

COUNCIL

10th MARCH 2015

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

3

TITLE OF REPORT: NORTH HERTFORDSHIRE MUSEUM & COMMUNITY FACILITY AT HITCHIN TOWN HALL: PROJECT UPDATE

REPORT OF THE STRATEGIC DIRECTOR OF CUSTOMER SERVICES & PROJECT EXECUTIVE

PORTFOLIO HOLDER: COUNCILLOR TONY HUNTER

1. SUMMARY

- 1.1 The North Hertfordshire Museum and Hitchin Town Hall Project was designed to provide a Museum facility which meets customer expectations, reduces operating costs and, in doing so, provide a sustainable operating model for the Hitchin Town Hall Gymnasium & Workman's Hall Trust. The project also provides for the refurbishment of Hitchin Town Hall to enhance and provide a long term future for this important heritage asset.
- 1.2 This report, an updated version of that considered by Cabinet in January 2015, details a number of areas where additional unavoidable cost has been or will be incurred in order to meet the Council's contractual obligations and seeks approval for the necessary adjustment to the capital budgets in 2014/15 and 2015/16.
- 1.3 The report also advises Council that failure to make adequate budgetary provision to meet the Council's contractual obligations would result in significant additional cost and delay and may require the Council's Chief Financial Officer to issue a S.114 report under the Local Government Finance Act 1988 should she consider that as a result of the failure the Council:
 - (a) has made or is about to make a decision which involves or would involve the authority incurring expenditure which is unlawful,
 - (b) has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the authority, or
 - (c) is about to enter an item of account the entry of which is unlawful,

Under Section 115 of the same Act the authority shall then consider the report at a specially arranged meeting where it shall decide whether it agrees or disagrees with the views contained in the report and what action (if any) it proposes to take in consequence of it.

2. RECOMMENDATIONS

- 2.1 Agree increase of the capital budget up to a maximum of £263,392 [£223,392 project budget (paragraph 8.4) plus £30,000 for treatment of moisture in basement (paragraph 8.6)].
- 2.2 To agree that in the event of HTH Ltd not being in a position to make its contractual financial contribution of £490,000 at the likely completion of the construction contract in May 2015 (paragraph 8.3) this additional proportion of the capital cost of the project will need to be funded from Council resources.
- 2.3 To note that any implications on 2014/15 and 2015/16 capital budgets as a result of profiling project spend will be reported in the third quarter capital monitoring report.
- 2.4 To note that further reports will be submitted in due course identifying any additional budgets necessary to complete the project.

3. REASONS FOR RECOMMENDATIONS

- 3.1 The recommendations contained in paragraph 2 are made in order to comply with the Council's contractual commitments to complete the development to a specified standard and timescale.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 No realistic alternative option could meet North Hertfordshire District Council's (NHDC) contractual obligations to the construction contractor or the requirements agreed between NHDC and Hitchin Town Hall Ltd (HTH Ltd) set out in the Development Agreement.
- 4.2 Whilst considerable scrutiny of the additional costs has been undertaken by NHDC's appointed Quantity Surveyor and Officers, if Council were minded not to support the increased expenditure - additional costs and risk would be incurred as a result of the Council's contractual commitments to other parties and, in addition, completion of the building works and facility opening could not be assured.

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 5.1 Consultation has been carried out with the Leader, Deputy Leader and Finance Portfolio Holder and Portfolio Holder 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 background to this project has been set out in a number of reports to Council most recently on 8th August 2013. In addition, regular updates reports have been provided to Area Committees/via Members Information Services. The full decision making history is detailed in paragraph 16.

7.2 In view of the numerous public statements made by HTH Ltd concerning areas of dispute in the Development Agreement a special meeting of Overview & Scrutiny Committee, to which all Members of the Council were invited, was held on 18th December 2014. At that meeting Overview & Scrutiny Committee resolved:

- (1) That the contents of the report entitled "Development Agreement: North Hertfordshire District Council & Hitchin Town Hall Ltd" be noted;
- (2) That, once matters regarding the Development Agreement between North Hertfordshire District Council and Hitchin Town Hall Limited had progressed, a further report be prepared for consideration by the Overview and Scrutiny Committee;
- (3) The Overview and Scrutiny Committee supported completion of the Hitchin Town Hall as a District Museum and Community Facility;
- (4) That, at a later date, the Overview and Scrutiny Committee to consider the approach of NHDC to larger projects.

