

OVERVIEW & SCRUTINY COMMITTEE

18 DECEMBER 2014

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

5

TITLE OF REPORT: DEVELOPMENT AGREEMENT: NORTH HERTFORDSHIRE DISTRICT COUNCIL & HITCHIN TOWN HALL LTD

REPORT OF THE STRATEGIC DIRECTOR CUSTOMER SERVICES & PROJECT EXECUTIVE

PORTFOLIO HOLDER: COUNCILLOR TONY HUNTER

1. SUMMARY

- 1.1 To provide 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.
- 1.2 In view of the current disputes between the parties and having regard to the provisions in the Development Agreement Part 1 of this report details the Council's decision making history and Part 2 of the report outlines the current key issues. This will be supplemented by an oral presentation to provide Members with the opportunity to scrutinise the implementation of Council's decision to enter the Agreement prior to further decisions being made.

2. RECOMMENDATIONS

- 2.1 Overview & Scrutiny Committee is requested to note this report.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To provide Members with the opportunity to consider the history and context of this project prior to determining the way forward at a future meeting of Council.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Not applicable.

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 5.1 This report has not been subject to consultation with external organisations or Ward Members.

6. FORWARD PLAN

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

7. BACKGROUND

- 7.1 On 8th August 2013 Council considered a report entitled 'North Hertfordshire Museum & Community Facility at Hitchin Town Hall'. A copy of that report and the corresponding minutes appear at Annex 1 and Annex 2 of this report. Also attached to Annex 1 of that report is the report considered by Council on 23rd April 2013 (with amendments showing as track changes).
- 7.2 In general terms the evolution of the Development Agreement and subsequent refurbishment of the Town Hall and construction of the new North Hertfordshire Museum has been a complex and often contentious process. Risks identified to the Council in entering the Agreement are more fully detailed in the Annexes to this report and the Part 2 reports and indeed many of the risks identified at that time have materialised.
- 7.3 This report is presented to a special meeting of Overview & Scrutiny Committee to which all Members of the Council have been invited and the purpose of this meeting was set out in my Members Information Service note of 28th November 2014 as follows:

'I understand the majority of Councillors have received a letter from Hitchin Town Hall Ltd in which a number of claims have been made in connection with the Development Agreement with North Hertfordshire District Council.

My report to Area Committees in the current cycle of meetings, which was reproduced as an MIS note circulated on 21st November 2014, referred to earlier statements made by Hitchin Town Hall Ltd and others which the Council firmly refuted and to arrangements I was making to arrange a confidential briefing for all Members of the Council in this respect.

*In the circumstances, and at the request of the Chairman of Overview & Scrutiny Committee, a special meeting of Overview & Scrutiny Committee **to which all Members of the Council are invited** has been arranged for **Thursday 18th December 2014 at 7.30 pm** in the Council Chamber. The meeting will:*

- Provide an overview of the Development Agreement and the current status of the project*
- Provide an overview of the breaches alleged by both sides to the Agreement, including those contained in Hitchin Town Hall Ltd's letter of 20th November 2014*
- Provide an indication of the reporting arrangements to Council to address the principal issues*

Because of the nature of the matters to be discussed, which concern an ongoing series of contractual disputes, it is likely that the meeting of Overview & Scrutiny Committee will largely be conducted under confidential/exempt information (Part 2) 'conditions.

The circulation of the most recent letter from Hitchin Town Hall Ltd to Councillors may in itself constitute a breach of the Development Agreement and, in the circumstances, the advice to all Members from the Acting Corporate Legal Manager and Monitoring Officer is:

Due to the nature of the contract dispute and the monies involved in the project, please could Members avoid commenting on speculation at this stage. The meeting on 18th December 2014 will offer an opportunity to address concerns you may have resulting from the Hitchin Town Hall Ltd letter and recent press coverage. It is important that the Council continues to act appropriately whilst we seek to resolve the dispute.

Pending the meeting Group Leaders have been briefed on the current situation but if you have any further queries at this stage my contact details appear below'.

- 7.4 Details of the Council's decision making history appear as Annex A of this report and further detailed information is available on the Council's website http://www.north-herts.gov.uk/index/leisure_and_culture/museums.htm

8. DEVELOPMENT AGREEMENT: NORTH HERTFORDSHIRE DISTRICT COUNCIL & HITCHIN TOWN HALL LTD

Development Agreement

- 8.1 An overview of the key stages in the Development Agreement appears in paragraph 8.2 and 8.3 of Annex . In brief, the Development Agreement sets out the legal obligations on the parties, from the beginning to the end of the Development (i.e from signature through to all conditions being satisfied and the lease granted). In essence it states that the following sequential events will occur:

- NHDC will appoint the Architect
- NHDC will appoint the Building Contractor
- HTH Ltd will acquire 14 and 15 Brand Street and allow NHDC access to the site for the purpose of the Development.
- NHDC will carry out the Development
- HTH Ltd will fit out the kitchen for the Café at its own cost
- The Architect will confirm completion of the Development
- HTH Ltd will pay its contribution to the Building Contractor
- HTH Ltd will transfer 14 and 15 Brand Street to the Trust
- NHDC will grant HTH Ltd a Lease in the agreed form and will also enter into the Community Use and Management Agreement.

