

Council Meeting: 8 August 2013**43. NORTH HERTFORDSHIRE MUSEUM AND COMMUNITY FACILITY AT HITCHIN TOWN HALL**

[Prior to the consideration of this item, the following interests were declared:

- (1) Councillor David Leal-Bennett declared a Disclosable Pecuniary Interest, in view of his role as a Director of Hitchin Town Hall Limited. He withdrew from the Chamber for the remainder of the meeting;
- (2) Councillor Mrs A.G. Ashley made a Declarable Interest as she had publicly stated her support for Hitchin Town Hall Limited, but considered that this was not so significant that she needed to withdraw from the meeting, and she therefore remained for the debate and vote upon this and the subsequent items on this matter; and
- (3) Councillor David Levett made a Declarable Interest in that he was a Member of the Cabinet Sub-Committee (Hitchin Gymnasium and Workmans Hall Trust). However, as the business to be transacted did not directly affect the Trust, he considered that the interest was not so significant that he needed to withdraw from the meeting, and he therefore remained for the debate and vote upon this and the subsequent items on this matter]

The Strategic Director of Customer Services provided the following amendments/updates to the Part 1 report on the North Hertfordshire Museum and Community Facility at Hitchin Town Hall, as contained in a Part 1 addendum tabled at the meeting:

- Paragraph 1.1 – deletion of the word “material” (Explanatory note: The wording of this paragraph left unchanged could leave some ambiguity. Hitchin Town Hall Limited (HTH Ltd) did not consider the change to be “material”. The Council was advised, however, that in the context of the decision making history, it was considered the changes were significant, particularly as the changes had financial and risk implications. Removal of the word “material” better reflected these views and the Strategic Director of Customer services was happy to correct any misunderstanding that may have arisen);
- Paragraph 2.1 (Recommendation) – deletion of the words “and if so” – referred to in the Part 2 addendum;
- Paragraph 2.2 (Recommendation) – deletion of the whole of this recommendation - referred to in the Part 2 addendum;
- Paragraph 8.9 – replacement of the date “2013” with “2030”; and
- Paragraph 10.2 – deletion of the whole of this paragraph and replacement with “The anticipated funding for the project is shown below, updated for the latest information on HTH Ltd’s acquisition funding. The financial model for Hitchin Town Hall Ltd will now need to reflect the repayment of the £140,000 long-term secured loan note following the repayment of the £510,000 loan from Adventure Capital Fund and the £20,000 (max) loan from the Council. Based on previously provided versions of the financial model we are advised by HTH Ltd this repayment should be within the tolerances of the model. However, the repayment of a further loan will delay the ability to reinvest the equivalent amount back into the facility over the period to 2030 unless HTH Ltd are able to achieve surpluses over and above this.

44. EXCLUSION OF PRESS AND PUBLIC

RESOLVED: That under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraphs 3 and 5 of Part 1 of Schedule 12A of the said Act (as amended).

45. NORTH HERTFORDSHIRE MUSEUM AND COMMUNITY FACILITY AT HITCHIN TOWN HALL

The Strategic Director of Customer Services provided the following amendment/update to the Part 2 report on the North Hertfordshire Museum and Community Facility at Hitchin Town Hall, as contained in a Part 2 addendum tabled at the meeting:

- Deletion of Paragraphs 3.6 and 3.8 in the report in respect of the Put Option, and their replacement with new Paragraphs 3.6, 3.7 and 3.8 as set out in the addendum, and consequent re-numbering of the subsequent paragraphs.

The Portfolio Holder for Community Engagement and Rural Affairs (Councillor A.F. Hunter) presented the Part 2 report of the Strategic Director of Customer Services in respect of the North Hertfordshire Museum and Community Facility at Hitchin Town Hall. The following annexes were submitted with the report:

Annex 1 – Part 2 Report to Council: 23 April 2013 entitled North Hertfordshire Museum and Community Facility: Proposal for the inclusion of 15 Brand Street; and
Annex 2 – HTH Ltd: 15 Brand Street “Acquisition Funding”.

