

## Note of meeting with Fylde BC Task & Finish Group: 22 April 04

*FBC's response to our questions is in Blue Italic*

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### **We have already provided copies of**

- Our reason for the meeting
- The statement of our current position
- Our annual report
- Our constitution

Can we take it everyone seen them?

**No-** *(So additional copies were circulated at the meeting)*

### **We have one initial question, and three main issues, which are:**

- public opinion;
- the Barrister's opinion; and
- funding alternatives.

#### **1). OUR REASON FOR THE MEETING *(previously circulated)***

"To explore how the essential infrastructure work listed by Scott Wilson - costing an estimated £750,000 and described as '*immediate repairs to the Gardens in order to prevent their further deterioration*' - together the other works to restore the historic character of the Gardens, can be achieved without selling or otherwise disposing of any part of the Gardens."

#### **2). STATEMENT OF OUR CURRENT POSITION *(previously circulated)***

Explain that whilst SOAG is fundamentally opposed to the sale or disposal of any land in Ashton Gardens, we wholeheartedly support the lottery bid in principle.

We have raised £5,000 to contribute toward the cost. We recognise this is a rare opportunity to get the funding needed to do the infrastructure repairs and renewals that should have been done over the years, and we are keen to explore all avenues to bring this about - provided that they do not involve the disposal of any of the Gardens.

#### **2a). QUESTION FOR THE COUNCIL**

To help us understand why you plan to dispose of land in Ashton Gardens, can you please clarify for us - whether you want to sell the land because you need for money to fund the lottery bid, or because the Council wants the land

for other purposes? (ie If someone came with £500,000 today, would you still want to sell the land?)

***Financing the HLF Lottery match funding is not the sole reason behind the Council's intention to dispose of 0.6% of the Gardens as per the Policy and Resources Committee resolution of the 15<sup>th</sup> January 2001. This small part of the Gardens is key to the future regeneration of the North East sector of the Town Centre. In addition the land is currently subject to two live planning permissions for residential accommodation.***

### **3). PUBLIC OPINION / SURVEY RESULTS**

- We believe public opinion is strongly against the sale of any land in the Gardens. The first petition had 44,000 signatures opposing the sale. 1,000 people took to the streets.
- When Newfield Jones & Safeway wanted the smaller area of the Pavilion and Red Cabin Yard, 3,800 people signed a petition opposing this plan in just one week. Collecting those signatures gave us an opportunity to talk with a wide cross section of people and gain their views. We are sure you will know that opposition to any disposal is very strong.
- At the public meeting held in July 2002 the single most important of the 22 issues of concern to the local community was that *"No part of Ashton Gardens should be sold or otherwise disposed of"*. 76% of the 200 respondents expressed that view.
- So, after the Leisure Committee spoke of land disposals, we sought public opinion again via a straw poll at our coffee morning survey - the results have been circulated recently. Copies are here today.
  - 94% said no sale, not even a small part of the Gardens
  - 83% oppose a sale even if it means no lottery grant
- We also spoke with representatives of the Civic Society who said they would formally oppose the sale of any land in Ashton Gardens.

We recognise our survey was only of 85 people - not enough to justify extrapolation, but enough to suggest the public view is constant. They do not support any land disposals in the Gardens, even if that means the lottery bid is not submitted at this time.

We believe the survey gives us adequate grounds to ask you to hold a referendum in St Annes before deciding to sell any land.

**So our second question is:** Are you prepared to hold such a referendum?

- *If not, are you prepared to join with SOAG on a 1:1 basis to undertake a bigger, more reliable survey of public opinion in the town centre?*

- *If not, are you prepared to delay the sale to allow the new St Annes Town Council to decide whether it would wish to acquire the land and perhaps submit the lottery bid itself?*

***"The Council would be prepared to hold a referendum in partnership with SOAG. However the Council would expect to lead the consultation process. This would be subject to S.O.A.G agreeing in writing to change its position with regard to the sale of 0.6 % of Ashton Gardens, should a majority Yes vote agreeing to the sale be the outcome of the referendum.***

***The sale of the land is subject to market forces and is therefore not within our power to schedule. With regard to the proposal for the Town Council to submit the bid, the Council believes that the timescale of July 2004 for a Stage 1 submission is the optimum time to achieve a successful bid. This strategy is based on falling lottery sales, over subscription of funds by 3 - 1 and the tactical advice from the Heritage Lottery Project Officer that when the Trustees consider the project in November no other large bid will be considered."***

#### **4). BARRISTERS OPINION / CHARITY COMMISSION REGISTRATION**

Last September, the Council's controlling political group believed that it was not possible to sell the land under the Institute, and plans were laid to reverse the decision that had been made in January 2001 to sell it. We know a reversal of that sale was planned and timetabled. Can you please tell us why that seems to have been abandoned?