The Agreement sets out the detail of each of these stages and deals with ancillary matters such as:

- Dispute resolution
- Liaison arrangements
- The ability for the Agreement to be used as financial security by HTH Ltd.
- Standard clauses that would ordinarily appear in a legal agreement of this nature

- 8.2 The Development Agreement itself is available on the Council's website http://www.north-herts.gov.uk/index/leisure_and_culture/museums/hitchin_town_hall_museum_proposal/s/development_agreement-2.htm

Current Status

- 8.3 The current status of the project was detailed in my Information Note to the last cycle of Area Committee meetings in December 2014 and projects a public opening of the facility on 22nd June 2015. However, this is subject to a delay of between 7 and 12 weeks principally as a result of at the requirement for conditions on an application for Listed Building Consent conditions to be reported to the Planning Control committee. The length of this extension and costs associated with it are currently being negotiated by the Council's Quantity Surveyor and the representatives of the construction contractor.

Alleged Breaches & Associated Issues

- 8.4 An overview of the breaches alleged by both Hitchin Town Hall Ltd and NHDC together with other associated issues is detailed in the corresponding Part 2 report. Hitchin Town Hall Ltd have made public statements on the alleged breaches, but the Council has to date taken the approach of not publicly responding to these points as in our view to take this approach is itself a breach of the Development Agreement.

Reporting Arrangements to Council

- 8.5 An outline of the likely reporting arrangements for decision making by the Council will be provided in the Part 2 oral report.

9. LEGAL IMPLICATIONS

- 9.1 The terms of reference of Overview and Scrutiny Committee include at 6.2.7(p) in the Council's Constitution "Review and scrutinise the decisions by and performance of the Cabinet and/or Committees and/or Officers in relation to individual decisions, and over time;"
- 9.2 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. The advice to Members from the Acting Corporate Legal Manager and Monitoring Officer in respect of communications from Hitchin Town Hall Ltd is set out in paragraph 7.3.
- 9.3 The legal implications previously identified in respect of this project are set out in the appended reports.

10. FINANCIAL IMPLICATIONS

- 10.1 Financial implications considered by Council are set out in the appended or referenced reports.

10.2 Specific Financial implications arising from issues identified in the Part 2 report will be provided by the Accountancy Manager at the meeting.

10.3 A loan made by NHDC to Hitchin Town Hall Ltd outside the scope of the Development Agreement to assist delivery of project remains outstanding. The full amount of the initial loan provided to Hitchin Town Hall Ltd was £16,414.. . Interest is accruing on this loan and the amount due is now in excess of £17k.

11. RISK IMPLICATIONS

11.1 The risk implications considered by Council are set out in the appended or referenced reports.

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 development, which includes No 15 Brand Street into the overall scheme expands the foyer/entrance area available and fulfils the authority's statutory disabled access requirements, by ensuring access is facilitated by ramped or assisted access i.e. by lift or platform lift.

13. SOCIAL VALUE IMPLICATIONS

13.1 As the recommendations made in this report do not constitute an additional 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 Resource implications arising from this report other than those associated with adequately resourcing the project team which faces an increased workload at a point when staff involved are also supporting other key corporate projects.

15. APPENDICES

15.1 Annex 1 Part 1 and Part 2 Report to 8th August 2013 North Hertfordshire Museum & Community Facility (Appending report to Council on 23rd April 2013) – **Please note Part 2 of this Annexe has been reproduced in the Part 2 papers accompanying this report**

Annex 2 Minutes and Resolution from Council meetings 8th August 2013 and 23rd April 2013

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17. BACKGROUND PAPERS

- 17.1 Report to Cabinet 23rd August 2005 on the Findings of the Review of the North Herts Museums Services.
- 17.2 Report to Cabinet 27th 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 19th May 2009
- 17.4 Report to Council on 3rd December 2009: Hitchin Town Hall/Museum Feasibility Study Outcomes and Actions Arising
- 17.5 Report to Council on 11th February 2010: Hitchin Town Hall/Museum Community Group Proposal
- 17.6 Report to Cabinet on 28th September 2010: Hitchin Town Hall/ Museum Proposals
- 17.7 Report to Council on 10th November 2010: Hitchin Town Hall/ Museum Proposals
- 17.8 Verbal update to Council on 7th April 2011: North Hertfordshire Museum & Community Facility at Hitchin Town Hall
- 17.9 Report to Cabinet on 26th July 2011: North Hertfordshire Museum & Community Facility: Project Update
- 17.10 Report to Council on 10th May 2012: North Hertfordshire Museum & Community Facility
- 17.11 Report to Council: 15th October 2012 North Hertfordshire Museum & Community Facility

- 17.12 Report to Council 23rd April 2013 North Hertfordshire Museum & Community Facility: Proposal for the Inclusion of 15 Brand Street
- 17.13 Report to Council 8th August 2013: North Hertfordshire Museum & Community Facility: