

The Public: Lessons learned by Arts Council England

By Anthony Blackstock

Executive summary

Brief

i. The Arts Council's brief requires a report setting out the lessons to be learned from its funding of The Public. The report should test measures already in place and recommend further changes.

Background

ii. Sensing widespread concern, the Arts Council decided in 2010 to commission an independent report partly to anticipate a demand from the Culture, Media and Sport Select Committee, which was critical of the Council's performance without a good understanding of the issues.

iii. The long and very troubled gestation of the project since 1995 inevitably invited the suspicion of poor value. The **first function** of this report is to define any shortcomings in the Arts Council's performance and to prescribe remedies.

iv. To do this, the report needs to establish:

- how far costs exceeded expected norms;
- how far The Public now delivers the cultural goods set out in its prospectus;
- the extent of wider benefits; and,
- The Public's prospects in an age of reduced funding.

v. The report then needs to:

- define any failings by the Arts Council;
- assess the rigour of the Arts Council's processes;
- consider the wisdom of its judgements; and,
- assess the extent to which this project was exceptional in its large portfolio.

vi. The evaluation cannot consider how The Public might fare with more generous funding: it must restrict itself to current performance and likely prospects. It assesses only the performance of the Arts Council. It expressively excludes judgement of the other public funders, who may be subject to different criteria.

vii. Despite a start in 1995, the critical phase of the Arts Council's oversight lay between 2001 and 2003. The **second and main function** of this report is to:

- examine the new processes of oversight long since introduced; and,
- recommend further changes.

viii. As a building, The Public is controversial. The report limits analysis of its architectural merits to their practical consequences. Opening in part in 2008 and in full in 2009, the building offers commercial spaces, a café and artistic spaces comprising a theatre, two galleries, and a snaking ramp winding up and around the building offering various interactive installations. The Public gave the Arts Council a very good opportunity to broaden both the type of arts it funded and the social reach of its benefit. The Arts Council was responding enthusiastically to the policy demands of the day: so far that, with hindsight, it might have compromised its power to determine policy independently while acting within the terms of its Royal Charter.

ix. However, the realisation fell well short of the aspiration that launched The Public. The extraordinary time taken from 1995 to the opening in 2008 indicates severe underlying difficulties. Even so, the people of West Bromwich increasingly make use of the facilities and there is hope for its future enjoyment. In 2010/11 it received 157,000 visits, confirming an upward trend.

Building

x. The first scheme foundered and a second suffered from late and major design changes. The Public was unable to meet its specification, which proved fluid, imprecise and unachievable. The original architect went into liquidation. The direction of the project was insufficient and lacked leadership capable of realising the project. The capital funding proved inadequate to meet costs. There was a lack of real confidence in an artistic and economic model that might achieve the goals of the completed venue. It was unsurprising when the Arts Council's co-funders eventually lost confidence, with the result that the developer went into administration in March 2006.

xi. In January 2009 the Arts Council decided it was unable to fund the new business plan for The Public and that regular funding would therefore cease at the end of March 2009. However, to give the project the best chance of independent success it made a final grant of £3m to Sandwell Metropolitan

Borough Council (the Borough) to help it complete the construction and bring the building fully into public use.

xii. The Arts Council also declined to fund the artistic programme put forward by the artistic operating company, The Public Gallery Ltd, as the gallery was still not functional and there was no prospect, at that time, of an opening date. The company went into administration and then liquidation in 2009 as a result. A new operating company, Sandwell Arts Trust, was subsequently installed and is running a so far solvent operation with enhanced public funding from the Borough. At 31st March 2011, the Borough reckons that the Trust will show a small accumulated surplus.

Value for money

xiii. The Arts Council invested £28.8m on top of the £3m referred to above. Its total of £31.8m increased from an original allocation of £19m. It has also paid £4.1m in revenue grants. The Borough reckons the total construction cost to be £52.6m. The Regional Development Agency (RDA), Advantage West Midlands, invested £8.4m and the Borough £16.5m; £8m of these funds came from the European Regional Development Fund (ERDF).

xiv. No study separates out the additional costs of delay and redesign and none is proposed. The conventional cost per square metre may give the best benchmark of comparative cost.

xv. This is problematic but arguably essential. Gauging the cost of arts buildings against those in other sectors is thwarted by lack of data, and against those in the sector by the very few entirely new builds to serve as comparators. Against these, I conclude that:

- There is a considerable premium in the cost of bespoke cultural buildings over complex structures in other areas such as hospitals.
- The addition premium incurred by the broken journey to reconfigure and build The Public was large but unquantifiable. That addition was poor value for money.
- Setting that addition aside leaves the core cost of The Public as relatively fair value for money against two other cultural new builds.

xvi. These data do not stand alone. The test of possible outcomes puts them into relief. The bleakest – that The Public ceases to produce art – would in effect summarily write off the Arts Council's investment. That prospect is unlikely. The Arts Council habitually takes a legal charge on a building it funds so that it may recover its grant as a first call on the proceeds of sale. Here, its charge lapsed in the first liquidation and was not renewed with the Borough because of the difficulties of so doing with a local authority. However, that authority undertook to repay other significant public funds in the event of failure and it makes the prospect of closure or change of use much less likely.

xvii. Even then, the Arts Council should be wary of the outcome. Its Charter limits funding to the creation of arts and their enjoyment. This may lead to meeting wider social and economic goals but that cannot be a primary aim. In that respect the artistic achievement falls well short of the radical prospectus offered at the outset even if the wider social and economic benefits in an area of acute deprivation are more encouraging.

xviii. The Public faces a challenge to meet its existing outputs. In 2011/12 it should receive £1.6m from the Borough. The Arts Council has not offered core revenue support, but has offered limited project support with the prospect of more. The outlook from April 2012 is no more encouraging. The Arts Council has declined to admit The Public as a National Portfolio Organisation and the Borough is undertaking a radical review.

xix. Weighing this uncertainty against the pressure on the Borough not to repay grants gives the edge to continuation. Even then, I argue that The Public's operation offers limited value for money.

xx. The report can now move to its **second function** of judging the Arts Council's performance by examining how well it managed the risks to the project, here expressed as the gaining of assurances.

xxi. Two assurances were paramount, here as in all projects. The first required the Arts Council to have confidence in the capacity of the leaders of The Public to undertake an extraordinarily difficult project. The Arts Council was never able to express that confidence. Worse, it became with others the shadow promoter of the project, taking away unambiguous responsibility from The Public. It ought to have withheld its confirmation until it had that confidence.

xxii. The second assurance is faith in an artistic and economic model for the construction and operation of The Public. The Arts Council never had sufficient evidence of such a workable model expressed in a business plan. Again, it should have declined funding until it had.

xxiii. Even the most established applicants had struggled to provide these assurances. The Arts Council's reluctance to demand them for a relatively small enterprise facing an extraordinary endeavour added significantly to risk.

xxiv. These core failures saw the Arts Council cross the line that must separate funder from developer. It was wrong to assume the role of shadow developer. Its officers, like all professionals, need to manage the line with great skill but they must not cross it.

xxv. The core errors put the Arts Council in a weak position in negotiations. It lost the essential ability to walk away until it was satisfied. Particularly after it confirmed its substantive funding in 2001, it found it impossible to retract when it ought to have done. In the end after 2006 it resolved its dilemma by compromise: the outcome would be far less than once promised but a final payment of £3m at least brought the project to fruition.

xxvi. The National Audit Office uncompromisingly expects abandonment at any stage of insufficiency. The reality may be more nuanced. The Arts Council would have faced strong criticism if the building had been half completed: better never to have started construction.

xxvii. The Arts Council's motives for wanting to back the pioneering artistic developments of this project were exemplary. Hindsight suggests that a more gradual, organic approach may have achieved the goals. In particular, the Arts Council needed to oversee a good management of the inevitable tensions of a bespoke IT installation, between innovation and the all too familiar traps. The Arts Council had agreed to fund a building that was not really fit for purpose. Insisting on a radical reduction in 1999/2000 would have been wiser.

xxviii. If the Arts Council was too ready to set aside the assurances it needed, then that may have reflected an erosion at the time of the 'arm's length principle', which secures its independence from government. It was too keen to meet Ministers' social agenda and it had ample funds to do so.

xxix. The project highlights just how far risk assessment must not reduce to dutiful list-making. Painstaking analysis will show just how risks interact and potentiate each other. Here, the compromised promotion raised the severity of other risks acutely.

xxx. The project lost momentum at various points. This strongly indicated major shortcomings. It should have alerted the Arts Council to the questionable viability of the scheme.

xxxi. The Arts Council succeeded in making good partnerships with its co-funders – the Borough and Advantage West Midlands, the RDA. These were vital for the project but brought issues of diverging objectives, accountabilities and cash flow. Partners' capacities will vary, and they will on occasion become too close. Particularly in this case the Borough owned the land and was probably conflicted in its roles. Finding a good fit between the partners can cause delay and indecision and this was probably a factor in this project.

xxxii. The volume and quality of paperwork available to the Arts Council stand in marked contrast to the quality of the decisions. The tenor of almost all advice from the many external advisers and the unpaid members of the Advisory Panel was to reject the application until convincing assurances were given. By contrast, the Arts Council was slow to realise the very particular challenge. It lacked good criteria for testing its enthusiasm and the value for money offered. There was no champion within the Council who could clearly articulate the goals of the project. The result was inconsistency and a lack of clarity.

xxxiii. In summary, these compromised assurances led the Arts Council to a highly questionable decision to confirm funding in July 2001. That it took until May 2003 for construction to start indicates the lack of real readiness. By then the Arts Council was committed to completion.

xxxiv. In conclusion, the Arts Council had good processes but it did not apply them properly in this case. Advisers' clear and strong misgivings were justified. The Arts Council erred in 2001 and should have retracted at any time up to May 2003. It is not clear why it ignored good advice. The speculation is that the wider social goal dominated all other factors.

xxxv. Since that time all the senior postholders and members have changed. The Arts Council has restructured and the present officers have met the need for change to a tougher regime without demur.

Other projects

xxxvi. The Public was not the only underachieving capital project. There were a few others; most are documented in the May 2003 National Audit Office (NAO) report. Their failure was fundamentally to generate sufficient earned income. The great majority of the 399 major projects flourish. On occasion, the Arts Council has been swift and decisive in rejecting inadequate proposals. Its handling of The Public was exceptional.