The Portfolio Holder for Community Engagement and Rural Affairs summarised the following elements set out in the report:

- The increased risks of the revised proposals;
- The revised Put Option in the Development Agreement; and
- HTH Ltd’s revised “Acquisition Funding for 15 Brand Street.

It was moved by Councillor A.F. Hunter, seconded by Councillor Mrs L.A. Needham and, following debate and upon being put to the vote, it was

RESOLVED: That the report be noted, and its contents be taken into consideration prior to voting on the recommendations in the Part 1 report (see Minute 46 below).

REASON FOR DECISION: To keep Members informed of Part 2 issues in respect of the redevelopment scheme for the North Hertfordshire Museum and Community Facility at Hitchin Town Hall.

[Note: At this point in the proceedings, the press and public were re-admitted to the meeting.]

46. NORTH HERTFORDSHIRE MUSEUM AND COMMUNITY FACILITY AT HITCHIN TOWN HALL

The Strategic Director of Customer Services presented a Part 1 report in respect of the North Hertfordshire Museum and Community Facility at Hitchin Town Hall. The following annex was submitted with the report:

Annex 1 – Part 1 report to Council: 23 April 2013 entitled North Hertfordshire Museum and Community Facility: Proposal for the inclusion of 15 Brand Street.

The Strategic Director of Customer Services reminded Members of the key changes to the Development Agreement, as reported to Council on 23 April 2013, which were:

“8.19.1 The scope of the development would be expanded to include 15 Brand Street in the scheme;

8.19.2 The Council would have until 30th September 2013* to procure the main building contractor. Within 10 working days after this date, HTH Ltd would complete the purchase of 14 Brand Street and the Council would formally award the building contract. Both events would occur simultaneously;

8.19.3 Documents annexed to the Development Agreement such as Leases, option agreements and plans would be updated to include 15 Brand Street; and

8.19.4 The Planning Permission for 15 Brand Street was granted in February 2013 and the Development Agreement would include reference to this planning permission.

* Date subsequently varied to 16 August 2013.”

The Strategic Director of Customer Services explained that the Put Option was a clause introduced at the request of Adventure Capital Fund (ACF), Hitchin Town Hall Ltd's bankers, and was reported to Council when it agreed the Development Agreement, Lease and associated Management and Community Use Agreements on 15 October 2012. At that time Council noted (Paragraph 5.6 of that report):

“Grant of Put Option by the Council - this new clause addresses the requested ‘Guarantee’ from NHDC to repay to ACF any investment made by them in the event that the project is not completed”. ACF have made it a requirement for a new Clause 11 within the Development Agreement, that would require the Council to grant a ‘Put Option’ to HTH Limited that, in the event of a Trigger Event, HTH Limited may exercise the Option to require the Council to re-purchase the property at 14 Brand Street from them.

The Put Option can only be exercised from the date of the Agreement until completion of the Lease to HTH Limited.

The Trigger Events are [in summary] (i) that the Works have not commenced or progressed in a manner likely to achieve the Target Completion Date (ii) HTH Limited terminates the agreement under Clause 8.3 due to a material breach by the Council of its obligations or (iii) the Target Completion Date has not been achieved by 14 November 2016.

In the event of any one of the above, trigger events above occur the Council would be required to purchase 14 Brand Street for the sum of £250,000. Other consequential risks to the Council have already been identified, in the event any of the Trigger Events occur. The Agreement has also been amended at Clause 8.4, to take into account the provisions of this proposed Direct Agreement with ACF.”

The Strategic Director of Customer Services advised that, on 29 July 2013, HTH Ltd confirmed that it was seeking an extension of this Put Option to incorporate 15 Brand Street. The increase in the value of the option required was £190,000 (the purchase price for 15 Brand Street, increased following an independent valuation from the maximum £180,000 envisaged). Notwithstanding the nature of the proposal to incorporate 15 Brand Street, in which the acquisition of the property was envisaged as being without further cost or risk to NHDC when reported, Directors of HTH Ltd had confirmed that they were not willing to accept the risk of not having such an Option.

