

COUNCIL
21 JANUARY 2016

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

APPENDIX 4

NORTH HERTFORDSHIRE MUSEUM & HITCHIN TOWN HALL: ACQUISITION OF 14/15 BRAND STREET

REPORT OF THE STRATEGIC DIRECTOR OF CUSTOMER SERVICES & PROJECT EXECUTIVE

EXECUTIVE MEMBER: COUNCILLOR TONY HUNTER

1. SUMMARY

- 1.1 The purpose of this report is to seek approval from Council for the acquisition of 14 & 15 Brand Street following the appointment of a Receiver by Hitchin Town Hall Ltd's (HTH Ltd) funder, the Social Invest Business (SIB) acting for the Adventure Capital Fund (ACF). Such an acquisition would allow the building to operate in an integrated way for the local community although the facility could operate without the Brand Street premises with limited alterations.
- 1.2 The report outlines the current situation, the issues to be addressed and seeks delegated authority to implement such action as may be required to obtain title of the premises within the financial limits and circumstances described more fully in the report and in the corresponding Part 2 report.
- 1.3 The Proper Officer is satisfied that, in accordance with Section 15 (paras 15.5.1 and 15.5.2 of the Council's Constitution) the report is genuinely urgent and cannot be delayed until a later meeting because of the need to secure ownership of the properties and safeguard the Council's substantial investment.

2. RECOMMENDATIONS

- 2.1 That Council notes the report.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To enable the Council to complete the development of the North Hertfordshire Museum/Hitchin Town Hall project and operate the facility for the benefit of the local community.
- 3.2 To protect the Council's interests and obtain best return from the Council's existing investment and to secure projected income from the facility to offset operational and fixed costs.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The option to open the facility without assured occupancy of 14 and 15 Brand Street has been fully developed but is not recommended, as the preferred course of action at this stage would be to secure nos 14 and 15 because of the additional cost, time delay

and reduction of service reconfiguring the facility would entail. Nevertheless, this option remains available should it be required.

- 4.2 The option not to open the facility or to partially open it has been considered but was discounted as it would not meet the Council's stated policy objectives and because of the investment already made in the agreed project.

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 5.1 Consultation has been carried out with the Leader and the Executive Member for Community Engagement & Rural Affairs.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1 The decision making history of this project is detailed in a number of Council and Cabinet reports which are available on the website <http://www.north-herts.gov.uk/home/museums/north-hertfordshire-museum-and-hitchin-town-hall/hitchin-town-hall-museum-proposals>

- 7.2 In summary, the key stages in this project have been:

- November 2010 – Council instruct officers to take the scheme outlined by Hitchin Initiative (incorporating 14 Brand Street) forward and agrees to use Hitchin Town Hall as the North Hertfordshire Museum and Community Facility.
- October 2012 – Changes to the draft Development Agreement agreed by Council and Officer authorised to enter the necessary legal agreements. Additionally that a loan to Hitchin Town Hall Ltd be agreed.
- 15th October 2012 - First Development Agreement signed
- April 2013 – Council agrees in principle to inclusion of 15 Brand Street in to the facility and authorises a new Development Agreement based on this.
- August 2013 – Council agrees a number of revisions to the new draft Development Agreement noting the associated risks.
- 9th September 2013 - Second Development Agreement signed
- February 2014 – Hitchin Town Hall Ltd claim breach of Development Agreement which was denied by NHDC.
- July 2014 – NHDC serve notice breach of the Development Agreement to Hitchin Town Hall Ltd which was denied.
- October 2014 – Hitchin Town Hall Ltd issue formal notice that a 'material breach' of the Development Agreement has occurred and seek to terminate the Agreement. NHDC asserts Hitchin Town Hall Ltd did not have the capacity to do this.

- December 2014 – Overview & Scrutiny Committee note a report on the circumstances and resolved to consider a further report on this and the approach to project management within NHDC more generally. Overview & Scrutiny Committee also supported the completion of the project as originally envisaged.
- July 2015 – Council do not accept the proposals to vary or replace the Development Agreement submitted by Hitchin Town Hall Ltd and instruct Officers to terminate the Development Agreement in the event of non payment of the Hitchin Town Hall Ltd capital contribution. Council also agreed that it will operate the Town Hall directly and agreed the additional capital expenditure for the fit out of the Town Hall, which was originally Hitchin Town Hall Ltd's responsibility.
- July 2015 – Cabinet agrees a revenue budget to operate the Town Hall and the operational model to ensure community use and, linked to this;
- September 2015 – Council confirm the immediate capital expenditure to a maximum of £138,000 for the fit out of the Town Hall.