Lessons and recommendations

xxxvii. The crisis of 2006 led to an internal review, which yielded many improvements and is distilled below.

xxxviii. The Arts Council undertook this partly to respond to undertakings made to the Public Accounts Committee. The NAO noted that the review showed the unlikelihood of a recurrence.

xxxix. Although it commissioned this current report in October 2010, the Arts Council decided to delay completion until it and others had determined funding for The Public from 2012/13. Nonetheless, it has already embedded most of the improvements.

xl. The old capital scheme is slowly coming to an end. A new smaller scheme shortly to be launched makes funding more strictly dependent on the granting of the several critical assurances.

xli. These start with a much more robust test of the capacity of the applicant's leaders and its processes of governance. I recommend that this must be non-negotiable and indispensable. Failure to convince must lead to rejection.

xlii. Likewise the need for a credible artistic and business plan based on plausible assumptions: without this, rejection should again be inevitable. One particular new requirement is for the applicant to have secured 90% of its partnership funding (i.e. from non-Arts Council sources) before construction can begin. I commend this strongly.

xliii. The Arts Council should continue to secure a legal charge on buildings that it has funded significantly, especially where there is a plausible prospect of a return

on alienation. I recommend that it should explore further the right to a refund where the applicant is a local authority.

xliv. The Arts Council should play a more supervisory and less promotional role. I recommend due vigilance about this.

xlv. In the critical issue of negotiation, the Arts Council should recognise that the critical point is the decision to start construction. Up to that point the Arts Council should be free to withdraw from plans even if the project has consumed high design costs. Thereafter, it is committed to completion. I commend the approach taken to achieve this in the new scheme.

xlvi. In making decisions about competing projects, the Arts Council should be aware of the appropriate unit cost of construction. I recommend that it builds a database to make this assessment routinely possible.

xlvii. The Arts Council should reassure itself about the fitness for purpose of a proposed scheme. Where innovation brings uncertainty it should examine development by separate, stand-alone steps.

xlviii. The new scheme rightly emphasises maintenance implications, adaptability and sustainability. The Arts Council will want to see the development of innovative IT projects. If it does, it should take into account the management of the all too evident risks.

xlix. In all this, the Arts Council should not retreat from the experimental, the unconventional. To do so would be to deny its mission.

I. The Arts Council must be careful to limit its funding to the criteria set out in its published strategy. It should not exceed them to meet social and other agendas. I commend the requirement of the new scheme to show how a proposal meets the Arts Council's objectives.

li. The Arts Council should insist on authentic risk assessment focusing on the few essentials and their interaction.

lii. The Arts Council should insist on good momentum, setting deadlines for submissions and withdrawals. I commend the setting of reasonable deadlines in the new scheme.

liii. The Arts Council's should secure its funding partnerships on formal agreements that reflect the real capacities of the parties. I commend the new style of partnership agreements.

liv. The Arts Council is strengthening its good processes by carrying them out more rigorously and heeding the messages they give. In particular, it has strengthened the Key Stage Review process, which requires a formal decision about whether to proceed.

lv. In conclusion, I commend the Arts Council for strengthening its processes and I offer some recommendations for further improvement. There is no current evidence of failure of process or resolve.

Brief

1. My brief from Arts Council England is 'to write a report which sets out the lessons learnt from Arts Council England's funding of the development of The Public¹ in West Bromwich'. To do that, it needs to: examine the Arts Council's role and performance as one of the public funders of the project; identify what lessons it has learned and what corrective measures it has put in place; and, make recommendations about its future practice which the lessons point to. I set out some background points at Annex 1.

Negative perception

2. There is a fairly widespread notion that the delivery and outcome of the project to build The Public in West Bromwich exposed some major failings. The Parliamentary Select Committee's report of 30th March 2011 went further, referring to the project as a 'gross waste of public money'. It was critical of the Arts Council's 'failure of leadership' in relation to this project. This report will examine how fair this prejudged notion may be in light of the facts and how far it should be refuted.

The origins of a report

3. The Arts Council has clearly been concerned about its role in the funding of The Public for some time. This reflects a determination of the Arts Council's current senior officers to be candid about any shortcomings in the Art Council's oversight of the project and to establish more rigorous processes. By the summer of 2010 this concern had crystallised into the need to publish a report into the lessons learned. The purpose of this was, in part, to ensure that the Arts Council had comprehensively reviewed its oversight of such projects in anticipation of a demand by the Select Committee.

4. This judgement was clearly correct. A reading of the Committee's report and the minutes of its deliberations of 12th October 2010 and 25th January 2011 does not reveal a well-evidenced basis for its conclusions. This is hardly surprising since it lacked the details and assumed that past practice still

¹ The Public is the name given to the building in this report. The original developer was also known as The Public Limited and before that had been Jubilee Arts Company Ltd and c/PLEX Ltd.

prevailed. One can surmise that a frustration about the lack of evidence whetted its vehemence.

5. The history of the project's planning and construction had, indeed, given some strong indicators of failure, dating back to 1995. The extraordinary length of gestation, several re-specifications, the stuttering progress, three insolvencies, changes of developer and contractor, and an unfulfilled brief are all symptoms of a deeply troubled development. It would be surprising if these adverse factors had not inevitably caused costs to escalate. Moreover, they might well have risen to a point where many might speculate that the project has been poor value for public money.

6. In October 2010, Arts Council England asked me to provide a report about the lessons that could be learned from its handling of The Public, and has subsequently informed the Culture, Media and Sport Select Committee that it would publish this report. The **first function** of this report is to show how the facts can give a precision and balance to the description of shortcomings and thus to the prescription of remedies.

Defining the degree and extent of failings

Criteria for judgement

7. I come back to the symptoms in looking at the building history below. Here, the initial task is to establish the criteria by which we can make a fair judgement about the extent of the failings and, indeed, of success. We need to look first at the outcomes and then at the symptoms:

- How far in excess of the expected norm is the full cost of the construction? In other words, how far is it good or poor value for money?
- How far does The Public deliver the public cultural goods specified for it at the outset?
- What are the wider social, cultural and economic impacts of the existence of The Public?
- What are its prospects for a future in which real reductions in public funding are now taking effect?

8. Knowledge of the extent of any failings is a necessary precondition to asking the reasons for them and to assessing whether the correct measures have been put in place to prevent a similar problem occurring in the future.

Defining the degree of Arts Council England's failings

9. We can then start to explore these reasons from the particular perspective of Arts Council England's performance.

10. The criteria just set out apply to the project as a whole and include the outcome of the Arts Council's investment. There are further criteria for judging Arts Council England's performance in its role as the lead funder of the project:

- How rigorous were Arts Council England's processes for assessing the project and then for managing the agreed goals?
- Granted the degree of rigour achieved, how sound and wise were the Arts Council's judgements in choosing between options for action?
- How far was the case of The Public exceptional in the Arts Council's management of a large portfolio of capital developments?

11. In its judgements about value, this paper will consider only The Public's current and prospective future use. It will not explore how value might be improved by investing yet more capital in its facilities or by a significant increase in revenue funding. This would exceed my brief and even if were not to, the prospect of either happening is too remote to contemplate. We must therefore assess value in terms of the production of public goods that the current facilities might supply given current and prospective levels of funding.

12. Note that the report will consider the performance of Arts Council England alone. It makes no judgement about the role of the other public funders and nothing in the report should be inferred to be a commentary on their actions. I limit myself to noting that the criteria applying to any judgement of them may, or may not, differ significantly from those that apply to the Arts Council.

Correcting failings

13. The project to build The Public began many years ago in 1995 and the critical stage of decision-making occurred between 2001 and 2003. Arts Council

England has long since adapted its practices to ensure that it never again faces a similar case. The report will go on to consider these new methods extensively. It will acknowledge those changes already in operation and will recommend some further changes. That is its **second and main function**.

The Public: The building

14. We can have any number of responses to Will Alsop's design for The Public. At the very least, it makes an architectural statement of extraordinary and unignorable imagination: a triumph or a conceit, according to taste. This report's concern with its architectural character is limited to its impact on design development, construction and operation.

15. The building opened in June 2008 as a multi-purpose venue and comprises lettable commercial spaces, a café and facilities for community and artistic use. The latter include two galleries, a theatre and a remarkable ramp that snakes up and around the building and offers a range of interactive video installations. This feature is both quirky and unique in this country.

16. It is clear why the Arts Council wanted to play such a leading role in bringing this extraordinary building into being. It offered the prospect of extending the range of facilities funded with capital lottery monies beyond the predictable and established. Indeed, the venue has brought many people into direct contact with the arts who might have been excluded. It was to act as the catalyst for the regeneration of a post-industrial inner city with few if any cultural facilities. It had the prospective virtue of broadening the reach of the Arts Council's mission. It fulfilled exactly the intent of the then Government's initiative (DCMS: PAT 10) for 'neighbourhood renewal'. The Arts Council of the day faced strong encouragement from the then Government to invest in such projects. Arguably, these amounted to an undue bending of the 'arm's length principle', which underwrites the Arts Council's autonomy in setting policy. The Arts Council of today believes that this principle is now being honoured.

A summary of the history

17. However, the realisation fell well short of the aspiration that launched it. It has been profoundly problematic. The extraordinary time taken from the start of design development in 1995 to opening in 2008 indicates severe underlying difficulties. Even so, the people of West Bromwich are increasingly making use of

the facilities and there is hope for its future enjoyment. In 2010/11 it received 157,000² visits, which confirms an upward trend.

18. The table included as Annex 2 sets out the main events gleaned from the Arts Council's files and from past exercises. It is, accordingly, a history of the Arts Council's transactions. The use of an annex should in no way imply a secondary importance. My aim is only to improve readability and I suggest that a proper appreciation of the report depends on a study of it.

19. In summary, the first scheme foundered and a second suffered from late and major design changes. The Public was unable to meet its specification, which proved fluid, imprecise and unachievable. The original architect went into liquidation. The direction of the project was insufficient and lacked leadership capable of realising the project. The capital funding proved inadequate to meet costs. There was a lack of real confidence in an artistic and economic model that might achieve the goals of the completed venue. It was unsurprising when the Arts Council's co-funders eventually lost confidence, with the result that the developer went into administration in March 2006.

