

LONDON BOROUGH OF TOWER HAMLETS

PROFORMA:

MAYORAL DECISION SUBJECT TO CALL-IN AND REFERENCE BACK

Mayoral Decision Log No: 101

Title: Rich Mix Litigation

Is this a Key Decision?

Yes

UNRESTRICTED / RESTRICTED:

Report - Restricted

→ ONLY APPENDIX 1, IF THAT, NEEDS TO BE RESTRICTED
THE REMAINDER OF THIS MD & APPENDICES ARE, UNRESTRICTED
PRIVILEGED

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:-

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 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

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 to Rich Mix, which in my view was intended to happen long ago, will enable 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.

Signed  Date 5th Aug 2015

Mayor John Biggs

- Appendix 1 Exempt mayoral decision and supporting report
- Appendix 2 Rich Mix's business plan
- Appendix 3 Documents demonstrating the business position by Rich Mix including historic and planned levels of outputs