7.3 On 27th January 2015 Cabinet considered an earlier version of this report and this was circulated to all Members of the Council via Members Information service on 30th January 2015 as part of the Notice of a delegated decision under his urgency powers by the Chief Executive. Details of these decisions and the subsequent reference to Council on 12th February 2015 were included in the regular update report to Area Committees in their March cycle and appear below:

Cabinet Meeting, Tuesday 27 January 2015

At its meeting of 27 January 2015 cabinet considered a report on the project and, at minute 108:

"RECOMMENDED TO COUNCIL: *That an increase of the Capital Programme up to a maximum of £223,392 for additional costs in respect of the North Hertfordshire Museum and Community Facility project (as set out in Paragraph 8.4 of the report) be approved.*

RESOLVED:

- (1) *That the Chief Executive's intention to take action under the Special Urgency procedure tomorrow to authorise capital expenditure of £68,539 to reflect the additional capital costs resulting from the delays in the building programme in securing the discharge of conditions for Listed Building Consent (as outlined in Paragraph 8.4 of the report) be noted;*
- (2) *That it be noted that, following consideration of the Capital Programme by Full Council on 12 February 2015, any implications on 2015/16 capital budgets as a result of profiling project spend will be reported in the third quarter capital monitoring report; and*
- (3) *That it be noted that a further report will be submitted in due course identifying any additional contingency budget necessary to complete the project."*

**Record of decision made under delegated authority,
Thursday 29 January 2015**

Following the meeting of Cabinet using his urgency powers, the Chief Executive authorised the following:

“To authorise capital expenditure [of £68,539] under the Special Urgency procedure to reflect additional capital costs resulting from the delays in the North Hertfordshire Museum/Hitchin Town Hall project in securing discharge of conditions for Listed Building Consent.”

“To comply with the Council's contractual commitments to complete the development to a specified standard and timescale ...”

Council Meeting, Thursday 12 February 2015

A report presenting Cabinet's recommendation to Council was included on the agenda for this meeting. However prior to this being considered the Chairman withdrew the item from consideration at the meeting.

**8. NORTH HERTFORDSHIRE MUSEUM & COMMUNITY FACILITY AT HITCHIN
TOWN HALL: PROJECT UPDATE**

- 8.1 The financial and other risks associated with this project have been documented in a number of the previous reports. Most pertinent to consider at this stage is the size and complexity of the project, the characteristics of the site and the basis on which the Council entered the Development Agreement.
- 8.2 The likely cost increase and delay in completing the project was first notified in reports to Area Committees and via Members Information Services in September 2014, December 2014 and January 2015. The initial assessment of risks, outlined in the report to Council on 10th May 2012 (para 8.12) identified a number of areas where additional cost and delay could be problematic. The additional costs can be categorised in three broad categories, namely:
- Those associated with the delay in securing the discharge of conditions for Listed Building consent etc.
 - Additional items which, in view of conditions of site, require additional works not previously identified.
 - Additional costs incurred or likely to be incurred as a result of the scale and complexity of the project including building cost inflation, securing necessary approvals etc.
- 8.3 A financial summary of each category illustrating the range of likely costs reported to Cabinet on 27th January 2015 appears below:

Item	Assessment of Potential Cost £	Agreed Position at 20.01.15 £	Items to be agreed £
Delays in obtaining Listed Building Consent etc	103,573.50	86,439.00	17,134.50
Conditions on Site	168,434.50	87,350.00	81,084.50
Additional to Scope of Contract	70,323.00	40,323.00	30,000.00
Total	342,331.00	214,112.00	128,219.00

[Source: Appleyard & Trew Quantity Surveyor's Report (15th January 2015)]

Project Budget

- 8.4 The Chief Executive, under Special Urgency Provisions, authorised the expenditure of £68,539 which covers the 8 week delay on the construction in accordance with para 5.6.23 of Section 5 Part A of the Constitution and 10.5.7 of Section 19 Part B (Financial Regulations). This is part of the £86,439 as shown in the above table which also includes £17,900 for the work undertaken as part of Listed Building Consent. The expenditure is required to maintain progress on site and reduce further delays to the project.