20. In January 2009 the Arts Council decided it was unable to fund the new business plan for The Public and that regular funding would therefore cease at the end of March 2009. However, it wanted to give the project the best chance of independent success and therefore made a final grant of £3m to Sandwell Metropolitan Borough Council (the Borough) to help it complete the construction and bring the building fully into public use.

21. The Arts Council also declined to fund the artistic programme put forward by the artistic operating company, The Public Gallery Ltd, as the gallery was still not functional and there was no prospect, at that time, of an opening date. That company went into administration and then liquidation in 2009 as a result. A new operating company, Sandwell Arts Trust, was subsequently installed and is running a so far solvent operation with enhanced public funding from the Borough. At 31st March 2011, the Borough reckons that the Trust will show a small accumulated surplus.

² Per Sandwell Arts Trust

Returning to the criteria to define the degrees of failings and success

Value for money: capital

22. From 1996 to the present, the Arts Council has invested a sum of £28.8m in capital plus £3m for launching and stabilising the new facility, all funded from its lottery allocation. This total of £31.8m is an increase of £12.8m on its original allocation of £19m and indicates how far delays, re-specifications and insolvency have parlayed up Arts Council England's contribution. It has also provided £4.1m in ordinary revenue support for the artistic operating company since 2002/03, funded from both its lottery allocation and its Grant in Aid.

23. The total construction cost of The Public is hard to assess because each funder measured capital costs in different ways. Since the data available to the Arts Council are reliable only up to 2006, I have had to depend on the figure given by Sandwell Metropolitan Borough Council. Its total of £52.6m is an increase of £7.8m on the capital element of the sum agreed by Arts Council England in July 2001 of £44.8m. It excludes aborted fees of £1.9m which, if added, take the total to £54.5m and the increase to £9.7m. As explained, the accuracy of this increase is compromised by disparate methods of calculation, but it does give an idea of the magnitude.

24. The Arts Council's capital investment is the ninth largest it has made and the £28.8m represents 55% of the total investment in The Public. Of the rest, Advantage West Midlands (AWM) – the Regional Development Agency – provided £8.4m through Sandwell Metropolitan Borough Council leaving the Borough to provide £16.5m. Of the total funds paid out by the Borough, £8.0m came from the European Regional Development Fund (ERDF). Private fundraising was minimal. These sums total £53.7m and are as close a fit to the deemed capital costs as it is possible to achieve without an exhaustive investigation.

25. There is no study showing how much the protracted development and the first administration added to the cost. The Arts Council does not feel it would be appropriate to commission one, given the likely cost of doing so. It would also raise as many questions about quantifying the sum as it would answer. By default, we need to explore alternative measures and the most obvious is to use the construction industry standard of cost per square metre.

26. Any such exercise is problematic. To undertake it all is to invite Wilde's taunt of knowing 'the price of everything and the value of nothing'. Not to do so it is to invite an accusation of special pleading: of knowing the value of everything and the price of nothing. Such measurement is routine for assessing the impact of public expenditure. The arts should not be exempted. To judge from their most recent report into the value of Arts Council spending – the cost of servicing grants in May 2008 – the National Audit Office supports this view. As an interested reader of this report, it would be surprised to find it not included.

27. The problem is to find a cohort of comparable projects. The exercise undertaken for this report excludes cultural buildings outside the Arts Council's portfolio mostly because the data are lacking and also because comparisons become too tenuous. The report is thus limited to buildings within the Arts Council portfolio of funded projects.

28. Even then, it excludes adaptations of cultural buildings since the costs of renovation and adaptation differ markedly from new builds such as The Public. Restriction to the latter really limits the number of comparators, since there were so few in the funded portfolio. Those few are markedly different in scope and purpose. Construction of each took place in different periods. Equalising 'real' costs to make fair comparisons never quite dispels the doubt that the re-rating may be unfair. All in all they form a pretty disparate group.

29. Taking the standard measure cost per square meter in current terms also raises a question about whether a cost per cubic meter might not be fairer. All the buildings chosen employ empty space to a considerable but varying extent to achieve their architectural aims. That measurement has not been available.

30. That said, it should surely be the case that the Arts Council at least knows the basic unit cost of a proposed construction. When that figure is relatively high, surely it should know by how much when deciding that the overall merits of the project justify that premium. The Arts Council does not routinely collate these data. It put together the following set of new-build costs for this report.

Project	Construction dates	Total historic cost (£)	ACE inflation to 4Q'08	Total comparative cost (£)	m2	Comparative cost per m2 (£)
Walsall Art Gallery	Jan '97 - Sep '99	20,192,273	72.143%	34,759,585	5,000	6,592

The Curve (theatre in Leicester)	? '05 - Nov '08	62,149,147	4.329%	64,839,584	12,570	5,158
The Sage (music venue in Gateshead)	? '01 - Dec '04	71,611,000	41.764%*	101,518,620	8,000	12,689
The Public	May '03 - May '05	52,600,000	23.65%**	65,039,900	8,138	7,992

Inflation factor taken from Arts Council England records

Comparison is at 4Q'08.

* based on inflation allowance for the Trestle Theatre

** average of Arts Council England values for 4Q'02 and 4Q'04

31. I stress how qualified the conclusions to be drawn from these data must be.

- The unit cost for arts buildings exceeds the average costs in other areas. For example, the cost per square metre of building and equipping public hospitals in the UK for Q4 2008 was £4,604.³ This comparator points up the very particular, bespoke nature of arts buildings, their expression of an artistic design, their complex plant and machinery and, critically, their function of providing great value to the public. We are dealing here with a comparison between premiums.
- The architectural ambition and the function of The Sage is clearly of a different order from the other three. It is one of the great modern landmarks of England. If the comparison were made on cubic capacities then the difference would, I suspect, be less. The Arts Council should feel confident in justifying the great premium in unit cost.
- Although each of the other three has a different function they form a closer group for comparison. It is of course possible that the unit cost of all three might be found excessive. I have no means of judging this. I believe it is reasonable to expect that the cost of The Public should approximate to The Curve and Walsall Arts Gallery. That it exceeds them is probably due in large part to the fractured path to its completion, and in smaller part to its extraordinary design and its interactive facilities.

³ Figure provided by Nick Parson to the Arts Council: extrapolated from BCIS (Building Cost Information Service) survey.

- It is not possible to unravel these variances. I conclude that since delay and redesign accounted for most of the premium, that sum was unproductive and of little value beyond its role in allowing the completion of the building.
- On these arguments, the construction cost of The Public included a material but unquantifiable premium as well as aborted fees that were poor value for money. Set these sums to one side and the build cost of The Public should fall within expected norms and thus represents fair value for money relative to like projects.

Value for money: operations

32. The prospects for the future operation of The Public are uncertain. I return to these and a tempered optimism below. Here I need to explore the impact of a range of outcomes from the bleakest to the warily encouraging. I start with the bleakest or worst case. If artistic activities no longer take place at The Public then Arts Council England will face the accusation that the value of its investment of public money will have collapsed completely in a very short time. It would be totally and summarily written off. That starkest judgement needs qualifying on two counts. The first starts unpromisingly but has a paradoxically helpful outcome.

Charges

33. If The Public ceases to operate as an arts venue then the Arts Council stands no chance of recovering any of its capital investment. It had secured a legal charge on the building, which might have triggered such a repayment in the event of its alienation from arts use. However, that charge lapsed with the first insolvency and the Arts Council found no means of reinstating it with Sandwell Metropolitan Borough Council. This arose because of the very great difficulty of securing a charge on land owned and developed by a local authority. It would have required ministers' permission and the Arts Council presumably felt – there is no record of its reckoning – that this was such an improbable outcome that it was not worth pursuing.

34. This needs some unravelling. The securing of an enforceable charge designed to secure the recovery of public money from a failed scheme is one of the core conditions of the capital Lottery programme. NAO has promoted it strongly. It is open to challenge even if it is the normal practice. The problem is

that a charge is valuable only if the asset pledged has the potential to yield a repayment. The great majority of the cultural buildings funded by the Lottery could simply not generate that yield. Very few can be put to alternative commercial use or be transferred for full value to another public or not-for-profit occupant.

35. The Public is, in part, one of those exceptions. A good deal of it – 23% – is commercially lettable and indeed partly let on a medium- to long-term basis. Assuming that part to be separable as a chargeable unit, the loss of the Arts Council's charge is a serious matter. The same is not the case with the cultural spaces. Transfer of these for a good yield would be highly unlikely. Even if a new occupant were to make the adaptations needed for commercial use then its investment would need to be so high as to make any premium paid to the landlord pretty small.

36. The lack of a formal charge by Arts Council England on Sandwell Metropolitan Borough Council does not absolve the Borough from some tough obligations. For a start, it committed to the ERDF to honour the terms of its funding to regenerate and create employment for twenty years. Failure to meet those goals would mean repayment. Then there is the political question. Having made such an investment and given so many undertakings about the building itself and its role in the wider regeneration of the cityscape, how plausible is a complete reversal by the Borough of the policy that drove the investment so compellingly?

37. In summary, this first qualification suggests that there is a powerful force in play which reduces the probability of the worst possible outcome of closure occurring.

Delivering cultural goods

38. This modified perspective allows us to explore the second qualification. This has to do with the nature of cultural goods offered by The Public.

39. The worst case specified the condition: 'if artistic activities no longer take place at The Public...'. This formulation was deliberate. It did not express the outcomes in broader terms of cultural benefit. These might include the extent of the catalytic effect on regeneration, the deepening of the skills of cultural

workers, and the presentation and enjoyment of cultural activities beyond the artistic.

40. This distinction between a narrow and a broad set of outcomes is important for a critical reason. The Arts Council operates under a legal constraint⁴ that limits its investment to the making of art and its enjoyment. It may achieve the broader outcome but can only do so as a happy extension of the narrower one. It is, for example, beyond its powers to invest in urban regeneration as such. It is within its powers to invest in artistic activities and participation in them, and if that leads to wider cultural outcomes such as regeneration then that is good and desirable.

41. The distinction is important for judging the value of the cultural goods now offered by The Public. There are two bases for that judgement: the broader, which probably applies for the other public funders, and the narrower, which applies to the Arts Council.

42. The artistic offer available in the building falls a good way short of the specification made at the start of construction in 2002 in one critical respect. Granted there is a range of pretty conventional facilities – the two galleries and the theatre. However, the scope of the interactive technology is limited and the possibility for its necessary updating in a fast-changing world is very limited. The Public does not realise the dream of a radical innovation and interaction with the public. On this narrower basis the Arts Council has received less artistic value for its money than it expected when it made its original commitment.