The Strategic Director of Customer Services stated that, although the request to extend the Put Option to cover the new liability on HTH Ltd represented by the new £140,000 “loan” to partly finance the acquisition of 15 Brand Street was understandable, Officers did not believe this new liability was assumed when the Council agreed to the revised scheme, as had been suggested by HTH Ltd.

The Strategic Director of Customer Services advised that, in summary, the non-negotiable position of HTH Ltd Directors was that the Council must agree to the terms of the amended Put Option and, in doing so, accept an additional financial risk of up to £190,000. If Council chose not to accept this risk, the project would be unable to proceed in its current form. The financial risks section of the report illustrated the effect on the Council's overall risk value should it wish to accept this change. Further consideration of the risk implications was provided in the Part 2 report.

The Council was informed that, during the course of negotiations to agree a revised Agreement, Hitchin Town Hall Ltd had advised that their funding structure was being modified and would no longer be funded by donations (albeit ‘donations’ which could be repaid and pay interest at Hitchin Town Hall Ltd's choice), but instead would rely on a long term unsecured loan and one donation. The new funding arrangements were set out in Annex 1 of the Part 2 report, but for ease of comparison the key features of both were set out in a table at paragraph 8.8 of the report.

The Strategic Director of Customer Services advised that the changes illustrated in the table reflected a significant change in the structure of HTH Ltd's acquisition funding. Whilst HTH were confident that their overall financial model was capable of accommodating repayments of both the £140,000 loan by 2013 and 2% annual interest payments until that time, this would mean a proportion of the projected surplus during this period would not be available to invest in HTH Ltd's charitable objectives – primarily the operation and management of the Town Hall itself.

In summary, the Council noted that the change in acquisition funding represented a potential risk to HTH Ltd, as it would be required to repay a "loan" and be required to pay interest, unlike the original arrangements where it could choose to do either at its discretion. Should HTH Ltd be unable to meet these payments, a degree of risk would in turn fall on NHDC. Further commentary on the risks arising from this were provided in Section 10 of the report and in the Part 2 report.

The Strategic Director of Customer Services referred to the current project timetable, as set out at Paragraph 8.12 of the report. Conclusion of negotiations with the preferred contractor were due to be concluded by 16 August 2013, but it was now envisaged that this would conclude by the end of August 2013 and, subject to ACF's agreement, would entail formal award of contract by 5 September 2013.

The Portfolio Holder for Community Engagement and Rural Affairs (Councillor A.F. Hunter) thanked all those involved for their time and effort in reaching the current position. He commented that this was a very complex project, involving investment of £4Million. The hard work would continue, but he considered that the project was now at a stage where some visible progress would soon become apparent.

It was therefore moved by Councillor A.F. Hunter, and seconded by Councillor Judi Billing, that Recommendation 2.1 in the report be approved, namely:
"That the request for the inclusion of a revised Put Option in favour of Hitchin Town Hall Ltd detailed in Paragraphs 8.5 and 8.7 of the report be agreed, and the revised funding structure detailed in Paragraphs 8.8 - 8.11 of the report, with the associated risks attached to both, be accepted.

A number of Members expressed their support to the above proposal. The general view was that, although the quantum of the risk to the Council had changed, the nature of the risk remained similar to that which had already been accepted.

Following further debate, and upon the motion being put to the vote, it was

RESOLVED: That the request for the inclusion of a revised Put Option in favour of Hitchin Town Hall Ltd detailed in Paragraphs 8.5 and 8.7 of the report be agreed, and the revised funding structure detailed in Paragraphs 8.8 - 8.11 of the report, with the associated risks attached to both, be accepted.

REASON FOR DECISION: To reflect the significant changes in the proposals already agreed by the Council, and to proceed with development on the amended terms required by Hitchin Town Hall Ltd.

Council Meeting: 23 April 2013**127. NORTH HERTFORDSHIRE MUSEUM AND COMMUNITY FACILITY**

[Prior to the consideration of this item, the following interests were declared:

- (1) Councillor David Leal-Bennett declared a Disclosable Pecuniary Interest, in view of his role as a Director of Hitchin Town Hall Limited. He withdrew from the Chamber for the remainder of the meeting;
- (2) Councillor Judi Billing declared a Non-Pecuniary Interest, in view of her role as a Director of Hitchin Initiative, and remained present in the meeting for this item and the debate and vote upon Minute Nos. 129 and 130 below; and
- (3) Councillor Mrs C.P.A. Strong declared that she was a Member of the Cabinet Sub-Committee (Hitchin Gymnasium and Workmans Hall Trust). She withdrew from the meeting for this item and Minute 129 below, but returned and sat in the public gallery for the Council's debate and vote upon Minute 130 below.]