7.3 At the meeting in July 2015 of Full Council, it was noted that dialogue had been initiated with Hitchin Town Hall Ltd in an attempt to find an agreed resolution to the contractual dispute and ensure that the project was capable of providing the Museum and Community Facility to the local community envisaged at the outset. As of January 2016 this dialogue has not resulted in an acceptable solution being offered following the Council's rejection of an offer from Hitchin Town Hall Ltd on 16th July 2015. That meeting resolved:

- (1) *'That Council not agree to the proposals to vary or replace the Development Agreement submitted by Hitchin Town Hall Ltd.;*
- (2) *That officers be instructed to serve notice on Hitchin Town Hall Ltd terminating the Development Agreement in the event of non-payment of their capital contribution and, subject to this,*
- (3) *It be agreed that NHDC will operate the Town Hall directly in accordance with the general provisions of the Development Agreement, and that Cabinet be requested to approve the necessary revenue budget and reviews this operating model within three years of opening and, subject to this,*
- (4) *It be agreed that that capital expenditure to a maximum of £138,000 be earmarked for the fit out of the Town Hall.'*

7.4 In the intervening period a number of proposals have been put forward all with a similar basis of the Council paying all HTHL's creditors in full in return for the acquisition of 14 and 15 Brand Street. The approximate cost to NHDC has been stated as being approximately £494,000. Additionally all the proposals would require the Council to write off, in full, any sums owed to it by Hitchin Town Hall Ltd. There has been no disclosure of creditors details which would be required for a public body to contemplate such a proposal.

7.5 A plan of the premises identifying the footprint of 14/15 Brand Street appears as Annex 1. Although it would be feasible to operate the facility without use of this area, this would entail some restrictions of use, would require additional capital expenditure and would limit revenue income.

8. NORTH HERTFORDSHIRE MUSEUM & HITCHIN TOWN HALL: ACQUISITION OF 14/15 BRAND STREET

Hitchin Town Hall Ltd

- 8.1 Since October 2014, when Hitchin Town Hall Ltd submitted a claim that NHDC had committed a material breach under the Development Agreement, it became increasingly apparent from both its public pronouncements and feedback from its funders that the company would not be in a position to meet its outstanding obligations under the Development Agreement. These are substantial and Council has previously noted that such obligations to it include the payment of £490,000 as a contribution towards the capital cost of the project, £138,000 for furniture and other equipment in addition to the 'working capital' necessary to operate the Town Hall (i.e. the revenue costs which will now fall to the Council although such costs should be offset by forecast income). Additionally, Hitchin Town Hall Ltd have significant secured borrowings from the SIB and further substantial unsecured debts.
- 8.2 A major unsecured Hitchin Town Hall Ltd creditor has approached NHDC requesting the Council repay Hitchin Town Hall Ltd's debt. It should be noted however that for the Council to repay third party debts it would have to satisfy itself that exceptional circumstances existed which meant such a deal met best value considerations and where to do so would be to the overall economic advantage of the Council and the Council Tax payers of the District. Subject to the detail provided in the Part 2 report, officers do not consider such advantage could be demonstrated and do not therefore propose to recommend it.
- 8.3 As noted in para 7.3, ongoing dialogue with Hitchin Town Hall Ltd has not resulted in any new substantive proposals which were likely to be acceptable beyond that put forward by Hitchin Town Hall Ltd and declined by Council in July 2015.

Acquisition of 14/15 Brand Street

- 8.4 Council was advised at its meeting on 17 July 2015 that it was unlikely to receive a capital contribution from Hitchin Town Hall Ltd as required in the Development Agreement. Hitchin Town Hall Ltd's funders, the Social Investment Business, had confirmed:

'In December 2014 HTHL was formally notified that it was in default of the Investment Agreement as a consequence of several Events of Default under that agreement, which were not capable of remedy. The investment offer was therefore withdrawn and Formal Demand for repayment of the funds previously drawn issued.'

Subsequently the directors of HTHL requested that recovery action be deferred to enable them to formulate a proposal for consideration by North Hertfordshire District Council. The Fund agreed on the understanding that the proposal would be supported by a comprehensive business plan, for consideration initially by NHDC and subsequently by the Fund if NHDC decided it was willing to support the proposal.'

As of July 2015 no comprehensive business plan had been submitted to either SIB or NHDC and that remains the position to date.

- 8.5 Following extensive dialogue with SIB it is evident that SIB consider that a deadlock has been reached and will be enforcing their previous default notice through the appointment of a Receiver under the Land and Property Act to recover their investment from Hitchin Town Hall Ltd, which was secured by way of a charge on 14

and 15 Brand Street. Hitchin Town Hall Ltd are also in default of a loan of approximately £17k (plus accrued interest) from NHDC and an outstanding capital contribution of £490k as part of the Development Agreement both of which are unsecured. It has been made clear that Hitchin Town Hall Ltd is not in a position to pay either NHDC or any other unsecured creditors.