Wider social, cultural and economic impacts

43. The broader definition offers a rather better conclusion. The Public offers a range of artistic events and other community functions that attract about 150,000 visits a year. More than that, the artistic scope of its events has offered some degree of innovation, experiment and challenging interaction even if it falls short of its prospectus. It has done so in a metropolitan borough – Sandwell – where the indices of economic and social deprivation are high and the ethnic mix is diverse and includes a high number of people of Black and Asian origin. An extensive redevelopment of the adjacent neighbourhood with consequent revival of the public estate is now well underway. West Bromwich promises to be a

⁴ The objects of its Royal Charter

better place. On this broader basis, the Arts Council can claim that its investment in art has played a significant instrumental role.

Future prospects

44. The warily encouraging outcome has depended on a certain level of revenue funding being offered to Sandwell Arts Trust. This amounted to £2.4m in 2010/11 including £1.5m from Arts Council England (being part of the final £3m payment) and should amount to £1.6m in 2011/12 with £Nil revenue funding from the Arts Council. Instead, Arts Council England has awarded Sandwell Arts Trust a £0.1m project grant from its Grants for the Arts programme, specifically for a six-month programme of art. At the time of writing it is considering a further application for a similar amount. I understand that Sandwell Arts Trust will also be applying to the Arts Council's new Strategic Fund for the provision of high-quality art in areas of least engagement.

45. It is not yet clear how far The Public can sustain its limited and conditional success from 2012/13 when the level of public funding for the arts is reducing. The Arts Council has given no commitment of further funding from that year and has rejected the request to make Sandwell Arts Trust a National Portfolio Organisation. The Trust will depend on the outcome of its application to Arts Council England's Grants for the Arts scheme and Strategic Fund and on the Borough's support.

46. Sandwell Metropolitan Borough Council has made public its intention to undertake a radical options appraisal. The options include disposal, closure and demolition as well as continuation. It is possible that the level and quality of artistic activities in The Public could reduce or vanish. However, I believe that the force of the case outlined above make this unlikely. At the time of writing in October 2011, the Borough had not completed this report. This appraisal may lead the Borough to withdraw or substantially reduce its funding. I have ventured that this is unlikely. However, it is not impossible. If it does happen then I believe the Borough's need to cut its overall budget radically will be the underlying cause. If that is the case, then I think it would be unfair to criticise the Arts Council for failing to foresee a crisis in public funding a good decade before it struck.

Conclusion about value for money

47. We have noted that the core capital cost of construction probably showed relatively fair value for money but that the premium for delay and revision was

poor value for money. The best the Arts Council can claim about the operation of that building, assuming it continues on current lines, is that its investment will produce pretty limited value for money. The impact on regeneration may be better but Arts Council England must be circumspect in claiming that achievement.

Assessing the Arts Council's performance

48. This section seeks to judge Arts Council England's role in the development of The Public by how far it managed and mitigated the risks the project presented. In the main, it will express the issues by the positive correlative of assurances sought and gained. The aim of this analysis is to identify areas of poor performance or process, to acknowledge where these have been identified and rectified by the Arts Council, and to make recommendations for future improvement.

Assurances about leadership

49. The Arts Council knew early on in the capital programme that there were two fundamental assurances it needed in order to have confidence in a successful outcome. It did not have them in this case.

50. The first is the quality of leadership. This means: does the developer really have the capacity, vision, skill and energy to undertake the project? Does it have a Chair and Chief Executive with these qualities? Is their relationship sound? The files suggest that The Public did show some of these qualities but it was not able to harness them into a coherent and cohesive unit capable of achieving an extraordinary project. Consequently, the Arts Council did not have a strong enough belief in the robustness of The Public's leadership. This was probably the main cause of the Arts Council becoming, with the other funders, the shadow promoters of the project. This in turn weakened the need for The Public's leaders to take unambiguous responsibility for the project. It was precisely the wrong stance. Working with its co-funders, the Arts Council should not have confirmed its funding until it was confident that the leadership of The Public had the real capacity as a group to realise this very demanding project.

Assurance about the artistic and economic model

51. The second is the assurance that the artistic vision and its economic expression are complete and convincing. Will funders contribute enough to cover

the capital costs? Is there a set of programmes and projects offering real, achievable fulfilment? Do these also cohere as the optimal economic outcome for the enterprise? Do they provide assurance that the management can bring them effectively into being, and then that they can achieve enduring solvency on reasonable criteria? Again, the records do not show that the Arts Council had sufficient confidence that the artistic and business model properly supported either the specification for the construction or the subsequent operation. Again, the Arts Council should not have confirmed its funding until it was satisfied on this point.

52. The Arts Council knew both these assurances to be indispensable for the largest projects that it funded in traditional artforms. Such projects had put their leaders under the greatest stress and caused significant disruption to artistic and financial outcomes. The Arts Council should have known that the assurances were even more important for a project that offered experiment and an extraordinary expansion of the ambitions and capacity of a fairly small community arts enterprise. It was evidently a risk that the Arts Council's reluctance to insist on them increased the possibility of the project's failure.

53. The developer failed consistently to be convincing about its viability. From May 2001 onwards the Arts Council was aware that The Public could not prepare a business plan that convincingly showed how the company could operate the completed building successfully and solvently. The Arts Council compounded this shortcoming by allowing the project to proceed without one in May 2003.

54. It is important to underline that this and the previous paragraph seek to distinguish two types of failing. It is unarguably the responsibility of the developer to provide the assurances of capacity and viability, evidenced in a good business plan. It is then the responsibility of the Arts Council as an accountable funder to ensure that these are convincing and to withhold approval until they are. Neither party met its separate responsibility properly.

55. In 2006 the Arts Council realised that no such reliable plan would be produced and required instead a more limited transitional plan for securing completion. Notwithstanding the second insolvency, this new methodology has succeeded to some degree.

Assurance of integrity of role as funder: crossing the line from funder to developer

56. Failure to secure the first two assurances led Arts Council England to compensate for those external shortcomings by overplaying its own role. The Arts Council's critical error was to cross the line that must separate funder from developer. This crucial point is a tough one. The Arts Council cannot remain a passive respondent to the bids of others. It must prioritise, influence and encourage. It must particularly back projects where artists can show how new structures expand existing artforms and introduce the new. It must support building in challenging places. But it cannot and must not act as the shadow promoter of a project.

57. Like all professionals, the Arts Council's officers must know where the line of virtue runs and resist all temptation to cross it. If they do, they fatally compromise all the proper conditions they must demand of a project. In 2009 the then Chief Executive of Sandwell Metropolitan Borough Council felt able to write to the Arts Council's Chair: 'The Public was the Arts Council's vision for art and technology set in an urban environment.' The reply did not refute the assertion that it was the Arts Council's project. It ought to have done.

Assurance about effective negotiating

58. The inadequacy of the first three assurances was bound to undermine a fourth. The principle of good negotiating is the ability to walk away and not to conclude an agreement. This ought to lie behind all the Arts Council's assessments of capital applications: that it can and will say no if it is not satisfied that the applicant has met the conditions. Indeed, the Arts Council has done just that when it has needed to in many cases. The principle is much more easily upheld in the early rather than later stages. Once the Arts Council (or any funder) has paid out significant sums for construction then it is prey to the argument that to abandon the project now is to squander the initial investment.

59. There is no doubt that the Arts Council was deeply susceptible to this argument from 2001 when it confirmed its funding. Then and afterwards it rejected the option to abandon the project time and again despite strong cause for doing so. After the crisis of 2006, the initiative for completion rested with the owner of the land, Sandwell Metropolitan Borough Council. It is a great credit to the Borough that it realised that completion. It is unsurprising that it determined to complete the building to the best possible reduced specification in the speediest time and at the lowest cost. It achieved that objective within two years. This put the Arts Council into a difficult position. On the one hand, it found that it could not support the reduced artistic vision offered and this led to it declining to

further fund the operating tenant, Public Gallery Ltd, in 2009. On the other, it sought to back the Borough's initiative with a final payment of £3m in order to secure a fully opened public facility housing an artistic programme. This dilemma for Arts Council England and the resulting compromise arose from the earlier reluctance to abandon.

60. The line taken by NAO and the Public Accounts Committee (PAC) to restrict payment if the developer fails to meet conditions is uncompromising. If strictly applied it might lead to half-built facilities, which would bring their own accusations of undue abandonment. The Arts Council clearly sees the risk of being damned both ways. It underlines the need for having enough confidence in a project before foundations are dug.

Data bank

61. I found it surprising that the Arts Council had not routinely collected and collated key data about unit costs from its extensive portfolio of projects. I cannot believe that it is not necessary to know these data in making an overall judgement about the value of an application. It is only one criterion among many but surely an indispensable requirement.

Assurance about fitness for purpose

62. The Arts Council's motives for wanting to support the project were exemplary. It sought to pioneer the development of artforms and the public's participation beyond the borders of conventional types. However, all involved had good cause to be wary. Had the development been of a conventional gallery then they would have been well aware of the constraints and potential and could have judged well how far they could stretch them. Had they been wiser they would have judged that the degree of innovation strongly suggested a modest start and the later organic expansion of success. Arts Council England should have insisted on such an approach.

63. The innovation rested largely in the development of bespoke interactive technology facilities. I think there is a real issue here for the Arts Council. On the one hand, it has made a prioritised commitment to back artistic innovation using new technologies. On the other hand, like every public body, the Arts Council is well aware that promises of delivery in this field can be notoriously susceptible to inadequate specification, delay, under-delivery, budgetary indiscipline, and rapid obsolescence. Reconciling the ambition with the all too common experience is

very challenging and I believe the installation at The Public provides an interesting case study. It raises questions about the interaction of public funding and private equity and the appropriate roles each can play in taking risk and gleaning reward. This paper cannot offer solutions – only invite the Arts Council to develop its response to such instances.

64. There were other problems. With hindsight the Arts Council can see that the building lacks flexibility and will be hard to adapt in the future. Some of the specifications have proved to be unworkable. It has concerns about maintenance, security and acoustic quality.

65. Given the scale of the ambition for the project and the innovation it promised, it is perhaps worth reflecting that if The Public had been a fraction of its eventual size then it would have opened many years before it did, and would be offering greater value for money than it now can.

