



DERBY CITY COUNCIL

**COUNCIL CABINET
26 OCTOBER 2010**

Report of the Strategic Director of
Neighbourhoods

ITEM 9

QUAD

SUMMARY

- 1.1 In September 2008, QUAD opened on the Market Place – a partnership between the former Q Arts, Metro Cinema, and Derby City Council. The new building is owned by Derby City Council and the Council is responsible for external repairs while QUAD is responsible for internal building and equipment maintenance.
- 1.2 QUAD is now operating successfully as an arts organisation with subsidy from two major funders, Arts Council England and Derby City Council -DCC grant of £373,000 - – as well as a wide range of other income sources. QUAD's contribution to the cultural offer in Derby is significant as well as being recognised nationally and internationally.
- 1.3 Since completion of the construction of the QUAD building, there have been a significant number of defect problems with the building as well as a range of other issues which are now all being drawn to a conclusion. This report brings all these issues together and makes recommendations for a final resolution.

RECOMMENDATION

- 2.1 To note the situation with a range of issues relating to QUAD.
- 2.2 To write off the outstanding £200,000 loan while recognising that costs are being transferred to QUAD, both on a short and longer term basis.
- 2.3 To approve changing the rent to a peppercorn rent thus removing the requirement to provide QUAD with a £39,000 sum to pay VAT on the rental.
- 2.4 To change the lease to a full repairing lease – both internal and external maintenance to be QUAD's responsibility.
- 2.5 To approve continuation of the present 35 year lease, but make amendments as detailed in 2.3 & 2.4 above.

REASONS FOR RECOMMENDATION

- 3.1 The problems experienced by QUAD over the past two years since they took on the new building have been extensive. In the first year in particular, this caused significant disruption to the building of their business and the recommendations in this

report reflect a pragmatic resolution to the difficulties.

- 3.2 Derby City Council is one of the founding partners of QUAD, and it is in the role as both partner and landlord that Derby City Council is asked to consider these recommendations following a very difficult start up period – as outlined in section 4. While concessions are made to QUAD, those concessions are being balanced by an increased responsibility and a requirement for them to cover one off and ongoing building costs in the future.

SUPPORTING INFORMATION

4.1 Development and success of QUAD to date

The Derby Cityscape Masterplan recognised a need to develop visitor attractions that would create a city centre with broad appeal for the whole community, focusing on economic, civic and cultural life. QUAD was recognised within the Masterplan as a cultural development priority, with a recognition that attractions of this nature need to be underpinned by public sector spending.

Derby City Council took a lead role in the development stages of QUAD. Senior Council managers led while the Council also appointed an external project manager to oversee the selection of the architects, fundraising and all elements of the construction programme as well as to support the merger of the partner organisations.

After a slow start while building the business, QUAD is now operating effectively and has since last year been meeting targets – in the first year 250,000 people visited QUAD, significantly more than forecast. In addition, QUAD has become a popular venue for both visitors to the city and residents alike. Key successes include;

A clear statement of Derby's Cultural Standing

- An iconic building designed by RIBA Award and Sterling Prize winning architects placing culture at the heart of the city.
- Providing Derby with a broader cultural offer, through state of the art galleries, cinemas and new media and learning facilities.
- Bringing the best of World Cinema and internationally renowned visual artists to Derby, often to make new work in and about the city.
- Generating over £1m of media profile for Derby since opening.

Internationally recognised, taking Derby to the world

- QUAD, with Derby City Council, has established the internationally recognised Format International Photography Festival which has toured to China where police crowd control was required for the launch event
- The launch exhibition for the building, celebrating the manufacturing industries in Derby has toured internationally, most recently at the most prestigious art festival in the Middle East.
- The QUAD Senior Curator has been invited to review at festivals and act as a judge around the world and was part of the Grand Jury at the New York Photography Festival.
- QUAD are working with Smith of Derby to create a unique trade event in China. They have also a QUAD facility in a new Creative Town in Chengdu, China.

4.2 Finalisation of Building Works and Defect Resolution

Since the QUAD building was completed in 2008, there have been a significant number of defects – at one time over 30 live and under investigation, several of these being major.

These have been only recently resolved and the final account with the building contractor is now agreed with a retention of £20,000 to be held until 31 March 2011 pending satisfactory operation of the building through the winter cycle. Also included in the final agreement with the builder and architect is a one off compensation payment of £40,000 for loss of business and disruption due to the building defects.

Outstanding major issues which QUAD remains unhappy about are a lack of cooling in the cinemas and the Box and lack of signage but for which Planning Committee continues to refuse planning permission. The issue of cooling in the cinema and Box could have health and safety implications for which the Council could be liable.

The final total project cost stands at £10.6m, covered in a report to Cabinet on 28 September 2010.