- 8.6 In general terms the Receiver acting on behalf of Hitchin Town Hall Ltd's secured lender the SIB has:

Powers

- To manage, grant leases etc or sell the property.
- Use income/proceeds of sale to clear SIB's secured debt
- The appointment of the receiver displaces Hitchin Town Hall Ltd Directors' powers of management over the property.
- No power to make a distribution to unsecured creditors.

Duties

- To act in good faith.
 - To obtain a reasonable price for the property.
 - To actively work to realise the value of the property.
 - To act with reasonable competence e.g as property's value is in doubt to take specialist surveyors advice.
 - To objectively sell the property to the best advantage of SIB.
 - Not to defer a sale in the hope the value of the property goes up.
 - To follow a proper marketing process of the property.
- 8.7 Following the appointment of a Receiver, it is proposed that NHDC seek to secure ownership of 14 and 15 Brand Street to allow it to; complete the development for the benefit of the community, to obtain best return from its existing investment and to offset operational and fixed costs from projected income.
- 8.8 The Part 2 report sets out the proposed terms of the acquisition of 14/15 Brand Street and is subject to the Council receiving a formal valuation and being satisfied it would secure best consideration in completing any purchase.

Conclusion

- 8.9 NHDC has to date committed £5.175m expenditure, including at least £0.550m which was/is due from Hitchin Town Hall Ltd on this project. Additionally a loan of approximately £17k (plus accrued interest) to Hitchin Town Hall Ltd remains outstanding. In order to obtain best return from this investment it will be necessary to secure ownership of 14/15 Brand Street. Part 2 of this report outlines the issues connected with this and seeks authority for the capital budget required.

Impact on Programme

- 8.10 In order to limit NHDC's financial exposure, works to complete elements of the fit out have been delayed until reasonable assurance could be secured that the footprint of 14/15 Brand Street would be included in the premises. This has meant an unavoidable delay in opening the facility which is expected to be completed and open in March/April but this is dependant on the approach adopted by the Receiver and practical matters associated with the mobilisation of the Town Hall including staff recruitment, training

and marketing. If 14/15 Brand Street is not secured, the timetable will need to be revisited to take account of the works needed to reconfigure the building to operate without that space.

9. LEGAL IMPLICATIONS

- 9.1 The General Power of Competence contained within the Localism Act 2011 came into force on 18 February 2012 and effectively replaced the previous wellbeing powers. The statutory General Power of Competence gives a local authority the power to do “anything that individuals generally may do”. Section 1(4) of the same Act confirms that in using such power the local authority may do so for the benefit of the authority, its area or persons resident in its area.
- 9.2 The authority has power under section 144 of the Local Government Act 1972 to provide, or encourage any other person or body to provide, facilities to encourage visitors, for conferences, trade fairs and exhibitions or improve, or encourage any other person or body to do so for any existing facilities. It has powers under section 19 of the Local Government (Miscellaneous Provisions) Act 1976 to provide recreational facilities, buildings, equipment, supplies or other assistance. To the extent these do not cover the current proposals then the General Power of Competence referred to in 9.1, can be relied upon.
- 9.3 The Council is currently in an on-going contract dispute with Hitchin Town Hall Ltd in respect of this project and therefore at this time it is correct and appropriate for detailed discussions on the issues in dispute to be kept confidential. The public interest in the project is acknowledged and therefore the need for confidentiality will be kept under on-going review.
- 9.4 The powers and duties of a Law of Property Act Receiver are set out within the report. The Council has sought, and will continue to seek, specialist insolvency advice as required in order to protect the Council’s position both legally and financially.
- 9.5 Specific legal implications for the project are contained within the previous reports to Full Council listed in the background papers at paragraph 16.

10. FINANCIAL IMPLICATIONS

- 10.1 Following the developments described in the body of this report, the Council’s total capital expenditure on this project now stands at £5.175m, of which £0.874m is funded by a contribution from the Heritage Lottery Fund. A chronology of the reported movements in project expenditure and funding is attached as Annex 2.
- 10.2 Any further revisions required to the capital budget as costs are finalised will be highlighted to Cabinet within the quarterly capital monitoring reporting.
- 10.3 Part 2 of this report sets out the expenditure and authorisation necessary to acquire 14/15 Brand Street in addition to the associated risks

11. RISK IMPLICATIONS

- 11.1 The risk implications arising from this report are largely:
- Financial – further delay in opening or not being able to open the facility will prevent achievement of the forecast income, failure to obtain best return from the existing capital investment and would mean existing Museum staff may not be fully utilised.

- Operational – uncertainty concerning opening prevents active marketing and sales. Potential customers may secure alternative venues and NHDC will retain the liabilities associated with a building of this sort.