66. In summary, Arts Council England agreed to fund a building that was not fit for purpose. It should have judged that this was the case and demanded a radical downscaling in 1999/2000.

Deviating from mission

67. It is curious that Arts Council England found itself so ready to bypass the assurances it ought to have made, as described in the five sections above. It suggests that an overriding force was in play: that the Arts Council became so persuaded by the transformative role of the project – for art, society and the built environment – that it was prepared to override due claims of prudence. Perhaps it was seeking too far to fulfil the social agenda of the Government of the day. If this was the case then it strengthens the current Arts Council's case for insisting on the integrity of the 'arms-length principle'. At the time, it had ample resources from the Lottery to back an extension of its role – too much, one might argue with hindsight.

Acknowledging the nature of risks

68. The challenge of risk assessment is to ensure that it does not just go through the motions. If it is not authentic then it can fail to draw attention to fundamental shortcomings. It can obscure the interaction of risks: these do not stand alone to be managed discretely. They more resemble the pieces on a chess board and

gain their potential, their neutralising or their removal both from their inherent dynamic and from their relation to the other pieces.

69. We can see both failures in this instance. In this case, compromising the promotion of the project really increased the risk of blurring the focus of leadership and the rigour of the artistic and economic modelling.

Maintaining momentum

70. The Arts Council knew by 2001 that slow progress in bringing a project together indicated real doubts about its successful realisation. Goodwill erodes and the commitment of stakeholders wanes. In the case of The Public these delays arose from several re-specifications driven in good part by the need to show that they and the operations they entailed were plausibly affordable. Each delay required the recommitment of the several funders to a different prospectus and this led inevitably to fatigue and reduced goodwill. Delay should have put the Arts Council more on its guard about its underlying causes, which were major.

Making good partnerships

71. As with the majority of projects, the Arts Council was a co-funder of The Public, working with Sandwell Metropolitan Borough Council and Advantage West Midlands. These important relationships bring with them the strength of good additional sources of public money and a wider democratic endorsement for the objectives of a project. But they also bring challenges. First is the divergence of objectives: alignment can be tricky and can dissipate focus. Second, the rules of accountability may not be uniform; what one body may accept another may reject. Third, the availability of their funding and its timing may be unequal over the course of a project. Fourth, the experience and capacity of the parties may be unequal. Fifth, the relationships may become too close, leading to a blurring of mission and purpose between the funders.

72. Sixth, one of the parties, usually a local authority, may be owner of the land and/or existing building and, if so, may be conflicted in its objectives. A small local authority will probably have no experience of the very particular strains that construction of a large arts facility will bring. Even more difficulties arise if the developer and operator are different entities. This became the case after 2006 when the Borough took on the construction directly. Resolving the different

priorities of each partner only compounded all the other issues in play. In this case, of course, local authority officers needed to cross the line, which was forbidden to Arts Council staff.

73. The need to achieve the best possible fit between the needs of all the co-funders has two inevitable consequences. It extends the time scale for taking decisions and it can distract from the real issues of the project to the point where the correct response is not made. It is hard to see how this might be avoided: there is a limit to which public bodies can cede authority to a lead funder. Making efficient processes for appropriate and effective collaboration is a critical requirement for the Arts Council.

Good process

74. The volume and lucidity of the documents available to Arts Council England senior officers and committees for each critical decision stand in remarkable and paradoxical contrast to the quality of decision making. The briefings were exhaustive and impartial, always couched as a set of options with a recommendation. Those responsible for taking the important decision were consistently well briefed.

75. There are five qualifications I make to this. One, the sheer volume and diversity of sources – from two Arts Council offices – means that papers are not filed in one archive. There is a collation of key papers up to March 2006 but the storage is more diffuse thereafter. I may have missed some key points.

76. Two, Arts Council England's assessments depended extensively on the reports of external advisers and consultants. This was standard practice in the period and reflects the sheer scale of the Arts Council's capital programme. The tenor of almost all these reports was to advise the Arts Council not to proceed with the project unless fundamental assurances had been verifiably secured. It is not possible to say for sure why the Arts Council so often set aside this advice but it points to the overriding of due prudence in the pursuit of a goal in the face of all the risks identified for its successful achievement.

77. Three, the same might be said about the role of the Capital Panel of unpaid advisers. During the period before and after the 2001 decision, it was voicing far more caution than the Council itself would accept and made several calls for withdrawal.

78. Four, the developer did not trust the Arts Council's assessors and found them too focused on detail. It saw their relationship as negative rather than supportive. The Arts Council was sending mixed messages – critical about almost all the key aspects but willing to continue funding nonetheless.

79. The fifth qualification has far more weight. The Arts Council was slow to realise the very particular nature of the project and just how challenging it would be in virtually every aspect. It is ironic that it had not supported its enthusiasm for the idea it represented with good criteria to back that judgement. Assessors had questioned whether the high cost of the innovatory features would be good value for money.

80. The Arts Council did not address this issue nor the related question about how it might achieve its strategic objectives with good value. It was thus unsurprising that the project lacked a champion at the Arts Council who could articulate and justify a belief in the project from the main funder's perspective. That role was tough. I have contended that the Arts Council crossed the line to become the shadow promoter of the project. Good and clear articulation might have shown the extent of that crossing. The result was a lack of clarity in communications and frequent changes in the processes of oversight.

The critical decision

81. The analysis of these compromised assurances reveals just how far the Arts Council had weakened its own ability to make good judgements in this extraordinary case. It allows us pinpoint the exact moment when the flaws coalesced into a highly questionable decision. In July 2001 Arts Council England's National Council knew its expert Advisory Panel had recommended rejection on the grounds of an unsound cost plan and likely cost overrun, a very high outstanding sum of Partnership Funding, the inflexibility of the design, the probable inadequacy of the revenue funding, and the need to scale up the management's capacity. It agreed funding of £17.5m in spite of all these, comforting itself that the project cost should and could be reduced by £5.7m, helped by the intervention of CAFE. It took 21 months of negotiation before the Arts Council gave permission in May 2003 for construction to begin. The truth is that the Panel's grounds for rejection still held good in substance at that date. From that moment the Arts Council had effectively lost the ability to walk away. It was committed to the completion.

Conclusion about the degree of the Arts Council's failings

82. We can now return to questions raised earlier about the extent of the Arts Council's failings, with the following conclusions.

Effectiveness of the Arts Council's processes

83. The Arts Council had good processes for ensuring that its oversight could be effective. It applied those processes in this case but was not effective in applying them rigorously and consistently or in drawing the right conclusions from them. Too often it subverted the safeguards in its desire to progress the project despite its potential shortcomings. It should not have. The Arts Council too often ignored the advice of its paid and unpaid advisers, all of whom had done their jobs with great skill and rigour. The Council members did not challenge the Executive effectively and did not heed their Panel properly.

Wisdom of the Arts Council's judgements

84. Arts Council England made two very poor judgements. The first was the decision to proceed in 2001 despite all the explicit misgivings. Thereafter, the Arts Council apparently found it politically impossible not to continue its support in the teeth of every setback. The second was a failure to see that very basis of the Arts Council's support – for new art and its enjoyment by new participants – was being eaten away. The Arts Council's advisers, justifiably as it turned out, had strong doubts about the achievement of the stated artistic vision. I am not surprised that Arts Council England could not express the aspirations for the project convincingly. Set against that is the evidence of a very strong, even unstoppable, force within the Arts Council to complete the project. The motive impelling this is not entirely clear. It cannot plausibly be a wish wilfully to disregard the advice of good experts. I suspect that the goal of achieving a wider social transformation, harnessed to partners seeking to achieve just that, overrode the artistic shortcomings. That outcome may be desirable but it lies beyond the Arts Council's powers as a primary aim.

85. None of the staff, advisers and Council Members who made the recommendations and decisions about the funding of The Public at the early, critical moments of decision is currently engaged with the Arts Council. Furthermore, the Arts Council has fundamentally changed its structure to

consolidate the formerly autonomous regional offices and boards. It has also developed its processes for assessing funding. I found the current senior officers helpful and candid. They are not defensive about the severe criticisms and are committed to a new and much tougher regime of oversight. I make no comment about the performance of individuals who took the decisions at those critical early moments. I consider it to be beyond the scope of my brief. I can say, however, that they acted in good faith and with information that was good enough to guide them to the right decisions.

Comparison with other projects funded by Arts Council England

86. The Public was not the only or the first case of significant underachievement in a project funded with Arts Council Lottery grants. The May 2003 NAO report cited the closure of the Dovecot Arts Centre in Stockton and the National Centre for Popular Music in Sheffield. Since that report was written, the Dovecot has re-opened as The Arc and another venue, Ocean in Hackney, has closed. In the first two cases, NAO noted, it was the failure to generate sufficient operating income that led to the insolvency. The Arts Council says the same is true of Ocean.

87. The NAO report also draws attention to other failings in its brief Case Studies. These are all covered under one of the assurances discussed above. What is perhaps most pertinent is that in these cases, and in Ocean, the novelty of the venture made valid forecasting of the likely levels of income difficult and liable to overstatement. This only underlines the fact that the assurance requiring a convincing business model for operations is fundamental.

88. We must not overplay these examples. The NAO report acknowledges their exceptional status. In the great majority of cases, projects funded with Arts Council England's Lottery grants covered their capital cost, continue to operate solvently and offer good value for money. This makes it more difficult to explain the lack of proper oversight of The Public project by the Arts Council.

89. In the great majority of cases, Arts Council England's processes were robust. It is instructive to note the contrasting case of the Shakespeare Memorial Theatre, which has recently re-opened to great acclaim on time and on budget. One of the foundations of that success was the Arts Council's summary rejection of a previous scheme in 2002, which failed to convince the Arts Council about its artistic coherence, effective leadership and a plausible business plan.

90. In conclusion, I find the Arts Council is properly chastened by its involvement in this deeply troubled process and outcome. Its record across the whole range of 399 major⁵ capital projects totalling £1,486m has been excellent in the main. England's stock of new and restored buildings now attests to the Arts Council's highly competent supervision.

91. The example of The Public taught the Arts Council critical lessons for the future management of its capital funds.

Lessons and recommendations

92. The crisis of 2006 led the Arts Council to analyse the problems that had arisen. It undertook an unsparing internal review, which yielded improvements for future practice. It has accepted and implemented these in good measure and they are distilled under the headings below.

