution levels which could threaten its viability. The proposed settlement will help to reduce exposure to such risks by facilitating capacity building and reducing its exposure to capital liabilities and will therefore help to safeguard historic investment in this important facility.

Rich Mix has demonstrated its value to the Arts Community which is increasingly centred on East London and which itself delivers significant

economic and social benefits to the local area and has solid plans for continuing to do so in to the future. Last year this included the provision of free arts space to artists approximately half of whom were drawn from the surrounding local communities to the value of £312,000 and a clear commitment to maintain free provision at similar levels.

Rich Mix continues to provide valuable support to local arts organisations that supplement the work that the Council undertakes.

Rich Mix has an extensive and well-established schools and youth-focused programme, centred very much on the local community. Since January of this year 3,232 children and young people participated in Rich Mix events with 20 of the Boroughs schools engaged, representing over half of the schools engaged by the organisation over this period. Between April 2014 and March 2015, 86 artists were employed to deliver work for, by and/or with children and young people. A clear commitment has been given to continue this valuable work in the future and the proposed settlement will allow Rich Mix to further improve its fund raising capacity to support this work which is 100% reliant on voluntary contributions.

My principal best value reason for moving to settle this matter as set out in my original decision is that by doing so the Council safeguards its own investment and that made by other public sector bodies and the wider tax payer in establishing this important facility by removing a real risk of insolvency to it and strengthening its financial position. I am satisfied that the organisation has consistently demonstrated outputs of a nature and at levels that directly benefit the local community, that they have provided a commitment to continue to do so at similar or increased levels in the future and that their business plan and associated financial plan supports this. It is also entirely consistent with the Council's best value duty to seek to protect this investment further by helping to improve its financial resilience in challenging economic times.

The organisation has been transparent in the way in which it would intend to apply the net resource resulting from the proposed settlement. This is specific to capacity building in relation to fund raising and to mitigating its exposure to capital costs and risks associated with potential reductions to its future public sector funding profile. I do not wish to set fund raising targets in such a challenging economic environment or to fetter the organisation's ability to apply the additional net resource resulting from this settlement as it sees fit in order to reduce its capital liabilities. I note the comments of the Overview and Scrutiny Committee but for the reasons I have given I do not consider it appropriate in this case to set performance output targets. I will, however, require the net section 106 resource retained by Rich Mix, following subtraction of the outstanding loan sum, to be used for the purposes outlined above and to increase 'free at the point of entry' cultural outputs expressly targeting local residents or local schools and I will make the agreement subject to an Audit requirement so that I can be satisfied that it has been applied for the purposes I have intended.

I am grateful for the reference from O&S. Having taken into account all of the relevant information I have decided to:-

~~(a) Confirm my decision published on 22nd June on the matter of the Rich Mix Litigation,* or~~

(b) Amend my decision published on 22nd June on the matter of the Rich Mix Litigation as set out below.*

My decision is as set out in my original decision published on 22nd June but now amended by noting that Rich Mix has through its business plan and other correspondence relating to work with young people and others across the borough, attached to this decision, demonstrated that the purposes intended for the net sum are specifically to increase 'free at the point of entry' cultural outputs expressly targeting local residents or local schools, capacity building within Rich Mix in relation to its own fund raising capability and any purpose for which the primary objective is to mitigate the organisations exposure to capital liabilities or risks associated with potential reductions to its future public sector funding profile. I believe that these facts form tangible consideration for the people of our Borough and help to secure the best value objectives of the Council.

I further note that the release of S106 funds, which in my view was intended to happen long ago, has enabled Rich Mix to repay the £850,000 owed to the Council and which will now be available for any General Fund use.

Finally, Rich Mix is an important cultural asset, and it will be my intention as Mayor, together with my key cabinet member(s), to meet at least annually with Rich Mix in order to exchange information and in particular to ensure that we maximise the relationship between Rich Mix and other institutions and communities across the Borough.

.....
.....
.....
.....
.....

(* Delete as applicable)

Signed Date

Mayor John Biggs

- Appendix 1 Exempt mayoral decision and supporting report
- Appendix 2 Rich Mix's business plan

genuine in their criticism then all documents relating to this decision should be made public and members should be able to scrutinise the decision.

Given the overall grants/funding related issues, best value review, PWC report and other relevant criticism, would it be wise, professional or appropriate for the new Labour mayor or the Executive to make such a decision now or in future to write off such a significant sum of Tax Payers' money, without proper accountability and transparency.

On what criteria and rationale can such a decision be made? We would request that the criteria and rationale be made public and shared with elected members in general, particularly councillors who have called-in this decision taken in a hurry and behind closed doors, opening up the council to potential criticism and cherry-picking, if no such information and evidence is made available. The criteria and rationale must be in writing; formally announced or made public and all organisations should be informed so they are aware of its existence and potential benefits on the same basis as the Rich Mix.