11.2 The specific risk implications connected for the acquisition of 14/15 Brand Street are set out in Part 2.

11.3 The North Hertfordshire Museum and Hitchin Town Hall Project is a Cabinet Top Risk. This is monitored through the Finance, Audit and Risk Committee. In addition there is a more detailed project risk log that is monitored and discussed by the Project Board.

12. EQUALITIES IMPLICATIONS

12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 12.2 that public bodies must meet, underpinned by more specific duties which are designed to help meet them.

12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

12.3 The proposals made in this report do not in themselves alter the overall project design as previously reported, but seek to ensure that in ensuring momentum to the existing contracts etc, a facility to meet the needs of all communities in North Herts can be completed and brought into community use. The report also suggests consideration of management arrangements for the facility which will be subject to the Public Sector Equality Duty. With or without the footprint of 14/15 Brand Street the new facility will enhance the experience for all visitors, including those with disabilities.

13. SOCIAL VALUE IMPLICATIONS

13.1 As the recommendations made in this report do constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 needs to be applied, although equalities implications and opportunities are identified in the relevant section at paragraphs

13.1 As the recommendations made in this report do not yet constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at paragraphs 12. Any individual award of a public service contract which may arise following subsequent review of the Council's operation of the hall over the next two/three years will be evaluated in terms of its social value through the Council's agreed procurement processes.

14. HUMAN RESOURCE IMPLICATIONS

14.1 The Human Resources implications arising from this report are associated with the significant additional workload on the Project Team Members and the need to recruit, train and manage a staff team to operate the Town Hall. This is currently mitigated by the reallocation of resources from less time sensitive projects but this situation cannot be sustained over a long period.

- 14.2 The demands of this project have required the temporary transfer of Senior Managers and Project Support staff to the Hitchin Town Hall project to develop alternative options and to minimise risk. The additional time having to be committed to this project including that of Chief Officers has created pressures and delays on other important work programmes elsewhere.
- 14.3 The approach agreed by Council in July 2015 provided additional management resources. These resources once fully in place will help manage the additional workload described above.
- 14.4 The Museum staff have already been through a restructure and formal consultation process that included the possibility of the staff working at the Town Hall as well as the Museum. The current uncertainty will be of concern and communications with staff to update them on the latest position will follow.
- 14.5 Recruitment of a Catering Manager, who will play a vital role in the operation of the Town Hall is currently underway. In order to fully open the facility, recruitment for other operational staff will commence shortly.

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16. BACKGROUND PAPERS

- 16.1 Report to Cabinet 23rd August 2005 on the Findings of the Review of the North Herts Museums Services.
- 16.2 Report to Cabinet 27th January 2009 on the Future of Museums Services.
- 16.3 Cragg Management Services report on the possible relocation of North Hertfordshire Museums to Hitchin Town Hall - Annex 2, Cabinet 19th May 2009
- 16.4 Report to Council on 3rd December 2009: Hitchin Town Hall/Museum Feasibility Study Outcomes and Actions Arising
- 16.5 Report to Council on 11th February 2010: Hitchin Town Hall/Museum Community Group Proposal
- 16.6 Report to Cabinet on 28th September 2010: Hitchin Town Hall/ Museum Proposals
- 16.7 Report to Council on 10th November 2010: Hitchin Town Hall/ Museum Proposals
- 16.8 Verbal update to Council on 7th April 2011: North Hertfordshire Museum & Community Facility at Hitchin Town Hall
- 16.9 Report to Cabinet on 26th July 2011: North Hertfordshire Museum & Community Facility: Project Update
- 16.10 Report to Council on 10th May 2012: North Hertfordshire Museum & Community Facility
- 16.11 Report to Council: 15th October 2012 North Hertfordshire Museum & Community Facility
- 16.12 Report to Council 23rd April 2013 North Hertfordshire Museum & Community Facility: Proposal for the Inclusion of 15 Brand Street
- 16.13 Report to Council 8th August 21013 North Hertfordshire Museum & Community Facility: Proposal for the Inclusion of 15 Brand Street

- 16.14 Report to Overview & Scrutiny Committee 18th December 2014 Development Agreement: North Hertfordshire District Council & Hitchin Town Hall Ltd
- 16.15 Report to Cabinet 27th January 2015: North Hertfordshire District Council & Hitchin Town Hall Ltd: Project Update
- 16.16 Report to Council 12th February 2015: North Hertfordshire District Council & Hitchin Town Hall Ltd: Project Update
- 16.17 Report to Council 10th March 2015: North Hertfordshire District Council & Hitchin Town Hall Ltd: Project Update
- 16.18 Report to Council 16th July 2015: North Hertfordshire Museum & Community Facility at Hitchin Town Hall
- 16.19 Report to Cabinet 29th July 2015: North Hertfordshire Museum & Community Facility at Hitchin Town Hall
- 16.20 Report to Council 3rd September 2015: North Hertfordshire Museum & Community Facility at Hitchin Town Hall