93. The Arts Council undertook this review partly to test the undertakings it had given to the Public Accounts Committee (PAC) in response to the NAO's value for money study in 2003. The NAO in turn reviewed the Arts Council's conclusions, which showed how it had fallen short in this case. It noted that its 'current processes would not allow [it] to risk public money on such a project again'.⁶ I support its view.

94. NAO did not seek formally to re-visit its past study of the Arts Council's capital projects on the basis of the experience with The Public. The Arts Council took some comfort that NAO had noted how far it had strengthened its oversight of capital projects.

95. Arts Council England made an undertaking in October 2010 to respond to the Select Committee and had resolved to do so for its own purpose well before that. However, any judgement about the future prospects for The Public – and thus the degree of its failure or success – really had to await the determination of its funding for 2012/13 to 2014/15 in March 2011. That condition is now met – The Public was refused funding as part of the new National Portfolio but the Arts Council continues to support its burgeoning artistic programme – even if the result is not conclusive, and the time for this report is right. Despite this delay, the

⁵ Defined as over £0.25m, including those less than this sum. Arts Council England offered 2,101 grants totalling £1,589m.

⁶ From NAO's note of the meeting in 2009

Arts Council has been operating new rules of decision making for a good time now.

96. At the same time, the Arts Council has continued to complete all remaining phases of its original Capital Scheme and should have paid up its funding of the very few outstanding projects within the next two years. It is shortly to launch a new scheme that will prioritise the renewal of the existing arts estate but may also back some new initiatives. The total level of funding available is much lower than it was in the first scheme and the level of individual grant is accordingly likely to be much lower than it has been so far.

97. Arts Council England's new rules of assessment seek to reflect the lessons of the past, as the following should reveal.

Leadership

98. The Arts Council had insufficient faith that original developer of The Public had the capacity to undertake the project. It allowed the project to proceed nonetheless. It should not have done.

99. It is now Arts Council policy to make a tougher assessment of an applicant's strength. It will test more robustly whether the non-executive and executive leaders have the skills, dedication, cohesion, time and energy to complete the project within a convincing set of governance processes. The aim must be to make this vital quality a condition precedent and not a later deliverable.

100. The condition is surely non-negotiable. I recommend that any applicant falling short should be rejected until it meets it. In practice, this is easier said than done. This arises in part because non-executive leaders may not be attracted until and unless there is confirmation of progress. It may arise also because initial enthusiasm fades. Nonetheless, I argue it is still indispensable.

Viability and business model

101. In the critical early phase of approving the construction of The Public, Arts Council England had continuing doubts about whether the artistic and business model would work. The Arts Council should have ensured their resolution before it approved the construction.

102. The Arts Council has changed its processes and now takes a more rigorous stance towards applications for capital funding. At the pre-design phase, it requires good evidence of matching or partnership funding needed to complete the project. The applicant must prove that it has secured 90% before building can begin. The Arts Council requires a viable artistic and business plan based on plausible assumptions and outcomes.

103. The new process recognises that the moment of truth occurs at the end of design development when the decision to progress to construction is due to be made. Once construction begins it is far more problematic to reshape a project or withdraw support. In practice, it may be impossible.

104. To sanction progress at this critical stage the Arts Council now requires stronger evidence of partnership funding and viability than it formerly did. Without this, it will refuse to make further payment. As with leadership, I recommend that this should be non-negotiable and the Arts Council should withdraw if the applicant cannot convincingly meet these conditions at any stage.

Charging of assets

105. Arts Council England's charge on The Public lapsed with the liquidation of the first developer and was thought impossible to secure from the second, a local authority.

106. It is tempting to equivocate about this. On the one hand, it is hard for a public body to shed the obligation to secure a charge where it can. Where there is an alternative commercial use or transferable value to another public or not-for-profit organisation, then the Arts Council should insist on that charge even where the potential is slight. On the other hand, where that alternative use is further than remote or at least only attainable with a huge additional cost of adaptation then the requirement does seem dogmatic.

107. Local authorities present a special issue. Where they act as the developer or the landlord to whom a lease would revert in the event of the tenant's collapse, then Arts Council England is going to find the securing of a charge on its interest very difficult.

108. Nonetheless, other funders such as ERDF have imposed a repayment clause and I recommend that the Arts Council explore how it might do likewise. The obligation has force after all since the prospect of default by a local authority

is very low. This exploration may prove fruitless. In these cases, the Arts Council may better meet its objective – of securing future artistic use – through its funding agreement with the authority or by a deed of dedication or covenant. These reinforce the obligation to honour its commitments. I recommend this as a second strategy.

Clarity of role

109. Arts Council England became the shadow promoter of the development of The Public at some time between July 2001 and May 2003. This was inappropriate.

110. It is implicit in the strengthened assurances demanded about leadership and sustainability that Arts Council England will play a more supervisory and less promotional role. This is essential. I recommend that the Arts Council remains very vigilant about this, ensuring that the promotion of a project remains firmly with the developer, not the funder.

Negotiation

111. The Arts Council's poor oversight of the development of The Public undermined its ability to enforce the cardinal rule of negotiation: it could not walk away.

112. The rule is a tough one. It sits uncomfortably beside Arts Council England's duty to encourage development. But holding that balance between sanction and nurture is surely the core task of a funding body. If it topples to either side, it ceases to have a credible role.

113. What is the right posture for Arts Council England's future capital programme? The key seems to me to lie in the single critical moment of decision. This is the moment at which the Arts Council decides whether to fund the construction and, thus, when (demolition and) building can begin. To reach that point, the applicant will have passed the milestones of completed design development, been granted planning consents and obtained sufficient pledges of total capital funding. (If it has not, then it has no case to proceed and the Arts Council should dismiss the request.) It will also have satisfied the Arts Council sufficiently of its capacity for good governance and economic sustainability.

114. Even so, there will doubtless have been gaps in the assurance given on these two vital points during the design phase. At the moment of critical decision those gaps must have closed and the level of assurance Arts Council England should then require needs to be much stricter. Some projects will founder at this point. If the Arts Council rejects them, then it should be because it is able to show that its lack of sufficient confidence is reasonable.

115. I argue that this is as it should be. Arts Council England should be prepared to take a certain level of risk on a project prospering up to the end of the design phase. Undoubtedly, it will have to commit funding to pay for this stage but it will be far less than the total needed to realise construction. We can express the risk in terms of public reaction. The rejection of mere plans – paper – is nothing beside the later abandonment of a half-built facility – steel and concrete. If the Arts Council allows a project to proceed to construction without full and proper assurance then it has no real ability to retreat and withdraw. It has lost the ability to negotiate within the true meaning of that word.

116. I recommend this approach because I think it reflects the reality of the development capital projects funded in part from the public purse. It reflects what is pragmatically reasonable to expect in the real world. I think the Arts Council should be completely explicit about its terms of engagement: that it will fund design development given a certain level of good assurance, and that the hurdle for granting funds for construction is then even higher. Applicants may fall at this point but the assurance of a good outcome should be far stronger.

Unit costs

117. The Arts Council has not assessed the unit cost of the buildings it has funded. Nor does it maintain a data base of such costs to make such judgements possible. I believe that making decisions about competing projects requires the Arts Council to be aware of the appropriate unit cost of construction. This is one criterion among many and not a basis for setting rigorous guidelines. I recommend that it builds a data-base to make this assessment routinely possible.

Fitness for purpose

118. Arts Council England did not sufficiently assure itself that the design and scale of The Public was fit for purpose.

119. Had the function of the building been familiar – say a contemporary art gallery – then the Arts Council would have more easily assessed it against

accepted benchmarks. Should it face such an innovative proposal in the future, I recommend that the assessment be no less rigorous than it would normally apply. However, the assessment should take particular account of the need to balance two competing priorities. The Arts Council will properly want to encourage innovation and equally it will want to ensure a realisable and successful outcome for the untried. One possibility for this reconciliation is to encourage development of a series of separate, stand-alone steps where the proven success of the latest argues for the confirmation of the next.

120. The Arts Council declares that it now pays more particular attention to the adaptability of spaces. It requires and evaluates whole-life costs and maintenance plans. Its new scheme will set environmental sustainability as a key criterion. These changes are unarguably sound but they do not address the central point about suitability. Maybe the best indicator of this lies in the plausibility of the business model discussed above.

Information technology

121. Proposals to invest in innovative information technology should call for special consideration along the lines set out above for innovation generally. Of course, Arts Council England must support development in creativity and engagement with information technology. However, it should work out very carefully how the project mitigates familiar risks of under-fulfilment in this field.

Retreat from innovation and diversity

122. There is a risk that the experience of funding The Public will deter the Arts Council from supporting projects that stretch the comfortable boundaries of the predictable and familiar. I recommend that it should reject such comfort. Action should back its rhetoric about innovation and diversity. It should remain open to such projects in future as funds permit. The Arts Council knows from 65 years' experience that multi-arts and experimental venues are volatile. If they are truly to innovate, then that fissile tendency is probably inevitable and perhaps even welcome. It is the Arts Council's role to anticipate and dissipate these storms.

123. Surely the Arts Council should be able to manage the tensions between the demands of innovation and achievability. It is good to know that the Arts Council's new scheme for capital funding will take due account of its commitment to innovation and diversity and I recommend that this holds good.

Holding to mission

124. The prospect of social and economic improvement may have influenced Arts Council England's judgement too strongly in its decision to commit to The Public.

125. Without a change in its Charter, the Arts Council is duty bound to limit its funding to the promotion of art and its enjoyment. Its current strategic plan, *Achieving great art for everyone*, published in November 2010, clarifies the Arts Council's goal and priorities within the remit of that Charter. I also note from recent papers that new proposals will have to show how they meet the objectives deriving from that plan. I recommend that senior officers and Council Members pay very close attention to this essential compliance. In most cases, the assurance will be obvious, but there will be some whose outcomes may be highly desirable but which may exceed the Arts Council's mission and objectives.

Nature of Risks

126. The example of The Public showed that the Arts Council's risk analysis and management was insufficient at that time.

127. This report has focused on the key assurances which I believe Arts Council England ought be securing. The Arts Council is now far more alert to the nature of risk. It now requires applicants and its assessors to complete an authentic assessment of risks and their management before it will commit to funding. It appreciates far more the subtleties of the interplay of risks. I recommend that it concentrates on the few critical risks analysed in this report and that it avoids the illusive security of a coverage of all potential pitfalls. It should avoid distraction by focusing on the really critical few.