The Strategic Director of Customer Services provided the following amendments/updates to the Part 1 report on the North Hertfordshire Museum and Community Facility - Proposal for the inclusion of 15 Brand Street:

- The words “and on the draft Deed of Variation (Appendix 6)” should be deleted from Paragraph 2.2 of the recommendations;
- The words “appended to this report” in Paragraph 8.27 should be deleted;
- The words “attached in Appendix 6” in Paragraph 8.28 should be deleted;
- Appendix 6 should be deleted;
- The following should be added as an additional recommendation to Paragraph 2.2:
2.2.3 “Authority is delegated to the Strategic Director of Customer Services, in consultation with the Strategic Director of Finance Policy and Governance, the Portfolio Holder for Community Engagement and Rural Affairs and the Contracts Solicitor, to agree any required variations to any Legal Agreements to incorporate the proposed changes to the scheme.”
- Paragraph 8.17 – Stage area and associated storage – this had been referred to by Brent Smith in his presentation to Council earlier in the meeting under Public Participation;
- Paragraphs 8.26 and 8.29.2 – clarification that the date for procurement of the main building contractor for the scheme would be by no later than 16 August 2013; and
- Paragraph 8.29.2 – clarification that within 10 working days of 16 August 2013, Hitchin Town Hall Limited would complete the purchase of both 14 and 15 Brand Street, and the Council would formally award the building contract.

128. EXCLUSION OF PRESS AND PUBLIC

RESOLVED: That under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraphs 3 and 5 of Part 1 of Schedule 12A of the said Act (as amended).

129. NORTH HERTFORDSHIRE MUSEUM AND COMMUNITY FACILITY

The Council was informed by the Strategic Director of Customer Services that the reference in the report at Paragraph 3.7 to “Paragraphs 3.7 and 3.8 below” should read “Paragraphs 3.8 and 3.9 below”.

The Portfolio Holder for Community Engagement and Rural Affairs (Councillor Tricia Cowley) presented the Part 2 report of the Strategic Director of Customer Services in respect of the North Hertfordshire Museum and Community Facility – Proposal for the inclusion of 15 Brand Street. The following appendix was submitted with the report:

Appendix 1 – Hitchin Town Hall Ltd. – Acquisition Funding Memorandum.

The Portfolio Holder for Community Engagement and Rural Affairs summarised the following risks set out in the report:

- Potential Withdrawal from the Approved or Amended Scheme by Hitchin Town Hall Ltd.;
- Hitchin Town Hall Ltd. – Financial Model and Capacity;
- Adventure Capital Fund (ACF) Conditions; and
- Procurement Issues.

Following debate, it was

RESOLVED: That the report be noted, and its contents be taken into consideration prior to voting on the recommendations in the Part 1 report (see Minute 130 below).

REASON FOR DECISION: To keep Members informed of Part 2 issues in respect of the potential incorporation of 15 Brand Street into the scheme for the North Hertfordshire Museum and Community Facility.

[Note: At this point in the proceedings, the press and public were re-admitted to the meeting.]

130. NORTH HERTFORDSHIRE MUSEUM AND COMMUNITY FACILITY

The Portfolio Holder for Community Engagement and Rural Affairs (Councillor Tricia Cowley) presented the Part 1 report of the Strategic Director of Customer Services in respect of the North Hertfordshire Museum and Community Facility – Proposal for the inclusion of 15 Brand Street. The following appendices were submitted with the report:

Appendix 1 – Proposal from Hitchin Town Hall Ltd;
 Appendix 2 – Illustration of Amended Building Frontage;
 Appendix 3 – Internal Layout Plans;
 Appendix 4 – Lease Plan – Existing Scheme; and
 Appendix 5 – Lease Plan – incorporating 15 Brand Street.