At its meeting on 27th January 2015 Cabinet recommend the adjustment in the capital programme for 2014/15 and the draft capital budget for 2015/16 up to a maximum of £223,392 to Council – this sum being the difference between total project variance (para 8.5) and the sum detailed in recommendation 2.1 i.e £291,931 less £68,539.

- 8.5 The table below provides an overview of project expenditure, project budget and the effect of the additional costs detailed in 8.3.

Project Expenditure	£
Original Contract sum	3,113,618
Construction potential cost	342,331
Total construction cost	3,455,949
Other project costs	
Consultancy costs (includes £28,584 of additional costs due to increase build cost)	405,482
Museum Fit out estimate	900,000
Pre Project cost	245,000
Total Project cost	5,006,431

Project Capital Budget	£
NHDC contribution	3,320,896
Strategic Priority Fund	30,000
HLF funding	873,604
HTH Ltds grant	490,000
Total Budget	4,714,500
Less Total Project cost	5,006,431
Total Project Variance	291,931

- 8.6 In addition to those items costed in paragraph 8.3 above, Cabinet noted a number of additional items which may have required further treatment either during the course of the current construction period or prior to opening. These have now been resolved within existing budgets other than the additional investigation/remedial action to remove moisture from the basement for which the Council's Architect recommends an additional budget of £30,000 and this is reflected in recommendation 2.1. This will increase the total Project expenditure to £5,036,431.
- 8.7 Whilst attempts to resolve the differences between the parties to the Development Agreement continue, it is probable that HTH Ltd will not be in a position to make its contractual financial contribution of £490,000 at the likely completion of the construction contract in May 2015. As the Council is responsible for the payments for the construction contract it is recommended that it be agreed that additional funding of £490,000 may now need to be met from Council resources. As HTH Ltd have stated they have insufficient financial resources it is unlikely any legal action for recovery of this sum would be successful and this reflected in recommendation 2.2. In addition, HTH Ltd have an outstanding loan from NHDC which, with interest, currently stands at £17,553 and repayment of this sum is equally at risk.
- 8.8 Finally, Council is also asked to note that, as is normal in contracts of this sort, settlement of final payments and other potential claims between the parties and their appointed contractors will continue for some time after the completion of physical works. These matters will be reported in due course (recommendation 2.4).

9. LEGAL IMPLICATIONS

- 9.1 Cabinet's terms of reference include at 5.6.23 "To receive reports on contract overspends in accordance with limits set out in the Financial Regulations and agree the action to be taken" and at 5.6.34, by recommendation to Full Council "The annual budget, including the capital and revenue budgets".
- 9.2 Specific legal implications for the project are contained within the previous reports to Full Council listed in the background papers at paragraph 16. As stated at paragraph 3.1 the Council has contractual obligations in relation to this project and would be at risk of a breach of contract claim if it failed to make payments in accordance with the terms of the contracts.

10. FINANCIAL IMPLICATIONS

- 10.1 These are set out in the body of the report.
- 10.2 Council is advised that failure to make adequate budgetary provision to meet the Council's contractual obligations would result in significant additional cost and delay and the Council's Chief Financial Officer may be obliged to issue a S.114 report under the Local Government Finance Act 1988 should she consider that as a result of the failure the Council:
- (a) Has made or is about to make a decision which involves or would involve the authority incurring expenditure which is unlawful
 - (b) Has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the authority, or
 - (c) Is about to enter an item of account the entry of which is unlawful,
- 10.3 Under Section 115 of the same Act the authority must then consider the report at a specially arranged meeting where it shall decide whether it agrees or disagrees with the views contained in the report and what action (if any) it proposes to take in consequence of it.

11. RISK IMPLICATIONS

- 11.1 The risk implications, fully detailed in the report to Council on 8th August 2013, identify a number of areas albeit with an acknowledgement that the range of risks associated with a complex project of this kind can not be comprehensively forecast. The range of risk value is from £758k - £2.5m with an assessment of risk at £629k.

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

13. SOCIAL VALUE IMPLICATIONS

- 13.1 As the recommendations made in this report do not constitute 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.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 There are no direct Human Resources implications arising from this report other than those associated with the significant additional workload on the Project Team Members. This is currently mitigated by the reallocation of resources from less time sensitive projects but this situation cannot be sustained over a long period..

15. CONTACT OFFICERS

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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