Momentum

128. The project to build The Public never had momentum. It took far too long to build.

129. The Arts Council will, it says, regard a protracted development much more circumspectly. It will be quicker to pinpoint the reasons for irresolution and to set reasonable deadlines for closing them.

130. Halting progress and delay are good indicators of failure. Stalling will usually tell the Arts Council that other vital assurances are wanting. I recommend that the Arts Council is robust in withdrawing from projects that lose momentum.

Partnership

131. It was, ironically, quite an achievement for Arts Council England to have held the partnership of public funders together for so long in the face of such problems. This should not mask the underlying challenges in managing differing expectations and priorities.

132. It is now the Arts Council's practice to make a careful assessment of its partners' capacity to participate effectively before it will agree to invest. It negotiates hard with partners and has its terms clearly spelled out in Funding Agreements. These will determine who of the partners is the leading funder and regulator and will safeguard the particular conditions of each party. The Arts Council's current practice reflects this and I endorse that.

Process

133. The case of The Public revealed the Arts Council's processes to be mostly robust up to the point when the Council disregarded the properly drawn conclusions. However, those processes were not demanding enough in forcing the Arts Council really to articulate the criteria by which it should judge the project. Small wonder then that it never made a full and convincing expression of its decision.

134. Arts Council England has been making its processes stronger. In 2008 it reduced the number of its assessors (project monitors), gave them revised roles and subjected them to quality assurance by an account manager. It communicates best practice across the team. Co-funders now share conditions and a common monitoring process to align the desired outcomes. It has introduced a process of quality assurance and upgraded its Key Stage Reviews⁷ to enforce conditions in a timely and consistent manner. Critically, the Arts

⁷ These closely match the process promulgated by the Office for Government Commerce and were found to be effective in the 2003 NAO Study.

Council withholds payments until it is satisfied that the developer has passed all the milestones.

135. Today, the Arts Council engages specialist advisers to set and evaluate the criteria for artistic qualities and good value. Indeed, it did this after 2006 to good effect. It has set up internal teams to monitor projects with greater rigour.

136. The Arts Council has now devolved the management of capital projects to its regional offices. This strengthens relationship with its co-funders. It has revised its practice on securing proper charges. Applicants now know that they have to secure these from the beginning.

137. Despite all this unarguably welcome invigoration of procedures, the real lesson of The Public is that the Arts Council must heed the messages it receives. It used to be over-dependent on consultants. This may have distracted officers from a close enough real engagement with the issues. I commend the more detailed personal engagement of senior officers shown since 2006.

Conclusion

138. In conclusion, I recognise that the Arts Council has absorbed many of the lessons learned from The Public project. I endorse the measures it has put in place and hope it will heed the additional recommendations that I have set out above. The Arts Council's determination to strengthen its processes refutes any notion of current failure alleged by the Select Committee.

Anthony Blackstock
For Anthony Blackstock Limited
28th October 2011

Annex 1

Background

A1.1 I drafted the report after reading the Art Council's voluminous files and after discussion with its officers. I also visited The Public and was very helpfully briefed by officers of the current operator – Sandwell Arts Trust, and the local authority – Sandwell Metropolitan Borough Council. I am grateful to them.

A1.2 People interviewed:

Althea Efunshile – Chief Operating Officer, Arts Council England

Francis Runacres – Director, Investment, Arts Council England

Beverley Dawson – Director, Capital, Arts Council England

Sarah Bond – Senior Manager Regional Planning, Arts Council England West Midlands

Linda Saunders – Managing Director of The Public – Sandwell Arts Trust

Tony Costello – Strategic Development Co-ordinator – Sandwell Metropolitan Borough Council

A1.3 The report is submitted by my company for the exclusive use of Arts Council England. It accepts no liability to any other parties for actions they may or may not take as a result of reading it.

A1.4 Anthony Blackstock is a Chartered Accountant who served as the Arts Council's Chief Financial Officer from 1984 to 1989. He subsequently held the same post at the National Theatre and the British Museum where he worked closely on major capital schemes funded by the National Lottery. As an independent consultant since 2000, he has worked on similar projects at the English National Opera, the Royal Shakespeare Company, the South Bank Centre and Chichester Festival Theatre. He has advised the Arts Council on several capital schemes, including the Royal Court, The Place, the Young Vic, and recently Liverpool Everyman and Turner Contemporary. He has commented on the Arts Council's proposed new capital funding scheme to promote its alignment with the recommendations in this report. He is a Trustee and Chair of the Audit and Risk Committee of the Roundhouse. He has had no involvement with The Public before writing this report and no connection with anyone who has.

Annex 2

<i>Date</i>	<i>Event</i>	<i>Estimated project cost</i>	<i>Arts Council England funding agreed</i>	<i>Cumulative Arts Council England funding</i>
December 1995	Application received for a scheme for four major buildings around a public square.	£35m (£24.1m from Arts Council England)		
June 1996	Application not agreed but feasibility study supported.		£0.4m	
April to June 1997	Re-submission assessed and decision deferred. Further interim award made.	£46.6m (£26.9m from Arts Council England)	£0.15m	£0.55m
September 1997	Arts Council England asked for revision working to lower Arts Council England funding. Bigger interim award made.		£1.88m	£2.43m
September 1997 to February 1998	Re-scoping revealed that project needed £19m from Arts Council England.			

<i>Date</i>	<i>Event</i>	<i>Estimated project cost</i>	<i>Arts Council England funding agreed</i>	<i>Cumulative Arts Council England funding</i>
March to October 1998	Arts Council England expressed uncertainty about finding £19m but allowed project to proceed to stage 2.			
November 1998	Arts Council England's Chief Executive Officer (CEO) confirmed progress with design development assuming £19m from Arts Council England.			
May 1999	Submission of request for further interim funding to proceed to RIBA stage D.	£33.6m		
April to May 1999	Application withdrawn after Arts Council England expressed worries about timetable for ERDF funding. Further stage 2 award outside the £19m limit. Stage 3 application due in April 2000.		£0.94m	£3.37m
November 1999 to July 2000	Arts Council England review concluded that April deadline would be missed. November 2000 set as new target and further interim award made.		£1.03m	£4.40m
December 2000 to	Arts Council England rejected stage 3 submission asking for quick re-	£47m		

<i>Date</i>	<i>Event</i>	<i>Estimated project cost</i>	<i>Arts Council England funding agreed</i>	<i>Cumulative Arts Council England funding</i>
January 2001	submission of re-scoped project assuming Arts Council England funding of £19m less £1.03m = £17.97m.			
April 2001	Resubmission of stage 3 application requesting the £17.97m from Arts Council England.	£51.1m		
May 2001	Independent assessment acknowledged progress but voiced significant concerns about insufficiency of £1.2m annual revenue funding, the improbability of attracting ¼m visitors pa, and the need for great advance in the management's capacity.			
June 2001	Arts Council England's Advisory Panel expressed real concerns about the robustness of the cost plan, the £26m gap in partnership (i.e. non-Arts Council England) funding, the inflexibility of the bespoke design, the inadequacy of £1.2m pa revenue funding and the management's capacity. Deferment was agreed but further interim award made.	£50.5m	£0.5m	£4.90m
July 2001	Arts Council England's Panel reconfirmed its misgivings, noting how Arts Council England was the sole funder making payments in the short term. It recommended the option to reject but also a request to CABE to			

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	help in a re-design to work within the balance of £17.5m from the £19m.			
July 2001	Arts Council England's Council confirmed funding conditional on a reduction of cost by £5.7m, collaboration to increase regional funding, acceptance of limit of Arts Council England funding and annual arts revenue of £0.6m pa. CAFE should assist in reducing the scheme.	£50.5m to reduce to £44.8m	£17.5m	£22.4m
August 2001	Conditions accepted subject to clarification of CAFE review.			
September 2001	CAFE's report submitted, concluding the capital and revenue funding reduction was achievable. CAFE also reckoned that value for money (vfm) of the building was on a par with other Arts Council England funded projects but that premium for artistic styling was not particularly good vfm.			
July 2002	Key Stage Review (KSR) 1 (delayed from March due date) revealed major concerns about the outstanding gap of £14.2m of partnership funding, the cash flow risk to Arts Council England as sole paying funder, and a £0.5m increase in project cost. Arts Council England's Council agreed to withhold payment until the partnership funding was	£45.2m		

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	secured and to make a stringent review in September.			
September and October 2002	Revisit of KSR1 and recent KSR2 confirmed the Panel's fears. Key deliverables were wanting. A financial risk of c£6.5m (£3.7m funding shortfall plus £2.8m cost overrun) remained. As sole paying funder, Arts Council England would have remitted £10m by March 2003. The 'value-engineered' savings of £1.4m were dubious. Panel recommended the option to withdraw forthwith.	£46.3m		
November 2002	Arts Council England's Council noted the future risks and agreed to discuss with other funders how far they would share them. If they were not, then Arts Council England would urge a joint decision to withdraw. It empowered Arts Council England's CEO to decide the outcome, urging great care and sensitivity.			
December 2002	Arts Council England informed other funders of its grave misgivings and intention to re-review the risks in January 2003 when a Guaranteed Maximum Price quote would be available. It also confirmed in strict confidence a £2m additional, 'last call' contribution if the other funders would find a 'first call' extra contribution to cover the c£6.5m financial			

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	risk.			
December 2002	Arts Council England informed The Public of possible withdrawal and of funders' reconsideration in January. It confirmed that £1m from the £19m would be payable to cover liabilities that could not be reduced as a result of the withdrawal.			
January 2003	Arts Council England's Council was informed that artistic programme was credible enough and that the architecture looked interesting. The outlook for partnership funding and the overrun guarantee looked promising. Arts Council England would share the revenue funding allocation with the Borough. An update would be made in March.			
February 2003	Arts Council England received an architectural appraisal, which expressed concerns about cost, cost certainty, the two-stage tendering, internal design, the approval process, fees and functionality. In essence, this and later December 2003 report expressed doubt about The Public's capacity to commit to a construction project.			
February 2003	A briefing of Arts Council England's CEO noted that the lack of cost			