Will other agencies, projects or similar venues be allowed to make such a case (if and once the criteria or rationale is known) and receive the same treatment from the Labour Mayor, Labour executive, and Labour-controlled Overview and Scrutiny Committee which is now supposed to scrutinise and monitor the Mayor, its policies and decisions rather than opposition? More importantly, how will other bodies know on what criteria and rationale this decision was made on, and how can they pursue similar course with the Council if there is no clear information.

If there is genuine need for 'Exempt Information' under legislation relating to this decision - summarised and appropriately redacted information must be provided and at the very least a criteria to inform public and other bodies be available so a fair, honest and transparent level playing fields is established.

How does this decision fit in with the cuts a Labour Mayor and Cabinet will have to make soon. Is it best use of our resources? What evidence is there to support such a claim vis-a-vis other cuts and pressures facing the council?.

The decision has been undertaken in such a hurry, whereas, this decision could have been made in a few days at the Cabinet meeting, following proper protocol with full information. Reports, rationale and details provided for scrutiny so that a transparent and robust decision is reached.

The lack of information, rationale, fairness, transparency, secretive manner in which this decision seemed to be handled has resulted in this decision being called-in - not the work done by Rich Mix. This decision will also make other groups in the community uneasy as there may be a risk of perceived level of cronyism and nepotism due to the manner in which is being taken behind closed doors. In order to support the some of the good work done by Rich Mix, and the Council's reputation, the above points must be addressed immediately

ORIGINAL DECISION:

As a result of consideration of the recommendations set out above the Mayor agreed:

- I. Not to proceed with the trial listed for 3 days in the week commencing 20 July 2015; and
- II. To settle the case on the basis of option 2.2 (to accept Rich Mix's settlement proposal of 27 March 2015).

Reasons for the Decision

Appendix 1 to this report sets out the reasons for the decision.

Alternative Options Considered

Appendix 1 to this report sets out any alternative options considered

REASONS FOR THE REFERENCE BACK

The call-in requisition in relation to the above decision set out the following reasons for the call-in:-

Independent Group fully supports and appreciates the wonderful work done by Rich Mix, its staff and partners at grassroots level. The key issues and reasons to call-in this decision herein, relates to the process; lack of transparency, accountability, precedent, best value for money, avoidance from criticism of cronyism and nepotism, together with, a fair and honest level-playing field for all local organisations, among other areas.

While it may be the case that a similar decision can be reached after going through the proper process, the issue of concern is that transparency should be observed with information available for scrutiny by local residents and elected members.

This call-in is based on the following reasons:

This decision was not being undertaken in the right way - here had been insufficient evidence and work to date to clarify the potential risk of a precedent, costs and benefits of writing off such a significant amount of public money, without public and elected councillors having the opportunity to objectively scrutinise and judge the merit of such a haphazard decision taken behind closed doors without evidence.

Need to know the cost of implementation of this decision for the council and local residents.

There has been a lot of talk about transparency and accountability - even criticism by Labour, Conservatives, and Secretary of State/Commissioners previously - about decisions being taken behind the close doors. If they were

Louise Fleming

From: Louise Fleming
Sent: 03 August 2015 09:16
To: K.knight1666@btinternet.com
Subject: FW: Alternative Action Proposed by O&S.pdf - Rich Mix
Attachments: Alternative Action Proposed by O&S.pdf; ATT00001.txt

Hi Ken, just to confirm that I received this ok and will confirm to Robin as set out below.
Thanks
Louise

-----Original Message-----

From: Ken Knight [<mailto:k.knight1666@btinternet.com>]
Sent: 31 July 2015 15:56
To: Louise Fleming
Subject: Alternative Action Proposed by O&S.pdf - Rich Mix

Louise

As you are aware attached report regarding Rich Mix was given to me by Robin Beattie on Wednesday.

Can you advise Robin that I can confirm that I do not consider the matter to fall within the Directions relating to Grants and nor is there any intention of using Direction 4 regarding the Mayor's decision on this matter.

It hanks very much.

Have a good weekend.

Ken

Louise Fleming

From: Louise Fleming on behalf of Commissioners
Sent: 03 August 2015 09:20
To: Robin Beattie
Subject: Alternative Action Proposed by O&S.pdf - Rich Mix

Dear Robin,

Sir Ken has read the report which you provided to him on Wednesday in respect of Rich Mix last week and has asked me to confirm to you that he does not consider the matter to fall within the Directions relating to Grants and nor is there any intention of using Direction 4 regarding the Mayor's decision on this matter.

Regards

Louise

Louise Fleming
PA to the Commissioners for the London Borough of Tower Hamlets Sir Ken Knight CBE Chris Allison CBE Max Caller
CBE Alan Wood CBE Tel 020 7364 4310