The Portfolio Holder for Community Engagement and Rural Affairs began by thanking all those involved for their time and effort in reaching the current position.

The Portfolio Holder for Community Engagement and Rural Affairs advised that the Development Agreement (Clause 4.7) with HTH Ltd required that “The parties remain committed to the exploration of an expanded future scheme that may include the remainder of 15 Brand Street to form this community facility and agree to consider a variation of this agreement should this be possible within the funding available at the time and is agreed between the parties to be viable and achievable”.

The Portfolio Holder for Community Engagement and Rural Affairs stated that Officers had provided informal feedback to HTH Ltd as the scheme developed at meetings between October 2012 and January 2013, and a formal proposal was received on 14 January 2013.

Following receipt of this proposal, further meetings to negotiate and clarify particular elements were held during the course of March and April 2013.

The Portfolio Holder for Community Engagement and Rural Affairs explained that, as it became apparent that negotiations would not conclude prior to the agreed date for the award of the construction contract for the agreed scheme, and with the agreement of HTH Ltd and Adventure Capital Fund (HTH Ltd's lenders), the Chief Executive authorised the delay of the award of contract to the end of April 2013 to allow:

- Hitchin Town Hall Ltd and NHDC to conclude negotiations on an amended Development Agreement to include 15 Brand Street for consideration by NHDC (full Council);
- Preparation of a report for Council and the Gymnasium and Workman's Hall Trust, together with the required public notice of the meetings to be issued;
- Consideration by both the Council and Gymnasium and Workman's Hall Trust of the proposal; and
- Either: the development of a detailed timetable for delivery of 15 Brand Street for discussion with ACF if this was agreed, or: mobilisation of the successful contractor for the original scheme incorporating 14 Brand Street only.

The Portfolio Holder for Community Engagement and Rural Affairs advised that the proposal from HTH Ltd was attached at Appendix 1 to the report. However, Members noted that during the course of further dialogue with HTH Ltd, a number of the elements were modified, and a commentary on these changes and the proposals more generally was provided in Appendix 1. The Portfolio Holder for Community Engagement and Rural Affairs focussed on some of the key changes, as follows:

- HTH Ltd's aspirations to accommodate additional design changes to relocate museum storage and other elements may create additional risk, as these aspirations had not been fully developed or agreed, but were being promoted by a small number of local organisations. However, the formal proposal made it clear that the internal layout of the extended museum entrance was a matter for NHDC to determine. The design, cost estimates, revised programme and draft amendments to the Development Agreement contained in the report had been based on this and were outlined in Paragraphs 8.26 – 8.28 of the report; and
- Confirmation of arrangements by ACF would be required before the proposal could be formally agreed, and it was uncertain at this stage whether or not ACF would be prepared to grant an extension that would be acceptable to NHDC.

The Portfolio Holder for Community Engagement and Rural Affairs reported that the museum exhibition designer had recently been chosen from a short-list of seven. The successful firm had been notified that there would be a short delay in the award of contract. Currently, the aim was for the fit-out designer to work with NHDC officers to submit the Stage 2 Heritage Lottery Fund (HLF) bid by 5 August 2013, for decision at a meeting on 28 November 2013. Under current HLF rules, the latest date NHDC could submit the Stage 2 bid was 11 November 2013, for decision at a meeting on 6 March 2014.

The Portfolio Holder for Community Engagement and Rural Affairs turned to the specific criteria detailed in 4.7 of the Development Agreement, and advised:

- That the funding currently available within the approved budget would not be sufficient to cover the increased costs to the Council of approximately £100,000. HTH Ltd have indicated that their costs were estimated at a maximum of £180,000 for the acquisition of 15 Brand Street, and the compensation payment to the current tenant would be secured from a combination of donations and loans;
- That Officers considered that the proposal was viable, as the physical amendments to the scheme were technically feasible, did not entail significant additional running costs, and would enhance the appearance of the Museum entrance, providing a more amenable customer experience and some additional display space for non-sensitive items; and

- That the proposal may be achievable, subject to the necessary funds being made available and the agreement of ACF to the terms and timescales acceptable to the Council. Achievability would also be dependant on Hitchin Town Hall Ltd's ability to secure £180,000 of donations/loans to finance the acquisition of 15 Brand Street within the timescales required to them.