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	detail defeated a risk analysis and cost certainty. It prohibited funders' approval of The Public's signing of a construction contract. The project was poor value for money. A shortfall of £1.9m in partnership funding remained and Arts Council England payments were still frontloaded by the non-confirmation of other grants. Designs were not available for Arts Council England's approval.			
March 2003	Arts Council England's Council was informed that Arts Council England and Advantage West Midlands (the Regional Development Agency) – AWM – would each set aside an extra £2m and the Borough would meet the balance of costs/shortfall at risk.			
April 2003	Shortfall now confirmed at c£7m, being mainly funding shortfalls of £1.9m plus £0.1m, cost escalation of £3m, fit-out of £1m, and irrecoverable VAT of £0.5m. Arts Council England confirmed cover at £2.3m on the basis of equal guarantees by the two other funders.	£40.8m		
May 2003	Arts Council England gave The Public permission to construct Phase 1. Contract signed on 7 May 2003 with start on 23 May. Completion of Phases 1 and 2 was due in January 2005.	£43.8m		

<i>Date</i>	<i>Event</i>	<i>Estimated project cost</i>	<i>Arts Council England funding agreed</i>	<i>Cumulative Arts Council England funding</i>
October to December 2003	Key Stage Review 3 undertaken. Expert assessment questioned the income generation from novel activities, the market attraction of interactive exhibits, the projected visitor numbers and the high dependence on sponsorship. This and the absence of a developed marketing plan raised doubts about sustainability. Cost uncertainty, poor control of the design process, the prospect of late delivery of an unfulfilled brief and the slow progress on tendering for Phase 2 led Arts Council England to carry forward KSR3 deliverables into KSR4 due on completion of that tendering. This would require cost and specification certainty.	£46.8m		
February to November 2004	Arts Council England received a number of expert assessments detailing the deterioration of all assumptions. In summary: <ul style="list-style-type: none"> • Project completion was 33 weeks behind schedule: slipped from January to August 2005 • Architect Alsop Ltd liquidated after delays in design work and restructuring • Reluctance by contractor to cost Phase 2 in view of its exposure on Phase 1 	£53.9m		

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	<ul style="list-style-type: none"> • Cost overrun was now in the range £8.5m to £10.5m • The £1.2m pa revenue funding was inadequate • Very little progress in raising £1.9m partnership funding. The Public had become aware of the funders' contingency arrangement for the £7m. <p>It was clear that Arts Council England would be pressed to confirm its £2.3m share of the £7m on condition that other funders did likewise. It had an exposure to find £1m to £1.66m over that sum as another third of extra capital funding. It faced a demand to add £1m pa to revenue funding.</p>			
November to December 2004	<p>Requests made to The Public to submit figures for options for immediate closure and suspension until cost certainty was available. These new projections showed:</p> <p>Project costs of £53.8m less agreed funding of £38.5m left a £15.3m gap, being a £8.3m increase on the £7m contingency funds. In addition, an increase of £1m for four years of revenue funding raised the total to £12.3m and the one-third shares of contingency from £2.3m to £4.1m.</p>			

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	The funders noted that termination would arise if any of them could not contribute its increased share, if the costs increased further, if The Public's new business plan contained unacceptable risks, or if the funders doubted The Public's management capacity.			
December 2004	Arts Council England's Council agreed the new £4.1m contingency on condition that the risks which would lead to termination (as set out above) had been covered.		£4.1m (£4.06m paid)	£26.5m
March 2005	Arts Council England informed The Public that further funding was unlikely unless it could give good assurances about management capacity, containing costs within £53.9m, and a viable business plan working to total public revenue funding of £10m for the three years from 2006/07, noting that the current version was unacceptable.			
March 2005	The Public received a highly critical report from its own consultant, which doubted the credibility of its business plan. It lacked cohesion, robust analysis and convincing assumptions. It questioned The Public's solvency. It reckoned the programme to be too challenging and the			

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	visitor numbers, sponsorship and initial lettings to be over-ambitious.			
March 2005	The main contractor terminated its contract on the grounds of uncertainty about funding, slow determination of design, and ability to meet the deadline. It would not seek unreasonable remedy if The Public used construction management to complete.			
March 2005	<p>Arts Council England's Council agreed to confirm extra revenue funding of £1m for two years and its share of the new contingency fund on condition that the other shares were confirmed, that The Public could convince that construction management could deliver the project within budget, that £1m of savings cost be made and that The Public's board could exercise its role in ensuring successful delivery.</p> <p>The Council noted the good prospect of these conditions being met and the need to gain a better understanding of the artistic case for the project through an inspection by two members.</p>		£2.33m	£28.8m
April 2005	Funders approved new procurement on condition that no new unfunded commitments were made. The contingency looked light.	£60.8m		

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April 2005	Arts Council England's Council received the inspection report, which saw the need to translate an artistic vision into practical reality and to secure this with a robust business plan underpinned by staff who could deliver it.			
May 2005	Practical completion of the building achieved.			
June 2005	AWM declared it would not confirm its £4.1m without assurances on cost, management competence and viable business plan. It would be carrying out its own assessment and not rely on Arts Council England's assessors. Sandwell Metropolitan Borough Council informed The Public of its need to meet the funders' conditions.			
January 2006	Cost overrun of £2m to £3m revealed. This breached AWM's conditions. Arts Council England and the Borough sought an options appraisal and attempted to prevent The Public's board from having to go into liquidation. AWM refused to release £1m to avoid that event.	£62.3m		
January 2006	Arts Council England's Council noted that its prime aim was to secure			

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	<p>an arts experience at The Public as close as possible to the original specification. It recognised the threat to its legal charge and was given a range of options for securing its prime aim. It empowered the Chair and CEO to take the decision about a release of funds in February.</p> <p>The Council also noted some relenting by AWM in its release of £1m and its conditional commitment to the £4.1m. The Borough confirmed a release of £1m without conditions.</p>			
March 2006	The conditions could not be met. The Public went into administration. Arts Council England and the Borough sought to complete the project under the control of the administrator.			
June 2006	Completion thwarted for several reasons, including problems with the contractors and poor financial management, making completing the building on budget more difficult to achieve.			
July 2006	New cost consultants' plans were reviewed. The administrators noted the project had not moved forward as quickly as hoped.			

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July 2006	Deed of variation to the development agreement submitted to Arts Council England. This transferred responsibility for construction to the Borough.			
July 2006	The Public started to develop a new business plan with expert help			
September 2006	The Borough declared an intention to do a scrutiny review of The Public.			
September 2006	Arts Council England's Council noted that a new charity, The Public Building Limited, was constituted to take over the running of the building, with its subsidiary The Public Gallery Limited responsible for the artistic elements. An exit from administration was predicted by the end of November 2006.			
September 2006	The Public Ltd's new business plan contained a skeleton plan for a launch in October 2007.			
September 2006	Arts Council England's Council agreed a new maximum allocation if this was essential to bring the building into use. The allocation was subject to normal authorisation, the meeting of the Arts Council's objectives and			

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	partnership funding secured from the Borough.			
November 2006	The Public Ltd's new business plan issued.			
January 2007	Third draft of the Project brief for completion works released.			
August 2007	Notice of move from administration to dissolution was signed by the joint administrators.			
September 2007	Arts Council England noted that consultants appointed by the stakeholders and retained by the Borough had been developing a business plan for the whole project. Building works had continued with an anticipated completion date of December 2007 for the Stage 3 works, and April 2008 for the catering and events space fit-out. The building was scheduled to open in summer 2008.			
October 2007	Consultant's report: The Public Direction and Structures received. An update on the building completion revealed 17 December 2007 as the agreed date for handover to the Borough with a view to opening around June 2008.			

<i>Date</i>	<i>Event</i>	<i>Estimated project cost</i>	<i>Arts Council England funding agreed</i>	<i>Cumulative Arts Council England funding</i>
June 2008	The Public opens to the public. This is a part opening. The interactive gallery is not available.			
September 2008	Arts Council England told by The Public Gallery Ltd that unless Arts Council England was able to provide an additional investment of £500,000 immediately then the board of the company would have no alternative but to put the company and its parent, The Public Ltd, into liquidation.			
October 2008	Arts Council England's Council declined to accept The Public Gallery Ltd's request for £500,000, noting the risk of the company's liquidation. It authorised officers to explore a recovery plan for the company on the basis that up to £4,000,000 might be allocated with the proviso that the plan was credible artistically, financially and operationally. It expected to see a report in December.			
November 2008	Next stage of The Public's development business plan released.			
December 2008	Arts Council England's Council agreed that it was not in a position to back a recovery plan by making significant extra investment in The			

<i>Date</i>	<i>Event</i>	<i>Estimated project cost</i>	<i>Arts Council England funding agreed</i>	<i>Cumulative Arts Council England funding</i>
	<p>Public Ltd and The Public Gallery Ltd, but sought a paper on which to make a definitive decision in January.</p> <p>If the Arts Council could not back a recovery plan then it would withdraw The Public Gallery Ltd's 2009 to 2011 revenue funding and leave its directors to wind up/down the company. The Council also expressed its wish that the Borough's operation of the building should have a significant artistic element. It could advise on this content and receive the Borough's application for funding of it.</p> <p>A group of Council Members was to visit before the January meeting. The Council also sought a good, publishable peer review to provide independent perspectives on the whole project. These were submitted.</p>			
January 2009	<p>Arts Council England noted that The Public Gallery Limited was only surviving because the Council was advancing the company's 2009/10 revenue grant. The Council was to be asked to make a further substantial investment of circa £3m to back a recovery plan to allow the company to survive. The Council put out a consultant brief to gather views.</p>			

<i>Date</i>	<i>Event</i>	<i>Estimated project cost</i>	<i>Arts Council England funding agreed</i>	<i>Cumulative Arts Council England funding</i>
January 2009	Arts Council England's Council decided not to fund the recovery plan submitted by The Public Ltd and The Public gallery Ltd, but to allocate about £200,000 to achieve the orderly wind down/solvent liquidation of The Public Gallery Ltd. It resolved further to work with the Borough to bring the building into operation so that the significant public investment led to benefit to the residents of Sandwell. A sum of £3m was allocated to allow the Borough to create a viable, integrated artistic and business plan for the whole building.		£3.0m	£31.8m
July 2009	Arts Council England's Council agreed £3m released to the Borough. The aim was to bring the building fully into operation, which would allow the people of West Bromwich to get full use of the cultural facility.			
August 2009	The interactive art gallery opens.			
August/September 2009	Sandwell Arts Trust and subsidiary of Sandwell Leisure Trust were appointed by the Borough to take over the operation of all functions of the building.			