***The Policy and Resources Committee resolved to dispose of the site of the Institute and Red Cabin Yard on 15<sup>th</sup> January 2001. The subsequently uncertainty over the future of the Safeway Supermarket chain resulted in a period of prolonged inactivity. Towards the end of 2003, in the light of this uncertainty, officers considered asking the Council to review its decision to dispose. However, before this matter was progressed the uncertainty surrounding the future of Safeway was largely determined, resulting in renewed interest in the site on the part of potential developers.***

SOAG's solicitor secured the opinion of an extremely experienced charity counsel, well known to both the Charity Commission and the Attorney General's office, and whose views are respected. We are advised by our solicitor that she is one of the top 5 charity law barristers in the UK. She has advised us that "a Court may conclude that the Gardens are held by Fylde Borough Council on charitable trusts. This makes it difficult (if not impossible) for the Council to sell any part of the park without first seeking a declaration from the Court as to the legal status of the Council's ownership."

**Our third question is:**

What is the Council's position on this matter?

***"Neither the Council nor its legal advisors has ever been shown the opinion or the instructions that gave rise to it. Without seeing the full document and the instructions it is impossible to be satisfied that the extracts provided by SOAG's solicitor in its letter of 3/12/01 properly represent Counsel's conclusions. Notwithstanding this the Council has said that it will bring the letter to the attention of any prospective buyers of any part of Ashton Gardens. It will then be for the buyer to satisfy itself about the Council's ability to sell. The solicitor's letter indicated that they had been retained (among other things) to secure the registration of the Park as a charity and to contact the Charity Commission and H.M. Attorney General. I would be interested to know if these steps have been taken and their outcome."***

Will it seek the direction of a court as to the legal status of the ownership?

**"No"**

- *Does it intend to contest or disregard the opinion?*

**No Answer**

- *Does it intend to attempt to pass the responsibility to a prospective purchaser?*

**No Answer**

Does it intend to register the land with the Charities Commission?

**"No"**

Having initiated a leading charity law barrister's opinion, how does the Council imagine that SOAG can support, or even agree to, a sale that we have been advised could be unlawful?

**No Answer**

## **5). ALTERNATIVE FUNDING OPTIONS AVAILABLE TO THE COUNCIL**

Here we have two questions and some proposals.

1. We welcome the Leisure Committee's decision to prefer Ashton Gardens, but we note the report said the Promenade Gardens had more or less equal merit, and equal cost.

Also, we note that the Leisure Committee was asked to choose which of these two schemes the Council should submit for Heritage Lottery funding.

If the Leisure Committee had chosen the Promenade Gardens rather than Ashton Gardens, can someone please explain from where the 25% for the Promenade Gardens was to have been paid?

***"No match-funding package has yet been established for the restoration of Promenade Gardens. However, due to its significant tourism status expectations are that the Promenade Gardens will be eligible for other funding streams."***

2. Why was the cost of this work not included in the capital estimates programme - valued at £7 million for the period 2004/2007, - which had been approved less than a month earlier.

Do you not agree that the sum of £1 to 1.5 million - approved by the Council two years earlier - should have been part of the capital estimates along with all the other schemes that were to be funded from asset disposals - if, indeed that is how you planned to fund it?

***"The Heritage Lottery Fund's Public Parks Initiative grant application process is in 3 stages. Stage 1 is effectively the feasibility stage with the production of a Restoration Management Plan. This has now been completed for Ashton and Promenade Gardens and a decision has been made by the Leisure and Recreation Policy Committee on the 10<sup>th</sup> March 2004 to proceed with a bid for Ashton Gardens."***

***The Council intends to submit a bid to the Heritage Lottery Fund for consideration by its Trustees. At this stage there are no guarantees that the bid will be successful and there is no requirement to have match funding in place at this time. However if the Trustees approve the project then the Stage 2 submission will require evidence that all match funding is in place."***

- *At the budget meeting Mr White said capital resources had been measured against corporate criteria, with "A" list schemes being given the highest priority. So why was the Ashton Gardens Lottery bid not also considered and weighed against the priority of other schemes*

**No Answer**

- *Could it have been that to do so would have alerted Councillors to the fact that there were actually spending choices available, and they may have chosen funding the lottery bid over other schemes that were on the list?*

**No Answer**

- *Why was this money separated from the normal budgetary process if it was not to appear to strengthen the case for selling part of the Gardens?*

**No Answer**

## **Alternative funding options proposed**

We believe the Council has access to resources that can fund the £145,000 per year without the need to resort to selling part of the Gardens.