As part of our ownership of the building, Derby City Council is responsible for external repairs, although a sum to cover this was never identified in the original business plan.

4.3 Loan of £250,000

A loan of £250,000 was made to QUAD in 2008 to enable them to cover a shortfall in fundraising for fit out of the building. £50,000 of this sum has been repaid to date.

It is proposed that we do not pursue repayment of the loan, but that QUAD uses that value to install cooling and the remaining signage. It is further suggested that QUAD take on responsibility for external as well as internal repairs, thus taking ultimate responsibility for the building

The cancellation of the loan gives QUAD the ability not only to pay for those elements of the building that they consider still need to be upgraded, but also to contribute further to their sinking fund for repairs and maintenance.

Alterations will be made to the lease to reflect QUAD's future liabilities in the areas outlined above. . This will include liability for health and safety where cinemas and the Box are overheating as outlined in 4.2 above.

4.4 Rental

Following approval by Cabinet in June 2006, Derby City Council currently pays £260,000 per annum to QUAD that they in turn use to pay their rent to us, the intention being that there would be a nil cost to QUAD. However, as QUAD can only reclaim 25% of VAT they incur, the Council additionally pays the VAT element to QUAD. This is £35,344 for this year but from April 2011 (when the VAT rate will be 20% for the whole year) this sum will increase to £39,000 per annum. This means there would be a net cost to Derby City Council of £39,000 for this arrangement.

A peppercorn rent is the obvious alternative and it is proposed that this is the adopted approach. The £39,000 'VAT' element of the rental grant would not then need to be found by the Council. It is proposed that this arrangement is backdated to 1 April 2010.

4.5 **Lease**

QUAD has requested an extension of the lease from 35 years to 60 years or more so they can instigate borrowing against the lease. As the building has claw-back clauses against it for European, emda and Arts Council England funding covering at least the next 25 years, this has been assessed by the Council's lawyers as not possible at this stage. It is unlikely that a bank making a loan would be happy with funders and indeed the Council having a higher charge on the lease than the bank would have. It is proposed therefore that we do not agree to the lease extension requested by QUAD.

4.6 **Risks to QUAD**

QUAD's success has been primarily down to the partnership approach that established it, developed the building and facilities, and enables it to thrive. Derby City Council's role in this success was and is significant and has a high profile in the public domain.

The Council will need to resolve the issues presented in this report in a way that does not risk destabilising what is still a developing business. This would have a significant impact on the reputation of the Council following its championing of the project throughout the development stage. It would also have an impact on the cultural and creative potential of the city through a skills drain to neighbouring cities .

OTHER OPTIONS CONSIDERED

- 5.1 Alternatives have been explored and rejected following consultation with senior officers and Cabinet.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Service Director(s) Other(s)	Stuart Leslie Toni Heathcote Celia Dyson Helen Osler
For more information contact: Background papers: List of appendices:	Name Helen Osler 01332 255955 e-mail helen.osler@derby.gov.uk None Appendix 1 – Implications

IMPLICATIONS

Financial

1.1 The proposals included in this report have the following financial implications:

- QUAD still owes the Council £200,000 as repayment for the loan made to them in 2008. These proposals leave the Council's corporate reserve with a shortfall of £200,000.
- The arrangement proposed for peppercorn rental will mean a net future saving of £39,000 to the Council. It will also mean reduction of the administrative burden of monthly billing and transferring £299,000 to QUAD every year. The £39,000 has been found to date from a variety of sources so is still not in the base budget. If this needs to be found for the future it will need to be flagged as a pressure for 2011/12 onwards.

Legal

2.1 The proposal to move to a peppercorn rent arrangement and to require QUAD to take responsibility for external as well as internal repairs will mean the lease will have to be re-drawn providing for those alterations.

Personnel

3.1 There are no personnel implications in this report.

Equalities Impact

4.1 There are no equalities implications in this report.

Health and Safety

5.1 The overheating of the two cinemas and the Box in hot weather presents a potential health risk to staff and members of the public. This could have serious implications in extreme circumstances. With the transfer of all building responsibilities to QUAD, this will become their responsibility.

Carbon commitment

6.1 There are no additional implications for the Council's commitment to carbon reduction in this report as cooling was suggested as a possibility at an early stage in the design and if QUAD installs cooling this will be in line with the original proposals. Additionally, it is anticipated that its usage would be minimal so not provide a significant challenge to the city's carbon commitment.

Value for money

- 7.1 The arrangements proposed in this report resolve Council responsibility for outstanding building problems as well as the lack of value for money in the current rent arrangement.

Corporate objectives and priorities for change

- 8.1 The partnership arrangement with QUAD and its development as a key cultural facility in Derby are in line with all Derby City Council's objectives and priorities for change.