


Individual Mayoral Decision Decision Log No: 101	 TOWER HAMLETS
Report of: Stephen Halsey - Head of Paid Service	Classification: Exempt
Rich Mix Litigation	

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

INDIVIDUAL MAYORAL DECISION 18 June 2015	 TOWER HAMLETS
Report of: Stephen Halsey - Head of Paid Service	Classification: Exempt
Rich Mix Litigation	

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

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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.
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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.
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- 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 Councils costs should be recoverable at this stage.
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- 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

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LATHAM & WATKINS

30 September 2014

BY EMAIL AND POST

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

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*

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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

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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

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LATHAM & WATKINS

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
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 Dear Sirs

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Madrid	Washington, D.C.

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

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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