We accept that you have choice in this matter and that you are electing not to use alternative funding sources, but we refute the absolute need to sell any of the land.

The whole funding issue is one of priority.

You are choosing not to provide the 25% from income, capital, or borrowing, but to spend (or indeed not to spend) that money on other things. We therefore want to ask you to re-examine your priorities in this area, because we believe your officers have got them wrong.

The first item that could fund such a sum is the £2.5 million from the sale of the Council's housing stock which has started to be repaid to you this year from New Fylde Housing's temporary loan.

It is also tempting to mention the £522,000 that was discovered by external auditors, or the million or so that is still outstanding in unpaid Council Tax and NNDR, or more practically, the difference between the 5.5% council tax increase needed to leave you with what one experienced Councillor described as "*sensible reserves*" - and the 9.9% that was actually charged.

***"Answers to the above questions were given at the meeting. However in summary, Ashton Gardens is not a Borough wide priority for these funding sources".***

The possibility of funding it from Planning Gain elsewhere remains a clear possibility.

***"There are, as you are aware, planning restrictions on building new homes in the borough of Fylde. The exception is the provision of affordable housing. It is envisaged that this will be the long-term position. Additionally Housing developers' off site commuted sum contributions have to be spent in the areas that would benefit the occupants of the new housing."***

As does taking the money from your reserves.

***"Answers to the above questions were given at the meeting. However in summary, Ashton Gardens is not a Borough wide priority for these funding sources".***

Some of our members believe your reserves represent money that you should have been spending over the years on replacing the worn out infrastructure, and this is a golden opportunity to save 75% of the cost you should have spent before now.

However, the simplest - and arguably the fairest - way to fund it, is to borrow the money. There is now no restriction on borrowing save for the ability to repay, and it is evidently right that the cost of the restoring the Gardens should be met by the generations that will enjoy them.

We estimate it would cost less than 2 pence per Fylde taxpayer per week over a ten year period or, more especially as the Gardens were left to the people of St Annes, sixpence per week for St Annes residents, and if you have no other way of funding it, we believe a loan should be used well before any consideration of selling assets.

***"The Council is currently debt free and has increasing pressures on the revenue budget. Any loan taken out would incur debt charges which compound these pressures. A future St Annes Council may wish to borrow and fund this project on a precept to St Annes taxpayers."***

*We did some looking back in the Council's minutes. Around 17 years ago, the Council of the day was concerned that, although it had been able to provide day-to-day horticultural maintenance of Ashton Gardens, the repair and replacement of the infrastructure was not being addressed. They asked the Chief Technical Officer what work was needed to bring the gardens back up to standard. His report showed that more than £84,000 was needed to restore the Gardens to what he thought was a proper state of repair at that time.*

*This sum was not included in the Council's capital expenditure programme, and the infrastructure renewals were not undertaken.*

*At the turn of the millennium, the Council again recognised that it had failed to deal with this problem, and spent £30,000 on a report from Scott Wilson to identify the work that was then needed to restore the gardens to a proper standard.*

*In January 2001 that report was presented to the Council. It showed that there had been further deterioration. It also highlighted new or additional areas that needed restoration.*

*The total cost of the works necessary to restore the gardens had reached £2.025 million, of which, essential repairs alone totalled £750,000.*

*It is self evident that the repairs and renewals needed in Ashton Gardens are unlikely to do anything except increase further, both in terms of cost and extent, as more time passes, and a failure to deal with them now may be as short sighted as it was 16 years ago.*

So, our final question is, if you do not secure the lottery grant, by spending £450,000, how do you propose to fund the £750,000 worth of 'immediate repairs to the Gardens in order to prevent their further deterioration' - let alone the works to restore the Gardens.

*The £711,486 that was deemed Essential works was decided by the Tourism and Leisure Committee on the 16<sup>T</sup> January 2001 not by Scott Wilson. These works included work of a high priority, necessary to make the Gardens safe and accessible, and to restore the historic character of the Gardens. If the Council were to critically look at the content of these works a considerable element could be removed from the essential category and re-classified as desirable restoration works. The remainder of the work would have to be done through a phased programme of improvements using existing revenue funding, bids into the capital programme and the added value of the parks supporters. Nationally, parks have declined over the years resulting in the establishment of the Heritage Lottery Funds Public Parks Initiative. This situation is not unique to St Annes.*