

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

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 In December 2014 Overview & Scrutiny Committee received a report which provided Members with an overview of the Development Agreement between North Hertfordshire District Council (NHDC) and Hitchin Town Hall Ltd (HTH Ltd), the history of the project, the current status of the Development Agreement and steps being taken to address the issues and arrangements for decision making by Council. The minutes of that meeting are attached as Appendix 1 to this report.
- 1.3 At its meeting on the 10 March 2015 Council considered a report which provided a further project update which, amongst other things, alerted Members to the probability that Hitchin Town Hall Ltd (HTH Ltd) would probably not be in a position to make its contractual financial contribution of £490,000 at the likely completion of the construction contract. As a result, Council agreed to make its contractual financial contribution to the construction contractors should payment not be made by Hitchin Town Hall Ltd as not to do so could result in a significant additional cost and delay which may have required the Council's Finance Officer to issue a S.114 report under the Local Government Finance Act 1998.
- 1.4 This report provides an overview of the current project status and in particular the outcome of the mediated meeting with Hitchin Town Hall Ltd at which a further proposal to amend the Development Agreement (DA) was received, the financial status of the project and seeks direction on how to proceed. Members are asked to note that confirmation of financial status of the project and, as a consequence, the options available going forward are not available at the time of writing this report. These will be circulated as 'to follow' items or reported verbally as appropriate.

**2. RECOMMENDATIONS**

- 2.1 Council is asked to note the proposals from Hitchin Town Hall Ltd and your Officer's comments and consider these alongside the financial status which will be circulated as a supplementary report when determining a way forward.

### **3. REASONS FOR RECOMMENDATIONS**

- 3.1 To provide Council with the opportunity to consider the proposal submitted by Hitchin Town Hall Ltd and its contractual, financial and service obligations.

### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 This report contains detail of the proposal submitted by Hitchin Town Hall Ltd and the available alternative options will not be known until further financial information is available. As a result, a supplementary report providing this information will be circulated in due course and this will detail the alternative options considered.

### **5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS**

- 5.1 Consultation has been carried out with the Leader and the Portfolio Holder for Community Engagement & Rural Affairs and Project Board.

### **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 NHDC originally entered in to a Development Agreement with Hitchin Town Hall Ltd on 12 October 2012. Following this and at the request of Hitchin Town Hall Ltd, Council subsequently entered in to a second Development Agreement which incorporated 15 Brand Street on 9 September 2013.

- 7.2 At its meeting on 18 December 2014 Overview & Scrutiny Committee resolved at minute no 71:

*"(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 An extract from the minutes of the meeting is attached as Appendix 1.

- 7.4 Since that point work to complete the refurbishment of the Town Hall and construction of the Museum has progressed and this has been subject of a number of reports to Council the most of recent of which detailing a request for additional capital expenditure was submitted on 10 March 2015. At that meeting Council resolved minute no 78:

*"(1) That the Capital Budget be increased by a maximum of £253,392 [£223,392 project budget (paragraph 8.4) plus £30,000 for treatment of moisture in basement (paragraph 8.6)];*

*(2) That, in the event of Hitchin Town Hall Limited 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;*

*(3) That any implications on 2014/15 and 2015/16 capital budgets as a result of profiling project spend be reported in the third quarter capital monitoring report; and*

*(4) That further reports be submitted in due course identifying any additional budgets necessary to complete the project."*

7.5 In an attempt to resolve matters of dispute with Hitchin Town Hall Ltd, NHDC engaged an independent chairman from the Institute of Chartered Arbitrators to chair a mediated meeting between Hitchin Town Hall Ltd and NHDC on 13 May 2015. At that meeting Hitchin Town Hall Ltd submitted a proposal to facilitate its continued involvement in the project. As the meeting was held under confidential conditions this proposal together with an analysis of its implications appears in the corresponding Part 2 report.

7.6 In addition, discussions with Hitchin Town Hall Ltd's funders, the Social Investment Business (SIB), have taken place at their request to determine whether the proposal was acceptable to SIB as without its agreement it seemed unlikely that Hitchin Town Hall Ltd would have access to the necessary finances to meet its existing obligations. At the time of writing confirmation in this respect has not yet been received and information on this, together with the status of Hitchin Town Hall Ltd's contractual financial contribution of £490,000 will be incorporated in a supplementary report or will be updated verbally at your meeting.

7.7 This project has been identified as a key project in the Council's Priorities for the District. It supports the Priority of "Working with our Communities".

## **8. NORTH HERTFORDSHIRE MUSEUM & COMMUNITY FACILITY AT HITCHIN TOWN HALL**

### **Hitchin Town Hall Ltd Proposals**

8.1 A copy of the proposal to vary the Development Agreement from Hitchin Town Hall Ltd submitted at the mediated meeting on 13 May 2015 together with a commentary on the implications appears in the corresponding Part 2 report.

8.2 In general terms the proposal would require significant additional expenditure by NHDC to be committed, requires NHDC to act as a guarantor to repay Hitchin Town Hall Ltd's loans (if granted) in the event of non payment or default and changes in the governance and operational arrangements previously agreed. The proposal also seeks to transfer more risk to the Council, with restriction on income generating opportunities.

8.3 As noted in 7.6, the proposal is dependent on agreement from SIB and it is expected that an update on this will be available at or before your meeting. Once there is more clarity on the proposed way forward it will also be necessary to report to the Cabinet Charities Sub-Committee to confirm its agreement.

## **Project & Finance Update**

- 8.4 Work on site is progressing and the certificate of Practical Completion for the main construction contract was received on 26 June 2015. The development of the Museum Exhibition is progressing on target and, subject to matters considered in this report the project is on track to be completed by October 2015.