The Portfolio Holder for Community Engagement and Rural Affairs considered that the inclusion of 15 Brand Street into the scheme would enhance the Museum by providing:

- Improved visual aesthetic, resulting from the wider and more commanding frontage;
- Enlarged entrance area, giving increased space for visiting groups, improved circulation space and appearance;
- Slightly larger first floor area, giving more scope for community exhibitions and displays outside the most secure museum space; and
- A café which remained proportionate, viable and complementary to the main function of the building as a museum.

The Portfolio Holder for Community Engagement and Rural Affairs advised that, as part of the analysis of the 15 Brand Street scheme, Buttress Fuller Alsop Williams, architects for the project, and Appleyard & Trew, Cost Consultants, carried out a comparison with the scheme which incorporated only 14 Brand Street. The costs associated with the incorporation of 15 Brand Street, as assessed by the Design Team, were set out in the report and amounted to an additional £100,390.50.

The Portfolio Holder for Community Engagement and Rural Affairs drew attention to the key changes to the Development Agreement, as set out in Paragraph 8.29 of the report. She also referred to the risks to the project, set out in Section 11 of the report.

The Portfolio Holder for Community Engagement and Rural Affairs concluded that the offer put forward by HTH Ltd was undoubtedly a generous one. HTH Ltd would be prepared to commit approximately £180,000 of expenditure to improve the aesthetic of the new museum building and provide improved functionality for the entrance and expanded display space. The project would provide for a more straightforward construction and improved opportunities for a range of activities in the expanded gallery for both NHDC and HTH Ltd. Finally, the proposal is consistent with the Gymnasium & Workmans Hall Trust objectives and would vest ownership of the expanded element of the building to the Trust.

However, the Portfolio Holder for Community Engagement and Rural Affairs considered that the proposal would increase the amount of time necessary to conclude the building and simultaneously increase costs and delay the achievement of forecast savings. The Council would need to accept a greater degree of risk, not least that arising from potential dissatisfaction with the internal layout and procurement issues more fully detailed in the Part 2 report

The Portfolio Holder for Community Engagement and Rural Affairs stated that, in overall terms, the proposal to incorporate 15 Brand Street was, subject to the risks outlined in the report, achievable, but a fully designed and agreed original scheme was at an advanced stage of procurement and is capable of being delivered at no additional cost or risk. Whilst of the view that both options were viable, the Portfolio Holder for Community Engagement and Rural Affairs advised that she would be recommending that 15 Brand Street be incorporated into the scheme, subject to the various conditions set out in the recommendations.

It was therefore moved by Councillor Tricia Cowley, seconded by Councillor Mrs L.A. Needham, and following debate and upon being put to the vote, it was

RESOLVED:

- (1) That the inclusion of 15 Brand Street into the North Hertfordshire Museum and Community facility development, as described in the body of the report, be agreed, on condition that:
 - (a) Significant changes to the layout from those illustrated at Appendix 3 to the report will not be considered unless there was significant benefit to the Museum and that no significant additional costs or delay to the project would occur;
 - (b) Any conditions required by the Adventure Capital Fund (ACF) are achievable within the Council's assessed programme and financial estimates, detailed in Paragraphs 8.25 and 10 of the report;
 - (c) Authority be delegated to the Strategic Director of Customer Services, in consultation with the Strategic Director of Finance Policy and Governance, the Portfolio Holder for Community Engagement and Rural Affairs and the Contracts Solicitor, to agree any required variations to any Legal Agreements to incorporate the proposed changes to the scheme; and
- (2) That, subject to Resolution (1)(b) above, the necessary expenditure from the Capital Programme of £100,000 to finance the Council's contribution be agreed, and officers be delegated authority to enter into the necessary legal agreements.

REASON FOR DECISION: To proceed with the option of varying the project for the development of a District Museum and Community Facility to incorporate 15 Brand Street.