## **Financial Status**

- 8.5 Under the terms of the Development Agreement, Hitchin Town Hall Ltd are now obliged to pay the sum of £490,000 to the Council's construction contractor following the issue of the Certificate of Practical Completion. Notice of this has been served to Hitchin Town Hall Ltd and an update on the status of the payment will be provided at Council. If payment has not been made by the due date Council, at its meeting 10 March 2015 resolved that this payment would need to be paid from Council resources in order to meet its contractual commitment to the construction contractor.
- 8.6 Hitchin Town Hall Ltd have confirmed that it does not currently have the ability to pay this sum or the loan of c.£17,000 provided by NHDC, which with accrued interest of £1,300 to 30 June now stands at £18,300, unless SIB agrees to its proposals.
- 8.7 Additional expenditure for fit out/operations etc is likely to be required if Hitchin Town Hall Ltd's proposal is not agreed and a supplementary report will be prepared and circulated to Members as soon as SIB's position is known.

## **9. LEGAL IMPLICATIONS**

- 9.1 Cabinet has responsibility for agreeing policies and strategies other than those reserved to Council. Strategic decisions relating to Museums and Halls are not reserved to Council but in this case because of the potential capital expenditure involved, and in accordance with previous decisions, this matter continues to be presented to Council.
- 9.2 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.
- 9.3 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 Specific legal implications for the project are contained within the previous reports to Full Council listed in the background papers at paragraph 16. 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 contract.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 These are set out in the body of the report.
- 10.2 It was reported to Council on 10 March 2015 that the total cost of the project was estimated to be to £5,036,431. The project expenditure would be funded by the Heritage Lottery Fund Grant of £873,604 the Community Builders Fund (referred to in this report as the SIB) grant of £490,000 to be provided by Hitchin Town Hall Limited, and the NHDC contribution of £3,627,827.
- 10.3 At the meeting on 10 March 2015, Council resolved to fund the contractual financial contribution of £490,000 to the project in the event Hitchin Town Hall Ltd were not in a position to do so, as detailed in paragraph 7.4 and 8.5 of this report. This would increase the total NHDC funding contribution to the project to £4,162,827
- 10.4 In the event that Hitchin Town Hall Ltd are not in a position to meet their financial obligations, NHDC may also incur the costs relating to the fit-out of the Hitchin Town Hall meeting rooms and café. These and other potential costs will be included in the supporting report.

## **11. RISK IMPLICATIONS**

- 11.1 The risk implications, fully detailed in the report to Council on 8 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.
- 11.2 In addition to 11.1, there is a Cabinet Top Risk “North Hertfordshire Museum & Hitchin Town Hall project” that has been monitored by the Finance, Audit and Risk Committee for a number of years. The description of this risk includes:
- Loss of or unavailability of or capacity of key personnel at Hitchin Town Hall Ltd and potential failure to mobilise resources to operate the building
  - Lack of fund raising and a ramp up plan from Hitchin Town Hall Ltd
  - Failure to adhere to the Development Agreement
- 11.3 There are identified financial risks in 2015/16 relating to the delivery of this project. These were included as appendix 8 to the Budget report to Council in February 2015. <http://web.north-herts.gov.uk/aksnherts/images/att9095.xlsx>

## **12. EQUALITIES IMPLICATIONS**

- 12.1 The Equality Act 2010 came into force on the 1 October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5 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 continuing 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 which will be subject to an Individual Equality Analysis to meet the requirements of the Public Sector Equality Duty.

### **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 12.3 above. The additional Social Value the project's contractors have brought to the area will be captured as the development completes.

### **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. APPENDICES**

- 15.1 Appendix 1 – Extract from Minutes of meeting of Overview and Scrutiny Committee: 18 December 2014.

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## **17. BACKGROUND PAPERS**

- 17.1 Report to Cabinet 23 August 2005 on the Findings of the Review of the North Herts Museums Services.
- 17.2 Report to Cabinet 27 January 2009 on the Future of Museums Services.
- 17.3 Cragg Management Services report on the possible relocation of North Hertfordshire Museums to Hitchin Town Hall- Annex 2, Cabinet 19 May 2009
- 17.4 Report to Council on 3 December 2009: Hitchin Town Hall/Museum Feasibility Study Outcomes and Actions Arising
- 17.5 Report to Council on 11 February 2010: Hitchin Town Hall/Museum Community Group Proposal
- 17.6 Report to Cabinet on 28 September 2010: Hitchin Town Hall/ Museum Proposals
- 17.7 Report to Council on 10 November 2010: Hitchin Town Hall/ Museum Proposals
- 17.8 Verbal update to Council on 7 April 2011: North Hertfordshire Museum & Community Facility at Hitchin Town Hall
- 17.9 Report to Cabinet on 26 July 2011: North Hertfordshire Museum & Community Facility: Project Update
- 17.10 Report to Council on 10 May 2012: North Hertfordshire Museum & Community Facility
- 17.11 Report to Council: 15 October 2012 North Hertfordshire Museum & Community Facility
- 17.12 Report to Council 23 April 2013 North Hertfordshire Museum & Community Facility: Proposal for the Inclusion of 15 Brand Street

- 17.13 Report to Council 8 August 21013 North Hertfordshire Museum & Community Facility: Proposal for the Inclusion of 15 Brand Street
- 17.14 Report to Overview & Scrutiny Committee 18 December 2014 Development Agreement: North Hertfordshire District Council & Hitchin Town Hall Ltd
- 17.15 Report to Cabinet 27 January 2015: North Hertfordshire District Council & Hitchin Town Hall Ltd: Project Update
- 17.16 Report to Council 12 February 2015: North Hertfordshire District Council & Hitchin Town Hall Ltd: Project Update
- 17.17 Report to Council 10 March 2015: North Hertfordshire District Council & Hitchin Town Hall Ltd: Project Update